

SENATE BILL No. 413

DIGEST OF INTRODUCED BILL

Citations Affected: IC 29-1-7.5-3; IC 30-2-14; IC 30-4.

Synopsis: Uniform principal and income act. Adopts the Uniform Principal and Income Act. Makes conforming changes. Repeals superseded statutes.

Effective: July 1, 1999.

Simpson

January 11, 1999, read first time and referred to Committee on Judiciary.

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First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

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SENATE BILL No. 413



A BILL FOR AN ACT to amend the Indiana Code concerning trusts and fiduciaries.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 29-1-7.5-3 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. Subject to section
 3 2(c) of this chapter, a personal representative who administers an estate
 4 under this chapter may do the following without order of the court:
 5 (1) retain assets owned by the decedent pending distribution or
 6 liquidation including those in which the representative is
 7 personally interested or which are otherwise improper for trust
 8 investment;
 9 (2) receive assets from fiduciaries, or other sources;
 10 (3) perform, compromise or refuse performance of the decedent's
 11 contracts that continue as obligations of the estate, as he may
 12 determine under the circumstances. In performing enforceable
 13 contracts by the decedent to convey or lease land, the personal
 14 representative, among other possible courses of action, may:
 15 (i) execute and deliver a deed of conveyance for cash payment of
 16 all sums remaining due or the purchaser's note for the sum
 17 remaining due secured by a mortgage or deed of trust on the land;



- 1 or
2 (ii) deliver a deed in escrow with directions that the proceeds,
3 when paid in accordance with the escrow agreement, be paid to
4 the successors of the decedent, as designated in the escrow
5 agreement;
6 (4) satisfy written charitable pledges of the decedent irrespective
7 of whether the pledges constituted binding obligations of the
8 decedent or were properly presented as claims, if in the judgment
9 of the personal representative the decedent would have wanted
10 the pledges completed under the circumstances;
11 (5) if funds are not needed to meet debts and expenses currently
12 payable and are not immediately distributable, deposit or invest
13 liquid assets of the estate, including moneys received from the
14 sale of other assets, in federally insured interest-bearing accounts,
15 readily marketable secured loan arrangements or other prudent
16 investments which would be reasonable for use by trustees
17 generally;
18 (6) acquire or dispose of an asset, including land in this or another
19 state, for cash or on credit, at public or private sale; and manage,
20 develop, improve, exchange, partition, change the character of, or
21 abandon an estate asset;
22 (7) make ordinary or extraordinary repairs or alterations in
23 buildings or other structures, demolish any improvements, raze
24 existing or erect new party walls or buildings;
25 (8) subdivide, develop or dedicate land to public use; make or
26 obtain the vacation of plats and adjust boundaries; or adjust
27 differences in valuation on exchange or partition by giving or
28 receiving considerations; or dedicate easements to public use
29 without consideration;
30 (9) enter for any purpose into a lease as lessor or lessee, with or
31 without option to purchase or renew, for a term within or
32 extending beyond the period of administration;
33 (10) enter into a lease or arrangement for exploration and removal
34 of minerals or other natural resources or enter into a pooling or
35 unitization agreement;
36 (11) abandon property when, in the opinion of the personal
37 representatives, it is valueless, or is so encumbered, or is in
38 condition that it is of no benefit to the estate;
39 (12) vote stocks or other securities in person or by general or
40 limited proxy;
41 (13) pay calls, assessments, and other sums chargeable or
42 accruing against or on account of securities, unless barred by the

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- 1 provisions relating to claims;
 2 (14) hold a security in the name of a nominee or in other form
 3 without disclosure of the interest of the estate but the personal
 4 representative is liable for any act of the nominee in connection
 5 with the security so held;
 6 (15) insure the assets of the estate against damage, loss and
 7 liability and himself against liability as to third persons;
 8 (16) borrow money with or without security to be repaid from the
 9 estate assets or otherwise; and advance money for the protection
 10 of the estate;
 11 (17) effect a fair and reasonable compromise with any debtor or
 12 obligor, or extend, renew or in any manner modify the terms of
 13 any obligation owing to the estate. If the personal representative
 14 holds a mortgage, pledge or other lien upon property of another
 15 person, he may, in lieu of foreclosure, accept a conveyance or
 16 transfer of encumbered assets from the owner thereof in
 17 satisfaction of the indebtedness secured by lien;
 18 (18) pay taxes, assessments, compensation of the personal
 19 representative, and other expenses incident to the administration
 20 of the estate;
 21 (19) sell or exercise stock subscription or conversion rights;
 22 consent, directly or through a committee or other agent, to the
 23 reorganization, consolidation, merger, dissolution, or liquidation
 24 of a corporation or other business enterprise;
 25 (20) allocate items of income or expense to either estate income
 26 or principal, as permitted or provided by law; **IC 30-2-14.**
 27 (21) employ persons, including attorneys, auditors, investment
 28 advisors, or agents, even if they are associated with the personal
 29 representative, to advise or assist the personal representative in
 30 the performance of his administrative duties; act without
 31 independent investigation upon their recommendations; and
 32 instead of acting personally, employ one (1) or more agents to
 33 perform any act of administration, whether or not discretionary;
 34 (22) prosecute or defend claims, or proceedings in any
 35 jurisdiction for the protection of the estate and of the personal
 36 representative in the performance of his duties;
 37 (23) sell, mortgage, or lease any real or personal property of the
 38 estate or any interest therein for cash, credit, or for part cash and
 39 part credit, and with or without security for unpaid balances;
 40 (24) continue any unincorporated business or venture in which the
 41 decedent was engaged at the time of his death:
 42 (i) in the same business form for a period of not more than five (5)

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1 months from the date of appointment of a general personal
 2 representative if continuation is a reasonable means of preserving
 3 the value of the business including good will;

4 (ii) in the same business form for any additional period of time
 5 that may be approved by order of the court in a formal proceeding
 6 to which the persons interested in the estate are parties; or

7 (iii) throughout the period of administration if the business is
 8 incorporated by the personal representative and if none of the
 9 probable distributees of the business who are competent adults
 10 object to its incorporations and retention in the estate;

11 (25) incorporate any business or venture in which the decedent
 12 was engaged at the time of his death;

13 (26) satisfy and settle claims;

14 (27) distribute assets of the estate upon such terms as he may
 15 impose; and

16 (28) perform any other act necessary or appropriate to administer
 17 the estate.

18 SECTION 2. IC 30-4-1-1.5 IS AMENDED TO READ AS
 19 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1.5. This article does
 20 not repeal:

21 (1) IC 30-2-4 (the Uniform Fiduciaries Act); ~~or~~

22 (2) IC 30-2-5 (the Uniform Act for the Simplification of Fiduciary
 23 Security Transfers); ~~or~~

24 **(3) IC 30-2-14 (the Uniform Principal and Income Act).**

25 SECTION 3. IC 30-4-1-2 IS AMENDED TO READ AS FOLLOWS
 26 [EFFECTIVE JULY 1, 1999]: Sec. 2. As used in this article:

27 (1) "Adult" means any person eighteen (18) years of age or older.

28 (2) "Affiliate" means a parent, descendant, spouse, spouse of a
 29 descendant, brother, sister, spouse of a brother or sister,
 30 employee, director, officer, partner, joint venturer, a corporation
 31 subject to common control with the trustee, a shareholder or
 32 corporation who controls the trustee or a corporation controlled
 33 by the trustee other than as a fiduciary.

34 (3) "Beneficiary" ~~means any cestui que trust or person named or~~
 35 ~~a member of the class designated in the terms of the trust to be~~
 36 ~~any person or class of persons for whose benefit the title to the~~
 37 ~~trust property is held and for whom the trust is to be administered.~~
 38 **has the meaning set forth in IC 30-2-14-2.**

39 (4) "Breach of trust" means a violation by the trustee of any duty
 40 which is owed to the settlor or beneficiary.

41 (5) "Court" means a court having jurisdiction over trust matters.

42 (6) "Income beneficiary" ~~means a beneficiary to whom income is~~

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1 presently payable or for whom it is accumulated for distribution
2 as income: **has the meaning set forth in IC 30-2-14-5.**

3 (7) "Inventory value" means the cost of property to the settlor or
4 the trustee at the time of acquisition or the market value of the
5 property at the time it is delivered to the trustee, or the value of
6 the property as finally determined for purposes of an estate or
7 inheritance tax.

8 (8) "Minor" means any person under the age of eighteen (18)
9 years.

10 (9) "Person" ~~means a natural person, corporation, or a unit,~~
11 ~~agency, or other subdivision of national, state, or local~~
12 ~~government: has the meaning set forth in IC 30-2-14-9.~~

13 (10) "Personal representative" means an executor or administrator
14 of a decedent's or absentee's estate, guardian of the person or
15 estate, guardian ad litem or other court appointed representative,
16 next friend, parent or custodian of a minor, attorney in fact, or
17 custodian of an incapacitated person (as defined in
18 IC 29-3-1-7.5).

19 (11) "Remainderman" means a beneficiary entitled to principal,
20 including income which has been accumulated and added to the
21 principal.

22 (12) "Settlor" means a person who establishes a trust including
23 the testator of a will under which a trust is created.

24 (13) "Trust estate" means the trust property and the income
25 derived from its use.

26 (14) "Trust property" means property either placed in trust or
27 purchased or otherwise acquired by the trustee for the trust
28 regardless of whether the trust property is titled in the name of the
29 trustee or the name of the trust.

30 (15) "Trustee" ~~means the person who is charged with the~~
31 ~~responsibility of administering the trust and includes a successor~~
32 ~~or added trustee: has the meaning set forth in IC 30-2-14-13.~~

33 SECTION 4. IC 30-2-14 IS ADDED TO THE INDIANA CODE AS
34 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
35 1, 1999]:

36 **Chapter 14. Uniform Principal and Income Act**

37 **Sec. 1.** As used in this chapter, "accounting period" means a
38 calendar year unless another twelve (12) month period is selected
39 by a fiduciary. The term includes a portion of a calendar year or
40 other twelve (12) month period that begins when an income
41 interest begins or ends when an income interest ends.

42 **Sec. 2.** As used in this chapter, "beneficiary" includes, in the

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1 case of a decedent's estate, an heir and a devisee and, in the case of
2 a trust, an income beneficiary and a remainder beneficiary.

3 Sec. 3. As used in this chapter, "fiduciary" means a personal
4 representative or a trustee. The term includes an executor,
5 administrator, successor personal representative, special
6 administrator, and a person performing substantially the same
7 function.

8 Sec. 4. As used in this chapter, "income" means money or
9 property that a fiduciary receives as current return from a
10 principal asset. The term includes a portion of receipts from a sale,
11 exchange, or liquidation of a principal asset, to the extent provided
12 in sections 21 through 35 of this chapter.

13 Sec. 5. As used in this chapter, "income beneficiary" means a
14 person to whom net income of a trust is or may be payable.

15 Sec. 6. As used in this chapter, "income interest" means the
16 right of an income beneficiary to receive all or part of net income,
17 whether the terms of the trust require it to be distributed or
18 authorize it to be distributed in the trustee's discretion.

19 Sec. 7. As used in this chapter, "mandatory income interest"
20 means the right of an income beneficiary to receive net income that
21 the terms of the trust require the fiduciary to distribute.

22 Sec. 8. As used in this chapter, "net income" means the total
23 receipts allocated to income during an accounting period minus the
24 disbursements made from income during the period, plus or minus
25 transfers under this chapter to or from income during the period.

26 Sec. 9. As used in this chapter, "person" means an individual,
27 corporation, business trust, estate, trust, partnership, limited
28 liability company, association, joint venture, government;
29 governmental subdivision, agency, or instrumentality; public
30 corporation, or any other legal or commercial entity.

31 Sec. 10. As used in this chapter, "principal" means property
32 held in trust for distribution to a remainder beneficiary when the
33 trust terminates.

34 Sec. 11. As used in this chapter, "remainder beneficiary" means
35 a person entitled to receive principal when an income interest ends.

36 Sec. 12. As used in this chapter, "terms of a trust" means the
37 manifestation of the intent of a settlor or decedent with respect to
38 the trust, expressed in a manner that admits of its proof in a
39 judicial proceeding, whether by written or spoken words or by
40 conduct.

41 Sec. 13. As used in this chapter, "trustee" includes an original,
42 additional, or successor trustee, whether or not appointed or
43 confirmed by a court.

44 Sec. 14. (a) In allocating receipts and disbursements to or
45 between principal and income, and with respect to any matter

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1 within the scope of sections 16 through 20 of this chapter, a
2 fiduciary:

3 (1) shall administer a trust or estate in accordance with the
4 terms of the trust or the will, even if there is a different
5 provision in this chapter;

6 (2) may administer a trust or estate by the exercise of a
7 discretionary power of administration given to the fiduciary
8 by the terms of the trust or the will, even if the exercise of the
9 power produces a result different from a result required or
10 permitted by this chapter;

11 (3) shall administer a trust or estate in accordance with this
12 chapter if the terms of the trust or the will do not contain a
13 different provision or do not give the fiduciary a discretionary
14 power of administration; and

15 (4) shall add a receipt or charge a disbursement to principal
16 to the extent that the terms of the trust and this chapter do
17 not provide a rule for allocating the receipt or disbursement
18 to or between principal and income.

19 (b) In exercising the power to adjust under section 15 of this
20 chapter or a discretionary power of administration regarding a
21 matter within the scope of this chapter, whether granted by the
22 terms of a trust, a will, or this chapter, a fiduciary shall administer
23 a trust or estate impartially, based on what is fair and reasonable
24 to all of the beneficiaries, except to the extent that the terms of the
25 trust or the will clearly manifest an intention that the fiduciary
26 shall or may favor one (1) or more of the beneficiaries. A
27 determination in accordance with this chapter is presumed to be
28 fair and reasonable to all of the beneficiaries.

29 Sec. 15. (a) A trustee may adjust between principal and income
30 to the extent the trustee considers necessary if the trustee invests
31 and manages trust assets as a prudent investor, the terms of the
32 trust describe the amount that may or must be distributed to a
33 beneficiary by referring to the trust's income, and the trustee
34 determines, after applying the rules in section 14(a) of this chapter,
35 that the trustee is unable to comply with section 14(b) of this
36 chapter.

37 (b) In deciding whether and to what extent to exercise the power
38 conferred by subsection (a), a trustee shall consider all factors
39 relevant to the trust and its beneficiaries, including the following
40 factors to the extent they are relevant:

41 (1) The nature, purpose, and expected duration of the trust.

42 (2) The intent of the settlor.

43 (3) The identity and circumstances of the beneficiaries.

44 (4) The needs for liquidity, regularity of income, and
45 preservation and appreciation of capital.



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- 1 (5) The assets held in the trust; the extent to which they
 2 consist of financial assets, interests in closely held enterprises,
 3 tangible and intangible personal property, or real property;
 4 the extent to which an asset is used by a beneficiary; and
 5 whether an asset was purchased by the trustee or received
 6 from the settlor.
- 7 (6) The net amount allocated to income under this chapter
 8 and the increase or decrease in the value of the principal
 9 assets, which the trustee may estimate as to assets for which
 10 market values are not readily available.
- 11 (7) Whether and to what extent the terms of the trust give the
 12 trustee the power to invade principal or accumulate income
 13 or prohibit the trustee from invading principal or
 14 accumulating income, and the extent to which the trustee has
 15 exercised a power from time to time to invade principal or
 16 accumulate income.
- 17 (8) The actual and anticipated effect of economic conditions
 18 on principal and income and effects of inflation and deflation.
- 19 (9) The anticipated tax consequences of an adjustment.
- 20 (c) A trustee may not make an adjustment:
- 21 (1) that diminishes the income interest in a trust that requires
 22 all of the income to be paid at least annually to a spouse and
 23 for which an estate tax or gift tax marital deduction would be
 24 allowed, in whole or in part, if the trustee did not have the
 25 power to make the adjustment;
- 26 (2) that reduces the actuarial value of the income interest in
 27 a trust to which a person transfers property with the intent to
 28 qualify for a gift tax exclusion;
- 29 (3) that changes the amount payable to a beneficiary as a fixed
 30 annuity or a fixed fraction of the value of the trust assets;
- 31 (4) from any amount that is permanently set aside for
 32 charitable purposes under a will or the terms of a trust unless
 33 both income and principal are so set aside;
- 34 (5) if possessing or exercising the power to make an
 35 adjustment causes an individual to be treated as the owner of
 36 all or part of the trust for income tax purposes, and the
 37 individual would not be treated as the owner if the trustee did
 38 not possess the power to make an adjustment;
- 39 (6) if possessing or exercising the power to make an
 40 adjustment causes all or part of the trust assets to be included
 41 for estate tax purposes in the estate of an individual who has
 42 the power to remove a trustee or appoint a trustee, or both,
 43 and the assets would not be included in the estate of the
 44 individual if the trustee did not possess the power to make an
 45 adjustment;



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1 (7) if the trustee is a beneficiary of the trust; or

2 (8) if the trustee is not a beneficiary, but the adjustment would
3 benefit the trustee directly or indirectly.

4 (d) If subsection (c)(5), (c)(6), (c)(7), or (c)(8) applies to a trustee
5 and there is more than one (1) trustee, a cotrustee to whom the
6 provision does not apply may make the adjustment unless the
7 exercise of the power by the remaining trustee or trustees is not
8 permitted by the terms of the trust.

9 (e) A trustee may release the entire power conferred by
10 subsection (a) or may release only the power to adjust from income
11 to principal or the power to adjust from principal to income if the
12 trustee is uncertain about whether possessing or exercising the
13 power will cause a result described in subsection (c)(1) through
14 (c)(6) or in subsection (c)(8) or if the trustee determines that
15 possessing or exercising the power will or may deprive the trust of
16 a tax benefit or impose a tax burden not described in subsection (c).
17 The release may be permanent or for a specified period, including
18 a period measured by the life of an individual.

19 (f) Terms of a trust that limit the power of a trustee to make an
20 adjustment between principal and income do not affect the
21 application of this section unless it is clear from the terms of the
22 trust that the terms are intended to deny the trustee the power of
23 adjustment conferred by subsection (a).

24 **Sec. 16.** After an individual dies, in the case of an estate, or after
25 an income interest in a trust ends, the following rules apply:

26 (1) A fiduciary of an estate or of a terminating income interest
27 shall determine the amount of net income and net principal
28 receipts received from property specifically given to a
29 beneficiary under the rules in sections 18 through 41 of this
30 chapter that apply to trustees and the rules in subdivision (5).
31 The fiduciary shall distribute the net income and net principal
32 receipts to the beneficiary who is to receive the specific
33 property.

34 (2) A fiduciary shall determine the remaining net income of a
35 decedent's estate or a terminating income interest under the
36 rules in sections 18 through 41 of this chapter that apply to
37 trustees and by:

38 (A) including in net income all income from property used
39 to discharge liabilities;

40 (B) paying from income or principal, in the fiduciary's
41 discretion, fees of attorneys, accountants, and fiduciaries;
42 court costs and other expenses of administration; and
43 interest on death taxes, but the fiduciary may pay those
44 expenses from income of property passing to a trust for
45 which the fiduciary claims an estate tax marital or

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1 charitable deduction only to the extent that the payment of
 2 those expenses from income will not cause the reduction or
 3 loss of the deduction; and

4 (C) paying from principal all other disbursements made or
 5 incurred in connection with the settlement of a decedent's
 6 estate or the winding up of a terminating income interest,
 7 including debts, funeral expenses, disposition of remains,
 8 family allowances, and death taxes and related penalties
 9 that are apportioned to the estate or terminating income
 10 interest by the will, the terms of the trust, or applicable
 11 law.

12 (3) A fiduciary shall distribute to a beneficiary who receives
 13 a pecuniary amount outright the interest or any other amount
 14 provided by the will, the terms of the trust, or applicable law
 15 from net income determined under subdivision (2) or from
 16 principal to the extent that net income is insufficient. If a
 17 beneficiary is to receive a pecuniary amount outright from a
 18 trust after an income interest ends and no interest or other
 19 amount is provided for by the terms of the trust or applicable
 20 law, the fiduciary shall distribute the interest or other amount
 21 to which the beneficiary would be entitled under applicable
 22 law if the pecuniary amount were required to be paid under
 23 a will.

24 (4) A fiduciary shall distribute the net income remaining after
 25 distributions required by subdivision (3) in the manner
 26 described in section 17 of this chapter to all other
 27 beneficiaries, including a beneficiary who receives a
 28 pecuniary amount in trust, even if the beneficiary holds an
 29 unqualified power to withdraw assets from the trust or other
 30 presently exercisable general power of appointment over the
 31 trust.

32 (5) A fiduciary may not reduce principal or income receipts
 33 from property described in subdivision (1) because of a
 34 payment described in section 36 or 37 of this chapter to the
 35 extent that the will, the terms of the trust, or applicable law
 36 requires the fiduciary to make the payment from assets other
 37 than the property or to the extent that the fiduciary recovers
 38 or expects to recover the payment from a third party. The net
 39 income and principal receipts from the property are
 40 determined by including all of the amounts the fiduciary
 41 receives or pays with respect to the property, whether those
 42 amounts accrued or became due before, on, or after the date
 43 of an individual's death or an income interest's terminating
 44 event, and by making a reasonable provision for amounts that
 45 the fiduciary believes the estate or terminating income

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1 interest may become obligated to pay after the property is
2 distributed.

3 **Sec. 17. (a)** Each beneficiary described in section 16(4) of this
4 chapter is entitled to receive a portion of the net income equal to
5 the beneficiary's fractional interest in undistributed principal
6 assets, using values as of the distribution date. If a fiduciary makes
7 more than one (1) distribution of assets to beneficiaries to whom
8 this section applies, each beneficiary, including one who does not
9 receive part of the distribution, is entitled, as of each distribution
10 date, to the net income the fiduciary has received after the date of
11 death or terminating event or earlier distribution date but has not
12 distributed as of the current distribution date.

13 **(b)** In determining a beneficiary's share of net income, the
14 following rules apply:

15 **(1)** The beneficiary is entitled to receive a portion of the net
16 income equal to the beneficiary's fractional interest in the
17 undistributed principal assets immediately before the
18 distribution date, including assets that later may be sold to
19 meet principal obligations.

20 **(2)** The beneficiary's fractional interest in the undistributed
21 principal assets must be calculated without regard to property
22 specifically given to a beneficiary and property required to
23 pay pecuniary amounts not in trust.

24 **(3)** The beneficiary's fractional interest in the undistributed
25 principal assets must be calculated on the basis of the
26 aggregate value of those assets as of the distribution date
27 without reducing the value by any unpaid principal
28 obligation.

29 **(4)** The distribution date for purposes of this section may be
30 the date as of which the fiduciary calculates the value of the
31 assets if that date is reasonably near the date on which assets
32 are actually distributed.

33 **(c)** If a fiduciary does not distribute all of the collected but
34 undistributed net income to each person as of a distribution date,
35 the fiduciary shall maintain appropriate records showing the
36 interest of each beneficiary in that net income.

37 **(d)** A fiduciary may apply the rules in this section, to the extent
38 that the fiduciary considers it appropriate, to net gain or loss
39 realized after the date of death or terminating event or earlier
40 distribution date from the disposition of a principal asset if this
41 section applies to the income from the asset.

42 **Sec. 18. (a)** An income beneficiary is entitled to net income from
43 the date on which the income interest begins. An income interest
44 begins on the date specified in the terms of the trust or, if no date
45 is specified, on the date an asset becomes subject to a trust or

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- 1 successive income interest.
- 2 (b) An asset becomes subject to a trust:
- 3 (1) on the date it is transferred to the trust in the case of an
- 4 asset that is transferred to a trust during the transferor's life;
- 5 (2) on the date of a testator's death in the case of an asset that
- 6 becomes subject to a trust by reason of a will, even if there is
- 7 an intervening period of administration of the testator's
- 8 estate; or
- 9 (3) on the date of an individual's death in the case of an asset
- 10 that is transferred to a fiduciary by a third party because of
- 11 the individual's death.
- 12 (c) An asset becomes subject to a successive income interest on
- 13 the day after the preceding income interest ends, as determined
- 14 under subsection (d), even if there is an intervening period of
- 15 administration to wind up the preceding income interest.
- 16 (d) An income interest ends on the day before an income
- 17 beneficiary dies or another terminating event occurs, or on the last
- 18 day of a period during which there is no beneficiary to whom a
- 19 trustee may distribute income.
- 20 **Sec. 19. (a) A trustee shall allocate an income receipt or**
- 21 **disbursement other than one to which section 16(1) of this chapter**
- 22 **applies to principal if its due date occurs before an individual dies**
- 23 **in the case of an estate or before an income interest begins in the**
- 24 **case of a trust or successive income interest.**
- 25 (b) A trustee shall allocate an income receipt or disbursement
- 26 to income if its due date occurs on or after the date on which an
- 27 individual dies or an income interest begins and it is a periodic due
- 28 date. An income receipt or disbursement must be treated as
- 29 accruing from day to day if its due date is not periodic or it has no
- 30 due date. The portion of the receipt or disbursement accruing
- 31 before the date on which an individual dies or an income interest
- 32 begins must be allocated to principal and the balance must be
- 33 allocated to income.
- 34 (c) An item of income or an obligation is due on the date the
- 35 payer is required to make a payment. If a payment date is not
- 36 stated, there is no due date for the purposes of this chapter.
- 37 Distributions to shareholders or other owners from an entity to
- 38 which section 21 of this chapter applies are deemed to be due on
- 39 the date fixed by the entity for determining who is entitled to
- 40 receive the distribution or, if no date is fixed, on the declaration
- 41 date for the distribution. A due date is periodic for receipts or
- 42 disbursements that must be paid at regular intervals under a lease
- 43 or an obligation to pay interest or if an entity customarily makes
- 44 distributions at regular intervals.
- 45 **Sec. 20. (a) As used in this section, "undistributed income"**



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1 means net income received before the date on which an income
2 interest ends. The term does not include an item of income or
3 expense that is due or accrued or net income that has been added
4 or is required to be added to principal under the terms of the trust.

5 (b) When a mandatory income interest ends, the trustee shall
6 pay to a mandatory income beneficiary who survives that date, or
7 the estate of a deceased mandatory income beneficiary whose death
8 causes the interest to end, the beneficiary's share of the
9 undistributed income that is not disposed of under the terms of the
10 trust unless the beneficiary has an unqualified power to revoke
11 more than five percent (5%) of the trust immediately before the
12 income interest ends. In the latter case, the undistributed income
13 from the portion of the trust that may be revoked must be added
14 to principal.

15 (c) When a trustee's obligation to pay a fixed annuity or a fixed
16 fraction of the value of the trust's assets ends, the trustee shall
17 prorate the final payment if and to the extent required by
18 applicable law to accomplish a purpose of the trust or its settlor
19 relating to income, gift, estate, or other tax requirements.

20 Sec. 21. (a) As used in this section, "entity" means a
21 corporation, partnership, limited liability company, regulated
22 investment company, real estate investment trust, common trust
23 fund, or any other organization in which a trustee has an interest
24 other than a trust or an estate to which section 22 of this chapter
25 applies, a business or activity to which section 23 of this chapter
26 applies, or an asset backed security to which section 35 of this
27 chapter applies.

28 (b) Except as otherwise provided in this section, a trustee shall
29 allocate to income money received from an entity.

30 (c) A trustee shall allocate the following receipts from an entity
31 to principal:

- 32 (1) Property other than money.
33 (2) Money received in one distribution or a series of related
34 distributions in exchange for part or all of a trust's interest in
35 the entity.
36 (3) Money received in total or partial liquidation of the entity.
37 (4) Money received from an entity that is a regulated
38 investment company or a real estate investment trust if the
39 money distributed is a capital gain dividend for federal
40 income tax purposes.

41 (d) Money is received in partial liquidation:

- 42 (1) to the extent that the entity, at or near the time of a
43 distribution, indicates that it is a distribution in partial
44 liquidation; or
45 (2) if the total amount of money and property received in a

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1 distribution or series of related distributions is greater than
 2 twenty percent (20%) of the entity's gross assets, as shown by
 3 the entity's year end financial statements immediately
 4 preceding the initial receipt.

5 (e) Money is not received in partial liquidation, nor may it be
 6 taken into account under subsection (d)(2), to the extent that it does
 7 not exceed the amount of income tax that a trustee or beneficiary
 8 must pay on taxable income of the entity that distributes the
 9 money.

10 (f) A trustee may rely upon a statement made by an entity about
 11 the source or character of a distribution if the statement is made at
 12 or near the time of distribution by the entity's board of directors
 13 or other person or group of persons authorized to exercise powers
 14 to pay money or transfer property comparable to those of a
 15 corporation's board of directors.

16 Sec. 22. A trustee shall allocate to income an amount received as
 17 a distribution of income from a trust or an estate in which the trust
 18 has an interest other than a purchased interest, and shall allocate
 19 to principal an amount received as a distribution of principal from
 20 such a trust or estate. If a trustee purchases an interest in a trust
 21 that is an investment entity, or a decedent or donor transfers an
 22 interest in such a trust to a trustee, sections 21 or 35 of this chapter
 23 apply to a receipt from the trust.

24 Sec. 23. (a) If a trustee who conducts a business or other activity
 25 determines that it is in the best interest of all the beneficiaries to
 26 account separately for the business or activity instead of
 27 accounting for it as part of the trust's general accounting records,
 28 the trustee may maintain separate accounting records for its
 29 transactions, whether or not its assets are segregated from other
 30 trust assets.

31 (b) A trustee who accounts separately for a business or other
 32 activity may determine the extent to which its net cash receipts
 33 must be retained for working capital, the acquisition or
 34 replacement of fixed assets, and other reasonably foreseeable needs
 35 of the business or activity, and the extent to which the remaining
 36 net cash receipts are accounted for as principal or income in the
 37 trust's general accounting records. If a trustee sells assets of the
 38 business or other activity, other than in the ordinary course of the
 39 business or activity, the trustee shall account for the net amount
 40 received as principal in the trust's general accounting records to
 41 the extent the trustee determines that the amount received is no
 42 longer required in the conduct of the business.

43 (c) Activities for which a trustee may maintain separate
 44 accounting records include:

45 (1) retail, manufacturing, service, and other traditional



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- 1 **business activities;**
- 2 **(2) farming;**
- 3 **(3) raising and selling livestock and other animals;**
- 4 **(4) management of rental properties;**
- 5 **(5) extraction of minerals and other natural resources;**
- 6 **(6) timber operations; and**
- 7 **(7) activities to which section 34 of this chapter applies.**

8 **Sec. 24. A trustee shall allocate to principal:**

- 9 **(1) to the extent not allocated to income under this chapter,**
10 **assets received from a transferor during the transferor's**
11 **lifetime, a decedent's estate, a trust with a terminating income**
12 **interest, or a payer under a contract naming the trust or its**
13 **trustee as beneficiary;**
- 14 **(2) money or other property received from the sale, exchange,**
15 **liquidation, or change in form of a principal asset, including**
16 **realized profit, subject to this sections 21 through 35 of this**
17 **chapter;**
- 18 **(3) amounts recovered from third parties to reimburse the**
19 **trust because of disbursements described in section 37(a)(7)**
20 **of this chapter or for other reasons to the extent not based on**
21 **the loss of income;**
- 22 **(4) proceeds of property taken by eminent domain, but a**
23 **separate award made for the loss of income with respect to an**
24 **accounting period during which a current income beneficiary**
25 **had a mandatory income interest is income;**
- 26 **(5) net income received in an accounting period during which**
27 **there is no beneficiary to whom a trustee may or must**
28 **distribute income; and**
- 29 **(6) other receipts as provided in sections 28 through 35 of this**
30 **chapter.**

31 **Sec. 25. To the extent that a trustee accounts for receipts from**
32 **rental property under this section, the trustee shall allocate to**
33 **income an amount received as rent of real or personal property,**
34 **including an amount received for cancellation or renewal of a**
35 **lease. An amount received as a refundable deposit, including a**
36 **security deposit or a deposit that is to be applied as rent for future**
37 **periods, must be added to principal and held subject to the terms**
38 **of the lease and is not available for distribution to a beneficiary**
39 **until the trustee's contractual obligations have been satisfied with**
40 **respect to that amount.**

41 **Sec. 26. (a) An amount received as interest, whether determined**
42 **at a fixed, variable, or floating rate, on an obligation to pay money**
43 **to the trustee, including an amount received as consideration for**
44 **prepaying principal, must be allocated to income without any**
45 **provision for amortization of premium.**



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1 (b) A trustee shall allocate to principal an amount received from
 2 the sale, redemption, or other disposition of an obligation to pay
 3 money to the trustee more than one (1) year after it is purchased
 4 or acquired by the trustee, including an obligation whose purchase
 5 price or value when it is acquired is less than its value at maturity.
 6 If the obligation matures within one (1) year after it is purchased
 7 or acquired by the trustee, an amount received in excess of its
 8 purchase price or its value when acquired by the trust must be
 9 allocated to income.

10 (c) This section does not apply to an obligation to which section
 11 29, 30, 31, 32, 34, or 35 of this chapter apply.

12 Sec. 27. (a) Except as otherwise provided in subsection (b), a
 13 trustee shall allocate to principal the proceeds of a life insurance
 14 policy or other contract in which the trust or its trustee is named
 15 as beneficiary, including a contract that insures the trust or its
 16 trustee against loss for damage to, destruction of, or loss of title to
 17 a trust asset. The trustee shall allocate dividends on an insurance
 18 policy to income if the premiums on the policy are paid from
 19 income, and to principal if the premiums are paid from principal.

20 (b) A trustee shall allocate to income proceeds of a contract that
 21 insures the trustee against loss of occupancy or other use by an
 22 income beneficiary, loss of income, or, subject to section 23 of this
 23 chapter, loss of profits from a business.

24 (c) This section does not apply to a contract to which section 29
 25 of this chapter applies.

26 Sec. 28. If a trustee determines that an allocation between
 27 principal and income required by section 29, 30, 31, 32, or 35 of
 28 this chapter is insubstantial, the trustee may allocate the entire
 29 amount to principal unless one (1) of the circumstances described
 30 in section 15(c) of this chapter applies to the allocation. This power
 31 may be exercised by a cotrustee in the circumstances described in
 32 section 15(d) of this chapter and may be released for the reasons
 33 and in the manner described in section 15(e) of this chapter. An
 34 allocation is presumed to be insubstantial if:

35 (1) the amount of the allocation would increase or decrease
 36 net income in an accounting period, as determined before the
 37 allocation, by less than ten percent (10%); or

38 (2) the value of the asset producing the receipt for which the
 39 allocation would be made is less than ten percent (10%) of the
 40 total value of the trust's assets at the beginning of the
 41 accounting period.

42 Sec. 29. (a) As used in this section, "payment" means a payment
 43 that a trustee may receive over a fixed number of years or during
 44 the life of one (1) or more individuals because of services rendered
 45 or property transferred to the payer in exchange for future

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1 payments. The term includes a payment made in money or
 2 property from the payer's general assets or from a separate fund
 3 created by the payer, including a private or commercial annuity,
 4 an individual retirement account, and a pension, profit sharing,
 5 stock bonus, or stock ownership plan.

6 (b) To the extent that a payment is characterized as interest or
 7 a dividend or a payment made in lieu of interest or a dividend, a
 8 trustee shall allocate it to income. The trustee shall allocate to
 9 principal the balance of the payment and any other payment
 10 received in the same accounting period that is not characterized as
 11 interest, a dividend, or an equivalent payment.

12 (c) If no part of a payment is characterized as interest, a
 13 dividend, or an equivalent payment, and all or part of the payment
 14 is required to be made, a trustee shall allocate to income ten
 15 percent (10%) of the part that is required to be made during the
 16 accounting period and the balance to principal. If no part of a
 17 payment is required to be made or the payment received is the
 18 entire amount to which the trustee is entitled, the trustee shall
 19 allocate the entire payment to principal. For purposes of this
 20 subsection, a payment is not "required to be made" to the extent
 21 that it is made because the trustee exercises a right of withdrawal.

22 (d) If, to obtain an estate tax marital deduction for a trust, a
 23 trustee must allocate more of a payment to income than provided
 24 for by this section, the trustee shall allocate to income the
 25 additional amount necessary to obtain the marital deduction.

26 (e) This section does not apply to payments to which section 30
 27 of this chapter applies.

28 Sec. 30. (a) As used in this section, "liquidating asset" means an
 29 asset whose value will diminish or terminate because the asset is
 30 expected to produce receipts for a period of limited duration. The
 31 term includes a leasehold, patent, copyright, royalty right, and
 32 right to receive payments during a period of more than one (1)
 33 year under an arrangement that does not provide for the payment
 34 of interest on the unpaid balance. The term does not include the
 35 following:

- 36 (1) A payment subject to section 29 of this chapter.
- 37 (2) Resources subject to section 31 of this chapter.
- 38 (3) Timber subject to section 32 of this chapter.
- 39 (4) An activity subject to section 34 of this chapter.
- 40 (5) An asset subject to section 35 of this chapter.
- 41 (6) Any asset for which the trustee establishes a reserve for
 42 depreciation under section 38 of this chapter.

43 (b) A trustee shall allocate to income ten percent (10%) of the
 44 receipts from a liquidating asset and the balance to principal.

45 Sec. 31. (a) To the extent that a trustee accounts for receipts

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1 from an interest in minerals or other natural resources under this
2 section, the trustee shall allocate them as follows:

3 (1) If received as nominal delay rental or nominal annual rent
4 on a lease, a receipt must be allocated to income.

5 (2) If received from a production payment, a receipt must be
6 allocated to income if and to the extent that the agreement
7 creating the production payment provides a factor for interest
8 or its equivalent. The balance must be allocated to principal.

9 (3) If an amount received as a royalty, shut-in-well payment,
10 take-or-pay payment, bonus, or delay rental is more than
11 nominal, ninety percent (90%) must be allocated to principal
12 and the balance to income.

13 (4) If an amount is received from a working interest or any
14 other interest not provided for in subdivision (1), (2), or (3),
15 ninety percent (90%) of the net amount received must be
16 allocated to principal and the balance to income.

17 (b) An amount received on account of an interest in water that
18 is renewable must be allocated to income. If the water is not
19 renewable, ninety percent (90%) of the amount must be allocated
20 to principal and the balance to income.

21 (c) This chapter applies whether or not a decedent or donor was
22 extracting minerals, water, or other natural resources before the
23 interest became subject to the trust.

24 (d) If a trust owns an interest in minerals, water, or other
25 natural resources on July 1, 1999, the trustee may allocate receipts
26 from the interest as provided in this chapter or in the manner used
27 by the trustee before July 1, 1999. If the trust acquires an interest
28 in minerals, water, or other natural resources after June 30, 1999,
29 the trustee shall allocate receipts from the interest as provided in
30 this chapter.

31 **Sec. 32. (a)** To the extent that a trustee accounts for receipts
32 from the sale of timber and related products pursuant to this
33 section, the trustee shall allocate the net receipts:

34 (1) to income to the extent that the amount of timber removed
35 from the land does not exceed the rate of growth of the timber
36 during the accounting periods in which a beneficiary has a
37 mandatory income interest;

38 (2) to principal to the extent that the amount of timber
39 removed from the land exceeds the rate of growth of the
40 timber or the net receipts are from the sale of standing
41 timber;

42 (3) to or between income and principal if the net receipts are
43 from the lease of timberland or from a contract to cut timber
44 from land owned by a trust, by determining the amount of
45 timber removed from the land under the lease or contract and



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1 applying the rules in subdivisions (1) and (2); or
 2 (4) to principal to the extent that advance payments, bonuses,
 3 and other payments are not allocated under subdivision (1),
 4 (2), or (3).

5 (b) In determining net receipts to be allocated under subsection
 6 (a), a trustee shall deduct and transfer to principal a reasonable
 7 amount for depletion.

8 (c) This chapter applies whether or not a decedent or transferor
 9 was harvesting timber from the property before it became subject
 10 to the trust.

11 (d) If a trust owns an interest in timberland on July 1, 1999, the
 12 trustee may allocate net receipts from the sale of timber and
 13 related products as provided in this chapter or in the manner used
 14 by the trustee before July 1, 1999. If the trust acquires an interest
 15 in timberland after June 30, 1999, the trustee shall allocate net
 16 receipts from the sale of timber and related products as provided
 17 in this chapter.

18 Sec. 33. (a) If a marital deduction is allowed for all or part of a
 19 trust whose assets consist substantially of property that does not
 20 provide the spouse with sufficient income from or use of the trust
 21 assets, and if the amounts that the trustee transfers from principal
 22 to income under section 15 of this chapter and distributes to the
 23 spouse from principal under the terms of the trust are insufficient
 24 to provide the spouse with the beneficial enjoyment required to
 25 obtain the marital deduction, the spouse may require the trustee to
 26 make property productive of income, convert property within a
 27 reasonable time, or exercise the power conferred by section 15(a)
 28 of this chapter. The trustee may decide which action or
 29 combination of actions to take.

30 (b) In cases not governed by subsection (a), proceeds from the
 31 sale or other disposition of an asset are principal without regard to
 32 the amount of income the asset produces during any accounting
 33 period.

34 Sec. 34. (a) As used in this section, "derivative" means a
 35 contract or financial instrument or a combination of contracts and
 36 financial instruments which gives a trust the right or obligation to
 37 participate in some or all changes in the price of a tangible or
 38 intangible asset or group of assets, or changes in a rate, an index of
 39 prices or rates, or other market indicator for an asset or a group
 40 of assets.

41 (b) To the extent that a trustee does not account under section
 42 23 of this chapter for transactions in derivatives, the trustee shall
 43 allocate to principal receipts from and disbursements made in
 44 connection with those transactions.

45 (c) If a trustee grants an option to buy property from the trust,



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1 whether or not the trust owns the property when the option is
 2 granted, grants an option that permits another person to sell
 3 property to the trust, or acquires an option to buy property for the
 4 trust or an option to sell an asset owned by the trust, and the
 5 trustee or other owner of the asset is required to deliver the asset
 6 if the option is exercised, an amount received for granting the
 7 option must be allocated to principal. An amount paid to acquire
 8 the option must be paid from principal. A gain or loss realized
 9 upon the exercise of an option, including an option granted to a
 10 settlor of the trust for services rendered, must be allocated to
 11 principal.

12 **Sec. 35. (a)** As used in this section, "asset backed security"
 13 means an asset whose value is based upon the right it gives the
 14 owner to receive distributions from the proceeds of financial assets
 15 that provide collateral for the security. The term includes an asset
 16 that gives the owner the right to receive from the collateral
 17 financial assets only the interest or other current return or only the
 18 proceeds other than interest or current return. The term does not
 19 include an asset to which sections 21 or 29 of this chapter apply.

20 **(b)** If a trust receives a payment from interest or other current
 21 return and from other proceeds of the collateral financial assets,
 22 the trustee shall allocate to income the portion of the payment
 23 which the payer identifies as being from interest or other current
 24 return and shall allocate the balance of the payment to principal.

25 **(c)** If a trust receives one (1) or more payments in exchange for
 26 the trust's entire interest in an asset backed security in one (1)
 27 accounting period, the trustee shall allocate the payments to
 28 principal. If a payment is one (1) of a series of payments that will
 29 result in the liquidation of the trust's interest in the security over
 30 more than one (1) accounting period, the trustee shall allocate ten
 31 percent (10%) of the payment to income and the balance to
 32 principal.

33 **Sec. 36.** A trustee shall make the following disbursements from
 34 income to the extent that they are not disbursements to which
 35 section 16(2)(B) or 16(2)(C) of this chapter applies:

- 36 (1) one-half (1/2) of the regular compensation of the trustee
 37 and of any person providing investment advisory or custodial
 38 services to the trustee;
 39 (2) one-half (1/2) of all expenses for accountings, judicial
 40 proceedings, or other matters that involve both the income
 41 and remainder interests;
 42 (3) all of the other ordinary expenses incurred in connection
 43 with the administration, management, or preservation of trust
 44 property and the distribution of income, including interest,
 45 ordinary repairs, regularly recurring taxes assessed against



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1 principal, and expenses of a proceeding or other matter that
 2 concerns primarily the income interest; and

3 (4) recurring premiums on insurance covering the loss of a
 4 principal asset or the loss of income from or use of the asset.

5 **Sec. 37. (a) A trustee shall make the following disbursements**
 6 **from principal:**

7 (1) the remaining one-half (1/2) of the disbursements
 8 described in section 36(1) and 36(2) of this chapter;

9 (2) all of the trustee's compensation calculated on principal as
 10 a fee for acceptance, distribution, or termination, and
 11 disbursements made to prepare property for sale;

12 (3) payments on the principal of a trust debt;

13 (4) expenses of a proceeding that concerns primarily
 14 principal, including a proceeding to construe the trust or to
 15 protect the trust or its property;

16 (5) premiums paid on a policy of insurance not described in
 17 section 36(4) of this chapter of which the trust is the owner
 18 and beneficiary;

19 (6) estate, inheritance, and other transfer taxes, including
 20 penalties, apportioned to the trust; and

21 (7) disbursements related to environmental matters, including
 22 reclamation, assessing environmental conditions, remedying
 23 and removing environmental contamination, monitoring
 24 remedial activities and the release of substances, preventing
 25 future releases of substances, collecting amounts from persons
 26 liable or potentially liable for the costs of those activities,
 27 penalties imposed under environmental laws or regulations
 28 and other payments made to comply with those laws or
 29 regulations, statutory or common law claims by third parties,
 30 and defending claims based on environmental matters.

31 (b) If a principal asset is encumbered with an obligation that
 32 requires income from that asset to be paid directly to the creditor,
 33 the trustee shall transfer from principal to income an amount
 34 equal to the income paid to the creditor in reduction of the
 35 principal balance of the obligation.

36 **Sec. 38. (a) In this section, "depreciation" means a reduction in**
 37 **value due to wear, tear, decay, corrosion, or gradual obsolescence**
 38 **of a fixed asset having a useful life of more than one (1) year.**

39 (b) A trustee may transfer to principal a reasonable amount of
 40 the net cash receipts from a principal asset that is subject to
 41 depreciation, but may not transfer any amount for depreciation:

42 (1) of that portion of real property used or available for use
 43 by a beneficiary as a residence or of tangible personal
 44 property held or made available for the personal use or
 45 enjoyment of a beneficiary;



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1 (2) during the administration of a decedent's estate; or
 2 (3) under this section if the trustee is accounting under section
 3 23 of this chapter for the business or activity in which the
 4 asset is used.

5 (c) An amount transferred to principal need not be held as a
 6 separate fund.

7 **Sec. 39. (a)** If a trustee makes or expects to make a principal
 8 disbursement described in this section, the trustee may transfer an
 9 appropriate amount from income to principal in one (1) or more
 10 accounting periods to reimburse principal or to provide a reserve
 11 for future principal disbursements.

12 (b) Principal disbursements to which subsection (a) applies
 13 include the following, but only to the extent that the trustee has not
 14 been and does not expect to be reimbursed by a third party:

15 (1) an amount chargeable to income but paid from principal
 16 because it is unusually large, including extraordinary repairs;

17 (2) a capital improvement to a principal asset, whether in the
 18 form of changes to an existing asset or the construction of a
 19 new asset, including special assessments;

20 (3) disbursements made to prepare property for rental,
 21 including tenant allowances, leasehold improvements, and
 22 broker's commissions;

23 (4) periodic payments on an obligation secured by a principal
 24 asset to the extent that the amount transferred from income
 25 to principal for depreciation is less than the periodic
 26 payments; and

27 (5) disbursements described in section 37(a)(7) of this chapter.

28 (c) If the asset whose ownership gives rise to the disbursements
 29 becomes subject to a successive income interest after an income
 30 interest ends, a trustee may continue to transfer amounts from
 31 income to principal as provided in subsection (a).

32 **Sec. 40. (a)** A tax required to be paid by a trustee based on
 33 receipts allocated to income must be paid from income.

34 (b) A tax required to be paid by a trustee based on receipts
 35 allocated to principal must be paid from principal, even if the tax
 36 is called an income tax by the taxing authority.

37 (c) A tax required to be paid by a trustee on the trust's share of
 38 an entity's taxable income must be paid proportionately:

39 (1) from income to the extent that receipts from the entity are
 40 allocated to income; and

41 (2) from principal to the extent that:

42 (A) receipts from the entity are allocated to principal; and

43 (B) the trust's share of the entity's taxable income exceeds
 44 the total receipts described in subdivisions (1) and (2)(A).

45 (d) For purposes of this section, receipts allocated to principal

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1 or income must be reduced by the amount distributed to a
 2 beneficiary from principal or income for which the trust receives
 3 a deduction in calculating the tax.

4 **Sec. 41. (a)** A fiduciary may make adjustments between
 5 principal and income to offset the shifting of economic interests or
 6 tax benefits between income beneficiaries and remainder
 7 beneficiaries that arise from:

8 (1) elections and decisions, other than those described in
 9 subsection (b), that the fiduciary makes from time to time
 10 regarding tax matters;

11 (2) an income tax or any other tax that is imposed upon the
 12 fiduciary or a beneficiary as a result of a transaction
 13 involving or a distribution from the estate or trust; or

14 (3) the ownership by an estate or trust of an interest in a
 15 entity whose taxable income, whether or not distributed, is
 16 includable in the taxable income of the estate, trust, or a
 17 beneficiary.

18 (b) If the amount of an estate tax marital deduction or
 19 charitable contribution deduction is reduced because a fiduciary
 20 deducts an amount paid from principal for income tax purposes
 21 instead of deducting it for estate tax purposes, and as a result estate
 22 taxes paid from principal are increased and income taxes paid by
 23 an estate, trust, or beneficiary are decreased, each estate, trust, or
 24 beneficiary that benefits from the decrease in income tax shall
 25 reimburse the principal from which the increase in estate tax is
 26 paid. The total reimbursement must equal the increase in the estate
 27 tax to the extent that the principal used to pay the increase would
 28 have qualified for a marital deduction or charitable contribution
 29 deduction but for the payment. The proportionate share of the
 30 reimbursement for each estate, trust, or beneficiary whose income
 31 taxes are reduced must be the same as its proportionate share of
 32 the total decrease in income tax. An estate or trust shall reimburse
 33 principal from income.

34 **Sec. 42.** In applying and construing this uniform act,
 35 consideration must be given to the need to promote uniformity of
 36 the law with respect to its subject matter among states that enact
 37 it.

38 **Sec. 43.** If any provision of this chapter or its application to any
 39 person or circumstance is held invalid, the invalidity does not affect
 40 other provisions or applications of this chapter that can be given
 41 effect without the invalid provision or application, and to this end
 42 the provisions of this chapter are severable.

43 SECTION 5. IC 30-4-5-0.5 IS ADDED TO THE INDIANA CODE
 44 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 45 1, 1999]: **Sec. 0.5.** The uniform principal and income act



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1 **(IC 30-2-14) applies to the administration of a trust under this**
 2 **article.**

3 SECTION 6. IC 30-4-5-1 IS AMENDED TO READ AS FOLLOWS
 4 [EFFECTIVE JULY 1, 1999]: Sec. 1. (~~Duty of Trustee as to Receipts~~
 5 ~~and Expenditures)~~

6 (a) A trust shall be administered with due regard to the respective
 7 interests of income beneficiaries and remaindermen. A trust is so
 8 administered with respect to the allocation of receipts and expenditures
 9 if a receipt is credited or an expenditure is charged to income or
 10 principal or partly to each:

11 (1) in accordance with the terms of the trust instrument,
 12 notwithstanding contrary provisions of this article **or IC 30-2-14;**

13 (2) in the absence of any contrary terms of the trust instrument, in
 14 accordance with the provisions of ~~this article;~~ **IC 30-2-14;** or

15 (3) if neither of the preceding rules of administration is
 16 applicable, in accordance with what is reasonable and equitable
 17 in view of the interests of those entitled to income as well as of
 18 those entitled to principal, and in view of the manner in which
 19 men of ordinary prudence, discretion and judgment would act in
 20 the management of their own affairs.

21 (b) If the trust instrument gives the trustee discretion in crediting a
 22 receipt or charging an expenditure to income or principal or partly to
 23 each, no inference of imprudence or partiality arises from the fact that
 24 the trustee has made an allocation contrary to the provisions of ~~this~~
 25 ~~article.~~ **IC 30-2-14.**

26 SECTION 7. IC 30-4-5-2 IS AMENDED TO READ AS FOLLOWS
 27 [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) Except as otherwise stated in
 28 a trust agreement, income ~~is the return in money or property derived~~
 29 ~~from the use of principal; including; but not limited to; return received~~
 30 ~~as:~~

31 (1) ~~rent on real or personal property; including sums received for~~
 32 ~~cancellation or renewal of a lease;~~

33 (2) ~~interest on money lent; including sums received as~~
 34 ~~consideration for the privilege of prepayment of principal except~~
 35 ~~as provided in section 5 of this chapter; on bond premium and~~
 36 ~~bond discount;~~

37 (3) ~~corporate distributions as provided in section 4 of this chapter;~~

38 (4) ~~accrued increases on bonds or other obligations issued at~~
 39 ~~discount as provided in section 5 of this chapter;~~

40 (5) ~~receipts from business and farming operations as provided in~~
 41 ~~sections 6 and 7 of this chapter;~~

42 (6) ~~receipts from disposition of natural resources as provided in~~
 43 ~~sections 8 and 9 of this chapter; and~~

44 (7) ~~receipts from other principal subject to depletion as provided~~



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1 in section 10 of this chapter: **has the meaning set forth in**
 2 **IC 30-2-14-4.**

3 (b) Principal is property; disposed of in trust; the income from which
 4 is payable to or to be accumulated for an income beneficiary and the
 5 title to which is either ultimately to vest in the remainderman or is to
 6 remain perpetually vested in the trustee. Principal includes but is not
 7 limited to:

8 (1) consideration received by the trustee on the sale or other
 9 transfer of principal or on repayment of a loan or as refund or
 10 replacement or change in the form of principal;

11 (2) proceeds of property taken in eminent domain proceedings;

12 (3) proceeds of insurance upon property forming part of the
 13 principal except proceeds of insurance upon a separate interest of
 14 an income beneficiary;

15 (4) stock dividends; receipts on liquidation of a corporation; and
 16 other corporate distributions as provided in section 4 of this
 17 chapter;

18 (5) receipts from the disposition of corporate securities as
 19 provided in section 5 of this chapter;

20 (6) royalties and other receipts from disposition of natural
 21 resources as provided in sections 8 and 9 of this chapter;

22 (7) receipts from other principal subject to depletion as provided
 23 in section 10 of this chapter; and

24 (8) any allowances for depreciation established under sections 6;
 25 7; and 11 of this chapter: **has the meaning set forth in**

26 **IC 30-2-14-10.**

27 SECTION 8. IC 30-4-5-3 IS AMENDED TO READ AS FOLLOWS
 28 [EFFECTIVE JULY 1, 1999]: Sec. 3. (~~When Right to Income Arises;~~
 29 ~~Apportionment of Income~~)

30 (a) An income beneficiary is entitled to income from the date
 31 specified in the terms of the trust or, if none is specified, the date an
 32 asset is ~~delivered to the trustee:~~ **becomes subject to a trust or**
 33 **successive income interest as determined under IC 30-2-14-18.**
 34 Receipts earned or accrued in whole or in part but not received before
 35 the date on which the asset is ~~delivered to the trustee becomes subject~~
 36 **to a trust or successive income interest as determined under**
 37 **IC 30-2-14-18 are income: principal.**

38 (b) The character attributed to income received during the
 39 administration of a decedent's estate shall be the same in the hands of
 40 the trustee as it is in the hands of the executor under the applicable
 41 probate law.

42 (c) When an income interest is terminated, the income beneficiary
 43 whose interest is terminated, or his estate, is entitled to **a distribution**
 44 **determined under IC 30-2-14-16.**



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1 (1) income undistributed on the date of termination;
 2 (2) income due but not paid to the trustee on the date of termination;
 3 (3) income in the form of periodic payments (other than corporate
 4 distributions to stockholders); including but not limited to rent; interest;
 5 or annuities; not due on the date of termination; accrued from day to
 6 day.

7 (d) Corporate distributions to stockholders are to be treated as due
 8 on the day fixed by the corporation for determination of stockholders
 9 of record entitled to distribution or, if no date is fixed, on the date of
 10 declaration of the distribution by the corporation.

11 SECTION 9. IC 30-4-5-8 IS AMENDED TO READ AS FOLLOWS
 12 [EFFECTIVE JULY 1, 1999] : Sec. 8. (~~Disposition of Natural~~
 13 ~~Resources~~)

14 (a) If any part of the principal consists of a right to receive royalties,
 15 overriding or limited royalties, working interests, production payments,
 16 net profit interests, delay rentals, or other interests in minerals or other
 17 natural resources in, on, or under land, the receipts from taking the
 18 natural resources from the land shall be allocated as follows:

19 (1) If received as rent on a lease or extension payments on a lease,
 20 the receipts are income.

21 (2) If received from a production payment, the receipts are
 22 income to the extent of any factor for interest or its equivalent
 23 provided in the governing instrument. There shall be allocated to
 24 principal all delay rentals and the fraction of the balance of the
 25 receipts which the unrecovered cost of the production payments
 26 bears to the balance owed on the production payment, exclusive
 27 of any factor for interest or its equivalent. The receipts not
 28 allocated to principal are income.

29 (3) If received as a royalty, overriding or limited royalty, or bonus,
 30 or from a working interest, net profit interest, or any other interest
 31 in minerals or other natural resources, receipts not provided for in
 32 the preceding paragraphs of this section shall be apportioned on
 33 a yearly basis in accordance with this paragraph whether or not
 34 any natural resources were being taken from the land at the time
 35 the trust was established. Twenty-seven and one-half percent
 36 (27-1/2%) of the gross receipts (but not to exceed fifty percent
 37 (50%) of the net receipts computed without allowance for
 38 depletion) shall be added to principal as an allowance for
 39 depletion. The balance of the gross receipts, after payment
 40 therefrom of all expenses, direct and indirect, is income.

41 (b) If a trustee, on September 2, 1971, held an item of depletable
 42 property of a type specified in this section he may allocate receipts
 43 from the property in the manner used before September 2, 1971; but as
 44 to all depletable property acquired after September 2, 1971; by an



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1 existing or new trust, the method of allocation provided herein shall be
 2 used: **provided by IC 30-2-14-31.**

3 SECTION 10. IC 30-4-5-9 IS AMENDED TO READ AS
 4 FOLLOWS [EFFECTIVE JULY 1, 1999] : Sec. 9. (~~Timber~~) If any part
 5 of the principal consists of land from which merchantable timber may
 6 be removed, the receipts from taking the timber from the land shall be
 7 allocated in accordance with ~~30-4-5-1(a)(3)~~: **IC 30-2-14.**

8 SECTION 11. THE FOLLOWING ARE REPEALED [EFFECTIVE
 9 JULY 1, 1999]: IC 30-4-5-4; IC 30-4-5-5; IC 30-4-5-6; IC 30-4-5-7;
 10 IC 30-4-5-11.

11 SECTION 12. [EFFECTIVE JULY 1, 1999] **IC 30-2-14, as added**
 12 **by this act, applies to every trust or decedent's estate existing on or**
 13 **created after July 1, 1999, except as otherwise expressly provided:**

- 14 (1) in the decedent's will;
 15 (2) by the terms of the trust; or
 16 (3) in IC 30-2-14.

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