

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Lance Kinzer at 3:30 p.m. on February 25, 2009, in Room 143-N of the Capitol.

All members were present except:

Representative Annie Kuether-excused  
Representative Jason Watkins-excused

Committee staff present:

Melissa Doebelin, Office of the Revisor of Statutes  
Matt Sterling, Office of the Revisor of Statutes  
Jill Wolters, Office of the Revisor of Statutes  
Athena Andaya, Kansas Legislative Research Department  
Jerry Donaldson, Kansas Legislative Research Department  
Sue VonFeldt, Committee Assistant

Conferees appearing before the committee:

Kyle Mead, Lawyers Title of Topeka  
Representative Rocky Fund  
Bruce Tomlinson, Kansas Association of Licensed Investigators  
John Ellis, Kansas Association of Private Investigators  
Randy Hearrell, Kansas Judicial Council  
Mark Knackendoffell, Kansas Judicial Council-Probate Law

Others attending:

See attached list.

The hearing on **HB 2305- Manufactured homes and mobile homes, treated as real property, when** was opened.

Kyle Mead, representing Lawyers Title of Topeka, spoke as a proponent of the bill. He explained some of the unforeseen, unintended consequences that arose from the application of the Kansas manufactured housing act, specifically K.S.A. 58-4214. He said prior to the amendment of the statute and creation of the "surrender" title procedure, it was a commonly accepted practice in the title industry to consider a Mobile Home or Manufactured Housing unit to be an affixed part of the real estate and no longer personal property if the following attributes were true:

- 1, The manufactured home or mobile home has been permanently affixed to real property, by placement upon a permanent foundation of a type not removable intact from such real property and the axles and wheels have been removed.
2. The manufactured home or mobile home is being taxed as real property;
3. All personal property liens on the manufactured home or mobile home have been paid and released.

This bill would amend the Kansas Manufactured Housing act and establish a manufactured or mobile home as real property if a certificate of title was issued on the property before January 1, 2003 and meets the three criteria previously mentioned. In addition, this bill would allow for, and require, documentation to be filed with the local Register of Deeds, as evidence of the status of the property as real property, which had been generally accepted and presumed. He advised this bill should provide the workable solutions to the problems they have been facing. (Attachment 1)

Neutral-Written Only:

Martha Smith, Executive Director of the Kansas Manufactured Housing Association, provided written support as a neutral position of the bill. (Attachment 2)

There were no opponents.

The hearing on **HB 2305** was closed.

CONTINUATION SHEET

Minutes of the House Judiciary Committee at 3:30 p.m. on February 25, 2009, in Room 143-N of the Capitol.

The hearing on **HB 2311 - Authorizing licensed private detectives to serve process statewide** was opened.

Representative Rocky Fund, appeared as a sponsor and proponent of the bill and introduced Mr Bruce Tomlinson to the committee.

Bruce Tomlinson, representing the Kansas Association of Licensed Investigators , outlined several items that were developed by their association that would make the serving process part of their work more efficient. (Attachment 3)

John Ellis spoke on behalf of the Kansas Association of Private Investigators and also supports passage of this bill. He also stated the current Private Detective Licensing Act defines “detective business” in KSA 75-7b01 using this definition as the basis for determining who must be licensed based on their activities. Terminology in that definition includes location investigations of the type frequently done by process servers making licensing a requirement unless a specific exemption to the licensing act is met. He also advised in the past, some attorneys, process servers and others have asserted that the court appointment order for process servers overcomes the private detective licensing act requirement or that the requirement to license presents undue burden and therefore suggested an amendment to the bill, amending KSA 75-7b03 to state “Any person performing duties as a court appointed process server when any investigation is conducted incidental to serving the legal process”. (Attachment 4)

There were no opponents.

The hearing on **HB 2311** was closed.

The hearing on **SB 70 - Trusts; unitrust conversion; uniform principal and income** act was opened.

Randy Hearrell, Executive Director of the Kansas Judicial Council, provided each Committee member with a current list of the members of the Judicial Council Probate Law Advisory Committee and also listed some examples of the work performed this Committee. (Attachment 5)

Mark Knackendoffell, a member of the Kansas Judicial Council-Probate Law, provided the committee with an explanation of how most trusts are drafted to direct the trustee to distribute income to a beneficiary for a specific amount of time. Trustees attempt to invest trust assets so to produce enough income to meet the current beneficiary’s needs. Under current law Kansas uses the “prudent investor rule” for guiding and assessing the trustee’s investment decisions. Under this rule results are evaluated on their role and impact with respect to the entire portfolio rather than asset-by-asset. This process has sacrificed total investment returns for the whole portfolio. Response to this dilemma is the adoption of “unitrust conversion statutes”.

Under this statutes, when a trust agreement directs the trustee to distribute income, the trustee is granted the authority to “convert” or redefine “income” so that distributions in income beneficiaries are determined by a unitrust distribution formula. Using this formula, a trustee distributes a fixed percentage of the assets to the beneficiary each year as “income” which adjusts as the portfolio grows or falls in value. The objectives of the income and beneficiaries are unified so that both are motivated by the total return of the portfolio.

He advised twenty-six states have adopted unitrust conversion statutes and that this bill was patterned from the Pennsylvania conversion, however their language would not allow you to convert back from a Unitrust and the Kansas statute will allow such a change. The Probate Law Advisory Committee proposed this statute be adopted and become a part of the Uniform Principal and Income Act as a new section 58-9-105. (Attachment 6)

There were no opponents.

The hearing on **SB 70** was closed.

CONTINUATION SHEET

Minutes of the House Judiciary Committee at 3:30 p.m. on February 25, 2009, in Room 143-N of the Capitol.

The next meeting is scheduled for February 26, 2009.

The meeting was adjourned at 4:20 p.m.

# JUDICIARY COMMITTEE GUEST LIST

DATE: 2-25-09

NAME	REPRESENTING
<del>Michael Melin</del>	KMHA
Michael Melin	KDOR - Title + registration <sup>DMV</sup>
John W. Ellis	Ks Assoc. of Priv. Inv.
Doug Wareham	KBA
DEL WHITE	KALI
Eric Nichols	KALI
Cathy MacFarlane	KS Assoc. of Private Investigators
Bob M. Britner	Federico Consulting
Benjamin Miller-Colina	Ru, Gogle
Randy Heanuel	KS graduation
Mark Kwackendoffe	"
REBECCA TOMLINSON	KALI
Brian Tomlinson	KALI
Rocky Fund 50 <sup>th</sup> Dist.	STATE OF KANSAS
SEAN MILLER	CAPITOL STRATEGIES
Hayden St. John	Lawyers Title of Topeka
Chris St. John	KLTA
John Peterson	Capitol Strategies
JOSEPH MOLINA	KS BAR ASSN

LANE WATTS

Jud. Branch

# JUDICIARY COMMITTEE GUEST LIST

DATE: 2/25/09

NAME	REPRESENTING
Marilyn Nichols	Ks. Register of Deeds Assoc.
Nancy Zogelman	Polisnell
<del>Elizabeth Utter</del>	KTC
David Scott	Kansas Secured Title
Greg Huehl	Kansas Secured Title
Spencer Duncan	Capitol Connection KS
Kyle Head	Lawyers Title of Topeka / KLTIA
Whitney Jann	KS Bar Assn

**House Judiciary Committee  
February 25, 2009**

**Testimony in support of House Bill 2305**

**Kyle J. Mead, Examining Attorney  
Lawyers Title of Topeka, Inc.  
5715 SW 21<sup>st</sup> Street, Topeka KS 66604**

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Mr. Chairman and Members of the Judiciary Committee,

I thank you for the opportunity to be able to speak in favor of House Bill 2305 today.

House Bill 2305 is an attempt to address some unforeseen, unintended consequences arising from the application of the Kansas manufactured housing act, specifically K.S.A. 58-4214. In particular we wish to address situations in which certain manufactured or mobile home units were considered to have been converted to real estate, prior to the enactment of the statute and the institution of the statutory procedure under K.S.A. 58-4214, which requires one to “surrender” title through the Department of Revenue, and have an approved Application form recorded with the appropriate Register of Deeds.

Prior to the enactment of the statute and creation of the “surrender” procedure, it was a commonly accepted practice in the title industry to consider a Mobile Home or Manufactured Housing unit to be an affixed part of the real estate and no longer personal property if the following attributes were true:

1. The manufactured home or mobile home has been permanently affixed to real property, by placement upon a permanent foundation of a type not removable intact from such real property and the axles and wheels have been removed;
2. the manufactured home or mobile home is being taxed as real property; and

House Judiciary  
Date 2-25-09  
Attachment # 1

3. all personal property liens on the manufactured home or mobile home have been paid and released.

As a result, hundreds if not thousands of property-owners have considered their property to be real estate in the fullest sense. The local county Appraiser, Clerk and Treasurer have considered the property to be real estate because they have taxed it as such. Practically speaking, these owners do not understand why they have to “re-establish” their unit as real property when it has been generally accepted, as such, for years. These are cases where it would not have been possible, at the time, to comply with the statute because the statute did not yet exist.

The issue has arisen in certain cases where a bankruptcy trustee has tried to set aside a mortgage, which presumably includes the land and affixed Manufactured Home, on the grounds that the statute has not been complied with, and that the manufactured home was personal property. In one particular case arising in Shawnee County, the challenged property had met all of the foregoing requirements to be considered real estate, and had been treated as such on several prior occasions.

We have been advised that similar cases have arisen in the Wichita area, and we estimate that hundreds of similar properties exist in the state right now, and are somewhat in a state of limbo.

We are in full support of the current “surrender” procedure for all units manufactured and placed subsequent to January 1, 2003, and for older units for which title certificates exist and could be surrendered under the current statute, but which were not converted to real estate under the established procedure prior to the enactment of K.S.A. 58-4214. What we are proposing is an appropriate alternative which will recognize those situations, where, prior to the statutory enactment, the criteria set out above had been met,

and the manufactured housing unit has been treated as real property for taxation and insuring purposes. The proposed amendments allow for, and require, documentation to be filed with the local Register of Deeds, as evidence of the status of the property as real property, which had been generally accepted and presumed. See New Section 1 (b).

As members of the Kansas Land Title Association, we, and other title professionals, have been working with representatives of the Kansas Manufactured Housing Association, Kansas Bankers Association and the Kansas Department of Revenue to find a workable solution to the problems we have been facing. We believe that House Bill 2305 represents that solution, and we ask for your support.



3521 SW 1st Street  
Topeka, KS 66606  
785-357-5256  
785-357-5257 fax  
kmha1@sbcglobal.net

TO: Representative Lance Kinzer, Chairman  
And Members of the Judiciary Committee

FROM: Martha Neu Smith  
Executive Director

DATE: February 25, 2009

RE: HB 2305 Kansas Manufactured Housing Act Concerning Certificates of Title

Chairman Kinzer and members of the Judiciary Committee, my name is Martha Neu Smith and I am the Executive Director for Kansas Manufactured Housing Association (KMHA) and I appreciate the opportunity to provide written comments on HB 2305.

KMHA is a statewide trade association, which represents all facets of the manufactured and modular housing industry including manufacturers, retail centers, community owners and operators, finance and insurance companies, service and supplier companies and transport companies.

KMHA was a member of the working group that met over the fall to discuss the situation described by the Kansas Land Title Association and we appreciated the opportunity. The association has taken the neutral position on HB 2305 understanding that the title insurance industry is a vital component of financing a manufactured home. We hope that HB 2305 addresses the Kansas Land Title Association's situation, but at the same time does not negatively impact any other aspect of the current process.

I would like to mention one non-legislative proposal that came out of our fall meetings that has already been implemented and has been very helpful which is the new form TR 64 - Manufactured or Mobile Home Ownership Affidavit. This proposal was developed by the Director of the Division of Vehicles, Carmen Alldritt and her staff; it provides a process for a manufactured homeowner who has never titled their manufactured home to go through to quiet the title in a timely and efficient manner. I have attached a copy of the TR 64 to my testimony.

Again, thank you for the opportunity to comment.

House Judiciary  
Date 2-25-09  
Attachment # 2

# MANUFACTURED OR MOBILE HOME OWNERSHIP AFFIDAVIT

STATE OF KANSAS )  
COUNTY OF \_\_\_\_\_ )

**ATTESTING OWNERSHIP OF A:**  
(Must Check One)

**Manufactured Home**       **Mobile Home**

From this point forward manufactured or mobile home will be referred to as "home".

I, the undersigned, certify that I am the owner of the home listed herein and that this home is free and clear of any and all liens and/or encumbrances.

Make \_\_\_\_\_ Year \_\_\_\_\_ Style \_\_\_\_\_ Weight or Dimensions \_\_\_\_\_

VIN \_\_\_\_\_ I have owned this home since (year): \_\_\_\_\_

Name(s) of Individual(s)  
Making this Affidavit: \_\_\_\_\_

This home is located at: \_\_\_\_\_ This home has been located here for (years): \_\_\_\_\_

\_\_\_\_\_      **KANSAS**  
Address      City      State      ZIP

**DOCUMENTATION THAT MUST BE ATTACHED TO THIS AFFIDAVIT**

- ✓ Proof that all (personal or real) property taxes for the home are paid for the preceding 5 years. If the home has been owned for less than 5 years, please provide proof for each preceding year, but no more than the preceding 5 years.
- ✓ All pages of the manufactured/mobile home history (history) obtained from the Kansas Titles and Registrations Bureau. If a "no record" letter is provided attach it as proof of verification of history.  
To obtain a history, complete a Request for Access to Vehicle Records TR/DL-302 and mail it along with the required fee to the address shown on the form.
- ✓ If a title record is found in the history, a notification will be sent to the applicant instructing them to contact the previous owner and lien holder, if applicable.

**AFFIANT'S CERTIFICATION - REQUIRED**

I certify the title to this manufacture/mobile home to be free and clear from all defects, liens or encumbrances of any nature whatsoever and that I will indemnify any subsequent purchaser of same for any loss sustained should anyone prove ownership of said manufactured/mobile home superior to my title.

I, the undersigned, hereby swear or affirm that I am the owner of the manufactured/mobile home described herein and the information provided in this affidavit is true and correct to the best of my belief. I have read and understand the warning below and therefore am aware that the law provides severe penalties for making false statements under oath.

Affiant's Signature \_\_\_\_\_ Affiant's Hand Printed Name \_\_\_\_\_ Date \_\_\_\_\_

**WARNING:** KANSAS STATUTES KSA 21-3711 PROVIDES THAT FALSIFYING INFORMATION ON ANY REQUIRED DOCUMENT IS A SEVERITY LEVEL 8, NONPERSON FELONY. KSA 21-3710 DEALS WITH FORGERY; FORGERY IS KNOWINGLY AND WITH INTENT TO DEFRAUD AND IS SEVERITY LEVEL 8 NONPERSON FELONY.



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KANSAS ASSOCIATION OF LICENSED INVESTIGATORS

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February 25, 2009

RE: Legislative Testimony

I would like to thank the members of this committee for allowing the Kansas Association of Licenses Investigators to testify in favor of HB 2311. The following are points that have been developed by association that would make this part of our industry work more efficiently than it has in the past.

1. This bill does not cost the taxpayers any money.
2. Each year, I have to send a motion and a proposed order to each county in the State of Kansas to be able to serve civil process. Each court clerk has to process my motion and order, and the motions and orders of all the other private detectives that make a living serving process. This would eliminate that task.
3. The sheriff of each county serves process for a fee of \$5.00 per service. However; as a former sheriff, there is always more process to serve than there are deputies to make service. Also, sheriff's offices often do not have the time or the manpower to chase down people that are difficult to serve.
4. With this bill, attorneys do not need to locate someone to serve process in their county. Any licensed private detective in the State of Kansas will be authorized to make service of process.
5. Private detectives are licensed and bonded as per state law. They are also accountable to the Kansas Bureau of Investigation. Private detectives also are required to maintain eight (8) hours of in-service training per renewal cycle. A detective's background has already been investigated by the KBI.

House Judiciary  
Date 2-25-09  
Attachment # 3

6. This bill will not preclude other individuals from obtaining permission from the court to serve process. This bill will not require individuals to be private detectives to serve process. It will however; encourage people who wish to serve process to obtain a private detective license. It will also be subject to the standards of the private detective license.
7. This will not interfere with a sheriff's office in the service of process. The sheriff can generally serve process cheaper than can a private detective. However, there are times that an attorney will want a summons served quicker than the sheriff's is able to serve the paper. There are circumstances that make it difficult for a sheriff's office to serve papers, such as person's living out of state, etc. These situations are the bulk of a private detective's process service.
8. Also a Private Detective will be able to serve subpoena in criminal cases. Often time when we are investigating criminal matters we serve subpoenas for the court case. This bill will allow us to do this throughout the State of Kansas.
9. Although the subpoenas, summons, and other legal papers can be signed by the clerk or assistant clerk of the court, the order appointing a special process server requires a judge's signature. It is always easy to find a clerk in the office, but judges are often busy or out of the office.
10. Thank you again for your consideration of HB 2311.

**Bruce E Tomlinson**

Licensed Private Detective

Board Certified Defense Investigator

Kansas Association of Licensed Investigator Charter Member

**KANSAS ASSOCIATION OF PRIVATE INVESTIGATORS**

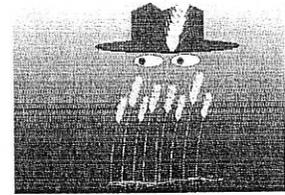
**P.O. Box 2111**

**Shawnee Mission, KS 66201-1111**

*John W. Ellis, President, 913-596-6445*

*johnellis@pmokspd.com*

February 14, 2009



SERVICEMARK,  
KAPI, S.M., KS 1996  
[www.kapi.org](http://www.kapi.org)

House Judiciary Committee  
State Capitol  
Topeka, KS 66612

**Re: House Bill 2311**

The Kansas Association of Private Investigators is a non-profit professional association for private detectives that was formed to establish and perpetuate high ethical and professional standards and excellence of professional service in the private investigative industry. KAPI monitors legislation affecting the industry. KAPI has reviewed the provisions of House Bill 2311 which would amend parts of KSA 60-303 and KSA 61-3003 to allow persons licensed under the Kansas Private Detective Licensing Act to serve court process statewide. *KAPI supports passage of this bill for these reasons:*

- Most private detectives in the state already serve court process; this change will simplify the requirements for doing so by eliminating the specific court appointment.
- Private detectives are required to complete continuing education each licensing period. Any private detective who needs initial or update training in this topical area will be able to obtain it from seminars provided by various professional associations, so lack of training or experience should not be a major concern for the public.

In addition to the changes proposed in HB 2311, the Committee may want to consider one additional amendment. The current Private Detective Licensing Act defines 'detective business' in KSA 75-7b01 using this definition as the basis for determining who must be licensed based on their activities. Terminology in that definition includes location investigations of the type frequently done by process servers making licensing a requirement unless a specific exemption to the licensing act is met. In the past, some attorneys, process servers and others have asserted that the court appointment order for process servers overcomes the private detective licensing act requirement or that the requirement to license presents an undue burden. KAPI does not agree with this legal interpretation, but the issue has not been clearly, formally resolved. Since the authority of private detectives to serve process has surfaced in this bill, KAPI recommends resolving the additional issue of applying the private detective licensing act to process servers within the same bill. KAPI suggests that language amending KSA 75-7b03 Exemptions from licensure be added to exempt Kansas process servers operating under a court appointment order. An example amendment is below:

*Establishing high ethical standards to provide excellent professional service to the public.*

House Judiciary

Date 2-25-09

Attachment # 4

*(n) Any person performing duties as a court appointed process server when any investigation is conducted incidental to serving the legal process;*

KAPI believes this would resolve the above issue and does so in a manner which balances the interests of the various parties involved in legal process service. KAPI will send a representative to any hearing held on the bill or provide answers to any questions on the subject.

I can be contacted at 816-830-1177 or [JohnEllis@pmokspd.com](mailto:JohnEllis@pmokspd.com) with any questions.



John W. Ellis, B.S., M.A.J.  
Licensed Private Detective  
Certified Firearms Instructor

President  
Kansas Association of Private Investigators

Major, Military Police, US Army Reserve (Retired)



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Kansas Judicial Center  
301 S.W. Tenth Street, Suite 140  
Topeka, Kansas 66612-1507

Telephone (785) 296-2498  
Facsimile (785) 296-1035

judicial.council@ksjc.state.ks.us  
www.kansasjudicialcouncil.org

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February 25, 2009

### Judicial Council Probate Law Advisory Committee

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<b>Cheryl C. Boushka,</b>	<b>Kansas City</b>
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<b>Jack R. Euler,</b>	<b>Troy</b>
<b>Prof. Martin B. Dickinson, Jr.,</b>	<b>Lawrence</b>
<b>Greta Goodwin,</b>	<b>Winfield</b>
<b>Mark Knackendoffel,</b>	<b>Manhattan</b>
<b>Justice Edward Larson,</b>	<b>Topeka</b>
<b>Philip D. Ridenour,</b>	<b>Cimarron</b>
<b>Willard B. Thompson,</b>	<b>Wichita</b>

House Judiciary  
Date 2-25-09  
Attachment # 5

**EXAMPLES OF PROBATE LAW  
ADVISORY COMMITTEE'S WORK:**

**Kansas Probate Code**

**Study of Uniform Probate Code**

**Small Estates Affidavit**

**Refusal to Grant Letters of Administration**

**Simplified Administration**

**Informal Administration**

**Elective Share of Spouse**

**Kansas Uniform Trust Code**

**Kansas Power of Attorney Act**

**Real Property Transfer on Death**

***Kansas Judicial Council Probate Forms***

**Numerous Other Act and Amendments**



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 STEPHEN E. ROBISON, WICHITA

Kansas Judicial Center  
 301 S.W. Tenth Street, Suite 140  
 Topeka, Kansas 66612-1507

Telephone (785) 296-2498  
 Facsimile (785) 296-1035

judicial.council@ksjc.state.ks.us  
 www.kansasjudicialcouncil.org

EXECUTIVE DIRECTOR  
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### MEMORANDUM

**TO:** House Judiciary Committee

**FROM:** Kansas Judicial Council

**DATE:** February 25, 2009

**RE:** Judicial Council Testimony on 2009 SB 70  
 Relating to Unitrust Conversion Statute

For many years, trusts have been drafted that direct the trustee to distribute the income to a beneficiary for a certain period of time (frequently the life of the beneficiary). This income generally consists of interest and dividends and is often identified as the "accounting" income. At the death of the beneficiary, the remaining principal, which usually includes capital gains obtained during the duration of the trust, would be distributable to another beneficiary or beneficiaries or the trust would continue for them.

Traditionally, trustees have attempted to invest trust assets to produce enough income to meet the current beneficiary's needs. However, at one extreme a trustee might invest all of the trust's assets in stocks that paid no dividends and generated no current income, particularly if the beneficiary had little or no need for current income. At the other extreme, a trustee might invest all trust assets in high yield bonds and generate 8% or 9% interest income. The first example would benefit the remainder beneficiaries at the expense of current income beneficiaries. The second example is the opposite situation. Thus, trustees often face the dilemma of investing a portfolio with conflicting objectives: enhancing the value of the principal assets for the remainder beneficiaries or producing income for current beneficiaries.

Most U.S. jurisdictions (including Kansas) have replaced the "prudent man rule" with the "prudent investor rule" for guiding and assessing a trustee's investment decisions. Under the prudent investor rule, the trustee's investment decisions and results are evaluated based on their role and impact with respect to the entire portfolio rather than on an asset-by-asset basis, which was the

House Judiciary

Date 2-25-09

Attachment # 6

test under the prudent man rule. The strategy under the prudent investor rule is to consider the interests of both income and remainder beneficiaries, ensure that the entire portfolio is adequately diversified and assess the performance and risk of the portfolio as a whole rather than the performance and risk of individual assets.

In recent years the emphasis on equities and the lower interest rates provided by fixed investments have reduced the total dividend and interest income to beneficiaries. Thus, in order to provide an ever-increasing stream of accounting income, a larger allocation of the portfolio must be invested in fixed income investments, which sacrifices total investment return for the whole portfolio, and particularly the remainder beneficiaries.

There are several solutions to the problem, such as distribution of principal, allocation of principal to income, modification of the trust instrument and possible statutory changes. One of the evolving statutory responses to this dilemma is the adoption of "unitrust conversion statutes."

Twenty-six states have adopted unitrust conversion statutes. Under these statutes, when a trust agreement directs the trustee to distribute income, the trustee is granted the authority to "convert" or redefine "income" so that distributions to income beneficiaries are determined by a unitrust distribution formula. Under this formula, the trustee distributes a fixed percentage of the assets to the beneficiary each year as "income." As the portfolio grows or falls in value, the income percentage as applied to the value of the trust will adjust the amount of income distributed. Thus, the objectives of the income and remainder beneficiaries are unified so that they are both motivated by the total return of the portfolio. This removes, or at least lessens, the inherent conflict between the objectives of current income beneficiaries and the remainder beneficiaries. It also facilitates the trustee abiding by the principles of the prudent investor rule.

The Probate Law Advisory Committee proposes the following statute be adopted and become a part of the Uniform Principal and Income Act as new section 58-9-105.