

3B:19B-1

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2001 **CHAPTER:** 212
NJSA: 3B:19B-1 ("Uniform Principal and Income Act")
BILL NO: A3261 (Substituted for S1667)

SPONSOR(S): Bateman and Biondi

DATE INTRODUCED: March 1, 2001

COMMITTEE: **ASSEMBLY:** Banking and Insurance

SENATE: ----

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** June 14, 2001

SENATE: June 28, 2001

DATE OF APPROVAL: August 15, 2001

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (1st reprint enacted)

(Amendments during passage denoted by superscript numbers)

A3261

SPONSORS STATEMENT: (Begins on page 19 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: No

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: No

S1667

SPONSORS STATEMENT: (Begins on page 19 of original bill) Yes

Bill and Sponsors Statement identical to A3261

COMMITTEE STATEMENT:

ASSEMBLY: No

SENATE: Yes

Identical to Assembly Statement for A3261

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

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ASSEMBLY, No. 3261

STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED MARCH 1, 2001

Sponsored by:

Assemblyman CHRISTOPHER "KIP" BATEMAN

District 16 (Morris and Somerset)

Assemblyman PETER J. BIONDI

District 16 (Morris and Somerset)

SYNOPSIS

Replaces "Revised Uniform Principal and Income Act" with "Uniform Principal and Income Act of 2000."

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning principal and income guidelines for trusts and
2 estates and repealing N.J.S.3B:19A-1 et seq.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. This act shall be known and may be cited as the "Uniform
8 Principal and Income Act of 2000."

9
10 2. As used in this act:

11 "Accounting period" means a calendar year unless another
12 12-month period is selected by a fiduciary. The term includes a
13 portion of a calendar year or other 12-month period that begins when
14 an income interest begins or ends when an income interest ends.

15 "Beneficiary" includes, in the case of a decedent's estate, an heir,
16 legatee and devisee and, in the case of a trust, an income beneficiary
17 and a remainder beneficiary.

18 "Fiduciary" means a personal representative or a trustee. The term
19 includes an executor, administrator, successor personal representative,
20 special administrator and a person performing substantially the same
21 function.

22 "Income" means money or property that a fiduciary receives as
23 current return from a principal asset. The term includes a portion of
24 receipts from a sale, exchange or liquidation of a principal asset, to the
25 extent provided in sections 10 through 24 of this act.

26 "Income beneficiary" means a person to whom net income of a trust
27 is or may be payable.

28 "Income interest" means the right of an income beneficiary to
29 receive all or part of net income, whether the terms of the trust require
30 it to be distributed or authorize it to be distributed in the trustee's
31 discretion.

32 "Mandatory income interest" means the right of an income
33 beneficiary to receive net income that the terms of the trust require the
34 fiduciary to distribute.

35 "Net income" means the total receipts allocated to income during
36 an accounting period minus the disbursements made from income
37 during the period, plus or minus transfers under this act to or from
38 income during the period.

39 "Person" means an individual, corporation, business trust, estate,
40 trust, partnership, limited liability company, association, joint venture,
41 government, governmental subdivision, agency or instrumentality,
42 public corporation or any other legal or commercial entity.

43 "Principal" means property held in trust for distribution to a
44 remainder beneficiary when the trust terminates.

45 "Remainder beneficiary" means a person entitled to receive
46 principal when an income interest ends.

1 “Terms of a trust” means the manifestation of the intent of a settlor
2 or decedent with respect to the trust, expressed in a manner that
3 admits of its proof in a judicial proceeding, whether by written or
4 spoken words or by conduct.

5 “Trustee” includes an original, additional or successor trustee,
6 whether or not appointed or confirmed by a court.

7

8 3. a. In allocating receipts and disbursements to or between
9 principal and income, and with respect to any matter within the scope
10 of sections 5 through 9 of this act, a fiduciary:

11 (1) shall administer a trust or estate in accordance with the terms
12 of the trust or the will, even if there is a different provision in this act;

13 (2) may administer a trust or estate by the exercise of a
14 discretionary power of administration given to the fiduciary by the
15 terms of the trust or the will, even if the exercise of the power
16 produces a result different from a result required or permitted by this
17 act;

18 (3) shall administer a trust or estate in accordance with this act if
19 the terms of the trust or the will do not contain a different provision
20 or do not give the fiduciary a discretionary power of administration;
21 and

22 (4) shall add a receipt or charge a disbursement to principal to the
23 extent that the terms of the trust and this act do not provide a rule for
24 allocating the receipt or disbursement to or between principal and
25 income.

26 b. In exercising the power to adjust under subsection a. of section
27 4 of this act or a discretionary power of administration regarding a
28 matter within the scope of this act, whether granted by the terms of a
29 trust, a will or this act, a fiduciary shall administer a trust or estate
30 impartially, based on what is fair and reasonable to all of the
31 beneficiaries, except to the extent that the terms of the trust or the will
32 clearly manifest an intention that the fiduciary shall or may favor one
33 or more of the beneficiaries. A determination in accordance with this
34 act is presumed to be fair and reasonable to all of the beneficiaries.

35

36 4. a. A trustee may adjust between principal and income to the
37 extent the trustee considers necessary if the trustee invests and
38 manages trust assets as a prudent investor, the terms of the trust
39 describe the amount that may or shall be distributed to a beneficiary by
40 referring to the trust’s income and the trustee determines, after
41 applying the rules in subsection a. of section 3 of this act, that the
42 trustee is unable to comply with subsection b. of section 3 of this act.

43 b. In deciding whether and to what extent to exercise the power
44 conferred by subsection a. of this section, a trustee shall consider all
45 factors relevant to the trust and its beneficiaries, including the
46 following factors to the extent they are relevant:

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

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 paragraph (5), (6), (7) or (8) of subsection c. of this section
5 applies to a trustee and there is more than one trustee, a cotrustee to
6 whom the provision does not apply may make the adjustment unless
7 the 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 subsection
10 a. of this section 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 power
13 will cause a result described in paragraphs (1) through (6) or (8) of
14 subsection c. of this section, or if the trustee determines that
15 possessing or exercising the power will or may deprive the trust of a
16 tax benefit or impose a tax burden not described in subsection c. of
17 this section. The release may be permanent or for a specified period,
18 including 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 application
21 of this section unless it is clear from the terms of the trust that the
22 terms are intended to deny the trustee the power of adjustment
23 conferred by subsection a. of this section.

24

25 5. After a decedent dies, in the case of an estate or after an income
26 interest in a trust ends, the following rules apply:

27 a. A fiduciary of an estate or of a terminating income interest shall
28 determine the amount of net income and net principal receipts received
29 from property specifically given to a beneficiary under the rules in
30 sections 7 through 30 of this act which apply to trustees and the rules
31 in subsection e. of this section. The fiduciary shall distribute the net
32 income and net principal receipts to the beneficiary who is to receive
33 the specific property.

34 b. A fiduciary shall determine the remaining net income of a
35 decedent's estate or a terminating income interest under the rules in
36 sections 7 through 30 of this act which apply to trustees and by:

37 (1) including in net income all income from property used to
38 discharge liabilities;

39 (2) paying from income or principal, in the fiduciary's discretion,
40 fees of attorneys, accountants and fiduciaries, court costs and other
41 expenses of administration and interest on death taxes, but the
42 fiduciary may pay those expenses from income of property passing to
43 a trust for which the fiduciary claims an estate tax marital or charitable
44 deduction only to the extent that the payment of those expenses from
45 income will not cause the reduction or loss of the deduction; and

46 (3) paying from principal all other disbursements made or incurred

1 in connection with the settlement of a decedent's estate or the winding
2 up of a terminating income interest, including debts, funeral expenses,
3 disposition of remains, family allowances and death taxes and related
4 penalties that are apportioned to the estate or terminating income
5 interest by the will, the terms of the trust or applicable law.

6 c. A fiduciary shall distribute to a beneficiary who receives a
7 pecuniary amount outright the interest or any other amount provided
8 by the will, the terms of the trust or applicable law from net income
9 determined under subsection b. of this section or from principal to the
10 extent that net income is insufficient. If a beneficiary is to receive a
11 pecuniary amount outright from a trust after an income interest ends
12 and no interest or other amount is provided for by the terms of the
13 trust or applicable law, the fiduciary shall distribute the interest or
14 other amount to which the beneficiary would be entitled under
15 applicable law if the pecuniary amount were required to be paid under
16 a will.

17 d. A fiduciary shall distribute the net income remaining after
18 distributions required by subsection c. of this section in the manner
19 described in section 6 of this act to all other beneficiaries, including a
20 beneficiary who receives a pecuniary amount in trust, even if the
21 beneficiary holds an unqualified power to withdraw assets from the
22 trust or other presently exercisable general power of appointment over
23 the trust.

24 e. A fiduciary shall not reduce principal or income receipts from
25 property described in subsection a. of this section because of a
26 payment described in section 25 or 26 of this act to the extent that the
27 will, the terms of the trust, or applicable law requires the fiduciary to
28 make the payment from assets other than the property or to the extent
29 that the fiduciary recovers or expects to recover the payment from a
30 third party. The net income and principal receipts from the property
31 are determined by including all of the amounts the fiduciary receives
32 or pays with respect to the property, whether those amounts accrued
33 or became due before, on or after the date of a decedent's death or an
34 income interest's terminating event, and by making a reasonable
35 provision for amounts that the fiduciary believes the estate or
36 terminating income interest may become obligated to pay after the
37 property is distributed.

38
39 6. a. Each beneficiary described in subsection d. of section 5 of
40 this act is entitled to receive a portion of the net income equal to the
41 beneficiary's fractional interest in undistributed principal assets, using
42 values as of the distribution date. If a fiduciary makes more than one
43 distribution of assets to beneficiaries to whom this section applies,
44 each beneficiary, including one who does not receive part of the
45 distribution, is entitled, as of each distribution date, to the net income
46 the fiduciary has received after the date of death or terminating event

1 or earlier distribution date but has not distributed as of the current
2 distribution date.

3 b. In determining a beneficiary's share of net income, the following
4 rules apply:

5 (1) The beneficiary is entitled to receive a portion of the net
6 income equal to the beneficiary's fractional interest in the
7 undistributed principal assets immediately before the distribution date,
8 including assets that later may be sold to meet principal obligations.

9 (2) The beneficiary's fractional interest in the undistributed
10 principal assets shall be calculated without regard to property
11 specifically given to a beneficiary and property required to pay
12 pecuniary amounts not in trust.

13 (3) The beneficiary's fractional interest in the undistributed
14 principal assets shall be calculated on the basis of the aggregate value
15 of those assets as of the distribution date without reducing the value
16 by any unpaid principal obligation.

17 (4) The distribution date for purposes of this section may be the
18 date as of which the fiduciary calculates the value of the assets if that
19 date is reasonably near the date on which assets are actually
20 distributed.

21 c. If a fiduciary does not distribute all of the collected but
22 undistributed net income to each person as of a distribution date, the
23 fiduciary shall maintain appropriate records showing the interest of
24 each beneficiary in that net income.

25 d. A fiduciary may apply the rules in this section, to the extent that
26 the fiduciary considers it appropriate, to net gain or loss realized after
27 the date of death or terminating event or earlier distribution date from
28 the disposition of a principal asset if this section applies to the income
29 from the asset.

30

31 7. a. An income beneficiary is entitled to net income from the date
32 on which the income interest begins. An income interest begins on the
33 date specified in the terms of the trust or, if no date is specified, on the
34 date an asset becomes subject to a trust or successive income interest.

35 b. An asset becomes subject to a trust:

36 (1) on the date it is transferred to the trust in the case of an asset
37 that is transferred to a trust during the transferor's life;

38 (2) on the date of a testator's death in the case of an asset that
39 becomes subject to a trust by reason of a will, even if there is an
40 intervening period of administration of the testator's estate; or

41 (3) on the date of an individual's death in the case of an asset that
42 is transferred to a fiduciary by a third party because of the individual's
43 death.

1 c. An asset becomes subject to a successive income interest on the
2 day after the preceding income interest ends, as determined under
3 subsection d. of this section, even if there is an intervening period of
4 administration to wind up the preceding income interest.

5 d. An income interest ends on the day before an income beneficiary
6 dies or another terminating event occurs, or on the last day of a period
7 during which there is no beneficiary to whom a trustee may distribute
8 income.

9
10 8. a. A trustee shall allocate an income receipt or disbursement
11 other than one to which paragraph (1) of subsection b. of section 5 of
12 this act applies to principal if its due date occurs before a decedent
13 dies in the case of an estate or before an income interest begins in the
14 case of a trust or successive income interest.

15 b. A trustee shall allocate an income receipt or disbursement to
16 income if its due date occurs on or after the date on which a decedent
17 dies or an income interest begins and it is a periodic due date. An
18 income receipt or disbursement shall be treated as accruing from day
19 to day if its due date is not periodic or it has no due date. The portion
20 of the receipt or disbursement accruing before the date on which a
21 decedent dies or an income interest begins shall be allocated to
22 principal and the balance shall be allocated to income.

23 c. An item of income or an obligation is due on the date the payer
24 is required to make a payment. If a payment date is not stated, there
25 is no due date for the purposes of this act. Distributions to
26 shareholders or other owners from an entity to which section 10 of this
27 act applies are deemed to be due on the date fixed by the entity for
28 determining who is entitled to receive the distribution or, if no date is
29 fixed, on the declaration date for the distribution. A due date is
30 periodic for receipts or disbursements that are to be paid at regular
31 intervals under a lease or an obligation to pay interest or if an entity
32 customarily makes distributions at regular intervals.

33
34 9. a. As used in this section, “undistributed income” means net
35 income received before the date on which an income interest ends.
36 The term does not include an item of income or expense that is due or
37 accrued or net income that has been added or is required to be added
38 to principal under the terms of the trust.

39 b. When a mandatory income interest ends, the trustee shall pay to
40 a mandatory income beneficiary who survives that date, or the estate
41 of a deceased mandatory income beneficiary whose death causes the
42 interest to end, the beneficiary’s share of the undistributed income that
43 is not disposed of under the terms of the trust, unless the beneficiary
44 has an unqualified power to revoke more than five percent of the trust
45 immediately before the income interest ends. In the latter case, the
46 undistributed income from the portion of the trust that may be revoked

1 shall be added to principal.

2 c. When a trustee's obligation to pay a fixed annuity or a fixed
3 fraction of the value of the trust's assets ends, the trustee shall prorate
4 the final payment if and to the extent required by applicable law to
5 accomplish a purpose of the trust or its settlor relating to income, gift,
6 estate or other tax requirements.

7

8 10. a. As used in this section, "entity" means a corporation,
9 partnership, limited liability company, regulated investment company,
10 real estate investment trust, common trust fund or any other
11 organization in which a trustee has an interest other than a trust or
12 estate to which section 11 of this act applies, a business or activity to
13 which section 12 of this act applies or an asset-backed security to
14 which section 24 of this act applies.

15 b. Except as otherwise provided in this section, a trustee shall
16 allocate to income money received from an entity.

17 c. A trustee shall allocate the following receipts from an entity to
18 principal:

19 (1) property other than money;

20 (2) money received in one distribution or a series of related
21 distributions in exchange for part or all of a trust's interest in the
22 entity;

23 (3) money received in total or partial liquidation of the entity; and

24 (4) money received from an entity that is a regulated investment
25 company or a real estate investment trust if the money distributed is a
26 capital gain dividend for federal income tax purposes.

27 d. Money is received in partial liquidation:

28 (1) to the extent that the entity, at or near the time of a distribution,
29 indicates that it is a distribution in partial liquidation; or

30 (2) if the total amount of money and property received in a
31 distribution or series of related distributions is greater than 20 percent
32 of the entity's gross assets, as shown by the entity's year-end financial
33 statements immediately preceding the initial receipt.

34 e. Money is not received in partial liquidation, nor may it be taken
35 into account under paragraph (2) of subsection d. of this section, to
36 the extent that it does not exceed the amount of income tax that a
37 trustee or beneficiary must pay on taxable income of the entity that
38 distributes the money.

39 f. A trustee may rely upon a statement made by an entity about the
40 source or character of a distribution if the statement is made at or near
41 the time of distribution by the entity's board of directors or other
42 person or group of persons authorized to exercise powers to pay
43 money or transfer property comparable to those of a corporation's
44 board of directors.

1 11. A trustee shall allocate to income an amount received as a
2 distribution of income from a trust or an estate in which the trust has
3 an interest other than a purchased interest, and shall allocate to
4 principal an amount received as a distribution of principal from such
5 a trust or estate. If a trustee purchases an interest in a trust that is an
6 investment entity, or a decedent or donor transfers an interest in such
7 a trust to a trustee, section 10 or 24 of this act applies to a receipt
8 from the trust.

9
10 12. a. If a trustee who conducts a business or other activity
11 determines that it is in the best interest of all the beneficiaries to
12 account separately for the business or activity instead of accounting
13 for it as part of the trust's general accounting records, the trustee may
14 maintain separate accounting records for its transactions, whether or
15 not its assets are segregated from other trust assets.

16 b. A trustee who accounts separately for a business or other
17 activity may determine the extent to which its net cash receipts are to
18 be retained for working capital, the acquisition or replacement of fixed
19 assets and other reasonably foreseeable needs of the business or
20 activity, and the extent to which the remaining net cash receipts are
21 accounted for as principal or income in the trust's general accounting
22 records. If a trustee sells assets of the business or other activity, other
23 than in the ordinary course of the business or activity, the trustee shall
24 account for the net amount received as principal in the trust's general
25 accounting records to the extent the trustee determines that the
26 amount received is no longer required in the conduct of the business.

27 c. Activities for which a trustee may maintain separate accounting
28 records include:

- 29 (1) retail, manufacturing, service and other traditional business
30 activities;
31 (2) farming;
32 (3) raising and selling livestock and other animals;
33 (4) management of rental properties;
34 (5) extraction of minerals and other natural resources;
35 (6) timber operations; and
36 (7) activities to which section 23 of this act applies.

37
38 13. A trustee shall allocate to principal:

39 a. To the extent not allocated to income under this act, assets
40 received from a transferor during the transferor's lifetime, a decedent's
41 estate, a trust with a terminating income interest or a payer under a
42 contract naming the trust or its trustee as beneficiary;

43 b. Money or other property received from the sale, exchange,
44 liquidation or change in form of a principal asset, including realized
45 profit, subject to sections 10 through 24 of this act;

1 c. Amounts recovered from third parties to reimburse the trust
2 because of disbursements described in paragraph (7) of subsection a.
3 of section 26 of this act or for other reasons to the extent not based on
4 the loss of income;

5 d. Proceeds of property taken by eminent domain, but a separate
6 award made for the loss of income with respect to an accounting
7 period during which a current income beneficiary had a mandatory
8 income interest is income;

9 e. Net income received in an accounting period during which there
10 is no beneficiary to whom a trustee may or shall distribute income; and

11 f. Other receipts as provided in sections 17 through 24 of this act.

12
13 14. To the extent that a trustee accounts for receipts from rental
14 property pursuant to this section, the trustee shall allocate to income
15 an amount received as rent of real or personal property, including an
16 amount received for cancellation or renewal of a lease. An amount
17 received as a refundable deposit, including a security deposit or a
18 deposit that is to be applied as rent for future periods, shall be added
19 to principal and held subject to the terms of the lease and is not
20 available for distribution to a beneficiary until the trustee's contractual
21 obligations have been satisfied with respect to that amount.

22
23 15. a. An amount received as interest, whether determined at a
24 fixed, variable or floating rate, on an obligation to pay money to the
25 trustee, including an amount received as consideration for prepaying
26 principal, shall be allocated to income without any provision for
27 amortization of premium.

28 b. A trustee shall allocate to principal an amount received from the
29 sale, redemption or other disposition of an obligation to pay money to
30 the trustee more than one year after it is purchased or acquired by the
31 trustee, including an obligation whose purchase price or value when
32 it is acquired is less than its value at maturity. If the obligation
33 matures within one year after it is purchased or acquired by the
34 trustee, an amount received in excess of its purchase price or its value
35 when acquired by the trust shall be allocated to income.

36 c. This section does not apply to an obligation to which section 18,
37 19, 20, 21, 23 or 24 of this act applies.

38
39 16. a. Except as otherwise provided in subsection b. of this
40 section, a trustee shall allocate to principal the proceeds of a life
41 insurance policy or other contract in which the trust or its trustee is
42 named as beneficiary, including a contract that insures the trust or its
43 trustee against loss for damage to, destruction of or loss of title to a
44 trust asset. The trustee shall allocate dividends on an insurance policy
45 to income if the premiums on the policy are paid from income, and to
46 principal if the premiums are paid from principal.

1 b. A trustee shall allocate to income proceeds of a contract that
2 insures the trustee against loss of occupancy or other use by an income
3 beneficiary, loss of income or, subject to section 12 of this act, loss of
4 profits from a business.

5 c. This section does not apply to a contract to which section 18 of
6 this act applies.

7
8 17. If a trustee determines that an allocation between principal and
9 income required by section 18, 19, 20, 21 or 24 of this act is
10 insubstantial, the trustee may allocate the entire amount to principal
11 unless one of the circumstances described in subsection c. of section
12 4 of this act applies to the allocation. This power may be exercised by
13 a cotrustee in the circumstances described in subsection d. of section
14 4 of this act and may be released for the reasons and in the manner
15 described in subsection e. of section 4 of this act. An allocation is
16 presumed to be insubstantial if:

17 (1) the amount of the allocation would increase or decrease net
18 income in an accounting period, as determined before the allocation,
19 by less than 10 percent; or

20 (2) the value of the asset producing the receipt for which the
21 allocation would be made is less than 10 percent of the total value of
22 the trust's assets at the beginning of the accounting period.

23
24 18. a. As used in this section, "payment" means a payment that a
25 trustee may receive over a fixed number of years or during the life of
26 one or more individuals because of services rendered or property
27 transferred to the payer in exchange for future payments. The term
28 includes a payment made in money or property from the payer's
29 general assets or from a separate fund created by the payer, including
30 a private or commercial annuity, an individual retirement account and
31 a pension, profit-sharing, stock-bonus, or stock-ownership plan.

32 b. To the extent that a payment is characterized as interest or a
33 dividend or a payment made in lieu of interest or a dividend, a trustee
34 shall allocate it to income. The trustee shall allocate to principal the
35 balance of the payment and any other payment received in the same
36 accounting period that is not characterized as interest, a dividend or
37 an equivalent payment.

38 c. If no part of a payment is characterized as interest, a dividend or
39 an equivalent payment, and all or part of the payment is required to be
40 made, a trustee shall allocate to income 10 percent of the part that is
41 required to be made during the accounting period and the balance to
42 principal. If no part of a payment is required to be made or the
43 payment received is the entire amount to which the trustee is entitled,
44 the trustee shall allocate the entire payment to principal. For purposes
45 of this subsection, a payment is not "required to be made" to the
46 extent that it is made because the trustee exercises a right of

1 withdrawal.

2 d. If, to obtain an estate tax marital deduction for a trust, a trustee
3 must allocate more of a payment to income than provided for by this
4 section, the trustee shall allocate to income the additional amount
5 necessary to obtain the marital deduction.

6 e. This section does not apply to payments to which section 19 of
7 this act applies.

8

9 19. a. As used in this section, "liquidating asset" means an asset
10 whose value will diminish or terminate because the asset is expected
11 to produce receipts for a period of limited duration. The term includes
12 a leasehold, patent, copyright, royalty right and right to receive
13 payments during a period of more than one year under an arrangement
14 that does not provide for the payment of interest on the unpaid
15 balance. The term does not include a payment subject to section 18 of
16 this act, resources subject to section 20 of this act, timber subject to
17 section 21 of this act, an activity subject to section 23 of this act, an
18 asset subject to section 24 of this act, or any asset for which the
19 trustee establishes a reserve for depreciation under section 27 of this
20 act.

21 b. A trustee shall allocate to income 10 percent of the receipts from
22 a liquidating asset and the balance to principal.

23

24 20. a. To the extent that a trustee accounts for receipts from an
25 interest in minerals or other natural resources pursuant to this section,
26 the trustee shall allocate them as follows:

27 (1) if received as nominal delay rental or nominal annual rent on a
28 lease, a receipt shall be allocated to income;

29 (2) if received from a production payment, a receipt shall be
30 allocated to income if and to the extent that the agreement creating the
31 production payment provides a factor for interest or its equivalent.
32 The balance shall be allocated to principal;

33 (3) if an amount received as a royalty, shut-in-well payment, take-
34 or-pay payment, bonus or delay rental is more than nominal, 90
35 percent shall be allocated to principal and the balance to income;

36 (4) if an amount is received from a working interest or any other
37 interest not provided for in paragraph (1), (2) or (3) of this subsection
38 a., 90 percent of the net amount received shall be allocated to principal
39 and the balance to income.

40 b. An amount received on account of an interest in water that is
41 renewable shall be allocated to income. If the water is not renewable,
42 90 percent of the amount shall be allocated to principal and the
43 balance to income.

44 c. This act applies whether or not a decedent or donor was
45 extracting minerals, water or other natural resources before the
46 interest became subject to the trust.

1 d. If a trust owns an interest in minerals, water, or other natural
2 resources on the effective date of this act, the trustee may allocate
3 receipts from the interest as provided in this act or in the manner used
4 by the trustee before the effective date of this act. If the trust acquires
5 an interest in minerals, water or other natural resources after the
6 effective date of this act, the trustee shall allocate receipts from the
7 interest as provided in this act.

8
9 21. a. To the extent that a trustee accounts for receipts from the
10 sale of timber and related products pursuant to this section, the trustee
11 shall allocate the net receipts:

12 (1) to income to the extent that the amount of timber removed from
13 the land does not exceed the rate of growth of the timber during the
14 accounting periods in which a beneficiary has a mandatory income
15 interest;

16 (2) to principal to the extent that the amount of timber removed
17 from the land exceeds the rate of growth of the timber or the net
18 receipts are from the sale of standing timber;

19 (3) to or between income and principal if the net receipts are from
20 the lease of timberland or from a contract to cut timber from land
21 owned by a trust, by determining the amount of timber removed from
22 the land under the lease or contract and applying the rules in
23 paragraphs (1) and (2) of this subsection a.; or

24 (4) to principal to the extent that advance payments, bonuses and
25 other payments are not allocated pursuant to paragraph (1), (2) or (3)
26 of this subsection a.

27 b. In determining net receipts to be allocated pursuant to
28 subsection a. of this section, a trustee shall deduct and transfer to
29 principal a reasonable amount for depletion.

30 c. This section applies whether or not a decedent or transferor was
31 harvesting timber from the property before it became subject to the
32 trust.

33 d. If a trust owns an interest in timberland on the effective date of
34 this act, the trustee may allocate net receipts from the sale of timber
35 and related products as provided in this act or in the manner used by
36 the trustee before the effective date of this act. If the trust acquires an
37 interest in timberland after the effective date of this act, the trustee
38 shall allocate net receipts from the sale of timber and related products
39 as provided in this act.

40
41 22. a. If a marital deduction is allowed for all or part of a trust
42 whose assets consist substantially of property that does not provide
43 the spouse with sufficient income from or use of the trust assets, and
44 if the amounts that the trustee transfers from principal to income under
45 section 4 of this act and distributes to the spouse from principal
46 pursuant to the terms of the trust are insufficient to provide the spouse

1 with the beneficial enjoyment required to obtain the marital deduction,
2 the spouse may require the trustee to make property productive of
3 income, convert property within a reasonable time or exercise the
4 power conferred by subsection a. of section 4 of this act. The trustee
5 may decide which action or combination of actions to take.

6 b. In cases not governed by subsection a. of this section, proceeds
7 from the sale or other disposition of an asset are principal without
8 regard to the amount of income the asset produces during any
9 accounting period.

10
11 23. a. As used in this section, “derivative” means a contract or
12 financial instrument or a combination of contracts and financial
13 instruments which gives a trust the right or obligation to participate in
14 some or all changes in the price of a tangible or intangible asset or
15 group of assets, or changes in a rate, an index of prices or rates or
16 other market indicator for an asset or a group of assets.

17 b. To the extent that a trustee does not account under section 12
18 of this act for transactions in derivatives, the trustee shall allocate to
19 principal receipts from and disbursements made in connection with
20 those transactions.

21 c. If a trustee grants an option to buy property from the trust,
22 whether or not the trust owns the property when the option is granted,
23 grants an option that permits another person to sell property to the
24 trust or acquires an option to buy property for the trust or an option
25 to sell an asset owned by the trust, and the trustee or other owner of
26 the asset is required to deliver the asset if the option is exercised, an
27 amount received for granting the option shall be allocated to principal.
28 An amount paid to acquire the option shall be paid from principal. A
29 gain or loss realized upon the exercise of an option, including an
30 option granted to a settlor of the trust for services rendered, shall be
31 allocated to principal.

32
33 24. a. As used in this section, “asset-backed security” means an
34 asset whose value is based upon the right it gives the owner to receive
35 distributions from the proceeds of financial assets that provide
36 collateral for the security. The term includes an asset that gives the
37 owner the right to receive from the collateral financial assets only the
38 interest or other current return or only the proceeds other than interest
39 or current return. The term does not include an asset to which section
40 10 or 18 of this act applies.

41 b. If a trust receives a payment from interest or other current
42 return and from other proceeds of the collateral financial assets, the
43 trustee shall allocate to income the portion of the payment which the
44 payer identifies as being from interest or other current return and shall
45 allocate the balance of the payment to principal.

46 c. If a trust receives one or more payments in exchange for the

1 trust's entire interest in an asset-backed security in one accounting
2 period, the trustee shall allocate the payments to principal. If a
3 payment is one of a series of payments that will result in the
4 liquidation of the trust's interest in the security over more than one
5 accounting period, the trustee shall allocate 10 percent of the payment
6 to income and the balance to principal.

7

8 25. A trustee shall make the following disbursements from income
9 to the extent that they are not disbursements to which paragraph (1)
10 or (2) of subsection b. of section 5 of this act applies:

11 a. one-half of the regular compensation of the trustee and of any
12 person providing investment advisory or custodial services to the
13 trustee;

14 b. one-half of all expenses for accountings, judicial proceedings, or
15 other matters that involve both the income and remainder interests;

16 c. all of the other ordinary expenses incurred in connection with the
17 administration, management, or preservation of trust property and the
18 distribution of income, including interest, ordinary repairs, regularly
19 recurring taxes assessed against principal and expenses of a proceeding
20 or other matter that concerns primarily the income interest; and

21 d. recurring premiums on insurance covering the loss of a principal
22 asset or the loss of income from or use of the asset.

23

24 26. a. A trustee shall make the following disbursements from
25 principal:

26 (1) the remaining one-half of the disbursements described in
27 subsections a. and b. of section 25 of this act;

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

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

32 (4) expenses of a proceeding that concerns primarily principal,
33 including a proceeding to construe the trust or to protect the trust or
34 its property;

35 (5) premiums paid on a policy of insurance not described in
36 subsection d. of section 25 of this act of which the trust is the owner
37 and beneficiary;

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

40 (7) disbursements related to environmental matters, including
41 reclamation, assessing environmental conditions, remedying and
42 removing environmental contamination, monitoring remedial activities
43 and the release of substances, preventing future releases of substances,
44 collecting amounts from persons liable or potentially liable for the
45 costs of those activities, penalties imposed under environmental laws
46 or regulations and other payments made to comply with those laws or

1 regulations, statutory or common law claims by third parties and
2 defending claims based on environmental matters.

3 b. If a principal asset is encumbered with an obligation that
4 requires income from that asset to be paid directly to the creditor, the
5 trustee shall transfer from principal to income an amount equal to the
6 income paid to the creditor in reduction of the principal balance of the
7 obligation.

8

9 27. a. As used in this section, “depreciation” means a reduction in
10 value due to wear, tear, decay, corrosion or gradual obsolescence of
11 a fixed asset having a useful life of more than one year.

12 b. A trustee may transfer to principal a reasonable amount of the
13 net cash receipts from a principal asset that is subject to depreciation,
14 but may not transfer any amount for depreciation:

15 (1) of that portion of real property used or available for use by a
16 beneficiary as a residence or of tangible personal property held or
17 made available for the personal use or enjoyment of a beneficiary;

18 (2) during the administration of a decedent’s estate; or

19 (3) under this section if the trustee is accounting under section 12
20 of this act for the business or activity in which the asset is used.

21 c. An amount transferred to principal need not be held as a
22 separate fund.

23

24 28. a. If a trustee makes or expects to make a principal
25 disbursement described in this section, the trustee may transfer an
26 appropriate amount from income to principal in one or more
27 accounting periods to reimburse principal or to provide a reserve for
28 future principal disbursements.

29 b. Principal disbursements to which subsection a. of this section
30 applies include the following, but only to the extent that the trustee
31 has not been and does not expect to be reimbursed by a third party:

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

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

37 (3) disbursements made to prepare property for rental, including
38 tenant allowances, leasehold improvements and broker’s commissions;

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

42 (5) disbursements described in paragraph (7) of subsection a. of
43 section 26 of this act.

44 c. If the asset whose ownership gives rise to the disbursements
45 becomes subject to a successive income interest after an income
46 interest ends, a trustee may continue to transfer amounts from income

1 to principal as provided in subsection a. of this section.

2

3 29. a. A tax required to be paid by a trustee based on receipts
4 allocated to income shall be paid from income.

5 b. A tax required to be paid by a trustee based on receipts allocated
6 to principal shall be paid from principal, even if the tax is called an
7 income tax by the taxing authority.

8 c. A tax required to be paid by a trustee on the trust's share of an
9 entity's taxable income shall be paid proportionately:

10 (1) from income to the extent that receipts from the entity are
11 allocated to income; and

12 (2) from principal to the extent that:

13 (a) receipts from the entity are allocated to principal; and

14 (b) the trust's share of the entity's taxable income exceeds the total
15 receipts described in paragraph (1) and subparagraph (a) of this
16 paragraph (2).

17 d. For purposes of this section, receipts allocated to principal or
18 income shall be reduced by the amount distributed to a beneficiary
19 from principal or income for which the trust receives a deduction in
20 calculating the tax.

21

22 30. a. A fiduciary may make adjustments between principal and
23 income to offset the shifting of economic interests or tax benefits
24 between income beneficiaries and remainder beneficiaries which arise
25 from:

26 (1) elections and decisions, other than those described in subsection
27 b. of this section, that the fiduciary makes from time to time regarding
28 tax matters;

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

32 (3) the ownership by an estate or trust of an interest in an entity
33 whose taxable income, whether or not distributed, is includable in the
34 taxable income of the estate, trust or a beneficiary.

35 b. If the amount of an estate tax marital deduction or charitable
36 contribution deduction is reduced because a fiduciary deducts an
37 amount paid from principal for income tax purposes instead of
38 deducting it for estate tax purposes, and as a result estate taxes paid
39 from principal are increased and income taxes paid by an estate, trust
40 or beneficiary are decreased, each estate, trust or beneficiary that
41 benefits from the decrease in income tax shall reimburse the principal
42 from which the increase in estate tax is paid. The total reimbursement
43 shall equal the increase in the estate tax to the extent that the principal
44 used to pay the increase would have qualified for a marital deduction
45 or charitable contribution deduction but for the payment. The
46 proportionate share of the reimbursement for each estate, trust or

1 beneficiary whose income taxes are reduced shall be the same as its
2 proportionate share of the total decrease in income tax. An estate or
3 trust shall reimburse principal from income.

4
5 31. In applying and construing this act, consideration shall be given
6 to the fact that this is a uniform act, and there is a need to promote
7 uniformity of the act with respect to its subject matter among states
8 that enact it.

9
10 32. This act applies to every trust or decedent's estate existing on
11 the effective date of this act, except as otherwise expressly provided
12 in the will or terms of the trust or in this act.

13
14 33. N.J.S.3B:19A-1 et seq. is repealed.

15
16 34. This act shall take effect immediately.

17
18
19 STATEMENT

20
21 This bill enacts the Uniform Principal and Income Act as revised in
22 1997 by the National Conference of Commissioners on Uniform State
23 Laws, and replaces the Revised Uniform Principal and Income Act
24 adopted in this State in 1991.

25 Like the prior law, the new Uniform Principal and Income Act
26 provides procedures by which trustees administering an estate are to
27 separate principal from income and ensure that the intention of the
28 trust creator is the guiding principle for management of the estate.
29 The central innovations of the new act, however, are to allow trustees
30 greater discretion in allocating income and expenses between a trust's
31 principal and income and the flexibility to invest assets for a total
32 return, as long as the investments are prudent.

33 In addition, the new act clarifies required allocations of acquired
34 assets and regulates trustees' handling of derivatives, options, deferred
35 payment obligations and synthetic financial assets. The act also
36 addresses disbursements made to comply with environmental laws and
37 imbalances or inequities that may result from tax elections.

[First Reprint]

ASSEMBLY, No. 3261

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED MARCH 1, 2001

Sponsored by:

Assemblyman CHRISTOPHER "KIP" BATEMAN

District 16 (Morris and Somerset)

Assemblyman PETER J. BIONDI

District 16 (Morris and Somerset)

Co-Sponsored by:

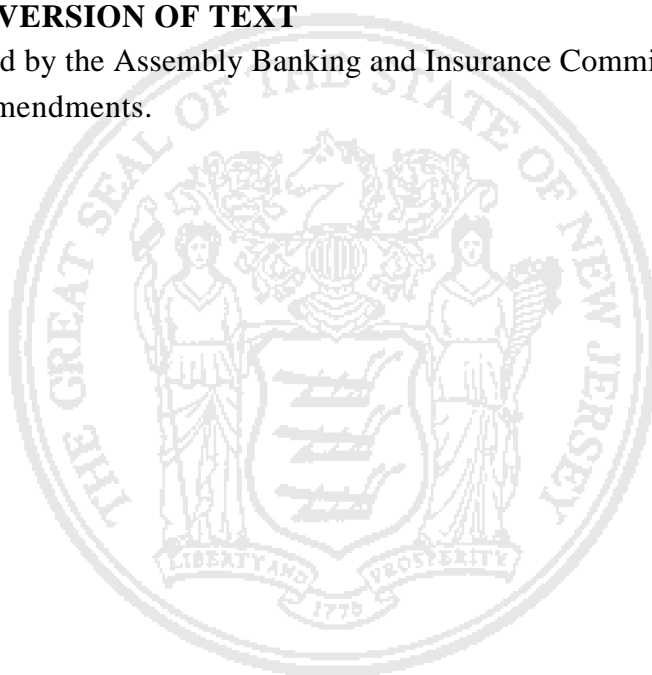
Senators Adler and Cardinale

SYNOPSIS

Replaces "Revised Uniform Principal and Income Act" with "Uniform Principal and Income Act of 2000."

CURRENT VERSION OF TEXT

As reported by the Assembly Banking and Insurance Committee on May 3, 2001, with amendments.



(Sponsorship Updated As Of: 6/29/2001)

1 AN ACT concerning principal and income guidelines for trusts and
2 estates and repealing N.J.S.3B:19A-1 et seq.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. ¹Short Title.¹ This act shall be known and may be cited as the
8 "Uniform Principal and Income Act of ¹[2000] 2001¹."

9
10 2. ¹Definitions.¹ As used in this act:
11 "Accounting period" means a calendar year unless another
12 12-month period is selected by a fiduciary. The term includes a
13 portion of a calendar year or other 12-month period that begins when
14 an income interest begins or ends when an income interest ends.

15 "Beneficiary" includes, in the case of a decedent's estate, an heir,
16 legatee and devisee and, in the case of a trust, an income beneficiary
17 and a remainder beneficiary.

18 "Fiduciary" means a personal representative or a trustee. The term
19 includes an executor, administrator, successor personal representative,
20 special administrator and a person performing substantially the same
21 function.

22 "Income" means money or property that a fiduciary receives as
23 current return from a principal asset. The term includes a portion of
24 receipts from a sale, exchange or liquidation of a principal asset, to the
25 extent provided in sections 10 through ¹[24] 23¹ of this act.

26 "Income beneficiary" means a person to whom net income of a trust
27 is or may be payable.

28 "Income interest" means the right of an income beneficiary to
29 receive all or part of net income, whether the terms of the trust require
30 it to be distributed or authorize it to be distributed in the trustee's
31 discretion.

32 "Mandatory income interest" means the right of an income
33 beneficiary to receive net income that the terms of the trust require the
34 fiduciary to distribute.

35 "Net income" means the total receipts allocated to income during
36 an accounting period minus the disbursements made from income
37 during the period, plus or minus transfers under this act to or from
38 income during the period.

39 "Person" means an individual, corporation, business trust, estate,
40 trust, partnership, limited liability company, association, joint venture,
41 government, governmental subdivision, agency or instrumentality,

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ABI committee amendments adopted May 3, 2001.

1 public corporation or any other legal or commercial entity.

2 “Principal” means property held in trust for distribution to a
3 remainder beneficiary when the trust terminates.

4 “Remainder beneficiary” means a person entitled to receive
5 principal when an income interest ends.

6 “Terms of a trust” means the manifestation of the intent of a settlor
7 or decedent with respect to the trust, expressed in a manner that
8 admits of its proof in a judicial proceeding, whether by written or
9 spoken words or by conduct.

10 “Trustee” includes an original, additional or successor trustee,
11 whether or not appointed or confirmed by a court.

12

13 3. Fiduciary Duties; General Principles.¹ a. In allocating receipts
14 and disbursements to or between principal and income, and with
15 respect to any matter within the scope of sections 5 through 9 of this
16 act, a fiduciary:

17 (1) shall administer a trust or estate in accordance with the terms
18 of the trust or the will, even if there is a different provision in this act;

19 (2) may administer a trust or estate by the exercise of a
20 discretionary power of administration given to the fiduciary by the
21 terms of the trust or the will, even if the exercise of the power
22 produces a result different from a result required or permitted by this
23 act;

24 (3) shall administer a trust or estate in accordance with this act if
25 the terms of the trust or the will do not contain a different provision
26 or do not give the fiduciary a discretionary power of administration;
27 and

28 (4) shall add a receipt or charge a disbursement to principal to the
29 extent that the terms of the trust and this act do not provide a rule for
30 allocating the receipt or disbursement to or between principal and
31 income.

32 b. ¹[In exercising the power to adjust under subsection a. of
33 section 4 of this act or a discretionary power of administration
34 regarding a matter within the scope of this act, whether granted by the
35 terms of a trust, a will or this act, a] A¹ fiduciary shall administer a
36 trust or estate impartially, based on what is fair and reasonable to all
37 of the beneficiaries, except to the extent that the terms of the trust or
38 the will clearly manifest an intention that the fiduciary shall or may
39 favor one or more of the beneficiaries. ¹[A determination in
40 accordance with this act is presumed to be fair and reasonable to all of
41 the beneficiaries.]¹

42

43 4. Trustee's Power to Adjust.¹ a. A trustee may adjust between
44 principal and income ¹[to the extent the trustee considers necessary if
45 the trustee invests and manages trust assets as a prudent investor,] if¹
46 the terms of the trust describe the amount that may or shall be

1 distributed to a beneficiary by referring to the trust's income and the
2 trustee determines, after applying the rules in subsection a. of section
3 3 of this act, that the trustee is unable to comply with subsection b. of
4 section 3 of this act. ¹A decision by a trustee to increase the
5 distribution to the income beneficiary or beneficiaries in any
6 accounting period to an amount not in excess of four percent, or to
7 decrease that period's distributions to not less than six percent, of the
8 net fair market value of the trust assets on the first business day of that
9 accounting period shall be presumed to be fair and reasonable to all of
10 the beneficiaries. Any adjustment by a trustee between income and
11 principal with respect to any accounting period shall be made during
12 that accounting period or within 65 days after the end of that period.¹

13 b. In deciding whether and to what extent to exercise the power
14 conferred by subsection a. of this section, a trustee shall consider all
15 factors relevant to the trust and its beneficiaries, including the
16 following factors to the extent they are relevant:

17 (1) the nature, purpose and expected duration of the trust;

18 (2) the intent of the settlor;

19 (3) the identity and circumstances of the beneficiaries;

20 (4) the needs for liquidity, regularity of income and preservation
21 and appreciation of capital;

22 (5) the assets held in the trust; the extent to which they consist of
23 financial assets, interests in closely held enterprises, tangible and
24 intangible personal property or real property; the extent to which an
25 asset is used by a beneficiary; and whether an asset was purchased by
26 the trustee or received from the settlor;

27 (6) the net amount allocated to income under the other sections of
28 this act and the increase or decrease in the value of the principal
29 assets, which the trustee may estimate as to assets for which market
30 values are not readily available;

31 (7) whether and to what extent the terms of the trust give the
32 trustee the power to invade principal or accumulate income or prohibit
33 the trustee from invading principal or accumulating income, and the
34 extent to which the trustee has exercised a power from time to time to
35 invade principal or accumulate income;

36 (8) the actual and anticipated effect of economic conditions on
37 principal and income and effects of inflation and deflation; ¹[and]¹

38 (9) ¹the shifting of economic interests or tax benefits between
39 income beneficiaries and remainder beneficiaries that arise from
40 elections and decisions regarding tax matters, the imposition of an
41 income or other tax on the fiduciary or a beneficiary as a result of a
42 transaction involving a distribution from the estate or trust, or the
43 ownership of an interest in an entity whose taxable income, whether
44 or not distributed, is includable in the taxable income of the estate,
45 trust or a beneficiary; and

46 (10)¹ the anticipated tax consequences of an adjustment.

1 c. A trustee shall not make an adjustment:

2 (1) that diminishes the income interest in a trust that requires all of
3 the income to be paid at least annually to a spouse and for which an
4 estate tax or gift tax marital deduction would be allowed, in whole or
5 in part, if the trustee did not have the power to make the adjustment;

6 (2) that reduces the actuarial value of the income interest in a trust
7 to which a person transfers property with the intent to qualify for a gift
8 tax exclusion;

9 (3) that changes the amount payable to a beneficiary as a fixed
10 annuity or a fixed fraction of the value of the trust assets;

11 (4) from any amount that is permanently set aside for charitable
12 purposes under a will or the terms of a trust unless both income and
13 principal are so set aside;

14 (5) if possessing or exercising the power to make an adjustment
15 causes an individual to be treated as the owner of all or part of the
16 trust for income tax purposes, and the individual would not be treated
17 as the owner if the trustee did not possess the power to make an
18 adjustment;

19 (6) if possessing or exercising the power to make an adjustment
20 causes all or part of the trust assets to be included for estate tax
21 purposes in the estate of an individual who has the power to remove
22 a trustee or appoint a trustee, or both, and the assets would not be
23 included in the estate of the individual if the trustee did not possess the
24 power to make an adjustment;

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

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

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

33 e. A trustee may release the entire power conferred by subsection
34 a. of this section or may release only the power to adjust from income
35 to principal or the power to adjust from principal to income if the
36 trustee is uncertain about whether possessing or exercising the power
37 will cause a result described in paragraphs (1) through (6) or (8) of
38 subsection c. of this section, or if the trustee determines that
39 possessing or exercising the power will or may deprive the trust of a
40 tax benefit or impose a tax burden not described in subsection c. of
41 this section. The release may be permanent or for a specified period,
42 including a period measured by the life of an individual.

43 f. Terms of a trust that limit the power of a trustee to make an
44 adjustment between principal and income do not affect the application
45 of this section unless it is clear from the terms of the trust that the
46 terms are intended to deny the trustee the power of adjustment

1 conferred by subsection a. of this section.

2

3 5. 1Determination and Distribution of Net Income. ¹After a
4 decedent dies, in the case of an estate or after an income interest in a
5 trust ends, the following rules apply:

6 a. A fiduciary of an estate or of a terminating income interest shall
7 determine the amount of net income and net principal receipts received
8 from property specifically ¹[given] devised¹ to a beneficiary under the
9 rules in sections 7 through ¹[30] 28¹ of this act which apply to
10 trustees and the rules in subsection e. of this section. The fiduciary
11 shall distribute the net income and net principal receipts to the
12 beneficiary who is to receive the specific property.

13 b. A fiduciary shall determine the remaining net income of a
14 decedent's estate or a terminating income interest under the rules in
15 sections 7 through ¹[30] 28¹ of this act which apply to trustees and
16 by:

17 (1) including in net income all income from property used to
18 discharge liabilities; ¹and¹

19 (2) ¹[paying from income or principal, in the fiduciary's discretion,
20 fees of attorneys, accountants and fiduciaries, court costs and other
21 expenses of administration and interest on death taxes, but the
22 fiduciary may pay those expenses from income of property passing to
23 a trust for which the fiduciary claims an estate tax marital or charitable
24 deduction only to the extent that the payment of those expenses from
25 income will not cause the reduction or loss of the deduction; and

26 (3)]¹ paying from principal all ¹[other disbursements made or
27 incurred in connection with the settlement of a decedent's estate or the
28 winding up of a terminating income interest, including debts, funeral
29 expenses, disposition of remains, family allowances and death taxes
30 and related penalties that are apportioned to the estate or terminating
31 income interest by the will, the terms of the trust or applicable law]
32 disbursements made or incurred in connection with the settlement of
33 a decedent's estate or the winding up of a terminating income interest,
34 expenses of administration, including fees of attorneys, accountants
35 and fiduciaries, court costs, debts, funeral expenses, disposition of
36 remains, family allowances and death taxes and related penalties that
37 are apportioned to the estate or terminating income interest by the
38 will, the terms of the trust or applicable law¹.

39 c. A fiduciary shall distribute to a beneficiary who receives a
40 pecuniary amount outright the interest or any other amount provided
41 by the will, the terms of the trust or applicable law from net income
42 determined under subsection b. of this section or from principal to the
43 extent that net income is insufficient. If a beneficiary is to receive a
44 pecuniary amount outright from a trust after an income interest ends
45 and no interest or other amount is provided for by the terms of the
46 trust or applicable law, the fiduciary shall distribute the interest or

1 other amount to which the beneficiary would be entitled under
2 applicable law if the pecuniary amount were required to be paid under
3 a will.

4 d. A fiduciary shall distribute the net income remaining after
5 distributions required by subsection c. of this section in the manner
6 described in section 6 of this act to all other beneficiaries, ¹[including
7 a beneficiary who receives a pecuniary amount in trust, even if the
8 beneficiary holds an unqualified power to withdraw assets from the
9 trust or other presently exercisable general power of appointment over
10 the trust] excluding a beneficiary who receives a pecuniary amount
11 outright or in trust¹.

12 e. A fiduciary shall not reduce principal or income receipts from
13 property described in subsection a. of this section because of a
14 payment described in section ¹[~~25~~] 24¹ or ¹[~~26~~] 25¹ of this act to the
15 extent that the will, the terms of the trust, or applicable law requires
16 the fiduciary to make the payment from assets other than the property
17 or to the extent that the fiduciary recovers or expects to recover the
18 payment from a third party. The net income and principal receipts
19 from the property are determined by including all of the amounts the
20 fiduciary receives or pays with respect to the property, whether those
21 amounts accrued or became due before, on or after the date of a
22 decedent's death or an income interest's terminating event, and by
23 making a reasonable provision for amounts that the fiduciary believes
24 the estate or terminating income interest may become obligated to pay
25 after the property is distributed.

26

27 6. ¹Distribution to Residuary and Remainder Beneficiaries.¹ a.
28 Each beneficiary described in subsection d. of section 5 of this act is
29 entitled to receive a portion of the net income equal to the
30 beneficiary's fractional interest in undistributed principal assets, using
31 values as of the distribution date. If a fiduciary makes more than one
32 distribution of assets to beneficiaries to whom this section applies,
33 each beneficiary, including one who does not receive part of the
34 distribution, is entitled, as of each distribution date, to the net income
35 the fiduciary has received after the date of death or terminating event
36 or earlier distribution date but has not distributed as of the current
37 distribution date.

38 b. In determining a beneficiary's share of net income, the following
39 rules apply:

40 (1) The beneficiary is entitled to receive a portion of the net
41 income equal to the beneficiary's fractional interest in the
42 undistributed principal assets immediately before the distribution date,
43 including assets that later may be sold to meet principal obligations.

44 (2) The beneficiary's fractional interest in the undistributed
45 principal assets shall be calculated without regard to property
46 specifically given to a beneficiary and property required to pay

1 pecuniary amounts not in trust.

2 (3) The beneficiary's fractional interest in the undistributed
3 principal assets shall be calculated on the basis of the aggregate value
4 of those assets as of the distribution date without reducing the value
5 by any unpaid principal obligation.

6 (4) The distribution date for purposes of this section may be the
7 date as of which the fiduciary calculates the value of the assets if that
8 date is reasonably near the date on which assets are actually
9 distributed.

10 c. If a fiduciary does not distribute all of the collected but
11 undistributed net income to each person as of a distribution date, the
12 fiduciary shall maintain appropriate records showing the interest of
13 each beneficiary in that net income.

14 d. A fiduciary may apply the rules in this section, to the extent that
15 the fiduciary considers it appropriate, to net gain or loss realized after
16 the date of death or terminating event or earlier distribution date from
17 the disposition of a principal asset if this section applies to the income
18 from the asset.

19

20 7. ¹When Right to Income Begins and Ends.¹ a. An income
21 beneficiary is entitled to net income from the date on which the income
22 interest begins. An income interest begins on the date specified in the
23 terms of the trust or, if no date is specified, on the date an asset
24 becomes subject to a trust or successive income interest.

25 b. An asset becomes subject to a trust:

26 (1) on the date it is transferred to the trust in the case of an asset
27 that is transferred to a trust during the transferor's life;

28 (2) on the date of a testator's death in the case of an asset that
29 becomes subject to a trust by reason of a will, even if there is an
30 intervening period of administration of the testator's estate; or

31 (3) on the date of an individual's death in the case of an asset that
32 is transferred to a fiduciary by a third party because of the individual's
33 death.

34 c. An asset becomes subject to a successive income interest on the
35 day after the preceding income interest ends, as determined under
36 subsection d. of this section, even if there is an intervening period of
37 administration to wind up the preceding income interest.

38 d. An income interest ends on the day before an income beneficiary
39 dies or another terminating event occurs, or on the last day of a period
40 during which there is no beneficiary to whom a trustee may distribute
41 income.

42

43 8. ¹Apportionment of Receipts and Disbursements When Decedent
44 Dies or Income Interest Begins.¹ a. A trustee shall allocate an income

45 receipt or disbursement ¹,¹ other than one to which ¹[paragraph (1)
46 of]¹ subsection ¹[b.] a.¹ of section 5 of this act applies ¹,¹ to principal

1 if its due date occurs before a decedent dies in the case of an estate or
2 before an income interest begins in the case of a trust or successive
3 income interest.

4 b. A trustee shall allocate an income receipt or disbursement to
5 income if its due date occurs on or after the date on which a decedent
6 dies or an income interest begins and it is a periodic due date. An
7 income receipt or disbursement shall be treated as accruing from day
8 to day if its due date is not periodic or it has no due date. The portion
9 of the receipt or disbursement accruing before the date on which a
10 decedent dies or an income interest begins shall be allocated to
11 principal and the balance shall be allocated to income.

12 c. An item of income or an obligation is due on the date the payer
13 is required to make a payment. If a payment date is not stated, there
14 is no due date for the purposes of this act. Distributions to
15 shareholders or other owners from an entity to which section 10 of this
16 act applies are deemed to be due on the date fixed by the entity for
17 determining who is entitled to receive the distribution or, if no date is
18 fixed, on the declaration date for the distribution. A due date is
19 periodic for receipts or disbursements that are to be paid at regular
20 intervals under a lease or an obligation to pay interest or if an entity
21 customarily makes distributions at regular intervals.

22
23 9. ¹Apportionment When Income Interest Ends.¹ a. As used in
24 this section, “undistributed income” means net income received before
25 the date on which an income interest ends. The term does not include
26 an item of income or expense that is due or accrued or net income that
27 has been added or is required to be added to principal under the terms
28 of the trust.

29 b. When a mandatory income interest ends, the trustee shall pay to
30 a mandatory income beneficiary who survives that date, or the estate
31 of a deceased mandatory income beneficiary whose death causes the
32 interest to end, the beneficiary’s share of the undistributed income that
33 is not disposed of under the terms of the trust, unless the beneficiary
34 has an unqualified power to revoke more than five percent of the trust
35 immediately before the income interest ends. In the latter case, the
36 undistributed income from the portion of the trust that may be revoked
37 shall be added to principal.

38 c. When a trustee’s obligation to pay a fixed annuity or a fixed
39 fraction of the value of the trust’s assets ends, the trustee shall prorate
40 the final payment if and to the extent required by applicable law to
41 accomplish a purpose of the trust or its settlor relating to income, gift,
42 estate or other tax requirements.

43
44 10. ¹Character of Receipts.¹ a. As used in this section, “entity”
45 means a corporation, partnership, limited liability company, regulated
46 investment company, real estate investment trust, common trust fund

1 or any other organization in which a trustee has an interest other than
2 a trust or estate to which section 11 of this act applies, a business or
3 activity to which section 12 of this act applies or an asset-backed
4 security to which section ¹[24] 23¹ of this act applies.

5 b. Except as otherwise provided in this section, a trustee shall
6 allocate to income money received from an entity.

7 c. A trustee shall allocate the following receipts from an entity to
8 principal:

9 (1) property other than money;

10 (2) money received in one distribution or a series of related
11 distributions in exchange for part or all of a trust's interest in the
12 entity;

13 (3) money received in total or partial liquidation of the entity; and

14 (4) money received from an entity that is a regulated investment
15 company or a real estate investment trust if the money distributed is a
16 capital gain dividend for federal income tax purposes.

17 d. Money is received in partial liquidation:

18 (1) to the extent that the entity, at or near the time of a distribution,
19 indicates that it is a distribution in partial liquidation; or

20 (2) if the total amount of money and property received in a
21 distribution or series of related distributions is greater than 20 percent
22 of the entity's gross assets, as shown by the entity's year-end financial
23 statements immediately preceding the initial receipt.

24 e. Money is not received in partial liquidation, nor may it be taken
25 into account under paragraph (2) of subsection d. of this section, to
26 the extent that it does not exceed the amount of income tax that a
27 trustee or beneficiary must pay on taxable income of the entity that
28 distributes the money.

29 f. A trustee may rely upon a statement made by an entity about the
30 source or character of a distribution if the statement is made at or near
31 the time of distribution by the entity's board of directors or other
32 person or group of persons authorized to exercise powers to pay
33 money or transfer property comparable to those of a corporation's
34 board of directors.

35
36 11. ¹Distribution from Trust or Estate.¹ A trustee shall allocate to
37 income an amount received as a distribution of income from a trust or
38 an estate in which the trust has an interest other than a purchased
39 interest, and shall allocate to principal an amount received as a
40 distribution of principal from such a trust or estate. If a trustee
41 purchases an interest in a trust that is an investment entity, or a
42 decedent or donor transfers an interest in such a trust to a trustee,
43 section 10 or ¹[24] 23¹ of this act applies to a receipt from the trust.
44

45 12. ¹Business and Other Activities Conducted by Trustee.¹ a. If
46 a trustee who conducts a business or other activity determines that it

1 is in the best interest of all the beneficiaries to account separately for
2 the business or activity instead of accounting for it as part of the
3 trust's general accounting records, the trustee may maintain separate
4 accounting records for its transactions, whether or not its assets are
5 segregated from other trust assets.

6 b. A trustee who accounts separately for a business or other
7 activity may determine the extent to which its net cash receipts are to
8 be retained for working capital, the acquisition or replacement of fixed
9 assets and other reasonably foreseeable needs of the business or
10 activity, and the extent to which the remaining net cash receipts are
11 accounted for as principal or income in the trust's general accounting
12 records. If a trustee sells assets of the business or other activity, other
13 than in the ordinary course of the business or activity, the trustee shall
14 account for the net amount received as principal in the trust's general
15 accounting records to the extent the trustee determines that the
16 amount received is no longer required in the conduct of the business.

17 c. Activities for which a trustee may maintain separate accounting
18 records include:

19 (1) retail, manufacturing, service and other traditional business
20 activities;

21 (2) farming;

22 (3) raising and selling livestock and other animals;

23 (4) management of rental properties;

24 (5) extraction of minerals and other natural resources;

25 (6) timber operations; and

26 (7) activities to which section ¹[23] 22¹ of this act applies.

27

28 13. ¹Principal Receipts.¹ A trustee shall allocate to principal:

29 a. To the extent not allocated to income under this act, assets
30 received from a transferor during the transferor's lifetime, a decedent's
31 estate, a trust with a terminating income interest or a payer under a
32 contract naming the trust or its trustee as beneficiary;

33 b. Money or other property received from the sale, exchange,
34 liquidation or change in form of a principal asset, including realized
35 profit, subject to sections 10 through ¹[24] 23¹ of this act;

36 c. Amounts recovered from third parties to reimburse the trust
37 because of disbursements described in paragraph ¹[(7)] 9¹ of
38 subsection a. of section ¹[26] 25¹ of this act or for other reasons to
39 the extent not based on the loss of income;

40 d. Proceeds of property taken by eminent domain, but a separate
41 award made for the loss of income with respect to an accounting
42 period during which a current income beneficiary had a mandatory
43 income interest is income;

44 e. Net income received in an accounting period during which there
45 is no beneficiary to whom a trustee may or shall distribute income; and

46 f. Other receipts as provided in sections 17 through ¹[24] 23¹ of

1 this act.

2

3 14. ¹Rental Property.¹ To the extent that a trustee accounts for
4 receipts from rental property pursuant to this section, the trustee shall
5 allocate to income an amount received as rent of real or personal
6 property, including an amount received for cancellation or renewal of
7 a lease. An amount received as a refundable deposit, including a
8 security deposit or a deposit that is to be applied as rent for future
9 periods, shall be added to principal and held subject to the terms of the
10 lease and is not available for distribution to a beneficiary until the
11 trustee's contractual obligations have been satisfied with respect to
12 that amount.

13

14 15. ¹Obligation to Pay Money.¹ a. An amount received as
15 interest, whether determined at a fixed, variable or floating rate, on an
16 obligation to pay money to the trustee, including an amount received
17 as consideration for prepaying principal, shall be allocated to income
18 without any provision for amortization of premium.

19 b. A trustee shall allocate to principal an amount received from the
20 sale, redemption or other disposition of an obligation to pay money to
21 the trustee more than one year after it is purchased or acquired by the
22 trustee, including an obligation whose purchase price or value when
23 it is acquired is less than its value at maturity. If the obligation
24 matures within one year after it is purchased or acquired by the
25 trustee, an amount received in excess of its purchase price or its value
26 when acquired by the trust shall be allocated to income.

27 c. This section does not apply to an obligation to which section
28 ¹17,¹ 18, 19, 20, ¹[21,] 22 or¹ 23 ¹[or 24]¹ of this act applies.

29

30 16. ¹Insurance Policies and Similar Contracts.¹ a. Except as
31 otherwise provided in subsection b. of this section, a trustee shall
32 allocate to principal the proceeds of a life insurance policy or other
33 contract in which the trust or its trustee is named as beneficiary,
34 including a contract that insures the trust or its trustee against loss for
35 damage to, destruction of or loss of title to a trust asset. The trustee
36 shall allocate dividends on an insurance policy to income if the
37 premiums on the policy are paid from income, and to principal if the
38 premiums are paid from principal.

39 b. A trustee shall allocate to income proceeds of a contract that
40 insures the trustee against loss of occupancy or other use by an income
41 beneficiary, loss of income or, subject to section 12 of this act, loss of
42 profits from a business.

43 c. This section does not apply to a contract to which section ¹[18]
44 17¹ of this act applies.

45

46 ¹[17. If a trustee determines that an allocation between principal

1 and income required by section 18, 19, 20, 21 or 24 of this act is
2 insubstantial, the trustee may allocate the entire amount to principal
3 unless one of the circumstances described in subsection c. of section
4 4 of this act applies to the allocation. This power may be exercised by
5 a cotrustee in the circumstances described in subsection d. of section
6 4 of this act and may be released for the reasons and in the manner
7 described in subsection e. of section 4 of this act. An allocation is
8 presumed to be insubstantial if:

9 (1) the amount of the allocation would increase or decrease net
10 income in an accounting period, as determined before the allocation,
11 by less than 10 percent; or

12 (2) the value of the asset producing the receipt for which the
13 allocation would be made is less than 10 percent of the total value of
14 the trust's assets at the beginning of the accounting period.]¹

15

16 ¹[18.] 17. Deferred Compensation, Retirement Benefits,
17 Annuities, and Similar Payments.¹

18 a. As used in this section,
19 "payment" means a payment that a trustee may receive over a fixed
20 ¹[number] period¹ of ¹[years] time¹ or during the life of one or more
21 individuals because of services rendered or property transferred to the
22 payer in exchange for future payments. The term includes a payment
23 made in money or property from the payer's general assets or from a
24 separate fund created by the payer ¹or by another¹, including a private
25 or commercial annuity, an individual retirement account and a pension,
26 profit-sharing, stock-bonus, or stock-ownership plan.

27 b. To the extent that a ¹[payment is characterized as interest or a
28 dividend or a payment made in lieu of interest or a dividend, a trustee
29 shall allocate it to income. The trustee shall allocate to principal the
30 balance of the payment and any other payment received in the same
31 accounting period that is not characterized as interest, a dividend or
32 an equivalent payment] trustee can readily ascertain the part of a
33 payment from a separate fund held for the benefit of the trust that
34 represents the then undistributed net income of the fund realized since
35 the trust acquired its interest in the fund, a trustee shall allocate that
36 part to income. The trustee shall allocate to principal the balance of
the payment¹.

37 c. If no part of a payment is ¹[characterized as interest, a dividend
38 or an equivalent payment] allocated to income under subsection b. of
39 this section¹, and all or part of the payment is required to be made, a
40 trustee shall allocate to income 10 percent of the part that is required
41 to be made during the accounting period and the balance to principal.
42 If no part of a payment is required to be made or the payment received
43 is the entire amount to which the trustee is entitled, the trustee shall
44 allocate the entire payment to principal. For purposes of this
45 subsection, a payment is not "required to be made" to the extent that
46 it is made because the trustee exercises a right of withdrawal.

1 d. If, to obtain an estate tax ¹or gift tax¹ marital deduction for a
2 trust, ¹[a] the¹ trustee must allocate more of a payment to income
3 than provided for by this section, the trustee shall allocate to income
4 the additional amount necessary to obtain the marital deduction.

5 e. This section does not apply to payments to which section ¹[19]
6 18¹ of this act applies.

7
8 ¹[19.] 18. Liquidating Asset. ¹a. As used in this section,
9 “liquidating asset” means an asset whose value will diminish or
10 terminate because the asset is expected to produce receipts for a
11 period of limited duration. The term includes a leasehold, patent,
12 copyright, royalty right and right to receive payments during a period
13 of more than one year under an arrangement that does not provide for
14 the payment of interest on the unpaid balance. The term does not
15 include a payment subject to section ¹[18] 17¹ of this act, resources
16 subject to section ¹[20] 19¹ of this act, timber subject to section
17 ¹[21] 20¹ of this act, an activity subject to section ¹[23] 22¹ of this
18 act, an asset subject to section ¹[24] 23¹ of this act, or any asset for
19 which the trustee establishes a reserve for depreciation under section
20 ¹[27] 26¹ of this act.

21 b. A trustee shall allocate to income 10 percent of the receipts from
22 a liquidating asset and the balance to principal.

23
24 ¹[20.] 19. Minerals, Water and Other Natural Resources. ¹a. To
25 the extent that a trustee accounts for receipts from an interest in
26 minerals or other natural resources pursuant to this section, the trustee
27 shall allocate them as follows:

28 (1) if received as nominal delay rental or nominal annual rent on a
29 lease, a receipt shall be allocated to income;

30 (2) if received from a production payment, a receipt shall be
31 allocated to income if and to the extent that the agreement creating the
32 production payment provides a factor for interest or its equivalent.
33 The balance shall be allocated to principal;

34 (3) if an amount received as a royalty, shut-in-well payment, take-
35 or-pay payment, bonus or delay rental is more than nominal, 90
36 percent shall be allocated to principal and the balance to income;

37 (4) if an amount is received from a working interest or any other
38 interest not provided for in paragraph (1), (2) or (3) of this subsection
39 a., 90 percent of the net amount received shall be allocated to principal
40 and the balance to income.

41 b. An amount received on account of an interest in water that is
42 renewable shall be allocated to income. If the water is not renewable,
43 90 percent of the amount shall be allocated to principal and the
44 balance to income.

45 c. This act applies whether or not a decedent or donor was

1 extracting minerals, water or other natural resources before the
2 interest became subject to the trust.

3 d. If a trust owns an interest in minerals, water, or other natural
4 resources on the effective date of this act, the trustee may allocate
5 receipts from the interest as provided in this act or in the manner used
6 by the trustee before the effective date of this act. If the trust acquires
7 an interest in minerals, water or other natural resources after the
8 effective date of this act, the trustee shall allocate receipts from the
9 interest as provided in this act.

10

11 ¹[21.] 20. Timber.¹ a. To the extent that a trustee accounts for
12 receipts from the sale of timber and related products pursuant to this
13 section, the trustee shall allocate the net receipts:

14 (1) to income to the extent that the amount of timber removed from
15 the land does not exceed the rate of growth of the timber during the
16 accounting periods in which a beneficiary has a mandatory income
17 interest;

18 (2) to principal to the extent that the amount of timber removed
19 from the land exceeds the rate of growth of the timber or the net
20 receipts are from the sale of standing timber;

21 (3) to or between income and principal if the net receipts are from
22 the lease of timberland or from a contract to cut timber from land
23 owned by a trust, by determining the amount of timber removed from
24 the land under the lease or contract and applying the rules in
25 paragraphs (1) and (2) of this subsection a.; or

26 (4) to principal to the extent that advance payments, bonuses and
27 other payments are not allocated pursuant to paragraph (1), (2) or (3)
28 of this subsection a.

29 b. In determining net receipts to be allocated pursuant to
30 subsection a. of this section, a trustee shall deduct and transfer to
31 principal a reasonable amount for depletion.

32 c. This section applies whether or not a decedent or transferor was
33 harvesting timber from the property before it became subject to the
34 trust.

35 d. If a trust owns an interest in timberland on the effective date of
36 this act, the trustee may allocate net receipts from the sale of timber
37 and related products as provided in this act or in the manner used by
38 the trustee before the effective date of this act. If the trust acquires an
39 interest in timberland after the effective date of this act, the trustee
40 shall allocate net receipts from the sale of timber and related products
41 as provided in this act.

42

43 ¹[22.] 21. Property Not Productive of Income.¹ a. If a marital
44 deduction is allowed for all or part of a trust whose assets consist
45 substantially of property that does not provide the spouse with
46 sufficient income from or use of the trust assets, and if the amounts

1 that the trustee transfers from principal to income under section 4 of
2 this act and distributes to the spouse from principal pursuant to the
3 terms of the trust are insufficient to provide the spouse with the
4 beneficial enjoyment required to obtain the marital deduction, the
5 spouse may require the trustee to make property productive of income,
6 convert property within a reasonable time or exercise the power
7 conferred by subsection a. of section 4 of this act. The trustee may
8 decide which action or combination of actions to take.

9 b. In cases not governed by subsection a. of this section, proceeds
10 from the sale or other disposition of an asset are principal without
11 regard to the amount of income the asset produces during any
12 accounting period.

13
14 ¹[23.] 22. Derivatives and Options.¹ a. As used in this section,
15 “derivative” means a contract or financial instrument or a combination
16 of contracts and financial instruments which gives a trust the right or
17 obligation to participate in some or all changes in the price of a
18 tangible or intangible asset or group of assets, or changes in a rate, an
19 index of prices or rates or other market indicator for an asset or a
20 group of assets.

21 b. To the extent that a trustee does not account under section 12
22 of this act for transactions in derivatives, the trustee shall allocate to
23 principal receipts from and disbursements made in connection with
24 those transactions.

25 c. If a trustee grants an option to buy property from the trust,
26 whether or not the trust owns the property when the option is granted,
27 grants an option that permits another person to sell property to the
28 trust or acquires an option to buy property for the trust or an option
29 to sell an asset owned by the trust, and the trustee or other owner of
30 the asset is required to deliver the asset if the option is exercised, an
31 amount received for granting the option shall be allocated to principal.
32 An amount paid to acquire the option shall be paid from principal. A
33 gain or loss realized upon the exercise of an option, including an
34 option granted to a settlor of the trust for services rendered, shall be
35 allocated to principal.

36
37 ¹[24.] 23. Asset-backed Securities.¹ a. As used in this section,
38 “asset-backed security” means an asset whose value is based upon the
39 right it gives the owner to receive distributions from the proceeds of
40 financial assets that provide collateral for the security. The term
41 includes an asset that gives the owner the right to receive from the
42 collateral financial assets only the interest or other current return or
43 only the proceeds other than interest or current return. The term does
44 not include an asset to which section 10 or ¹[18] 17¹ of this act
45 applies.

46 b. If a trust receives a payment from interest or other current

1 return and from other proceeds of the collateral financial assets, the
2 trustee shall allocate to income the portion of the payment which the
3 payer identifies as being from interest or other current return and shall
4 allocate the balance of the payment to principal.

5 c. If a trust receives one or more payments in exchange for the
6 trust's entire interest in an asset-backed security in one accounting
7 period, the trustee shall allocate the payments to principal. If a
8 payment is one of a series of payments that will result in the
9 liquidation of the trust's interest in the security over more than one
10 accounting period, the trustee shall allocate 10 percent of the payment
11 to income and the balance to principal.

12
13 ¹[25.] 24. Disbursements from Income.¹ A trustee shall make the
14 following disbursements from income to the extent that they are not
15 disbursements to which paragraph (1) or (2) of subsection b. of section
16 5 of this act applies:

17 a. ¹[one-half of the regular compensation of the trustee and of any
18 person providing investment advisory or custodial services to the
19 trustee] commissions allowed by law to a trustee on income receipts,
20 if properly chargeable to the trust¹;

21 b. one-half of ¹[all expenses for accountings, judicial proceedings,
22 or other matters that involve both the income and remainder interests]
23 the fees paid to banks and other financial institutions for custodial
24 services to the fiduciary if properly chargeable to the trust¹;

25 c. all of the other ordinary expenses incurred in connection with the
26 administration, management, or preservation of trust property and the
27 distribution of income, including interest ¹[, ordinary repairs, regularly
28 recurring taxes assessed against principal and expenses of a proceeding
29 or other matter that concerns primarily the income interest] paid by
30 the trustee, including interest on death taxes, regularly recurring taxes
31 assessed against any portion of the principal, water rates, bond
32 premiums, and the expenses, including court costs, attorneys' fees, and
33 accountants' fees, of an accounting, judicial proceeding or other matter
34 that concerns primarily the income interest, unless the court directs
35 otherwise¹; and

36 d. recurring premiums on insurance covering the loss of a principal
37 asset or the loss of income from or use of the asset.

38
39 ¹[26.] 25. Disbursements from Principal.¹ a. A trustee shall make
40 the following disbursements from principal:

41 (1) ¹[the remaining one-half of the disbursements described in
42 subsections a. and b. of section 25 of this act] commissions allowed
43 by law to a trustee on principal receipts or distributions or on
44 termination of the trust estate¹;

45 (2) ¹[all of the trustee's compensation calculated on principal as a

1 fee for acceptance, distribution, or termination, and disbursements
2 made to prepare property for sale] the remaining one-half of the fees
3 paid to banks and other financial institutions for custodial services, if
4 properly chargeable to the trust¹;

5 (3) ¹[payments on the principal of a trust debt] fees paid to banks
6 and other financial institutions and registered investment advisors for
7 investment advisory or investment management services, if properly
8 chargeable to the trust¹;

9 (4) ¹[expenses of a proceeding that concerns primarily principal,
10 including a proceeding to construe the trust or to protect the trust or
11 its property] costs of investing and reinvesting principal and payments
12 on the principal of an indebtedness, including a mortgage or security
13 interest amortized by periodic payments of principal¹;

14 (5) ¹[premiums paid on a policy of insurance not described in
15 subsection d. of section 25 of this act of which the trust is the owner
16 and beneficiary] extraordinary repairs or expenses incurred in making
17 a capital improvement, including special assessments, and
18 disbursements made to prepare property for sale¹;

19 (6) ¹[estate, inheritance and other transfer taxes, including
20 penalties, apportioned to the trust] court costs, attorneys' fees,
21 accountants' fees and other fees, incurred on an accounting or judicial
22 proceeding or in maintaining or defending any action to construe a will
23 or a trust, protect it or the trust estate, or assure the title of any
24 property, unless properly chargeable to income under subsection c. of
25 section 24 of this act or the court otherwise directs¹; ¹[and]¹

26 (7) ¹[disbursements related to environmental matters, including
27 reclamation, assessing environmental conditions, remedying and
28 removing environmental contamination, monitoring remedial activities
29 and the release of substances, preventing future releases of substances,
30 collecting amounts from persons liable or potentially liable for the
31 costs of those activities, penalties imposed under environmental laws
32 or regulations and other payments made to comply with those laws or
33 regulations, statutory or common law claims by third parties and
34 defending claims based on environmental matters] premiums paid on
35 an insurance policy not described in subsection d. of section 24 of this
36 act of which the trust is the owner and beneficiary;

37 (8) estate, inheritance and other transfer taxes, including penalties
38 apportioned to the trust;

39 (9) disbursements related to environmental matters, including
40 reclamation, assessing environmental conditions, remedying and
41 removing environmental contamination, monitoring remedial activities
42 and the release of substances, preventing future releases of substances,
43 collecting amounts from persons liable or potentially liable for the cost
44 of those activities, penalties imposed under environmental laws or
45 regulations and other payments made to comply with those laws or

1 regulations, statutory or common law claims by third parties and
2 defending claims based on environmental matters; and

3 (10) if an estate or inheritance tax is levied in respect of a trust in
4 which both an income beneficiary and remainderman have an interest,
5 any amount apportioned to the trust, including penalties, even though
6 the income beneficiary also has rights in the principal¹.

7 b. If a principal asset is encumbered with an obligation that
8 requires income from that asset to be paid directly to the creditor, the
9 trustee shall transfer from principal to income an amount equal to the
10 income paid to the creditor in reduction of the principal balance of the
11 obligation.

12
13 ¹[27.] 26. Transfers from Income to Principal for Depreciation.¹

14 a. As used in this section, “depreciation” means a reduction in
15 value due to wear, tear, decay, corrosion or gradual obsolescence of
16 a fixed asset having a useful life of more than one year.

17 b. A trustee may transfer to principal a reasonable amount of the
18 net cash receipts from a principal asset that is subject to depreciation,
19 but may not transfer any amount for depreciation:

20 (1) of that portion of real property used or available for use by a
21 beneficiary as a residence or of tangible personal property held or
22 made available for the personal use or enjoyment of a beneficiary;

23 (2) during the administration of a decedent’s estate; or

24 (3) under this section if the trustee is accounting under section 12
25 of this act for the business or activity in which the asset is used.

26 c. An amount transferred to principal need not be held as a
27 separate fund.

28
29 ¹[28.] 27. Transfer from Income to Reimburse Principal.¹

30 a. If a trustee makes or expects to make a principal disbursement described
31 in this section, the trustee may transfer an appropriate amount from
32 income to principal in one or more accounting periods to reimburse
33 principal or to provide a reserve for future principal disbursements.

34 b. Principal disbursements to which subsection a. of this section
35 applies include the following, but only to the extent that the trustee
36 has not been and does not expect to be reimbursed by a third party:

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

39 (2) ¹[a capital improvement to a principal asset, whether in the
40 form of changes to an existing asset or the construction of a new asset,
41 including special assessments;

42 (3)]¹ disbursements made to prepare property for rental, including
43 tenant allowances, leasehold improvements and broker’s commissions;
44 ¹and¹

45 ¹[(4)] (3)¹ periodic payments on an obligation secured by a
46 principal asset to the extent that the amount transferred from income

1 to principal for depreciation is less than the periodic payments ¹[; and
2 (5) disbursements described in paragraph (7) of subsection a. of
3 section 26 of this act]¹.

4 c. If the asset whose ownership gives rise to the disbursements
5 becomes subject to a successive income interest after an income
6 interest ends, a trustee may continue to transfer amounts from income
7 to principal as provided in subsection a. of this section.

8

9 ¹[29.] 28. Income Taxes. ¹ a. A tax required to be paid by a
10 trustee based on receipts allocated to income shall be paid from
11 income.

12 b. A tax required to be paid by a trustee based on receipts allocated
13 to principal shall be paid from principal, even if the tax is called an
14 income tax by the taxing authority.

15 c. A tax required to be paid by a trustee on the trust's share of an
16 entity's taxable income shall be paid proportionately:

17 (1) from income to the extent that receipts from the entity are
18 allocated to income; and

19 (2) from principal to the extent that:

20 (a) receipts from the entity are allocated to principal; and

21 (b) the trust's share of the entity's taxable income exceeds the total
22 receipts described in paragraph (1) and subparagraph (a) of this
23 paragraph (2).

24 d. For purposes of this section, receipts allocated to principal or
25 income shall be reduced by the amount distributed to a beneficiary
26 from principal or income for which the trust receives a deduction in
27 calculating the tax.

28

29 ¹[30. a. A fiduciary may make adjustments between principal and
30 income to offset the shifting of economic interests or tax benefits
31 between income beneficiaries and remainder beneficiaries which arise
32 from:

33 (1) elections and decisions, other than those described in subsection
34 b. of this section, that the fiduciary makes from time to time regarding
35 tax matters;

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

39 (3) the ownership by an estate or trust of an interest in an entity
40 whose taxable income, whether or not distributed, is includable in the
41 taxable income of the estate, trust or a beneficiary.

42 b. If the amount of an estate tax marital deduction or charitable
43 contribution deduction is reduced because a fiduciary deducts an
44 amount paid from principal for income tax purposes instead of
45 deducting it for estate tax purposes, and as a result estate taxes paid
46 from principal are increased and income taxes paid by an estate, trust

1 or beneficiary are decreased, each estate, trust or beneficiary that
2 benefits from the decrease in income tax shall reimburse the principal
3 from which the increase in estate tax is paid. The total reimbursement
4 shall equal the increase in the estate tax to the extent that the principal
5 used to pay the increase would have qualified for a marital deduction
6 or charitable contribution deduction but for the payment. The
7 proportionate share of the reimbursement for each estate, trust or
8 beneficiary whose income taxes are reduced shall be the same as its
9 proportionate share of the total decrease in income tax. An estate or
10 trust shall reimburse principal from income.]¹

11

12 ¹[31.] 29. Uniformity of Application and Construction. ¹ In
13 applying and construing this act, consideration shall be given to the
14 fact that this is a uniform act, and there is a need to promote
15 uniformity of the act with respect to its subject matter among states
16 that enact it.

17

18 ¹[32.] 30. Application of Act to Existing and Future Trusts and
19 Estates.¹ This act applies to every trust or decedent's estate existing
20 on ¹or after¹ the effective date of this act, except as otherwise
21 expressly provided in the will or terms of the trust or in this act.

22

23 ¹31. Judicial Control of Discretionary Powers. a. A court shall
24 not change a fiduciary's decision to exercise or not to exercise a
25 discretionary power conferred by this act unless it determines that the
26 decision was an abuse of discretion. A court shall not determine that
27 a fiduciary abused its discretion merely because the court would have
28 exercised the discretion in a different manner or would not have
29 exercised the discretion.

30 b. The decisions to which subsection a. of this section applies
31 include:

32 (1) A determination under subsection a. of section 4 of this act of
33 whether and to what extent an amount should be transferred from
34 principal to income or from income to principal.

35 (2) A determination of the factors that are relevant to the trust and
36 its beneficiaries, the extent to which they are relevant, and the weight,
37 if any, to be given to the relevant factors in deciding whether and to
38 what extent to exercise the powers conferred by subsection a. of
39 section 4 of this act.

40 c. If a court determines that a fiduciary has abused its discretion,
41 the remedy is to restore the income and remainder beneficiaries to the
42 position they would have occupied if the fiduciary had not abused its
43 discretion, according to the following rules:

44 (1) To the extent that the abuse of discretion has resulted in no
45 distribution to a beneficiary or a distribution that is too small, the
46 court shall require the fiduciary to distribute from the trust to the

1 beneficiary an amount that the court determines will restore the
2 beneficiary, in whole or in part, to his appropriate position.

3 (2) To the extent that an abuse of discretion has resulted in a
4 distribution to a beneficiary that is too large, the court shall restore the
5 beneficiaries, the trust, or both, in whole or in part, to their
6 appropriate position by requiring the fiduciary to withhold an amount
7 from one or more of future distributions to the beneficiary who
8 received the distribution that was too large or requiring that
9 beneficiary to return some or all of the distribution to the trust.

10 (3) To the extent that the court is unable, after applying paragraphs
11 (1) and (2) of this subsection to restore the beneficiaries, the trust, or
12 both, to the position they would have occupied if the fiduciary had not
13 abused its discretion, the court may require the fiduciary to pay an
14 appropriate amount from its own funds to one or more of the
15 beneficiaries or the trust or both.

16 d. Upon a petition by the fiduciary, the court having jurisdiction
17 over the trust or estate shall determine whether a proposed exercise or
18 nonexercise by the fiduciary of a discretionary power conferred by this
19 act will result in an abuse of the fiduciary's discretion. If the petition
20 describes the proposed exercise or nonexercise of the power and
21 contains sufficient information to inform the beneficiaries of the
22 reasons for the proposal, the facts upon which the fiduciary relies, and
23 an explanation of how the income and remainder beneficiaries will be
24 affected by the proposed exercise or nonexercise of the power, a
25 beneficiary who challenges the proposed exercise or nonexercise has
26 the burden of establishing that it will result in an abuse of discretion.¹

27

28 ¹[33.] 32. Repealer.¹ N.J.S.3B:19A-1 et seq. is repealed.

29

30 ¹[34.] 33. Effective Date.¹ This act shall take effect
31 ¹[immediately] on January 1 of the year following enactment¹.

ASSEMBLY BANKING AND INSURANCE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3261

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 3, 2001

The Assembly Banking and Insurance Committee reports favorably and with committee amendments, Assembly Bill No. 3261.

This bill, as amended by the committee, enacts the Uniform Principal and Income Act as revised in 1997 by the National Conference of Commissioners on Uniform State Laws (NCCUSL) with certain changes and additions, and replaces the Revised Uniform Principal and Income Act adopted in this State in 1991.

The primary purpose of the bill is to better allow a trustee (or a personal representative of an estate) to satisfy fiduciary duties to the two types of beneficiaries of a trust, whose interests often are in conflict: remainder beneficiaries, who benefit from a trust's principal, and income beneficiaries, who benefit from a trust's income distribution. The bill's most significant change from existing law is that it provides a trustee with the discretion to allocate trust assets either to principal or income, in conformity with rules established by the bill and with the "Prudent Investor Act" (P.L.1997, c.26; C.3B:20-11.1 et seq.). Some other key provisions of the bill are discussed below.

The bill provides new and clarified rules for allocation, including the rule that any money received by a trustee is regarded as income, unless it fits into certain categories. Those categories include:

- (1) Money received as part of liquidation of the trust;
- (2) Money received from an investment company that has labeled the distribution as a capital gain; or
- (3) Property received that is not money, such as a stock distribution.

In addition, receipts from derivatives, with one exception, are considered principal; receipts from asset-backed securities, on the other hand, may be either income or principal, depending on the category into which the payor of the security falls. Where a trust provides a fixed income for the income beneficiary, the bill allows the trustee to adjust principal and income if necessary for compliance with prudent investment standards. Before adjusting principal and income in this way, a trustee is required by the bill to consider a list of factors including the nature, purpose and expected duration of the trust, as

well as the intent of the settlor. In addition, the bill creates a safe harbor for a trustee in this allocation by providing that a decision by a trustee to adjust distributions to an income beneficiary to four percent of the principal of the trust (or to decrease distributions to six percent) will be deemed a fair and reasonable adjustment. The bill forbids a trustee from making adjustments when they would diminish income in a trust that requires full income to be paid annually to a surviving spouse, and in other circumstances.

The bill provides that the payment of administration expenses are to be paid out of principal when an income interest in a trust ends (or when a decedent dies).

During the life of the trust, the bill provides for payment of expenses as follows: ordinary expenses are to be paid out of income; commissions to a trustee on income receipts and principal receipts are to be paid from income and principal, respectively; payments for legal proceedings defending a will or trust or to assure title of any property are to be paid from principal; and expenses that are specific to the remainder are made from principal. Additional rules govern situations such as depreciation or enhancement of assets.

The bill specifies that the only remedy available for an exercise or nonexercise of discretion is an abuse of discretion. A court cannot change a fiduciary's decision to exercise or not to exercise a discretionary power conferred by this bill unless it determines that the decision was an abuse of discretion. A court cannot determine that a fiduciary abused its discretion merely because the court would have exercised the discretion in a different manner or would not have exercised the discretion. The bill limits the remedy for an abuse of discretion to restoring the beneficiaries and the trust to the position they would have occupied if there had not been an abuse. The objective is to accomplish the restoration initially by making adjustments between the beneficiaries and the trust to the extent possible; to the extent that restoration is not possible by such adjustments, a court may order the trustee to pay an amount to one or more beneficiaries, the trust or both. The bill allows a fiduciary to petition a court to determine whether a proposed exercise or nonexercise by the fiduciary of a discretionary power conferred by this bill will result in an abuse of the fiduciary's discretion. If the petition contains the information prescribed in subsection d. of section 31 of this bill, the proposed action or inaction is presumed not to result in an abuse, and a beneficiary who challenges the proposal must establish that it will.

Finally, the bill provides that the express language of a trust instrument, will or other applicable document will govern that trust or estate, and that the bill merely provides the default rule if the governing instrument is silent.

As reported by the committee, this bill is identical to Senate Bill No. 1667(1R).

SENATE, No. 1667

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED SEPTEMBER 25, 2000

Sponsored by:

Senator JOHN H. ADLER

District 6 (Camden)

Senator GERALD CARDINALE

District 39 (Bergen)

SYNOPSIS

Replaces "Revised Uniform Principal and Income Act" with "Uniform Principal and Income Act of 2000."

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning principal and income guidelines for trusts and
2 estates and repealing N.J.S.3B:19A-1 et seq.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. This act shall be known and may be cited as the "Uniform
8 Principal and Income Act of 2000."

9
10 2. As used in this act:

11 "Accounting period" means a calendar year unless another
12 12-month period is selected by a fiduciary. The term includes a
13 portion of a calendar year or other 12-month period that begins when
14 an income interest begins or ends when an income interest ends.

15 "Beneficiary" includes, in the case of a decedent's estate, an heir,
16 legatee and devisee and, in the case of a trust, an income beneficiary
17 and a remainder beneficiary.

18 "Fiduciary" means a personal representative or a trustee. The term
19 includes an executor, administrator, successor personal representative,
20 special administrator and a person performing substantially the same
21 function.

22 "Income" means money or property that a fiduciary receives as
23 current return from a principal asset. The term includes a portion of
24 receipts from a sale, exchange or liquidation of a principal asset, to the
25 extent provided in sections 10 through 24 of this act.

26 "Income beneficiary" means a person to whom net income of a trust
27 is or may be payable.

28 "Income interest" means the right of an income beneficiary to
29 receive all or part of net income, whether the terms of the trust require
30 it to be distributed or authorize it to be distributed in the trustee's
31 discretion.

32 "Mandatory income interest" means the right of an income
33 beneficiary to receive net income that the terms of the trust require the
34 fiduciary to distribute.

35 "Net income" means the total receipts allocated to income during
36 an accounting period minus the disbursements made from income
37 during the period, plus or minus transfers under this act to or from
38 income during the period.

39 "Person" means an individual, corporation, business trust, estate,
40 trust, partnership, limited liability company, association, joint venture,
41 government, governmental subdivision, agency or instrumentality,
42 public corporation or any other legal or commercial entity.

43 "Principal" means property held in trust for distribution to a
44 remainder beneficiary when the trust terminates.

45 "Remainder beneficiary" means a person entitled to receive

1 principal when an income interest ends.

2 “Terms of a trust” means the manifestation of the intent of a settlor
3 or decedent with respect to the trust, expressed in a manner that
4 admits of its proof in a judicial proceeding, whether by written or
5 spoken words or by conduct.

6 “Trustee” includes an original, additional or successor trustee,
7 whether or not appointed or confirmed by a court.

8

9 3. a. In allocating receipts and disbursements to or between
10 principal and income, and with respect to any matter within the scope
11 of sections 5 through 9 of this act, a fiduciary:

12 (1) shall administer a trust or estate in accordance with the terms
13 of the trust or the will, even if there is a different provision in this act;

14 (2) may administer a trust or estate by the exercise of a
15 discretionary power of administration given to the fiduciary by the
16 terms of the trust or the will, even if the exercise of the power
17 produces a result different from a result required or permitted by this
18 act;

19 (3) shall administer a trust or estate in accordance with this act if
20 the terms of the trust or the will do not contain a different provision
21 or do not give the fiduciary a discretionary power of administration;
22 and

23 (4) shall add a receipt or charge a disbursement to principal to the
24 extent that the terms of the trust and this act do not provide a rule for
25 allocating the receipt or disbursement to or between principal and
26 income.

27 b. In exercising the power to adjust under subsection a. of section
28 4 of this act or a discretionary power of administration regarding a
29 matter within the scope of this act, whether granted by the terms of a
30 trust, a will or this act, a fiduciary shall administer a trust or estate
31 impartially, based on what is fair and reasonable to all of the
32 beneficiaries, except to the extent that the terms of the trust or the will
33 clearly manifest an intention that the fiduciary shall or may favor one
34 or more of the beneficiaries. A determination in accordance with this
35 act is presumed to be fair and reasonable to all of the beneficiaries.

36

37 4. a. A trustee may adjust between principal and income to the
38 extent the trustee considers necessary if the trustee invests and
39 manages trust assets as a prudent investor, the terms of the trust
40 describe the amount that may or shall be distributed to a beneficiary by
41 referring to the trust’s income and the trustee determines, after
42 applying the rules in subsection a. of section 3 of this act, that the
43 trustee is unable to comply with subsection b. of section 3 of this act.

44 b. In deciding whether and to what extent to exercise the power
45 conferred by subsection a. of this section, a trustee shall consider all
46 factors relevant to the trust and its beneficiaries, including the

1 following factors to the extent they are relevant:

2 (1) the nature, purpose and expected duration of the trust;

3 (2) the intent of the settlor;

4 (3) the identity and circumstances of the beneficiaries;

5 (4) the needs for liquidity, regularity of income and preservation
6 and appreciation of capital;

7 (5) the assets held in the trust; the extent to which they consist of
8 financial assets, interests in closely held enterprises, tangible and
9 intangible personal property or real property; the extent to which an
10 asset is used by a beneficiary; and whether an asset was purchased by
11 the trustee or received from the settlor;

12 (6) the net amount allocated to income under the other sections of
13 this act and the increase or decrease in the value of the principal
14 assets, which the trustee may estimate as to assets for which market
15 values are not readily available;

16 (7) whether and to what extent the terms of the trust give the
17 trustee the power to invade principal or accumulate income or prohibit
18 the trustee from invading principal or accumulating income, and the
19 extent to which the trustee has exercised a power from time to time to
20 invade principal or accumulate income;

21 (8) the actual and anticipated effect of economic conditions on
22 principal and income and effects of inflation and deflation; and

23 (9) the anticipated tax consequences of an adjustment.

24 c. A trustee shall not make an adjustment:

25 (1) that diminishes the income interest in a trust that requires all of
26 the income to be paid at least annually to a spouse and for which an
27 estate tax or gift tax marital deduction would be allowed, in whole or
28 in part, if the trustee did not have the power to make the adjustment;

29 (2) that reduces the actuarial value of the income interest in a trust
30 to which a person transfers property with the intent to qualify for a gift
31 tax exclusion;

32 (3) that changes the amount payable to a beneficiary as a fixed
33 annuity or a fixed fraction of the value of the trust assets;

34 (4) from any amount that is permanently set aside for charitable
35 purposes under a will or the terms of a trust unless both income and
36 principal are so set aside;

37 (5) if possessing or exercising the power to make an adjustment
38 causes an individual to be treated as the owner of all or part of the
39 trust for income tax purposes, and the individual would not be treated
40 as the owner if the trustee did not possess the power to make an
41 adjustment;

42 (6) if possessing or exercising the power to make an adjustment
43 causes all or part of the trust assets to be included for estate tax
44 purposes in the estate of an individual who has the power to remove
45 a trustee or appoint a trustee, or both, and the assets would not be
46 included in the estate of the individual if the trustee did not possess the

1 power to make an adjustment;

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

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

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

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

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

25

26 5. After a decedent dies, in the case of an estate or after an income
27 interest in a trust ends, the following rules apply:

28 a. A fiduciary of an estate or of a terminating income interest shall
29 determine the amount of net income and net principal receipts received
30 from property specifically given to a beneficiary under the rules in
31 sections 7 through 30 of this act which apply to trustees and the rules
32 in subsection e. of this section. The fiduciary shall distribute the net
33 income and net principal receipts to the beneficiary who is to receive
34 the specific property.

35 b. A fiduciary shall determine the remaining net income of a
36 decedent's estate or a terminating income interest under the rules in
37 sections 7 through 30 of this act which apply to trustees and by:

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

40 (2) paying from income or principal, in the fiduciary's discretion,
41 fees of attorneys, accountants and fiduciaries, court costs and other
42 expenses of administration and interest on death taxes, but the
43 fiduciary may pay those expenses from income of property passing to
44 a trust for which the fiduciary claims an estate tax marital or charitable
45 deduction only to the extent that the payment of those expenses from
46 income will not cause the reduction or loss of the deduction; and

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

7 c. A fiduciary shall distribute to a beneficiary who receives a
8 pecuniary amount outright the interest or any other amount provided
9 by the will, the terms of the trust or applicable law from net income
10 determined under subsection b. of this section or from principal to the
11 extent that net income is insufficient. If a beneficiary is to receive a
12 pecuniary amount outright from a trust after an income interest ends
13 and no interest or other amount is provided for by the terms of the
14 trust or applicable law, the fiduciary shall distribute the interest or
15 other amount to which the beneficiary would be entitled under
16 applicable law if the pecuniary amount were required to be paid under
17 a will.

18 d. A fiduciary shall distribute the net income remaining after
19 distributions required by subsection c. of this section in the manner
20 described in section 6 of this act to all other beneficiaries, including a
21 beneficiary who receives a pecuniary amount in trust, even if the
22 beneficiary holds an unqualified power to withdraw assets from the
23 trust or other presently exercisable general power of appointment over
24 the trust.

25 e. A fiduciary shall not reduce principal or income receipts from
26 property described in subsection a. of this section because of a
27 payment described in section 25 or 26 of this act to the extent that the
28 will, the terms of the trust, or applicable law requires the fiduciary to
29 make the payment from assets other than the property or to the extent
30 that the fiduciary recovers or expects to recover the payment from a
31 third party. The net income and principal receipts from the property
32 are determined by including all of the amounts the fiduciary receives
33 or pays with respect to the property, whether those amounts accrued
34 or became due before, on or after the date of a decedent's death or an
35 income interest's terminating event, and by making a reasonable
36 provision for amounts that the fiduciary believes the estate or
37 terminating income interest may become obligated to pay after the
38 property is distributed.

39
40 6. a. Each beneficiary described in subsection d. of section 5 of
41 this act is entitled to receive a portion of the net income equal to the
42 beneficiary's fractional interest in undistributed principal assets, using
43 values as of the distribution date. If a fiduciary makes more than one
44 distribution of assets to beneficiaries to whom this section applies,
45 each beneficiary, including one who does not receive part of the
46 distribution, is entitled, as of each distribution date, to the net income

1 the fiduciary has received after the date of death or terminating event
2 or earlier distribution date but has not distributed as of the current
3 distribution date.

4 b. In determining a beneficiary's share of net income, the following
5 rules apply:

6 (1) The beneficiary is entitled to receive a portion of the net
7 income equal to the beneficiary's fractional interest in the
8 undistributed principal assets immediately before the distribution date,
9 including assets that later may be sold to meet principal obligations.

10 (2) The beneficiary's fractional interest in the undistributed
11 principal assets shall be calculated without regard to property
12 specifically given to a beneficiary and property required to pay
13 pecuniary amounts not in trust.

14 (3) The beneficiary's fractional interest in the undistributed
15 principal assets shall be calculated on the basis of the aggregate value
16 of those assets as of the distribution date without reducing the value
17 by any unpaid principal obligation.

18 (4) The distribution date for purposes of this section may be the
19 date as of which the fiduciary calculates the value of the assets if that
20 date is reasonably near the date on which assets are actually
21 distributed.

22 c. If a fiduciary does not distribute all of the collected but
23 undistributed net income to each person as of a distribution date, the
24 fiduciary shall maintain appropriate records showing the interest of
25 each beneficiary in that net income.

26 d. A fiduciary may apply the rules in this section, to the extent that
27 the fiduciary considers it appropriate, to net gain or loss realized after
28 the date of death or terminating event or earlier distribution date from
29 the disposition of a principal asset if this section applies to the income
30 from the asset.

31

32 7. a. An income beneficiary is entitled to net income from the date
33 on which the income interest begins. An income interest begins on the
34 date specified in the terms of the trust or, if no date is specified, on the
35 date an asset becomes subject to a trust or successive income interest.

36 b. An asset becomes subject to a trust:

37 (1) on the date it is transferred to the trust in the case of an asset
38 that is transferred to a trust during the transferor's life;

39 (2) on the date of a testator's death in the case of an asset that
40 becomes subject to a trust by reason of a will, even if there is an
41 intervening period of administration of the testator's estate; or

42 (3) on the date of an individual's death in the case of an asset that
43 is transferred to a fiduciary by a third party because of the individual's
44 death.

45 c. An asset becomes subject to a successive income interest on the
46 day after the preceding income interest ends, as determined under

1 subsection d. of this section, even if there is an intervening period of
2 administration to wind up the preceding income interest.

3 d. An income interest ends on the day before an income beneficiary
4 dies or another terminating event occurs, or on the last day of a period
5 during which there is no beneficiary to whom a trustee may distribute
6 income.

7

8 8. a. A trustee shall allocate an income receipt or disbursement
9 other than one to which paragraph (1) of subsection b. of section 5 of
10 this act applies to principal if its due date occurs before a decedent
11 dies in the case of an estate or before an income interest begins in the
12 case of a trust or successive income interest.

13 b. A trustee shall allocate an income receipt or disbursement to
14 income if its due date occurs on or after the date on which a decedent
15 dies or an income interest begins and it is a periodic due date. An
16 income receipt or disbursement shall be treated as accruing from day
17 to day if its due date is not periodic or it has no due date. The portion
18 of the receipt or disbursement accruing before the date on which a
19 decedent dies or an income interest begins shall be allocated to
20 principal and the balance shall be allocated to income.

21 c. An item of income or an obligation is due on the date the payer
22 is required to make a payment. If a payment date is not stated, there
23 is no due date for the purposes of this act. Distributions to
24 shareholders or other owners from an entity to which section 10 of this
25 act applies are deemed to be due on the date fixed by the entity for
26 determining who is entitled to receive the distribution or, if no date is
27 fixed, on the declaration date for the distribution. A due date is
28 periodic for receipts or disbursements that are to be paid at regular
29 intervals under a lease or an obligation to pay interest or if an entity
30 customarily makes distributions at regular intervals.

31

32 9. a. As used in this section, “undistributed income” means net
33 income received before the date on which an income interest ends.
34 The term does not include an item of income or expense that is due or
35 accrued or net income that has been added or is required to be added
36 to principal under the terms of the trust.

37 b. When a mandatory income interest ends, the trustee shall pay to
38 a mandatory income beneficiary who survives that date, or the estate
39 of a deceased mandatory income beneficiary whose death causes the
40 interest to end, the beneficiary’s share of the undistributed income that
41 is not disposed of under the terms of the trust, unless the beneficiary
42 has an unqualified power to revoke more than five percent of the trust
43 immediately before the income interest ends. In the latter case, the
44 undistributed income from the portion of the trust that may be revoked
45 shall be added to principal.

46 c. When a trustee’s obligation to pay a fixed annuity or a fixed

1 fraction of the value of the trust's assets ends, the trustee shall prorate
2 the final payment if and to the extent required by applicable law to
3 accomplish a purpose of the trust or its settlor relating to income, gift,
4 estate or other tax requirements.

5
6 10. a. As used in this section, "entity" means a corporation,
7 partnership, limited liability company, regulated investment company,
8 real estate investment trust, common trust fund or any other
9 organization in which a trustee has an interest other than a trust or
10 estate to which section 11 of this act applies, a business or activity to
11 which section 12 of this act applies or an asset-backed security to
12 which section 24 of this act applies.

13 b. Except as otherwise provided in this section, a trustee shall
14 allocate to income money received from an entity.

15 c. A trustee shall allocate the following receipts from an entity to
16 principal:

17 (1) property other than money;

18 (2) money received in one distribution or a series of related
19 distributions in exchange for part or all of a trust's interest in the
20 entity;

21 (3) money received in total or partial liquidation of the entity; and

22 (4) money received from an entity that is a regulated investment
23 company or a real estate investment trust if the money distributed is a
24 capital gain dividend for federal income tax purposes.

25 d. Money is received in partial liquidation:

26 (1) to the extent that the entity, at or near the time of a distribution,
27 indicates that it is a distribution in partial liquidation; or

28 (2) if the total amount of money and property received in a
29 distribution or series of related distributions is greater than 20 percent
30 of the entity's gross assets, as shown by the entity's year-end financial
31 statements immediately preceding the initial receipt.

32 e. Money is not received in partial liquidation, nor may it be taken
33 into account under paragraph (2) of subsection d. of this section, to
34 the extent that it does not exceed the amount of income tax that a
35 trustee or beneficiary must pay on taxable income of the entity that
36 distributes the money.

37 f. A trustee may rely upon a statement made by an entity about the
38 source or character of a distribution if the statement is made at or near
39 the time of distribution by the entity's board of directors or other
40 person or group of persons authorized to exercise powers to pay
41 money or transfer property comparable to those of a corporation's
42 board of directors.

43
44 11. A trustee shall allocate to income an amount received as a
45 distribution of income from a trust or an estate in which the trust has
46 an interest other than a purchased interest, and shall allocate to

1 principal an amount received as a distribution of principal from such
2 a trust or estate. If a trustee purchases an interest in a trust that is an
3 investment entity, or a decedent or donor transfers an interest in such
4 a trust to a trustee, section 10 or 24 of this act applies to a receipt
5 from the trust.

6

7 12. a. If a trustee who conducts a business or other activity
8 determines that it is in the best interest of all the beneficiaries to
9 account separately for the business or activity instead of accounting
10 for it as part of the trust's general accounting records, the trustee may
11 maintain separate accounting records for its transactions, whether or
12 not its assets are segregated from other trust assets.

13 b. A trustee who accounts separately for a business or other
14 activity may determine the extent to which its net cash receipts are to
15 be retained for working capital, the acquisition or replacement of fixed
16 assets and other reasonably foreseeable needs of the business or
17 activity, and the extent to which the remaining net cash receipts are
18 accounted for as principal or income in the trust's general accounting
19 records. If a trustee sells assets of the business or other activity, other
20 than in the ordinary course of the business or activity, the trustee shall
21 account for the net amount received as principal in the trust's general
22 accounting records to the extent the trustee determines that the
23 amount received is no longer required in the conduct of the business.

24 c. Activities for which a trustee may maintain separate accounting
25 records include:

26 (1) retail, manufacturing, service and other traditional business
27 activities;

28 (2) farming;

29 (3) raising and selling livestock and other animals;

30 (4) management of rental properties;

31 (5) extraction of minerals and other natural resources;

32 (6) timber operations; and

33 (7) activities to which section 23 of this act applies.

34

35 13. A trustee shall allocate to principal:

36 a. To the extent not allocated to income under this act, assets
37 received from a transferor during the transferor's lifetime, a decedent's
38 estate, a trust with a terminating income interest or a payer under a
39 contract naming the trust or its trustee as beneficiary;

40 b. Money or other property received from the sale, exchange,
41 liquidation or change in form of a principal asset, including realized
42 profit, subject to sections 10 through 24 of this act;

43 c. Amounts recovered from third parties to reimburse the trust
44 because of disbursements described in paragraph (7) of subsection a.
45 of section 26 of this act or for other reasons to the extent not based on
46 the loss of income;

1 d. Proceeds of property taken by eminent domain, but a separate
2 award made for the loss of income with respect to an accounting
3 period during which a current income beneficiary had a mandatory
4 income interest is income;

5 e. Net income received in an accounting period during which there
6 is no beneficiary to whom a trustee may or shall distribute income; and

7 f. Other receipts as provided in sections 17 through 24 of this act.
8

9 14. To the extent that a trustee accounts for receipts from rental
10 property pursuant to this section, the trustee shall allocate to income
11 an amount received as rent of real or personal property, including an
12 amount received for cancellation or renewal of a lease. An amount
13 received as a refundable deposit, including a security deposit or a
14 deposit that is to be applied as rent for future periods, shall be added
15 to principal and held subject to the terms of the lease and is not
16 available for distribution to a beneficiary until the trustee's contractual
17 obligations have been satisfied with respect to that amount.
18

19 15. a. An amount received as interest, whether determined at a
20 fixed, variable or floating rate, on an obligation to pay money to the
21 trustee, including an amount received as consideration for prepaying
22 principal, shall be allocated to income without any provision for
23 amortization of premium.

24 b. A trustee shall allocate to principal an amount received from the
25 sale, redemption or other disposition of an obligation to pay money to
26 the trustee more than one year after it is purchased or acquired by the
27 trustee, including an obligation whose purchase price or value when
28 it is acquired is less than its value at maturity. If the obligation
29 matures within one year after it is purchased or acquired by the
30 trustee, an amount received in excess of its purchase price or its value
31 when acquired by the trust shall be allocated to income.

32 c. This section does not apply to an obligation to which section 18,
33 19, 20, 21, 23 or 24 of this act applies.
34

35 16. a. Except as otherwise provided in subsection b. of this
36 section, a trustee shall allocate to principal the proceeds of a life
37 insurance policy or other contract in which the trust or its trustee is
38 named as beneficiary, including a contract that insures the trust or its
39 trustee against loss for damage to, destruction of or loss of title to a
40 trust asset. The trustee shall allocate dividends on an insurance policy
41 to income if the premiums on the policy are paid from income, and to
42 principal if the premiums are paid from principal.

43 b. A trustee shall allocate to income proceeds of a contract that
44 insures the trustee against loss of occupancy or other use by an income
45 beneficiary, loss of income or, subject to section 12 of this act, loss of
46 profits from a business.

1 c. This section does not apply to a contract to which section 18 of
2 this act applies.

3

4 17. If a trustee determines that an allocation between principal and
5 income required by section 18, 19, 20, 21 or 24 of this act is
6 insubstantial, the trustee may allocate the entire amount to principal
7 unless one of the circumstances described in subsection c. of section
8 4 of this act applies to the allocation. This power may be exercised by
9 a cotrustee in the circumstances described in subsection d. of section
10 4 of this act and may be released for the reasons and in the manner
11 described in subsection e. of section 4 of this act. An allocation is
12 presumed to be insubstantial if:

13 (1) the amount of the allocation would increase or decrease net
14 income in an accounting period, as determined before the allocation,
15 by less than 10 percent; or

16 (2) the value of the asset producing the receipt for which the
17 allocation would be made is less than 10 percent of the total value of
18 the trust's assets at the beginning of the accounting period.

19

20 18. a. As used in this section, "payment" means a payment that a
21 trustee may receive over a fixed number of years or during the life of
22 one or more individuals because of services rendered or property
23 transferred to the payer in exchange for future payments. The term
24 includes a payment made in money or property from the payer's
25 general assets or from a separate fund created by the payer, including
26 a private or commercial annuity, an individual retirement account and
27 a pension, profit-sharing, stock-bonus, or stock-ownership plan.

28 b. To the extent that a payment is characterized as interest or a
29 dividend or a payment made in lieu of interest or a dividend, a trustee
30 shall allocate it to income. The trustee shall allocate to principal the
31 balance of the payment and any other payment received in the same
32 accounting period that is not characterized as interest, a dividend or
33 an equivalent payment.

34 c. If no part of a payment is characterized as interest, a dividend or
35 an equivalent payment, and all or part of the payment is required to be
36 made, a trustee shall allocate to income 10 percent of the part that is
37 required to be made during the accounting period and the balance to
38 principal. If no part of a payment is required to be made or the
39 payment received is the entire amount to which the trustee is entitled,
40 the trustee shall allocate the entire payment to principal. For purposes
41 of this subsection, a payment is not "required to be made" to the
42 extent that it is made because the trustee exercises a right of
43 withdrawal.

44 d. If, to obtain an estate tax marital deduction for a trust, a trustee
45 must allocate more of a payment to income than provided for by this
46 section, the trustee shall allocate to income the additional amount

1 necessary to obtain the marital deduction.

2 e. This section does not apply to payments to which section 19 of
3 this act applies.

4

5 19. a. As used in this section, "liquidating asset" means an asset
6 whose value will diminish or terminate because the asset is expected
7 to produce receipts for a period of limited duration. The term includes
8 a leasehold, patent, copyright, royalty right and right to receive
9 payments during a period of more than one year under an arrangement
10 that does not provide for the payment of interest on the unpaid
11 balance. The term does not include a payment subject to section 18 of
12 this act, resources subject to section 20 of this act, timber subject to
13 section 21 of this act, an activity subject to section 23 of this act, an
14 asset subject to section 24 of this act, or any asset for which the
15 trustee establishes a reserve for depreciation under section 27 of this
16 act.

17 b. A trustee shall allocate to income 10 percent of the receipts from
18 a liquidating asset and the balance to principal.

19

20 20. a. To the extent that a trustee accounts for receipts from an
21 interest in minerals or other natural resources pursuant to this section,
22 the trustee shall allocate them as follows:

23 (1) if received as nominal delay rental or nominal annual rent on a
24 lease, a receipt shall be allocated to income;

25 (2) if received from a production payment, a receipt shall be
26 allocated to income if and to the extent that the agreement creating the
27 production payment provides a factor for interest or its equivalent.
28 The balance shall be allocated to principal;

29 (3) if an amount received as a royalty, shut-in-well payment, take-
30 or-pay payment, bonus or delay rental is more than nominal, 90
31 percent shall be allocated to principal and the balance to income;

32 (4) if an amount is received from a working interest or any other
33 interest not provided for in paragraph (1), (2) or (3) of this subsection
34 a., 90 percent of the net amount received shall be allocated to principal
35 and the balance to income.

36 b. An amount received on account of an interest in water that is
37 renewable shall be allocated to income. If the water is not renewable,
38 90 percent of the amount shall be allocated to principal and the
39 balance to income.

40 c. This act applies whether or not a decedent or donor was
41 extracting minerals, water or other natural resources before the
42 interest became subject to the trust.

43 d. If a trust owns an interest in minerals, water, or other natural
44 resources on the effective date of this act, the trustee may allocate
45 receipts from the interest as provided in this act or in the manner used
46 by the trustee before the effective date of this act. If the trust acquires

1 an interest in minerals, water or other natural resources after the
2 effective date of this act, the trustee shall allocate receipts from the
3 interest as provided in this act.

4
5 21. a. To the extent that a trustee accounts for receipts from the
6 sale of timber and related products pursuant to this section, the trustee
7 shall allocate the net receipts:

8 (1) to income to the extent that the amount of timber removed from
9 the land does not exceed the rate of growth of the timber during the
10 accounting periods in which a beneficiary has a mandatory income
11 interest;

12 (2) to principal to the extent that the amount of timber removed
13 from the land exceeds the rate of growth of the timber or the net
14 receipts are from the sale of standing timber;

15 (3) to or between income and principal if the net receipts are from
16 the lease of timberland or from a contract to cut timber from land
17 owned by a trust, by determining the amount of timber removed from
18 the land under the lease or contract and applying the rules in
19 paragraphs (1) and (2) of this subsection a.; or

20 (4) to principal to the extent that advance payments, bonuses and
21 other payments are not allocated pursuant to paragraph (1), (2) or (3)
22 of this subsection a.

23 b. In determining net receipts to be allocated pursuant to
24 subsection a. of this section, a trustee shall deduct and transfer to
25 principal a reasonable amount for depletion.

26 c. This section applies whether or not a decedent or transferor was
27 harvesting timber from the property before it became subject to the
28 trust.

29 d. If a trust owns an interest in timberland on the effective date of
30 this act, the trustee may allocate net receipts from the sale of timber
31 and related products as provided in this act or in the manner used by
32 the trustee before the effective date of this act. If the trust acquires an
33 interest in timberland after the effective date of this act, the trustee
34 shall allocate net receipts from the sale of timber and related products
35 as provided in this act.

36
37 22. a. If a marital deduction is allowed for all or part of a trust
38 whose assets consist substantially of property that does not provide
39 the spouse with sufficient income from or use of the trust assets, and
40 if the amounts that the trustee transfers from principal to income under
41 section 4 of this act and distributes to the spouse from principal
42 pursuant to the terms of the trust are insufficient to provide the spouse
43 with the beneficial enjoyment required to obtain the marital deduction,
44 the spouse may require the trustee to make property productive of
45 income, convert property within a reasonable time or exercise the
46 power conferred by subsection a. of section 4 of this act. The trustee

1 may decide which action or combination of actions to take.

2 b. In cases not governed by subsection a. of this section, proceeds
3 from the sale or other disposition of an asset are principal without
4 regard to the amount of income the asset produces during any
5 accounting period.

6

7 23. a. As used in this section, “derivative” means a contract or
8 financial instrument or a combination of contracts and financial
9 instruments which gives a trust the right or obligation to participate in
10 some or all changes in the price of a tangible or intangible asset or
11 group of assets, or changes in a rate, an index of prices or rates or
12 other market indicator for an asset or a group of assets.

13 b. To the extent that a trustee does not account under section 12
14 of this act for transactions in derivatives, the trustee shall allocate to
15 principal receipts from and disbursements made in connection with
16 those transactions.

17 c. If a trustee grants an option to buy property from the trust,
18 whether or not the trust owns the property when the option is granted,
19 grants an option that permits another person to sell property to the
20 trust or acquires an option to buy property for the trust or an option
21 to sell an asset owned by the trust, and the trustee or other owner of
22 the asset is required to deliver the asset if the option is exercised, an
23 amount received for granting the option shall be allocated to principal.
24 An amount paid to acquire the option shall be paid from principal. A
25 gain or loss realized upon the exercise of an option, including an
26 option granted to a settlor of the trust for services rendered, shall be
27 allocated to principal.

28

29 24. a. As used in this section, “asset-backed security” means an
30 asset whose value is based upon the right it gives the owner to receive
31 distributions from the proceeds of financial assets that provide
32 collateral for the security. The term includes an asset that gives the
33 owner the right to receive from the collateral financial assets only the
34 interest or other current return or only the proceeds other than interest
35 or current return. The term does not include an asset to which section
36 10 or 18 of this act applies.

37 b. If a trust receives a payment from interest or other current
38 return and from other proceeds of the collateral financial assets, the
39 trustee shall allocate to income the portion of the payment which the
40 payer identifies as being from interest or other current return and shall
41 allocate the balance of the payment to principal.

42 c. If a trust receives one or more payments in exchange for the
43 trust’s entire interest in an asset-backed security in one accounting
44 period, the trustee shall allocate the payments to principal. If a
45 payment is one of a series of payments that will result in the
46 liquidation of the trust’s interest in the security over more than one

1 accounting period, the trustee shall allocate 10 percent of the payment
2 to income and the balance to principal.

3

4 25. A trustee shall make the following disbursements from income
5 to the extent that they are not disbursements to which paragraph (1)
6 or (2) of subsection b. of section 5 of this act applies:

7 a. one-half of the regular compensation of the trustee and of any
8 person providing investment advisory or custodial services to the
9 trustee;

10 b. one-half of all expenses for accountings, judicial proceedings, or
11 other matters that involve both the income and remainder interests;

12 c. all of the other ordinary expenses incurred in connection with the
13 administration, management, or preservation of trust property and the
14 distribution of income, including interest, ordinary repairs, regularly
15 recurring taxes assessed against principal and expenses of a proceeding
16 or other matter that concerns primarily the income interest; and

17 d. recurring premiums on insurance covering the loss of a principal
18 asset or the loss of income from or use of the asset.

19

20 26. a. A trustee shall make the following disbursements from
21 principal:

22 (1) the remaining one-half of the disbursements described in
23 subsections a. and b. of section 25 of this act;

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

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

28 (4) expenses of a proceeding that concerns primarily principal,
29 including a proceeding to construe the trust or to protect the trust or
30 its property;

31 (5) premiums paid on a policy of insurance not described in
32 subsection d. of section 25 of this act of which the trust is the owner
33 and beneficiary;

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

36 (7) disbursements related to environmental matters, including
37 reclamation, assessing environmental conditions, remedying and
38 removing environmental contamination, monitoring remedial activities
39 and the release of substances, preventing future releases of substances,
40 collecting amounts from persons liable or potentially liable for the
41 costs of those activities, penalties imposed under environmental laws
42 or regulations and other payments made to comply with those laws or
43 regulations, statutory or common law claims by third parties and
44 defending claims based on environmental matters.

45 b. If a principal asset is encumbered with an obligation that
46 requires income from that asset to be paid directly to the creditor, the

1 trustee shall transfer from principal to income an amount equal to the
2 income paid to the creditor in reduction of the principal balance of the
3 obligation.

4

5 27. a. As used in this section, “depreciation” means a reduction in
6 value due to wear, tear, decay, corrosion or gradual obsolescence of
7 a fixed asset having a useful life of more than one year.

8 b. A trustee may transfer to principal a reasonable amount of the
9 net cash receipts from a principal asset that is subject to depreciation,
10 but may not transfer any amount for depreciation:

11 (1) of that portion of real property used or available for use by a
12 beneficiary as a residence or of tangible personal property held or
13 made available for the personal use or enjoyment of a beneficiary;

14 (2) during the administration of a decedent’s estate; or

15 (3) under this section if the trustee is accounting under section 12
16 of this act for the business or activity in which the asset is used.

17 c. An amount transferred to principal need not be held as a
18 separate fund.

19

20 28. a. If a trustee makes or expects to make a principal
21 disbursement described in this section, the trustee may transfer an
22 appropriate amount from income to principal in one or more
23 accounting periods to reimburse principal or to provide a reserve for
24 future principal disbursements.

25 b. Principal disbursements to which subsection a. of this section
26 applies include the following, but only to the extent that the trustee
27 has not been and does not expect to be reimbursed by a third party:

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

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

33 (3) disbursements made to prepare property for rental, including
34 tenant allowances, leasehold improvements and broker’s commissions;

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

38 (5) disbursements described in paragraph (7) of subsection a. of
39 section 26 of this act.

40 c. If the asset whose ownership gives rise to the disbursements
41 becomes subject to a successive income interest after an income
42 interest ends, a trustee may continue to transfer amounts from income
43 to principal as provided in subsection a. of this section.

44

45 29. a. A tax required to be paid by a trustee based on receipts
46 allocated to income shall be paid from income.

1 b. A tax required to be paid by a trustee based on receipts allocated
2 to principal shall be paid from principal, even if the tax is called an
3 income tax by the taxing authority.

4 c. A tax required to be paid by a trustee on the trust's share of an
5 entity's taxable income shall be paid proportionately:

6 (1) from income to the extent that receipts from the entity are
7 allocated to income; and

8 (2) from principal to the extent that:

9 (a) receipts from the entity are allocated to principal; and

10 (b) the trust's share of the entity's taxable income exceeds the total
11 receipts described in paragraph (1) and subparagraph (a) of this
12 paragraph (2).

13 d. For purposes of this section, receipts allocated to principal or
14 income shall be reduced by the amount distributed to a beneficiary
15 from principal or income for which the trust receives a deduction in
16 calculating the tax.

17
18 30. a. A fiduciary may make adjustments between principal and
19 income to offset the shifting of economic interests or tax benefits
20 between income beneficiaries and remainder beneficiaries which arise
21 from:

22 (1) elections and decisions, other than those described in subsection
23 b. of this section, that the fiduciary makes from time to time regarding
24 tax matters;

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

28 (3) the ownership by an estate or trust of an interest in an entity
29 whose taxable income, whether or not distributed, is includable in the
30 taxable income of the estate, trust or a beneficiary.

31 b. If the amount of an estate tax marital deduction or charitable
32 contribution deduction is reduced because a fiduciary deducts an
33 amount paid from principal for income tax purposes instead of
34 deducting it for estate tax purposes, and as a result estate taxes paid
35 from principal are increased and income taxes paid by an estate, trust
36 or beneficiary are decreased, each estate, trust or beneficiary that
37 benefits from the decrease in income tax shall reimburse the principal
38 from which the increase in estate tax is paid. The total reimbursement
39 shall equal the increase in the estate tax to the extent that the principal
40 used to pay the increase would have qualified for a marital deduction
41 or charitable contribution deduction but for the payment. The
42 proportionate share of the reimbursement for each estate, trust or
43 beneficiary whose income taxes are reduced shall be the same as its
44 proportionate share of the total decrease in income tax. An estate or
45 trust shall reimburse principal from income.

1 31. In applying and construing this act, consideration shall be given
2 to the fact that this is a uniform act, and there is a need to promote
3 uniformity of the act with respect to its subject matter among states
4 that enact it.

5

6 32. This act applies to every trust or decedent's estate existing on
7 the effective date of this act, except as otherwise expressly provided
8 in the will or terms of the trust or in this act.

9

10 33. N.J.S.3B:19A-1 et seq. is repealed.

11

12 34. This act shall take effect immediately.

13

14

15

STATEMENT

16

17 This bill enacts the Uniform Principal and Income Act as revised in
18 1997 by the National Conference of Commissioners on Uniform State
19 Laws, and replaces the Revised Uniform Principal and Income Act
20 adopted in this State in 1991.

21 Like the prior law, the new Uniform Principal and Income Act
22 provides procedures by which trustees administering an estate are to
23 separate principal from income and ensure that the intention of the
24 trust creator is the guiding principle for management of the estate.
25 The central innovations of the new act, however, are to allow trustees
26 greater discretion in allocating income and expenses between a trust's
27 principal and income and the flexibility to invest assets for a total
28 return, as long as the investments are prudent.

29 In addition, the new act clarifies required allocations of acquired
30 assets and regulates trustees' handling of derivatives, options, deferred
31 payment obligations and synthetic financial assets. The act also
32 addresses disbursements made to comply with environmental laws and
33 imbalances or inequities that may result from tax elections.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 1667

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 8, 2001

The Senate Commerce Committee reports favorably and with committee amendments Senate Bill No. 1667.

This bill, as amended by the committee, enacts the Uniform Principal and Income Act as revised in 1997 by the National Conference of Commissioners on Uniform State Laws (NCCUSL) with certain changes and additions, and replaces the Revised Uniform Principal and Income Act adopted in this State in 1991.

The primary purpose of the bill is to better allow a trustee (or a personal representative of an estate) to satisfy fiduciary duties to the two types of beneficiaries of a trust, whose interests often are in conflict: remainder beneficiaries, who benefit from a trust's principal, and income beneficiaries, who benefit from a trust's income distribution. The bill's most significant change from existing law is that it provides a trustee with the discretion to allocate trust assets either to principal or income, in conformity with rules established by the bill and with the "Prudent Investor Act" (P.L.1997, c.26; C.3B:20-11.1 et seq.). Some other key provisions of the bill are discussed below.

The bill provides new and clarified rules for allocation, including the rule that any money received by a trustee is regarded as income, unless it fits into certain categories. Those categories include:

- (1) Money received as part of liquidation of the trust;
- (2) Money received from an investment company that has labeled the distribution as a capital gain; or
- (3) Property received that is not money, such as a stock distribution.

In addition, receipts from derivatives, with one exception, are considered principal; receipts from asset-backed securities, on the other hand, may be either income or principal, depending on the category into which the payor of the security falls. Where a trust provides a fixed income for the income beneficiary, the bill allows the trustee to adjust principal and income if necessary for compliance with prudent investment standards. Before adjusting principal and income in this way, a trustee is required by the bill to consider a list of factors

including the nature, purpose and expected duration of the trust, as well as the intent of the settlor. In addition, the bill creates a safe harbor for a trustee in this allocation by providing that a decision by a trustee to adjust distributions to an income beneficiary to four percent of the principal of the trust (or to decrease distributions to six percent) will be deemed a fair and reasonable adjustment. The bill forbids a trustee from making adjustments when they would diminish income in a trust that requires full income to be paid annually to a surviving spouse, and in other circumstances.

The bill provides that the payment of administration expenses are to be paid out of principal when an income interest in a trust ends (or when a decedent dies).

During the life of the trust, the bill provides for payment of expenses as follows: ordinary expenses are to be paid out of income; commissions to a trustee on income receipts and principal receipts are to be paid from income and principal, respectively; payments for legal proceedings defending a will or trust or to assure title of any property are to be paid from principal; and expenses that are specific to the remainder are made from principal. Additional rules govern situations such as depreciation or enhancement of assets.

The bill specifies that the only remedy available for an exercise or nonexercise of discretion is an abuse of discretion. A court cannot change a fiduciary's decision to exercise or not to exercise a discretionary power conferred by this bill unless it determines that the decision was an abuse of discretion. A court cannot determine that a fiduciary abused its discretion merely because the court would have exercised the discretion in a different manner or would not have exercised the discretion. The bill limits the remedy for an abuse of discretion to restoring the beneficiaries and the trust to the position they would have occupied if there had not been an abuse. The objective is to accomplish the restoration initially by making adjustments between the beneficiaries and the trust to the extent possible; to the extent that restoration is not possible by such adjustments, a court may order the trustee to pay an amount to one or more beneficiaries, the trust or both. The bill allows a fiduciary to petition a court to determine whether a proposed exercise or nonexercise by the fiduciary of a discretionary power conferred by this bill will result in an abuse of the fiduciary's discretion. If the petition contains the information prescribed in subsection d. of section 31 of this bill, the proposed action or inaction is presumed not to result in an abuse, and a beneficiary who challenges the proposal must establish that it will.

Finally, the bill provides that the express language of a trust instrument, will or other applicable document will govern that trust or estate, and that the bill merely provides the default rule if the governing instrument is silent.

[First Reprint]

SENATE, No. 1667

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED SEPTEMBER 25, 2000

Sponsored by:

Senator JOHN H. ADLER

District 6 (Camden)

Senator GERALD CARDINALE

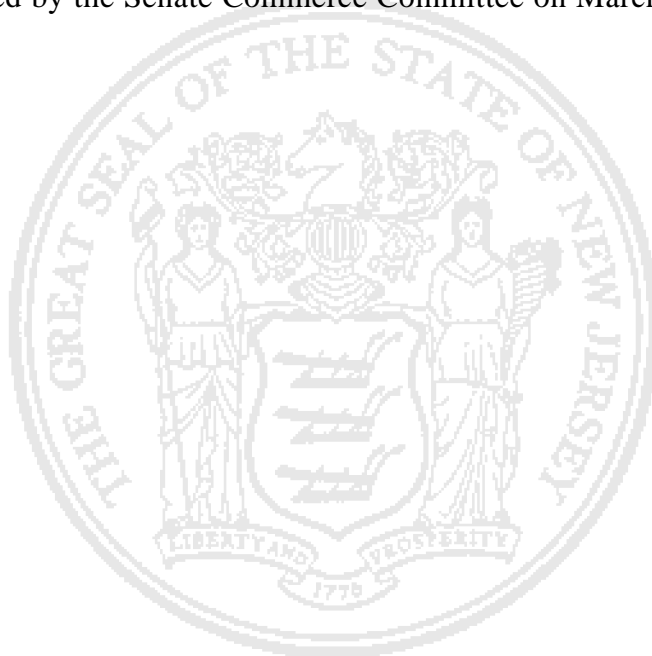
District 39 (Bergen)

SYNOPSIS

Replaces "Revised Uniform Principal and Income Act" with "Uniform Principal and Income Act of 2000."

CURRENT VERSION OF TEXT

As reported by the Senate Commerce Committee on March 8, 2001, with amendments.



1 AN ACT concerning principal and income guidelines for trusts and
2 estates and repealing N.J.S.3B:19A-1 et seq.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. ¹Short Title.¹ This act shall be known and may be cited as the
8 "Uniform Principal and Income Act of ¹[2000] 2001¹."

9
10 2. ¹Definitions.¹ As used in this act:
11 "Accounting period" means a calendar year unless another
12 12-month period is selected by a fiduciary. The term includes a
13 portion of a calendar year or other 12-month period that begins when
14 an income interest begins or ends when an income interest ends.

15 "Beneficiary" includes, in the case of a decedent's estate, an heir,
16 legatee and devisee and, in the case of a trust, an income beneficiary
17 and a remainder beneficiary.

18 "Fiduciary" means a personal representative or a trustee. The term
19 includes an executor, administrator, successor personal representative,
20 special administrator and a person performing substantially the same
21 function.

22 "Income" means money or property that a fiduciary receives as
23 current return from a principal asset. The term includes a portion of
24 receipts from a sale, exchange or liquidation of a principal asset, to the
25 extent provided in sections 10 through ¹[24] 23¹ of this act.

26 "Income beneficiary" means a person to whom net income of a trust
27 is or may be payable.

28 "Income interest" means the right of an income beneficiary to
29 receive all or part of net income, whether the terms of the trust require
30 it to be distributed or authorize it to be distributed in the trustee's
31 discretion.

32 "Mandatory income interest" means the right of an income
33 beneficiary to receive net income that the terms of the trust require the
34 fiduciary to distribute.

35 "Net income" means the total receipts allocated to income during
36 an accounting period minus the disbursements made from income
37 during the period, plus or minus transfers under this act to or from
38 income during the period.

39 "Person" means an individual, corporation, business trust, estate,
40 trust, partnership, limited liability company, association, joint venture,
41 government, governmental subdivision, agency or instrumentality,

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SCM committee amendments adopted March 8, 2001.

1 public corporation or any other legal or commercial entity.

2 “Principal” means property held in trust for distribution to a
3 remainder beneficiary when the trust terminates.

4 “Remainder beneficiary” means a person entitled to receive
5 principal when an income interest ends.

6 “Terms of a trust” means the manifestation of the intent of a settlor
7 or decedent with respect to the trust, expressed in a manner that
8 admits of its proof in a judicial proceeding, whether by written or
9 spoken words or by conduct.

10 “Trustee” includes an original, additional or successor trustee,
11 whether or not appointed or confirmed by a court.

12

13 3. Fiduciary Duties; General Principles.¹ a. In allocating receipts
14 and disbursements to or between principal and income, and with
15 respect to any matter within the scope of sections 5 through 9 of this
16 act, a fiduciary:

17 (1) shall administer a trust or estate in accordance with the terms
18 of the trust or the will, even if there is a different provision in this act;

19 (2) may administer a trust or estate by the exercise of a
20 discretionary power of administration given to the fiduciary by the
21 terms of the trust or the will, even if the exercise of the power
22 produces a result different from a result required or permitted by this
23 act;

24 (3) shall administer a trust or estate in accordance with this act if
25 the terms of the trust or the will do not contain a different provision
26 or do not give the fiduciary a discretionary power of administration;
27 and

28 (4) shall add a receipt or charge a disbursement to principal to the
29 extent that the terms of the trust and this act do not provide a rule for
30 allocating the receipt or disbursement to or between principal and
31 income.

32 b. ¹[In exercising the power to adjust under subsection a. of
33 section 4 of this act or a discretionary power of administration
34 regarding a matter within the scope of this act, whether granted by the
35 terms of a trust, a will or this act, a] A¹ fiduciary shall administer a
36 trust or estate impartially, based on what is fair and reasonable to all
37 of the beneficiaries, except to the extent that the terms of the trust or
38 the will clearly manifest an intention that the fiduciary shall or may
39 favor one or more of the beneficiaries. ¹[A determination in
40 accordance with this act is presumed to be fair and reasonable to all of
41 the beneficiaries.]¹

42

43 4. Trustee's Power to Adjust.¹ a. A trustee may adjust between
44 principal and income ¹[to the extent the trustee considers necessary if
45 the trustee invests and manages trust assets as a prudent investor,] if¹
46 the terms of the trust describe the amount that may or shall be

1 distributed to a beneficiary by referring to the trust's income and the
2 trustee determines, after applying the rules in subsection a. of section
3 3 of this act, that the trustee is unable to comply with subsection b. of
4 section 3 of this act. ¹A decision by a trustee to increase the
5 distribution to the income beneficiary or beneficiaries in any
6 accounting period to an amount not in excess of four percent, or to
7 decrease that period's distributions to not less than six percent, of the
8 net fair market value of the trust assets on the first business day of that
9 accounting period shall be presumed to be fair and reasonable to all of
10 the beneficiaries. Any adjustment by a trustee between income and
11 principal with respect to any accounting period shall be made during
12 that accounting period or within 65 days after the end of that period.¹

13 b. In deciding whether and to what extent to exercise the power
14 conferred by subsection a. of this section, a trustee shall consider all
15 factors relevant to the trust and its beneficiaries, including the
16 following factors to the extent they are relevant:

17 (1) the nature, purpose and expected duration of the trust;

18 (2) the intent of the settlor;

19 (3) the identity and circumstances of the beneficiaries;

20 (4) the needs for liquidity, regularity of income and preservation
21 and appreciation of capital;

22 (5) the assets held in the trust; the extent to which they consist of
23 financial assets, interests in closely held enterprises, tangible and
24 intangible personal property or real property; the extent to which an
25 asset is used by a beneficiary; and whether an asset was purchased by
26 the trustee or received from the settlor;

27 (6) the net amount allocated to income under the other sections of
28 this act and the increase or decrease in the value of the principal
29 assets, which the trustee may estimate as to assets for which market
30 values are not readily available;

31 (7) whether and to what extent the terms of the trust give the
32 trustee the power to invade principal or accumulate income or prohibit
33 the trustee from invading principal or accumulating income, and the
34 extent to which the trustee has exercised a power from time to time to
35 invade principal or accumulate income;

36 (8) the actual and anticipated effect of economic conditions on
37 principal and income and effects of inflation and deflation; ¹[and]¹

38 (9) ¹the shifting of economic interests or tax benefits between
39 income beneficiaries and remainder beneficiaries that arise from
40 elections and decisions regarding tax matters, the imposition of an
41 income or other tax on the fiduciary or a beneficiary as a result of a
42 transaction involving a distribution from the estate or trust, or the
43 ownership of an interest in an entity whose taxable income, whether
44 or not distributed, is includable in the taxable income of the estate,
45 trust or a beneficiary; and

46 (10)¹ the anticipated tax consequences of an adjustment.

1 c. A trustee shall not make an adjustment:

2 (1) that diminishes the income interest in a trust that requires all of
3 the income to be paid at least annually to a spouse and for which an
4 estate tax or gift tax marital deduction would be allowed, in whole or
5 in part, if the trustee did not have the power to make the adjustment;

6 (2) that reduces the actuarial value of the income interest in a trust
7 to which a person transfers property with the intent to qualify for a gift
8 tax exclusion;

9 (3) that changes the amount payable to a beneficiary as a fixed
10 annuity or a fixed fraction of the value of the trust assets;

11 (4) from any amount that is permanently set aside for charitable
12 purposes under a will or the terms of a trust unless both income and
13 principal are so set aside;

14 (5) if possessing or exercising the power to make an adjustment
15 causes an individual to be treated as the owner of all or part of the
16 trust for income tax purposes, and the individual would not be treated
17 as the owner if the trustee did not possess the power to make an
18 adjustment;

19 (6) if possessing or exercising the power to make an adjustment
20 causes all or part of the trust assets to be included for estate tax
21 purposes in the estate of an individual who has the power to remove
22 a trustee or appoint a trustee, or both, and the assets would not be
23 included in the estate of the individual if the trustee did not possess the
24 power to make an adjustment;

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

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

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

33 e. A trustee may release the entire power conferred by subsection
34 a. of this section or may release only the power to adjust from income
35 to principal or the power to adjust from principal to income if the
36 trustee is uncertain about whether possessing or exercising the power
37 will cause a result described in paragraphs (1) through (6) or (8) of
38 subsection c. of this section, or if the trustee determines that
39 possessing or exercising the power will or may deprive the trust of a
40 tax benefit or impose a tax burden not described in subsection c. of
41 this section. The release may be permanent or for a specified period,
42 including a period measured by the life of an individual.

43 f. Terms of a trust that limit the power of a trustee to make an
44 adjustment between principal and income do not affect the application
45 of this section unless it is clear from the terms of the trust that the
46 terms are intended to deny the trustee the power of adjustment
47 conferred by subsection a. of this section.

1 5. ¹Determination and Distribution of Net Income. After a
2 decedent dies, in the case of an estate or after an income interest in a
3 trust ends, the following rules apply:

4 a. A fiduciary of an estate or of a terminating income interest shall
5 determine the amount of net income and net principal receipts received
6 from property specifically ¹[given] devised¹ to a beneficiary under the
7 rules in sections 7 through ¹[30] 28¹ of this act which apply to
8 trustees and the rules in subsection e. of this section. The fiduciary
9 shall distribute the net income and net principal receipts to the
10 beneficiary who is to receive the specific property.

11 b. A fiduciary shall determine the remaining net income of a
12 decedent's estate or a terminating income interest under the rules in
13 sections 7 through ¹[30] 28¹ of this act which apply to trustees and
14 by:

15 (1) including in net income all income from property used to
16 discharge liabilities; ¹and¹

17 (2) ¹[paying from income or principal, in the fiduciary's discretion,
18 fees of attorneys, accountants and fiduciaries, court costs and other
19 expenses of administration and interest on death taxes, but the
20 fiduciary may pay those expenses from income of property passing to
21 a trust for which the fiduciary claims an estate tax marital or charitable
22 deduction only to the extent that the payment of those expenses from
23 income will not cause the reduction or loss of the deduction; and

24 (3)]¹ paying from principal all [other disbursements made or
25 incurred in connection with the settlement of a decedent's estate or the
26 winding up of a terminating income interest, including debts, funeral
27 expenses, disposition of remains, family allowances and death taxes
28 and related penalties that are apportioned to the estate or terminating
29 income interest by the will, the terms of the trust or applicable law]
30 disbursements made or incurred in connection with the settlement of
31 a decedent's estate or the winding up of a terminating income interest,
32 expenses of administration, including fees of attorneys, accountants
33 and fiduciaries, court costs, debts, funeral expenses, disposition of
34 remains, family allowances and death taxes and related penalties that
35 are apportioned to the estate or terminating income interest by the
36 will, the terms of the trust or applicable law¹.

37 c. A fiduciary shall distribute to a beneficiary who receives a
38 pecuniary amount outright the interest or any other amount provided
39 by the will, the terms of the trust or applicable law from net income
40 determined under subsection b. of this section or from principal to the
41 extent that net income is insufficient. If a beneficiary is to receive a
42 pecuniary amount outright from a trust after an income interest ends
43 and no interest or other amount is provided for by the terms of the
44 trust or applicable law, the fiduciary shall distribute the interest or
45 other amount to which the beneficiary would be entitled under
46 applicable law if the pecuniary amount were required to be paid under
47 a will.

1 d. A fiduciary shall distribute the net income remaining after
2 distributions required by subsection c. of this section in the manner
3 described in section 6 of this act to all other beneficiaries, ¹[including
4 a beneficiary who receives a pecuniary amount in trust, even if the
5 beneficiary holds an unqualified power to withdraw assets from the
6 trust or other presently exercisable general power of appointment over
7 the trust] excluding a beneficiary who receives a pecuniary amount
8 outright or in trust¹.

9 e. A fiduciary shall not reduce principal or income receipts from
10 property described in subsection a. of this section because of a
11 payment described in section ¹[25] 24¹ or ¹[26] 25¹ of this act to the
12 extent that the will, the terms of the trust, or applicable law requires
13 the fiduciary to make the payment from assets other than the property
14 or to the extent that the fiduciary recovers or expects to recover the
15 payment from a third party. The net income and principal receipts
16 from the property are determined by including all of the amounts the
17 fiduciary receives or pays with respect to the property, whether those
18 amounts accrued or became due before, on or after the date of a
19 decedent's death or an income interest's terminating event, and by
20 making a reasonable provision for amounts that the fiduciary believes
21 the estate or terminating income interest may become obligated to pay
22 after the property is distributed.

23
24 6. ¹Distribution to Residuary and Remainder Beneficiaries.¹ a.
25 Each beneficiary described in subsection d. of section 5 of this act is
26 entitled to receive a portion of the net income equal to the
27 beneficiary's fractional interest in undistributed principal assets, using
28 values as of the distribution date. If a fiduciary makes more than one
29 distribution of assets to beneficiaries to whom this section applies,
30 each beneficiary, including one who does not receive part of the
31 distribution, is entitled, as of each distribution date, to the net income
32 the fiduciary has received after the date of death or terminating event
33 or earlier distribution date but has not distributed as of the current
34 distribution date.

35 b. In determining a beneficiary's share of net income, the following
36 rules apply:

37 (1) The beneficiary is entitled to receive a portion of the net
38 income equal to the beneficiary's fractional interest in the
39 undistributed principal assets immediately before the distribution date,
40 including assets that later may be sold to meet principal obligations.

41 (2) The beneficiary's fractional interest in the undistributed
42 principal assets shall be calculated without regard to property
43 specifically given to a beneficiary and property required to pay
44 pecuniary amounts not in trust.

45 (3) The beneficiary's fractional interest in the undistributed
46 principal assets shall be calculated on the basis of the aggregate value
47 of those assets as of the distribution date without reducing the value

1 by any unpaid principal obligation.

2 (4) The distribution date for purposes of this section may be the
3 date as of which the fiduciary calculates the value of the assets if that
4 date is reasonably near the date on which assets are actually
5 distributed.

6 c. If a fiduciary does not distribute all of the collected but
7 undistributed net income to each person as of a distribution date, the
8 fiduciary shall maintain appropriate records showing the interest of
9 each beneficiary in that net income.

10 d. A fiduciary may apply the rules in this section, to the extent that
11 the fiduciary considers it appropriate, to net gain or loss realized after
12 the date of death or terminating event or earlier distribution date from
13 the disposition of a principal asset if this section applies to the income
14 from the asset.

15

16 7. 1When Right to Income Begins and Ends. ¹ a. An income
17 beneficiary is entitled to net income from the date on which the income
18 interest begins. An income interest begins on the date specified in the
19 terms of the trust or, if no date is specified, on the date an asset
20 becomes subject to a trust or successive income interest.

21 b. An asset becomes subject to a trust:

22 (1) on the date it is transferred to the trust in the case of an asset
23 that is transferred to a trust during the transferor's life;

24 (2) on the date of a testator's death in the case of an asset that
25 becomes subject to a trust by reason of a will, even if there is an
26 intervening period of administration of the testator's estate; or

27 (3) on the date of an individual's death in the case of an asset that
28 is transferred to a fiduciary by a third party because of the individual's
29 death.

30 c. An asset becomes subject to a successive income interest on the
31 day after the preceding income interest ends, as determined under
32 subsection d. of this section, even if there is an intervening period of
33 administration to wind up the preceding income interest.

34 d. An income interest ends on the day before an income beneficiary
35 dies or another terminating event occurs, or on the last day of a period
36 during which there is no beneficiary to whom a trustee may distribute
37 income.

38

39 8. 1Apportionment of Receipts and Disbursements When Decedent
40 Dies or Income Interest Begins. ¹ a. A trustee shall allocate an income
41 receipt or disbursement ¹, ¹ other than one to which ¹[paragraph (1)
42 of] ¹ subsection ¹[b.] ¹a. ¹ of section 5 of this act applies ¹, ¹ to principal
43 if its due date occurs before a decedent dies in the case of an estate or
44 before an income interest begins in the case of a trust or successive
45 income interest.

46 b. A trustee shall allocate an income receipt or disbursement to
47 income if its due date occurs on or after the date on which a decedent

1 dies or an income interest begins and it is a periodic due date. An
2 income receipt or disbursement shall be treated as accruing from day
3 to day if its due date is not periodic or it has no due date. The portion
4 of the receipt or disbursement accruing before the date on which a
5 decedent dies or an income interest begins shall be allocated to
6 principal and the balance shall be allocated to income.

7 c. An item of income or an obligation is due on the date the payer
8 is required to make a payment. If a payment date is not stated, there
9 is no due date for the purposes of this act. Distributions to
10 shareholders or other owners from an entity to which section 10 of this
11 act applies are deemed to be due on the date fixed by the entity for
12 determining who is entitled to receive the distribution or, if no date is
13 fixed, on the declaration date for the distribution. A due date is
14 periodic for receipts or disbursements that are to be paid at regular
15 intervals under a lease or an obligation to pay interest or if an entity
16 customarily makes distributions at regular intervals.

17

18 9. ¹Apportionment When Income Interest Ends. ¹ a. As used in
19 this section, “undistributed income” means net income received before
20 the date on which an income interest ends. The term does not include
21 an item of income or expense that is due or accrued or net income that
22 has been added or is required to be added to principal under the terms
23 of the trust.

24 b. When a mandatory income interest ends, the trustee shall pay to
25 a mandatory income beneficiary who survives that date, or the estate
26 of a deceased mandatory income beneficiary whose death causes the
27 interest to end, the beneficiary’s share of the undistributed income that
28 is not disposed of under the terms of the trust, unless the beneficiary
29 has an unqualified power to revoke more than five percent of the trust
30 immediately before the income interest ends. In the latter case, the
31 undistributed income from the portion of the trust that may be revoked
32 shall be added to principal.

33 c. When a trustee’s obligation to pay a fixed annuity or a fixed
34 fraction of the value of the trust’s assets ends, the trustee shall prorate
35 the final payment if and to the extent required by applicable law to
36 accomplish a purpose of the trust or its settlor relating to income, gift,
37 estate or other tax requirements.

38

39 10. ¹Character of Receipts. ¹ a. As used in this section, “entity”
40 means a corporation, partnership, limited liability company, regulated
41 investment company, real estate investment trust, common trust fund
42 or any other organization in which a trustee has an interest other than
43 a trust or estate to which section 11 of this act applies, a business or
44 activity to which section 12 of this act applies or an asset-backed
45 security to which section ¹[24] 23¹ of this act applies.

46 b. Except as otherwise provided in this section, a trustee shall
47 allocate to income money received from an entity.

- 1 c. A trustee shall allocate the following receipts from an entity to
2 principal:
- 3 (1) property other than money;
- 4 (2) money received in one distribution or a series of related
5 distributions in exchange for part or all of a trust's interest in the
6 entity;
- 7 (3) money received in total or partial liquidation of the entity; and
8 (4) money received from an entity that is a regulated investment
9 company or a real estate investment trust if the money distributed is a
10 capital gain dividend for federal income tax purposes.
- 11 d. Money is received in partial liquidation:
- 12 (1) to the extent that the entity, at or near the time of a distribution,
13 indicates that it is a distribution in partial liquidation; or
14 (2) if the total amount of money and property received in a
15 distribution or series of related distributions is greater than 20 percent
16 of the entity's gross assets, as shown by the entity's year-end financial
17 statements immediately preceding the initial receipt.
- 18 e. Money is not received in partial liquidation, nor may it be taken
19 into account under paragraph (2) of subsection d. of this section, to
20 the extent that it does not exceed the amount of income tax that a
21 trustee or beneficiary must pay on taxable income of the entity that
22 distributes the money.
- 23 f. A trustee may rely upon a statement made by an entity about the
24 source or character of a distribution if the statement is made at or near
25 the time of distribution by the entity's board of directors or other
26 person or group of persons authorized to exercise powers to pay
27 money or transfer property comparable to those of a corporation's
28 board of directors.
- 29
- 30 11. ¹Distribution from Trust or Estate.¹ A trustee shall allocate to
31 income an amount received as a distribution of income from a trust or
32 an estate in which the trust has an interest other than a purchased
33 interest, and shall allocate to principal an amount received as a
34 distribution of principal from such a trust or estate. If a trustee
35 purchases an interest in a trust that is an investment entity, or a
36 decedent or donor transfers an interest in such a trust to a trustee,
37 section 10 or ¹[24] 23¹ of this act applies to a receipt from the trust.
38
- 39 12. ¹Business and Other Activities Conducted by Trustee.¹ a. If
40 a trustee who conducts a business or other activity determines that it
41 is in the best interest of all the beneficiaries to account separately for
42 the business or activity instead of accounting for it as part of the
43 trust's general accounting records, the trustee may maintain separate
44 accounting records for its transactions, whether or not its assets are
45 segregated from other trust assets.
- 46 b. A trustee who accounts separately for a business or other
47 activity may determine the extent to which its net cash receipts are to

1 be retained for working capital, the acquisition or replacement of fixed
2 assets and other reasonably foreseeable needs of the business or
3 activity, and the extent to which the remaining net cash receipts are
4 accounted for as principal or income in the trust's general accounting
5 records. If a trustee sells assets of the business or other activity, other
6 than in the ordinary course of the business or activity, the trustee shall
7 account for the net amount received as principal in the trust's general
8 accounting records to the extent the trustee determines that the
9 amount received is no longer required in the conduct of the business.

10 c. Activities for which a trustee may maintain separate accounting
11 records include:

12 (1) retail, manufacturing, service and other traditional business
13 activities;

14 (2) farming;

15 (3) raising and selling livestock and other animals;

16 (4) management of rental properties;

17 (5) extraction of minerals and other natural resources;

18 (6) timber operations; and

19 (7) activities to which section ¹[23] 22¹ of this act applies.

20

21 13. ¹Principal Receipts.¹ A trustee shall allocate to principal:

22 a. To the extent not allocated to income under this act, assets
23 received from a transferor during the transferor's lifetime, a decedent's
24 estate, a trust with a terminating income interest or a payer under a
25 contract naming the trust or its trustee as beneficiary;

26 b. Money or other property received from the sale, exchange,
27 liquidation or change in form of a principal asset, including realized
28 profit, subject to sections 10 through ¹[24] 23¹ of this act;

29 c. Amounts recovered from third parties to reimburse the trust
30 because of disbursements described in paragraph ¹[(7)] (9)¹ of
31 subsection a. of section ¹[26] 25¹ of this act or for other reasons to
32 the extent not based on the loss of income;

33 d. Proceeds of property taken by eminent domain, but a separate
34 award made for the loss of income with respect to an accounting
35 period during which a current income beneficiary had a mandatory
36 income interest is income;

37 e. Net income received in an accounting period during which there
38 is no beneficiary to whom a trustee may or shall distribute income; and

39 f. Other receipts as provided in sections 17 through ¹[24] 23¹ of
40 this act.

41

42 14. ¹Rental Property.¹ To the extent that a trustee accounts for
43 receipts from rental property pursuant to this section, the trustee shall
44 allocate to income an amount received as rent of real or personal
45 property, including an amount received for cancellation or renewal of
46 a lease. An amount received as a refundable deposit, including a
47 security deposit or a deposit that is to be applied as rent for future

1 periods, shall be added to principal and held subject to the terms of the
2 lease and is not available for distribution to a beneficiary until the
3 trustee's contractual obligations have been satisfied with respect to
4 that amount.

5
6 15. ¹Obligation to Pay Money.¹ a. An amount received as
7 interest, whether determined at a fixed, variable or floating rate, on an
8 obligation to pay money to the trustee, including an amount received
9 as consideration for prepaying principal, shall be allocated to income
10 without any provision for amortization of premium.

11 b. A trustee shall allocate to principal an amount received from the
12 sale, redemption or other disposition of an obligation to pay money to
13 the trustee more than one year after it is purchased or acquired by the
14 trustee, including an obligation whose purchase price or value when
15 it is acquired is less than its value at maturity. If the obligation
16 matures within one year after it is purchased or acquired by the
17 trustee, an amount received in excess of its purchase price or its value
18 when acquired by the trust shall be allocated to income.

19 c. This section does not apply to an obligation to which section
20 ¹17.¹ 18, 19, 20, ¹[21,] 22 or¹ 23 ¹[or 24]¹ of this act applies.

21
22 16. ¹Insurance Policies and Similar Contracts.¹ a. Except as
23 otherwise provided in subsection b. of this section, a trustee shall
24 allocate to principal the proceeds of a life insurance policy or other
25 contract in which the trust or its trustee is named as beneficiary,
26 including a contract that insures the trust or its trustee against loss for
27 damage to, destruction of or loss of title to a trust asset. The trustee
28 shall allocate dividends on an insurance policy to income if the
29 premiums on the policy are paid from income, and to principal if the
30 premiums are paid from principal.

31 b. A trustee shall allocate to income proceeds of a contract that
32 insures the trustee against loss of occupancy or other use by an income
33 beneficiary, loss of income or, subject to section 12 of this act, loss of
34 profits from a business.

35 c. This section does not apply to a contract to which section ¹[18]
36 17¹ of this act applies.

37
38 ¹[17. If a trustee determines that an allocation between principal
39 and income required by section 18, 19, 20, 21 or 24 of this act is
40 insubstantial, the trustee may allocate the entire amount to principal
41 unless one of the circumstances described in subsection c. of section
42 4 of this act applies to the allocation. This power may be exercised by
43 a cotrustee in the circumstances described in subsection d. of section
44 4 of this act and may be released for the reasons and in the manner
45 described in subsection e. of section 4 of this act. An allocation is
46 presumed to be insubstantial if:

47 (1) the amount of the allocation would increase or decrease net

1 income in an accounting period, as determined before the allocation,
2 by less than 10 percent; or

3 (2) the value of the asset producing the receipt for which the
4 allocation would be made is less than 10 percent of the total value of
5 the trust's assets at the beginning of the accounting period.]¹

6

7 ¹[18.] 17. Deferred Compensation, Retirement Benefits,
8 Annuities, and Similar Payments.¹ a. As used in this section,

9 "payment" means a payment that a trustee may receive over a fixed
10 ¹[number] period¹ of ¹[years] time¹ or during the life of one or more
11 individuals because of services rendered or property transferred to the
12 payer in exchange for future payments. The term includes a payment
13 made in money or property from the payer's general assets or from a
14 separate fund created by the payer ¹or by another¹, including a private
15 or commercial annuity, an individual retirement account and a pension,
16 profit-sharing, stock-bonus, or stock-ownership plan.

17 b. To the extent that a ¹[payment is characterized as interest or a
18 dividend or a payment made in lieu of interest or a dividend, a trustee
19 shall allocate it to income. The trustee shall allocate to principal the
20 balance of the payment and any other payment received in the same
21 accounting period that is not characterized as interest, a dividend or
22 an equivalent payment] trustee can readily ascertain the part of a
23 payment from a separate fund held for the benefit of the trust that
24 represents the then undistributed net income of the fund realized since
25 the trust acquired its interest in the fund, a trustee shall allocate that
26 part to income. The trustee shall allocate to principal the balance of
27 the payment¹.

28 c. If no part of a payment is ¹[characterized as interest, a dividend
29 or an equivalent payment] allocated to income under subsection b. of
30 this section¹, and all or part of the payment is required to be made, a
31 trustee shall allocate to income 10 percent of the part that is required
32 to be made during the accounting period and the balance to principal.
33 If no part of a payment is required to be made or the payment received
34 is the entire amount to which the trustee is entitled, the trustee shall
35 allocate the entire payment to principal. For purposes of this
36 subsection, a payment is not "required to be made" to the extent that
37 it is made because the trustee exercises a right of withdrawal.

38 d. If, to obtain an estate tax ¹or gift tax¹ marital deduction for a
39 trust, ¹[a] the¹ trustee must allocate more of a payment to income
40 than provided for by this section, the trustee shall allocate to income
41 the additional amount necessary to obtain the marital deduction.

42 e. This section does not apply to payments to which section ¹[19]
43 18¹ of this act applies.

44

45 ¹[19.] 18. Liquidating Asset.¹ a. As used in this section,
46 "liquidating asset" means an asset whose value will diminish or

1 terminate because the asset is expected to produce receipts for a
2 period of limited duration. The term includes a leasehold, patent,
3 copyright, royalty right and right to receive payments during a period
4 of more than one year under an arrangement that does not provide for
5 the payment of interest on the unpaid balance. The term does not
6 include a payment subject to section ¹[18] 17¹ of this act, resources
7 subject to section ¹[20] 19¹ of this act, timber subject to section
8 ¹[21] 20¹ of this act, an activity subject to section ¹[23] 22¹ of this
9 act, an asset subject to section ¹[24] 23¹ of this act, or any asset for
10 which the trustee establishes a reserve for depreciation under section
11 ¹[27] 26¹ of this act.

12 b. A trustee shall allocate to income 10 percent of the receipts from
13 a liquidating asset and the balance to principal.
14

15 ¹[20.] 19. Minerals, Water and Other Natural Resources.¹ a. To
16 the extent that a trustee accounts for receipts from an interest in
17 minerals or other natural resources pursuant to this section, the trustee
18 shall allocate them as follows:

19 (1) if received as nominal delay rental or nominal annual rent on a
20 lease, a receipt shall be allocated to income;

21 (2) if received from a production payment, a receipt shall be
22 allocated to income if and to the extent that the agreement creating the
23 production payment provides a factor for interest or its equivalent.
24 The balance shall be allocated to principal;

25 (3) if an amount received as a royalty, shut-in-well payment, take-
26 or-pay payment, bonus or delay rental is more than nominal, 90
27 percent shall be allocated to principal and the balance to income;

28 (4) if an amount is received from a working interest or any other
29 interest not provided for in paragraph (1), (2) or (3) of this subsection
30 a., 90 percent of the net amount received shall be allocated to principal
31 and the balance to income.

32 b. An amount received on account of an interest in water that is
33 renewable shall be allocated to income. If the water is not renewable,
34 90 percent of the amount shall be allocated to principal and the
35 balance to income.

36 c. This act applies whether or not a decedent or donor was
37 extracting minerals, water or other natural resources before the
38 interest became subject to the trust.

39 d. If a trust owns an interest in minerals, water, or other natural
40 resources on the effective date of this act, the trustee may allocate
41 receipts from the interest as provided in this act or in the manner used
42 by the trustee before the effective date of this act. If the trust acquires
43 an interest in minerals, water or other natural resources after the
44 effective date of this act, the trustee shall allocate receipts from the
45 interest as provided in this act.
46

1 ¹[21.] 20. Timber.¹ a. To the extent that a trustee accounts for
2 receipts from the sale of timber and related products pursuant to this
3 section, the trustee shall allocate the net receipts:

4 (1) to income to the extent that the amount of timber removed from
5 the land does not exceed the rate of growth of the timber during the
6 accounting periods in which a beneficiary has a mandatory income
7 interest;

8 (2) to principal to the extent that the amount of timber removed
9 from the land exceeds the rate of growth of the timber or the net
10 receipts are from the sale of standing timber;

11 (3) to or between income and principal if the net receipts are from
12 the lease of timberland or from a contract to cut timber from land
13 owned by a trust, by determining the amount of timber removed from
14 the land under the lease or contract and applying the rules in
15 paragraphs (1) and (2) of this subsection a.; or

16 (4) to principal to the extent that advance payments, bonuses and
17 other payments are not allocated pursuant to paragraph (1), (2) or (3)
18 of this subsection a.

19 b. In determining net receipts to be allocated pursuant to
20 subsection a. of this section, a trustee shall deduct and transfer to
21 principal a reasonable amount for depletion.

22 c. This section applies whether or not a decedent or transferor was
23 harvesting timber from the property before it became subject to the
24 trust.

25 d. If a trust owns an interest in timberland on the effective date of
26 this act, the trustee may allocate net receipts from the sale of timber
27 and related products as provided in this act or in the manner used by
28 the trustee before the effective date of this act. If the trust acquires an
29 interest in timberland after the effective date of this act, the trustee
30 shall allocate net receipts from the sale of timber and related products
31 as provided in this act.

32

33 ¹[22.] 21. Property Not Productive of Income.¹ a. If a marital
34 deduction is allowed for all or part of a trust whose assets consist
35 substantially of property that does not provide the spouse with
36 sufficient income from or use of the trust assets, and if the amounts
37 that the trustee transfers from principal to income under section 4 of
38 this act and distributes to the spouse from principal pursuant to the
39 terms of the trust are insufficient to provide the spouse with the
40 beneficial enjoyment required to obtain the marital deduction, the
41 spouse may require the trustee to make property productive of income,
42 convert property within a reasonable time or exercise the power
43 conferred by subsection a. of section 4 of this act. The trustee may
44 decide which action or combination of actions to take.

45 b. In cases not governed by subsection a. of this section, proceeds
46 from the sale or other disposition of an asset are principal without
47 regard to the amount of income the asset produces during any

1 accounting period.

2

3 ¹[23.] 22. Derivatives and Options.¹ a. As used in this section,
4 “derivative” means a contract or financial instrument or a combination
5 of contracts and financial instruments which gives a trust the right or
6 obligation to participate in some or all changes in the price of a
7 tangible or intangible asset or group of assets, or changes in a rate, an
8 index of prices or rates or other market indicator for an asset or a
9 group of assets.

10 b. To the extent that a trustee does not account under section 12
11 of this act for transactions in derivatives, the trustee shall allocate to
12 principal receipts from and disbursements made in connection with
13 those transactions.

14 c. If a trustee grants an option to buy property from the trust,
15 whether or not the trust owns the property when the option is granted,
16 grants an option that permits another person to sell property to the
17 trust or acquires an option to buy property for the trust or an option
18 to sell an asset owned by the trust, and the trustee or other owner of
19 the asset is required to deliver the asset if the option is exercised, an
20 amount received for granting the option shall be allocated to principal.
21 An amount paid to acquire the option shall be paid from principal. A
22 gain or loss realized upon the exercise of an option, including an
23 option granted to a settlor of the trust for services rendered, shall be
24 allocated to principal.

25

26 ¹[24.] 23. Asset-backed Securities.¹ a. As used in this section,
27 “asset-backed security” means an asset whose value is based upon the
28 right it gives the owner to receive distributions from the proceeds of
29 financial assets that provide collateral for the security. The term
30 includes an asset that gives the owner the right to receive from the
31 collateral financial assets only the interest or other current return or
32 only the proceeds other than interest or current return. The term does
33 not include an asset to which section 10 or ¹[18] 17¹ of this act
34 applies.

35 b. If a trust receives a payment from interest or other current
36 return and from other proceeds of the collateral financial assets, the
37 trustee shall allocate to income the portion of the payment which the
38 payer identifies as being from interest or other current return and shall
39 allocate the balance of the payment to principal.

40 c. If a trust receives one or more payments in exchange for the
41 trust’s entire interest in an asset-backed security in one accounting
42 period, the trustee shall allocate the payments to principal. If a
43 payment is one of a series of payments that will result in the
44 liquidation of the trust’s interest in the security over more than one
45 accounting period, the trustee shall allocate 10 percent of the payment
46 to income and the balance to principal.

47

1 ¹[25.] 24. Disbursements from Income.¹ A trustee shall make the
2 following disbursements from income to the extent that they are not
3 disbursements to which paragraph (1) or (2) of subsection b. of section
4 5 of this act applies:

5 a. ¹[one-half of the regular compensation of the trustee and of any
6 person providing investment advisory or custodial services to the
7 trustee] commissions allowed by law to a trustee on income receipts,
8 if properly chargeable to the trust¹;

9 b. one-half of ¹[all expenses for accountings, judicial proceedings,
10 or other matters that involve both the income and remainder interests]
11 the fees paid to banks and other financial institutions for custodial
12 services to the fiduciary if properly chargeable to the trust¹;

13 c. all of the other ordinary expenses incurred in connection with the
14 administration, management, or preservation of trust property and the
15 distribution of income, including interest ¹[, ordinary repairs, regularly
16 recurring taxes assessed against principal and expenses of a proceeding
17 or other matter that concerns primarily the income interest] paid by
18 the trustee, including interest on death taxes, regularly recurring taxes
19 assessed against any portion of the principal, water rates, bond
20 premiums, and the expenses, including court costs, attorneys' fees, and
21 accountants' fees, of an accounting, judicial proceeding or other matter
22 that concerns primarily the income interest, unless the court directs
23 otherwise¹; and

24 d. recurring premiums on insurance covering the loss of a principal
25 asset or the loss of income from or use of the asset.

26

27 ¹[26.] 25. Disbursements from Principal.¹ a. A trustee shall make
28 the following disbursements from principal:

29 (1) ¹[the remaining one-half of the disbursements described in
30 subsections a. and b. of section 25 of this act] commissions allowed
31 by law to a trustee on principal receipts or distributions or on
32 termination of the trust estate¹;

33 (2) ¹[all of the trustee's compensation calculated on principal as a
34 fee for acceptance, distribution, or termination, and disbursements
35 made to prepare property for sale] the remaining one-half of the fees
36 paid to banks and other financial institutions for custodial services, if
37 properly chargeable to the trust¹;

38 (3) ¹[payments on the principal of a trust debt] fees paid to banks
39 and other financial institutions and registered investment advisors for
40 investment advisory or investment management services, if properly
41 chargeable to the trust¹;

42 (4) ¹[expenses of a proceeding that concerns primarily principal,
43 including a proceeding to construe the trust or to protect the trust or
44 its property] costs of investing and reinvesting principal and payments
45 on the principal of an indebtedness, including a mortgage or security
46 interest amortized by periodic payments of principal¹;

1 (5) ¹[premiums paid on a policy of insurance not described in
2 subsection d. of section 25 of this act of which the trust is the owner
3 and beneficiary] extraordinary repairs or expenses incurred in making
4 a capital improvement, including special assessments, and
5 disbursements made to prepare property for sale¹;

6 (6) ¹[estate, inheritance and other transfer taxes, including
7 penalties, apportioned to the trust] court costs, attorneys' fees,
8 accountants' fees and other fees, incurred on an accounting or judicial
9 proceeding or in maintaining or defending any action to construe a will
10 or a trust, protect it or the trust estate, or assure the title of any
11 property, unless properly chargeable to income under subsection c. of
12 section 24 of this act or the court otherwise directs¹; ¹[and]¹

13 (7) ¹[disbursements related to environmental matters, including
14 reclamation, assessing environmental conditions, remedying and
15 removing environmental contamination, monitoring remedial activities
16 and the release of substances, preventing future releases of substances,
17 collecting amounts from persons liable or potentially liable for the
18 costs of those activities, penalties imposed under environmental laws
19 or regulations and other payments made to comply with those laws or
20 regulations, statutory or common law claims by third parties and
21 defending claims based on environmental matters] premiums paid on
22 an insurance policy not described in subsection d. of section 24 of this
23 act of which the trust is the owner and beneficiary;

24 (8) estate, inheritance and other transfer taxes, including penalties
25 apportioned to the trust;

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

35 (10) if an estate or inheritance tax is levied in respect of a trust in
36 which both an income beneficiary and remainderman have an interest,
37 any amount apportioned to the trust, including penalties, even though
38 the income beneficiary also has rights in the principal¹.

39 b. If a principal asset is encumbered with an obligation that
40 requires income from that asset to be paid directly to the creditor, the
41 trustee shall transfer from principal to income an amount equal to the
42 income paid to the creditor in reduction of the principal balance of the
43 obligation.

44

45 ¹[27.] 26. Transfers from Income to Principal for Depreciation.¹

46 a. As used in this section, “depreciation” means a reduction in value

1 due to wear, tear, decay, corrosion or gradual obsolescence of a fixed
2 asset having a useful life of more than one year.

3 b. A trustee may transfer to principal a reasonable amount of the
4 net cash receipts from a principal asset that is subject to depreciation,
5 but may not transfer any amount for depreciation:

6 (1) of that portion of real property used or available for use by a
7 beneficiary as a residence or of tangible personal property held or
8 made available for the personal use or enjoyment of a beneficiary;

9 (2) during the administration of a decedent's estate; or

10 (3) under this section if the trustee is accounting under section 12
11 of this act for the business or activity in which the asset is used.

12 c. An amount transferred to principal need not be held as a
13 separate fund.

14

15 ¹[28.] 27. Transfer from Income to Reimburse Principal.¹ a. If
16 a trustee makes or expects to make a principal disbursement described
17 in this section, the trustee may transfer an appropriate amount from
18 income to principal in one or more accounting periods to reimburse
19 principal or to provide a reserve for future principal disbursements.

20 b. Principal disbursements to which subsection a. of this section
21 applies include the following, but only to the extent that the trustee
22 has not been and does not expect to be reimbursed by a third party:

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

25 (2) ¹[a capital improvement to a principal asset, whether in the
26 form of changes to an existing asset or the construction of a new asset,
27 including special assessments;

28 (3)]¹ disbursements made to prepare property for rental, including
29 tenant allowances, leasehold improvements and broker's commissions;

30 ¹and¹

31 ¹[(4)] (3)¹ periodic payments on an obligation secured by a
32 principal asset to the extent that the amount transferred from income
33 to principal for depreciation is less than the periodic payments ¹['; and

34 (5) disbursements described in paragraph (7) of subsection a. of
35 section 26 of this act]¹.

36 c. If the asset whose ownership gives rise to the disbursements
37 becomes subject to a successive income interest after an income
38 interest ends, a trustee may continue to transfer amounts from income
39 to principal as provided in subsection a. of this section.

40

41 ¹[29.] 28. Income Taxes.¹ a. A tax required to be paid by a
42 trustee based on receipts allocated to income shall be paid from
43 income.

44 b. A tax required to be paid by a trustee based on receipts allocated
45 to principal shall be paid from principal, even if the tax is called an
46 income tax by the taxing authority.

1 c. A tax required to be paid by a trustee on the trust's share of an
2 entity's taxable income shall be paid proportionately:

3 (1) from income to the extent that receipts from the entity are
4 allocated to income; and

5 (2) from principal to the extent that:

6 (a) receipts from the entity are allocated to principal; and

7 (b) the trust's share of the entity's taxable income exceeds the total
8 receipts described in paragraph (1) and subparagraph (a) of this
9 paragraph (2).

10 d. For purposes of this section, receipts allocated to principal or
11 income shall be reduced by the amount distributed to a beneficiary
12 from principal or income for which the trust receives a deduction in
13 calculating the tax.

14
15 ¹[30. a. A fiduciary may make adjustments between principal and
16 income to offset the shifting of economic interests or tax benefits
17 between income beneficiaries and remainder beneficiaries which arise
18 from:

19 (1) elections and decisions, other than those described in subsection
20 b. of this section, that the fiduciary makes from time to time regarding
21 tax matters;

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

25 (3) the ownership by an estate or trust of an interest in an entity
26 whose taxable income, whether or not distributed, is includable in the
27 taxable income of the estate, trust or a beneficiary.

28 b. If the amount of an estate tax marital deduction or charitable
29 contribution deduction is reduced because a fiduciary deducts an
30 amount paid from principal for income tax purposes instead of
31 deducting it for estate tax purposes, and as a result estate taxes paid
32 from principal are increased and income taxes paid by an estate, trust
33 or beneficiary are decreased, each estate, trust or beneficiary that
34 benefits from the decrease in income tax shall reimburse the principal
35 from which the increase in estate tax is paid. The total reimbursement
36 shall equal the increase in the estate tax to the extent that the principal
37 used to pay the increase would have qualified for a marital deduction
38 or charitable contribution deduction but for the payment. The
39 proportionate share of the reimbursement for each estate, trust or
40 beneficiary whose income taxes are reduced shall be the same as its
41 proportionate share of the total decrease in income tax. An estate or
42 trust shall reimburse principal from income.]¹

43
44 ¹[31.] 29. Uniformity of Application and Construction.¹ In
45 applying and construing this act, consideration shall be given to the
46 fact that this is a uniform act, and there is a need to promote
47 uniformity of the act with respect to its subject matter among states

1 that enact it.

2

3 ¹[32.] 30. Application of Act to Existing and Future Trusts and
4 Estates. ¹ This act applies to every trust or decedent's estate existing
5 on ¹or ¹after ¹the effective date of this act, except as otherwise
6 expressly provided in the will or terms of the trust or in this act.

7

8 ¹31. Judicial Control of Discretionary Powers. a. A court shall
9 not change a fiduciary's decision to exercise or not to exercise a
10 discretionary power conferred by this act unless it determines that the
11 decision was an abuse of discretion. A court shall not determine that
12 a fiduciary abused its discretion merely because the court would have
13 exercised the discretion in a different manner or would not have
14 exercised the discretion.

15 b. The decisions to which subsection a. of this section applies
16 include:

17 (1) A determination under subsection a. of section 4 of this act of
18 whether and to what extent an amount should be transferred from
19 principal to income or from income to principal.

20 (2) A determination of the factors that are relevant to the trust and
21 its beneficiaries, the extent to which they are relevant, and the weight,
22 if any, to be given to the relevant factors in deciding whether and to
23 what extent to exercise the powers conferred by subsection a. of
24 section 4 of this act.

25 c. If a court determines that a fiduciary has abused its discretion,
26 the remedy is to restore the income and remainder beneficiaries to the
27 position they would have occupied if the fiduciary had not abused its
28 discretion, according to the following rules:

29 (1) To the extent that the abuse of discretion has resulted in no
30 distribution to a beneficiary or a distribution that is too small, the
31 court shall require the fiduciary to distribute from the trust to the
32 beneficiary an amount that the court determines will restore the
33 beneficiary, in whole or in part, to his appropriate position.

34 (2) To the extent that an abuse of discretion has resulted in a
35 distribution to a beneficiary that is too large, the court shall restore the
36 beneficiaries, the trust, or both, in whole or in part, to their
37 appropriate position by requiring the fiduciary to withhold an amount
38 from one or more of future distributions to the beneficiary who
39 received the distribution that was too large or requiring that
40 beneficiary to return some or all of the distribution to the trust.

41 (3) To the extent that the court is unable, after applying paragraphs
42 (1) and (2) of this subsection to restore the beneficiaries, the trust, or
43 both, to the position they would have occupied if the fiduciary had not
44 abused its discretion, the court may require the fiduciary to pay an
45 appropriate amount from its own funds to one or more of the
46 beneficiaries or the trust or both.

47 d. Upon a petition by the fiduciary, the court having jurisdiction

1 over the trust or estate shall determine whether a proposed exercise or
2 nonexercise by the fiduciary of a discretionary power conferred by this
3 act will result in an abuse of the fiduciary's discretion. If the petition
4 describes the proposed exercise or nonexercise of the power and
5 contains sufficient information to inform the beneficiaries of the
6 reasons for the proposal, the facts upon which the fiduciary relies, and
7 an explanation of how the income and remainder beneficiaries will be
8 affected by the proposed exercise or nonexercise of the power, a
9 beneficiary who challenges the proposed exercise or nonexercise has
10 the burden of establishing that it will result in an abuse of discretion.¹

11

12 ¹[33.] 32. Repealer.¹ N.J.S.3B:19A-1 et seq. is repealed.

13

14 ¹[34.] 33. Effective Date.¹ This act shall take effect
15 ¹[immediately] on January 1 of the year following enactment¹.

§§1-31 -
C.3B:19B-1 to 3B:19B-31
Chapter 19B (New) of Title
3B
Principal and Income
§32 - Repealer
§33 - Note to
§§1-32

P.L. 2001, CHAPTER 212, *approved August 15, 2001*
Assembly No. 3261 (*First Reprint*)

1 AN ACT concerning principal and income guidelines for trusts and
2 estates and repealing N.J.S.3B:19A-1 et seq.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. ¹Short Title.¹ This act shall be known and may be cited as the
8 "Uniform Principal and Income Act of ¹[2000] 2001¹."

9

10 2. ¹Definitions.¹ As used in this act:

11 "Accounting period" means a calendar year unless another
12 12-month period is selected by a fiduciary. The term includes a
13 portion of a calendar year or other 12-month period that begins when
14 an income interest begins or ends when an income interest ends.

15 "Beneficiary" includes, in the case of a decedent's estate, an heir,
16 legatee and devisee and, in the case of a trust, an income beneficiary
17 and a remainder beneficiary.

18 "Fiduciary" means a personal representative or a trustee. The term
19 includes an executor, administrator, successor personal representative,
20 special administrator and a person performing substantially the same
21 function.

22 "Income" means money or property that a fiduciary receives as
23 current return from a principal asset. The term includes a portion of
24 receipts from a sale, exchange or liquidation of a principal asset, to the
25 extent provided in sections 10 through ¹[24] 23¹ of this act.

26 "Income beneficiary" means a person to whom net income of a trust
27 is or may be payable.

28 "Income interest" means the right of an income beneficiary to
29 receive all or part of net income, whether the terms of the trust require
30 it to be distributed or authorize it to be distributed in the trustee's
31 discretion.

32 "Mandatory income interest" means the right of an income
33 beneficiary to receive net income that the terms of the trust require the
34 fiduciary to distribute.

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ABI committee amendments adopted May 3, 2001.

1 “Net income” means the total receipts allocated to income during
2 an accounting period minus the disbursements made from income
3 during the period, plus or minus transfers under this act to or from
4 income during the period.

5 “Person” means an individual, corporation, business trust, estate,
6 trust, partnership, limited liability company, association, joint venture,
7 government, governmental subdivision, agency or instrumentality,
8 public corporation or any other legal or commercial entity.

9 “Principal” means property held in trust for distribution to a
10 remainder beneficiary when the trust terminates.

11 “Remainder beneficiary” means a person entitled to receive
12 principal when an income interest ends.

13 “Terms of a trust” means the manifestation of the intent of a settlor
14 or decedent with respect to the trust, expressed in a manner that
15 admits of its proof in a judicial proceeding, whether by written or
16 spoken words or by conduct.

17 “Trustee” includes an original, additional or successor trustee,
18 whether or not appointed or confirmed by a court.

19

20 3. ¹Fiduciary Duties; General Principles.¹ a. In allocating receipts
21 and disbursements to or between principal and income, and with
22 respect to any matter within the scope of sections 5 through 9 of this
23 act, a fiduciary:

24 (1) shall administer a trust or estate in accordance with the terms
25 of the trust or the will, even if there is a different provision in this act;

26 (2) may administer a trust or estate by the exercise of a
27 discretionary power of administration given to the fiduciary by the
28 terms of the trust or the will, even if the exercise of the power
29 produces a result different from a result required or permitted by this
30 act;

31 (3) shall administer a trust or estate in accordance with this act if
32 the terms of the trust or the will do not contain a different provision
33 or do not give the fiduciary a discretionary power of administration;
34 and

35 (4) shall add a receipt or charge a disbursement to principal to the
36 extent that the terms of the trust and this act do not provide a rule for
37 allocating the receipt or disbursement to or between principal and
38 income.

39 b. ¹[In exercising the power to adjust under subsection a. of
40 section 4 of this act or a discretionary power of administration
41 regarding a matter within the scope of this act, whether granted by the
42 terms of a trust, a will or this act, a] A¹ fiduciary shall administer a
43 trust or estate impartially, based on what is fair and reasonable to all
44 of the beneficiaries, except to the extent that the terms of the trust or
45 the will clearly manifest an intention that the fiduciary shall or may
46 favor one or more of the beneficiaries. ¹[A determination in

1 accordance with this act is presumed to be fair and reasonable to all of
2 the beneficiaries.]¹

3
4 4. ¹Trustee's Power to Adjust.¹ a. A trustee may adjust between
5 principal and income ¹[to the extent the trustee considers necessary if
6 the trustee invests and manages trust assets as a prudent investor,] if¹
7 the terms of the trust describe the amount that may or shall be
8 distributed to a beneficiary by referring to the trust's income and the
9 trustee determines, after applying the rules in subsection a. of section
10 3 of this act, that the trustee is unable to comply with subsection b. of
11 section 3 of this act. ¹A decision by a trustee to increase the
12 distribution to the income beneficiary or beneficiaries in any
13 accounting period to an amount not in excess of four percent, or to
14 decrease that period's distributions to not less than six percent, of the
15 net fair market value of the trust assets on the first business day of that
16 accounting period shall be presumed to be fair and reasonable to all of
17 the beneficiaries. Any adjustment by a trustee between income and
18 principal with respect to any accounting period shall be made during
19 that accounting period or within 65 days after the end of that period.¹

20 b. In deciding whether and to what extent to exercise the power
21 conferred by subsection a. of this section, a trustee shall consider all
22 factors relevant to the trust and its beneficiaries, including the
23 following factors to the extent they are relevant:

24 (1) the nature, purpose and expected duration of the trust;

25 (2) the intent of the settlor;

26 (3) the identity and circumstances of the beneficiaries;

27 (4) the needs for liquidity, regularity of income and preservation
28 and appreciation of capital;

29 (5) the assets held in the trust; the extent to which they consist of
30 financial assets, interests in closely held enterprises, tangible and
31 intangible personal property or real property; the extent to which an
32 asset is used by a beneficiary; and whether an asset was purchased by
33 the trustee or received from the settlor;

34 (6) the net amount allocated to income under the other sections of
35 this act and the increase or decrease in the value of the principal
36 assets, which the trustee may estimate as to assets for which market
37 values are not readily available;

38 (7) whether and to what extent the terms of the trust give the
39 trustee the power to invade principal or accumulate income or prohibit
40 the trustee from invading principal or accumulating income, and the
41 extent to which the trustee has exercised a power from time to time to
42 invade principal or accumulate income;

43 (8) the actual and anticipated effect of economic conditions on
44 principal and income and effects of inflation and deflation; ¹[and]¹

45 (9) ¹the shifting of economic interests or tax benefits between
46 income beneficiaries and remainder beneficiaries that arise from

1 elections and decisions regarding tax matters, the imposition of an
2 income or other tax on the fiduciary or a beneficiary as a result of a
3 transaction involving a distribution from the estate or trust, or the
4 ownership of an interest in an entity whose taxable income, whether
5 or not distributed, is includable in the taxable income of the estate,
6 trust or a beneficiary; and

7 (10)¹ the anticipated tax consequences of an adjustment.

8 c. A trustee shall not make an adjustment:

9 (1) that diminishes the income interest in a trust that requires all of
10 the income to be paid at least annually to a spouse and for which an
11 estate tax or gift tax marital deduction would be allowed, in whole or
12 in part, if the trustee did not have the power to make the adjustment;

13 (2) that reduces the actuarial value of the income interest in a trust
14 to which a person transfers property with the intent to qualify for a gift
15 tax exclusion;

16 (3) that changes the amount payable to a beneficiary as a fixed
17 annuity or a fixed fraction of the value of the trust assets;

18 (4) from any amount that is permanently set aside for charitable
19 purposes under a will or the terms of a trust unless both income and
20 principal are so set aside;

21 (5) if possessing or exercising the power to make an adjustment
22 causes an individual to be treated as the owner of all or part of the
23 trust for income tax purposes, and the individual would not be treated
24 as the owner if the trustee did not possess the power to make an
25 adjustment;

26 (6) if possessing or exercising the power to make an adjustment
27 causes all or part of the trust assets to be included for estate tax
28 purposes in the estate of an individual who has the power to remove
29 a trustee or appoint a trustee, or both, and the assets would not be
30 included in the estate of the individual if the trustee did not possess the
31 power to make an adjustment;

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

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

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

40 e. A trustee may release the entire power conferred by subsection
41 a. of this section or may release only the power to adjust from income
42 to principal or the power to adjust from principal to income if the
43 trustee is uncertain about whether possessing or exercising the power
44 will cause a result described in paragraphs (1) through (6) or (8) of
45 subsection c. of this section, or if the trustee determines that
46 possessing or exercising the power will or may deprive the trust of a

1 tax benefit or impose a tax burden not described in subsection c. of
2 this section. The release may be permanent or for a specified period,
3 including a period measured by the life of an individual.

4 f. Terms of a trust that limit the power of a trustee to make an
5 adjustment between principal and income do not affect the application
6 of this section unless it is clear from the terms of the trust that the
7 terms are intended to deny the trustee the power of adjustment
8 conferred by subsection a. of this section.

9
10 5. ¹Determination and Distribution of Net Income. After a
11 decedent dies, in the case of an estate or after an income interest in a
12 trust ends, the following rules apply:

13 a. A fiduciary of an estate or of a terminating income interest shall
14 determine the amount of net income and net principal receipts received
15 from property specifically ¹[given] devised¹ to a beneficiary under the
16 rules in sections 7 through ¹[30] 28¹ of this act which apply to
17 trustees and the rules in subsection e. of this section. The fiduciary
18 shall distribute the net income and net principal receipts to the
19 beneficiary who is to receive the specific property.

20 b. A fiduciary shall determine the remaining net income of a
21 decedent's estate or a terminating income interest under the rules in
22 sections 7 through ¹[30] 28¹ of this act which apply to trustees and
23 by:

24 (1) including in net income all income from property used to
25 discharge liabilities; ¹and¹

26 (2) ¹[paying from income or principal, in the fiduciary's discretion,
27 fees of attorneys, accountants and fiduciaries, court costs and other
28 expenses of administration and interest on death taxes, but the
29 fiduciary may pay those expenses from income of property passing to
30 a trust for which the fiduciary claims an estate tax marital or charitable
31 deduction only to the extent that the payment of those expenses from
32 income will not cause the reduction or loss of the deduction; and

33 (3)¹ paying from principal all ¹[other disbursements made or
34 incurred in connection with the settlement of a decedent's estate or the
35 winding up of a terminating income interest, including debts, funeral
36 expenses, disposition of remains, family allowances and death taxes
37 and related penalties that are apportioned to the estate or terminating
38 income interest by the will, the terms of the trust or applicable law]
39 disbursements made or incurred in connection with the settlement of
40 a decedent's estate or the winding up of a terminating income interest,
41 expenses of administration, including fees of attorneys, accountants
42 and fiduciaries, court costs, debts, funeral expenses, disposition of
43 remains, family allowances and death taxes and related penalties that
44 are apportioned to the estate or terminating income interest by the
45 will, the terms of the trust or applicable law¹.

46 c. A fiduciary shall distribute to a beneficiary who receives a

1 pecuniary amount outright the interest or any other amount provided
2 by the will, the terms of the trust or applicable law from net income
3 determined under subsection b. of this section or from principal to the
4 extent that net income is insufficient. If a beneficiary is to receive a
5 pecuniary amount outright from a trust after an income interest ends
6 and no interest or other amount is provided for by the terms of the
7 trust or applicable law, the fiduciary shall distribute the interest or
8 other amount to which the beneficiary would be entitled under
9 applicable law if the pecuniary amount were required to be paid under
10 a will.

11 d. A fiduciary shall distribute the net income remaining after
12 distributions required by subsection c. of this section in the manner
13 described in section 6 of this act to all other beneficiaries, ¹[including
14 a beneficiary who receives a pecuniary amount in trust, even if the
15 beneficiary holds an unqualified power to withdraw assets from the
16 trust or other presently exercisable general power of appointment over
17 the trust] excluding a beneficiary who receives a pecuniary amount
18 outright or in trust¹.

19 e. A fiduciary shall not reduce principal or income receipts from
20 property described in subsection a. of this section because of a
21 payment described in section ¹[25] 24¹ or ¹[26] 25¹ of this act to the
22 extent that the will, the terms of the trust, or applicable law requires
23 the fiduciary to make the payment from assets other than the property
24 or to the extent that the fiduciary recovers or expects to recover the
25 payment from a third party. The net income and principal receipts
26 from the property are determined by including all of the amounts the
27 fiduciary receives or pays with respect to the property, whether those
28 amounts accrued or became due before, on or after the date of a
29 decedent's death or an income interest's terminating event, and by
30 making a reasonable provision for amounts that the fiduciary believes
31 the estate or terminating income interest may become obligated to pay
32 after the property is distributed.

33

34 6. ¹Distribution to Residuary and Remainder Beneficiaries.¹ a.
35 Each beneficiary described in subsection d. of section 5 of this act is
36 entitled to receive a portion of the net income equal to the
37 beneficiary's fractional interest in undistributed principal assets, using
38 values as of the distribution date. If a fiduciary makes more than one
39 distribution of assets to beneficiaries to whom this section applies,
40 each beneficiary, including one who does not receive part of the
41 distribution, is entitled, as of each distribution date, to the net income
42 the fiduciary has received after the date of death or terminating event
43 or earlier distribution date but has not distributed as of the current
44 distribution date.

45 b. In determining a beneficiary's share of net income, the following
46 rules apply:

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

5 (2) The beneficiary's fractional interest in the undistributed
6 principal assets shall be calculated without regard to property
7 specifically given to a beneficiary and property required to pay
8 pecuniary amounts not in trust.

9 (3) The beneficiary's fractional interest in the undistributed
10 principal assets shall be calculated on the basis of the aggregate value
11 of those assets as of the distribution date without reducing the value
12 by any unpaid principal obligation.

13 (4) The distribution date for purposes of this section may be the
14 date as of which the fiduciary calculates the value of the assets if that
15 date is reasonably near the date on which assets are actually
16 distributed.

17 c. If a fiduciary does not distribute all of the collected but
18 undistributed net income to each person as of a distribution date, the
19 fiduciary shall maintain appropriate records showing the interest of
20 each beneficiary in that net income.

21 d. A fiduciary may apply the rules in this section, to the extent that
22 the fiduciary considers it appropriate, to net gain or loss realized after
23 the date of death or terminating event or earlier distribution date from
24 the disposition of a principal asset if this section applies to the income
25 from the asset.

26

27 7. ¹When Right to Income Begins and Ends.¹ a. An income
28 beneficiary is entitled to net income from the date on which the income
29 interest begins. An income interest begins on the date specified in the
30 terms of the trust or, if no date is specified, on the date an asset
31 becomes subject to a trust or successive income interest.

32 b. An asset becomes subject to a trust:

33 (1) on the date it is transferred to the trust in the case of an asset
34 that is transferred to a trust during the transferor's life;

35 (2) on the date of a testator's death in the case of an asset that
36 becomes subject to a trust by reason of a will, even if there is an
37 intervening period of administration of the testator's estate; or

38 (3) on the date of an individual's death in the case of an asset that
39 is transferred to a fiduciary by a third party because of the individual's
40 death.

41 c. An asset becomes subject to a successive income interest on the
42 day after the preceding income interest ends, as determined under
43 subsection d. of this section, even if there is an intervening period of
44 administration to wind up the preceding income interest.

45 d. An income interest ends on the day before an income beneficiary
46 dies or another terminating event occurs, or on the last day of a period

1 during which there is no beneficiary to whom a trustee may distribute
2 income.

3

4 8. 1Apportionment of Receipts and Disbursements When Decedent
5 Dies or Income Interest Begins.¹ a. A trustee shall allocate an income
6 receipt or disbursement ¹,¹ other than one to which ¹[paragraph (1)
7 of]¹ subsection ¹[b.] a.¹ of section 5 of this act applies¹ ¹ to principal
8 if its due date occurs before a decedent dies in the case of an estate or
9 before an income interest begins in the case of a trust or successive
10 income interest.

11 b. A trustee shall allocate an income receipt or disbursement to
12 income if its due date occurs on or after the date on which a decedent
13 dies or an income interest begins and it is a periodic due date. An
14 income receipt or disbursement shall be treated as accruing from day
15 to day if its due date is not periodic or it has no due date. The portion
16 of the receipt or disbursement accruing before the date on which a
17 decedent dies or an income interest begins shall be allocated to
18 principal and the balance shall be allocated to income.

19 c. An item of income or an obligation is due on the date the payer
20 is required to make a payment. If a payment date is not stated, there
21 is no due date for the purposes of this act. Distributions to
22 shareholders or other owners from an entity to which section 10 of this
23 act applies are deemed to be due on the date fixed by the entity for
24 determining who is entitled to receive the distribution or, if no date is
25 fixed, on the declaration date for the distribution. A due date is
26 periodic for receipts or disbursements that are to be paid at regular
27 intervals under a lease or an obligation to pay interest or if an entity
28 customarily makes distributions at regular intervals.

29

30 9. 1Apportionment When Income Interest Ends.¹ a. As used in
31 this section, “undistributed income” means net income received before
32 the date on which an income interest ends. The term does not include
33 an item of income or expense that is due or accrued or net income that
34 has been added or is required to be added to principal under the terms
35 of the trust.

36 b. When a mandatory income interest ends, the trustee shall pay to
37 a mandatory income beneficiary who survives that date, or the estate
38 of a deceased mandatory income beneficiary whose death causes the
39 interest to end, the beneficiary’s share of the undistributed income that
40 is not disposed of under the terms of the trust, unless the beneficiary
41 has an unqualified power to revoke more than five percent of the trust
42 immediately before the income interest ends. In the latter case, the
43 undistributed income from the portion of the trust that may be revoked
44 shall be added to principal.

45 c. When a trustee’s obligation to pay a fixed annuity or a fixed
46 fraction of the value of the trust’s assets ends, the trustee shall prorate

1 the final payment if and to the extent required by applicable law to
2 accomplish a purpose of the trust or its settlor relating to income, gift,
3 estate or other tax requirements.

4
5 10. Character of Receipts.¹ a. As used in this section, “entity”
6 means a corporation, partnership, limited liability company, regulated
7 investment company, real estate investment trust, common trust fund
8 or any other organization in which a trustee has an interest other than
9 a trust or estate to which section 11 of this act applies, a business or
10 activity to which section 12 of this act applies or an asset-backed
11 security to which section ¹[24] 23¹ of this act applies.

12 b. Except as otherwise provided in this section, a trustee shall
13 allocate to income money received from an entity.

14 c. A trustee shall allocate the following receipts from an entity to
15 principal:

16 (1) property other than money;

17 (2) money received in one distribution or a series of related
18 distributions in exchange for part or all of a trust’s interest in the
19 entity;

20 (3) money received in total or partial liquidation of the entity; and

21 (4) money received from an entity that is a regulated investment
22 company or a real estate investment trust if the money distributed is a
23 capital gain dividend for federal income tax purposes.

24 d. Money is received in partial liquidation:

25 (1) to the extent that the entity, at or near the time of a distribution,
26 indicates that it is a distribution in partial liquidation; or

27 (2) if the total amount of money and property received in a
28 distribution or series of related distributions is greater than 20 percent
29 of the entity’s gross assets, as shown by the entity’s year-end financial
30 statements immediately preceding the initial receipt.

31 e. Money is not received in partial liquidation, nor may it be taken
32 into account under paragraph (2) of subsection d. of this section, to
33 the extent that it does not exceed the amount of income tax that a
34 trustee or beneficiary must pay on taxable income of the entity that
35 distributes the money.

36 f. A trustee may rely upon a statement made by an entity about the
37 source or character of a distribution if the statement is made at or near
38 the time of distribution by the entity’s board of directors or other
39 person or group of persons authorized to exercise powers to pay
40 money or transfer property comparable to those of a corporation’s
41 board of directors.

42
43 11. Distribution from Trust or Estate.¹ A trustee shall allocate to
44 income an amount received as a distribution of income from a trust or
45 an estate in which the trust has an interest other than a purchased
46 interest, and shall allocate to principal an amount received as a

1 distribution of principal from such a trust or estate. If a trustee
2 purchases an interest in a trust that is an investment entity, or a
3 decedent or donor transfers an interest in such a trust to a trustee,
4 section 10 or ¹[24] 23¹ of this act applies to a receipt from the trust.

5
6 12. 1Business and Other Activities Conducted by Trustee.¹ a. If
7 a trustee who conducts a business or other activity determines that it
8 is in the best interest of all the beneficiaries to account separately for
9 the business or activity instead of accounting for it as part of the
10 trust's general accounting records, the trustee may maintain separate
11 accounting records for its transactions, whether or not its assets are
12 segregated from other trust assets.

13 b. A trustee who accounts separately for a business or other
14 activity may determine the extent to which its net cash receipts are to
15 be retained for working capital, the acquisition or replacement of fixed
16 assets and other reasonably foreseeable needs of the business or
17 activity, and the extent to which the remaining net cash receipts are
18 accounted for as principal or income in the trust's general accounting
19 records. If a trustee sells assets of the business or other activity, other
20 than in the ordinary course of the business or activity, the trustee shall
21 account for the net amount received as principal in the trust's general
22 accounting records to the extent the trustee determines that the
23 amount received is no longer required in the conduct of the business.

24 c. Activities for which a trustee may maintain separate accounting
25 records include:

- 26 (1) retail, manufacturing, service and other traditional business
27 activities;
28 (2) farming;
29 (3) raising and selling livestock and other animals;
30 (4) management of rental properties;
31 (5) extraction of minerals and other natural resources;
32 (6) timber operations; and
33 (7) activities to which section ¹[23] 22¹ of this act applies.

34
35 13. 1Principal Receipts.¹ A trustee shall allocate to principal:

36 a. To the extent not allocated to income under this act, assets
37 received from a transferor during the transferor's lifetime, a decedent's
38 estate, a trust with a terminating income interest or a payer under a
39 contract naming the trust or its trustee as beneficiary;

40 b. Money or other property received from the sale, exchange,
41 liquidation or change in form of a principal asset, including realized
42 profit, subject to sections 10 through ¹[24] 23¹ of this act;

43 c. Amounts recovered from third parties to reimburse the trust
44 because of disbursements described in paragraph ¹[(7)] (9)¹ of
45 subsection a. of section ¹[26] 25¹ of this act or for other reasons to
46 the extent not based on the loss of income;

1 d. Proceeds of property taken by eminent domain, but a separate
2 award made for the loss of income with respect to an accounting
3 period during which a current income beneficiary had a mandatory
4 income interest is income;

5 e. Net income received in an accounting period during which there
6 is no beneficiary to whom a trustee may or shall distribute income; and

7 f. Other receipts as provided in sections 17 through ¹[24] 23¹ of
8 this act.

9
10 14. ¹Rental Property.¹ To the extent that a trustee accounts for
11 receipts from rental property pursuant to this section, the trustee shall
12 allocate to income an amount received as rent of real or personal
13 property, including an amount received for cancellation or renewal of
14 a lease. An amount received as a refundable deposit, including a
15 security deposit or a deposit that is to be applied as rent for future
16 periods, shall be added to principal and held subject to the terms of the
17 lease and is not available for distribution to a beneficiary until the
18 trustee's contractual obligations have been satisfied with respect to
19 that amount.

20
21 15. ¹Obligation to Pay Money.¹ a. An amount received as
22 interest, whether determined at a fixed, variable or floating rate, on an
23 obligation to pay money to the trustee, including an amount received
24 as consideration for prepaying principal, shall be allocated to income
25 without any provision for amortization of premium.

26 b. A trustee shall allocate to principal an amount received from the
27 sale, redemption or other disposition of an obligation to pay money to
28 the trustee more than one year after it is purchased or acquired by the
29 trustee, including an obligation whose purchase price or value when
30 it is acquired is less than its value at maturity. If the obligation
31 matures within one year after it is purchased or acquired by the
32 trustee, an amount received in excess of its purchase price or its value
33 when acquired by the trust shall be allocated to income.

34 c. This section does not apply to an obligation to which section
35 ¹17,¹ 18, 19, 20, ¹[21,] 22 or¹ 23 ¹[or 24]¹ of this act applies.

36
37 16. ¹Insurance Policies and Similar Contracts.¹ a. Except as
38 otherwise provided in subsection b. of this section, a trustee shall
39 allocate to principal the proceeds of a life insurance policy or other
40 contract in which the trust or its trustee is named as beneficiary,
41 including a contract that insures the trust or its trustee against loss for
42 damage to, destruction of or loss of title to a trust asset. The trustee
43 shall allocate dividends on an insurance policy to income if the
44 premiums on the policy are paid from income, and to principal if the
45 premiums are paid from principal.

46 b. A trustee shall allocate to income proceeds of a contract that

1 insures the trustee against loss of occupancy or other use by an income
2 beneficiary, loss of income or, subject to section 12 of this act, loss of
3 profits from a business.

4 c. This section does not apply to a contract to which section ¹[18]
5 17¹ of this act applies.

6
7 ¹[17. If a trustee determines that an allocation between principal
8 and income required by section 18, 19, 20, 21 or 24 of this act is
9 insubstantial, the trustee may allocate the entire amount to principal
10 unless one of the circumstances described in subsection c. of section
11 4 of this act applies to the allocation. This power may be exercised by
12 a cotrustee in the circumstances described in subsection d. of section
13 4 of this act and may be released for the reasons and in the manner
14 described in subsection e. of section 4 of this act. An allocation is
15 presumed to be insubstantial if:

16 (1) the amount of the allocation would increase or decrease net
17 income in an accounting period, as determined before the allocation,
18 by less than 10 percent; or

19 (2) the value of the asset producing the receipt for which the
20 allocation would be made is less than 10 percent of the total value of
21 the trust's assets at the beginning of the accounting period.]¹

22
23 ¹[18.] 17. Deferred Compensation, Retirement Benefits,
24 Annuities, and Similar Payments.¹ a. As used in this section,
25 "payment" means a payment that a trustee may receive over a fixed
26 ¹[number] period¹ of ¹[years] time¹ or during the life of one or more
27 individuals because of services rendered or property transferred to the
28 payer in exchange for future payments. The term includes a payment
29 made in money or property from the payer's general assets or from a
30 separate fund created by the payer ¹or by another¹, including a private
31 or commercial annuity, an individual retirement account and a pension,
32 profit-sharing, stock-bonus, or stock-ownership plan.

33 b. To the extent that a ¹[payment is characterized as interest or a
34 dividend or a payment made in lieu of interest or a dividend, a trustee
35 shall allocate it to income. The trustee shall allocate to principal the
36 balance of the payment and any other payment received in the same
37 accounting period that is not characterized as interest, a dividend or
38 an equivalent payment] trustee can readily ascertain the part of a
39 payment from a separate fund held for the benefit of the trust that
40 represents the then undistributed net income of the fund realized since
41 the trust acquired its interest in the fund, a trustee shall allocate that
42 part to income. The trustee shall allocate to principal the balance of
43 the payment¹.

44 c. If no part of a payment is ¹[characterized as interest, a dividend
45 or an equivalent payment] allocated to income under subsection b. of

1 this section¹, and all or part of the payment is required to be made, a
2 trustee shall allocate to income 10 percent of the part that is required
3 to be made during the accounting period and the balance to principal.
4 If no part of a payment is required to be made or the payment received
5 is the entire amount to which the trustee is entitled, the trustee shall
6 allocate the entire payment to principal. For purposes of this
7 subsection, a payment is not “required to be made” to the extent that
8 it is made because the trustee exercises a right of withdrawal.

9 d. If, to obtain an estate tax ¹or gift tax¹ marital deduction for a
10 trust, ¹[a] the¹ trustee must allocate more of a payment to income
11 than provided for by this section, the trustee shall allocate to income
12 the additional amount necessary to obtain the marital deduction.

13 e. This section does not apply to payments to which section ¹[19]
14 18¹ of this act applies.

15

16 ¹[19.] 18. Liquidating Asset.¹ a. As used in this section,
17 “liquidating asset” means an asset whose value will diminish or
18 terminate because the asset is expected to produce receipts for a
19 period of limited duration. The term includes a leasehold, patent,
20 copyright, royalty right and right to receive payments during a period
21 of more than one year under an arrangement that does not provide for
22 the payment of interest on the unpaid balance. The term does not
23 include a payment subject to section ¹[18] 17¹ of this act, resources
24 subject to section ¹[20] 19¹ of this act, timber subject to section
25 ¹[21] 20¹ of this act, an activity subject to section ¹[23] 22¹ of this
26 act, an asset subject to section ¹[24] 23¹ of this act, or any asset for
27 which the trustee establishes a reserve for depreciation under section
28 ¹[27] 26¹ of this act.

29 b. A trustee shall allocate to income 10 percent of the receipts from
30 a liquidating asset and the balance to principal.

31

32 ¹[20.] 19. Minerals, Water and Other Natural Resources.¹ a. To
33 the extent that a trustee accounts for receipts from an interest in
34 minerals or other natural resources pursuant to this section, the trustee
35 shall allocate them as follows:

36 (1) if received as nominal delay rental or nominal annual rent on a
37 lease, a receipt shall be allocated to income;

38 (2) if received from a production payment, a receipt shall be
39 allocated to income if and to the extent that the agreement creating the
40 production payment provides a factor for interest or its equivalent.
41 The balance shall be allocated to principal;

42 (3) if an amount received as a royalty, shut-in-well payment, take-
43 or-pay payment, bonus or delay rental is more than nominal, 90
44 percent shall be allocated to principal and the balance to income;

45 (4) if an amount is received from a working interest or any other

1 interest not provided for in paragraph (1), (2) or (3) of this subsection
2 a., 90 percent of the net amount received shall be allocated to principal
3 and the balance to income.

4 b. An amount received on account of an interest in water that is
5 renewable shall be allocated to income. If the water is not renewable,
6 90 percent of the amount shall be allocated to principal and the
7 balance to income.

8 c. This act applies whether or not a decedent or donor was
9 extracting minerals, water or other natural resources before the
10 interest became subject to the trust.

11 d. If a trust owns an interest in minerals, water, or other natural
12 resources on the effective date of this act, the trustee may allocate
13 receipts from the interest as provided in this act or in the manner used
14 by the trustee before the effective date of this act. If the trust acquires
15 an interest in minerals, water or other natural resources after the
16 effective date of this act, the trustee shall allocate receipts from the
17 interest as provided in this act.

18

19 ¹[21.] 20. Timber.¹ a. To the extent that a trustee accounts for
20 receipts from the sale of timber and related products pursuant to this
21 section, the trustee shall allocate the net receipts:

22 (1) to income to the extent that the amount of timber removed from
23 the land does not exceed the rate of growth of the timber during the
24 accounting periods in which a beneficiary has a mandatory income
25 interest;

26 (2) to principal to the extent that the amount of timber removed
27 from the land exceeds the rate of growth of the timber or the net
28 receipts are from the sale of standing timber;

29 (3) to or between income and principal if the net receipts are from
30 the lease of timberland or from a contract to cut timber from land
31 owned by a trust, by determining the amount of timber removed from
32 the land under the lease or contract and applying the rules in
33 paragraphs (1) and (2) of this subsection a.; or

34 (4) to principal to the extent that advance payments, bonuses and
35 other payments are not allocated pursuant to paragraph (1), (2) or (3)
36 of this subsection a.

37 b. In determining net receipts to be allocated pursuant to
38 subsection a. of this section, a trustee shall deduct and transfer to
39 principal a reasonable amount for depletion.

40 c. This section applies whether or not a decedent or transferor was
41 harvesting timber from the property before it became subject to the
42 trust.

43 d. If a trust owns an interest in timberland on the effective date of
44 this act, the trustee may allocate net receipts from the sale of timber
45 and related products as provided in this act or in the manner used by
46 the trustee before the effective date of this act. If the trust acquires an

1 interest in timberland after the effective date of this act, the trustee
2 shall allocate net receipts from the sale of timber and related products
3 as provided in this act.

4

5 ¹[22.] 21. Property Not Productive of Income.¹ a. If a marital
6 deduction is allowed for all or part of a trust whose assets consist
7 substantially of property that does not provide the spouse with
8 sufficient income from or use of the trust assets, and if the amounts
9 that the trustee transfers from principal to income under section 4 of
10 this act and distributes to the spouse from principal pursuant to the
11 terms of the trust are insufficient to provide the spouse with the
12 beneficial enjoyment required to obtain the marital deduction, the
13 spouse may require the trustee to make property productive of income,
14 convert property within a reasonable time or exercise the power
15 conferred by subsection a. of section 4 of this act. The trustee may
16 decide which action or combination of actions to take.

17 b. In cases not governed by subsection a. of this section, proceeds
18 from the sale or other disposition of an asset are principal without
19 regard to the amount of income the asset produces during any
20 accounting period.

21

22 ¹[23.] 22. Derivatives and Options.¹ a. As used in this section,
23 “derivative” means a contract or financial instrument or a combination
24 of contracts and financial instruments which gives a trust the right or
25 obligation to participate in some or all changes in the price of a
26 tangible or intangible asset or group of assets, or changes in a rate, an
27 index of prices or rates or other market indicator for an asset or a
28 group of assets.

29 b. To the extent that a trustee does not account under section 12
30 of this act for transactions in derivatives, the trustee shall allocate to
31 principal receipts from and disbursements made in connection with
32 those transactions.

33 c. If a trustee grants an option to buy property from the trust,
34 whether or not the trust owns the property when the option is granted,
35 grants an option that permits another person to sell property to the
36 trust or acquires an option to buy property for the trust or an option
37 to sell an asset owned by the trust, and the trustee or other owner of
38 the asset is required to deliver the asset if the option is exercised, an
39 amount received for granting the option shall be allocated to principal.
40 An amount paid to acquire the option shall be paid from principal. A
41 gain or loss realized upon the exercise of an option, including an
42 option granted to a settlor of the trust for services rendered, shall be
43 allocated to principal.

1 ¹[24.] 23. Asset-backed Securities.¹ a. As used in this section,
2 “asset-backed security” means an asset whose value is based upon the
3 right it gives the owner to receive distributions from the proceeds of
4 financial assets that provide collateral for the security. The term
5 includes an asset that gives the owner the right to receive from the
6 collateral financial assets only the interest or other current return or
7 only the proceeds other than interest or current return. The term does
8 not include an asset to which section 10 or ¹[18] 17¹ of this act
9 applies.

10 b. If a trust receives a payment from interest or other current
11 return and from other proceeds of the collateral financial assets, the
12 trustee shall allocate to income the portion of the payment which the
13 payer identifies as being from interest or other current return and shall
14 allocate the balance of the payment to principal.

15 c. If a trust receives one or more payments in exchange for the
16 trust’s entire interest in an asset-backed security in one accounting
17 period, the trustee shall allocate the payments to principal. If a
18 payment is one of a series of payments that will result in the
19 liquidation of the trust’s interest in the security over more than one
20 accounting period, the trustee shall allocate 10 percent of the payment
21 to income and the balance to principal.

22

23 ¹[25.] 24. Disbursements from Income.¹ A trustee shall make the
24 following disbursements from income to the extent that they are not
25 disbursements to which paragraph (1) or (2) of subsection b. of section
26 5 of this act applies:

27 a. ¹[one-half of the regular compensation of the trustee and of any
28 person providing investment advisory or custodial services to the
29 trustee] commissions allowed by law to a trustee on income receipts,
30 if properly chargeable to the trust¹;

31 b. one-half of ¹[all expenses for accountings, judicial proceedings,
32 or other matters that involve both the income and remainder interests]
33 the fees paid to banks and other financial institutions for custodial
34 services to the fiduciary if properly chargeable to the trust¹;

35 c. all of the other ordinary expenses incurred in connection with the
36 administration, management, or preservation of trust property and the
37 distribution of income, including interest ¹[, ordinary repairs, regularly
38 recurring taxes assessed against principal and expenses of a proceeding
39 or other matter that concerns primarily the income interest] paid by
40 the trustee, including interest on death taxes, regularly recurring taxes
41 assessed against any portion of the principal, water rates, bond
42 premiums, and the expenses, including court costs, attorneys' fees, and
43 accountants' fees, of an accounting, judicial proceeding or other matter
44 that concerns primarily the income interest, unless the court directs
45 otherwise¹; and

1 d. recurring premiums on insurance covering the loss of a principal
2 asset or the loss of income from or use of the asset.

3
4 ¹[26.] 25. Disbursements from Principal.¹ a. A trustee shall make
5 the following disbursements from principal:

6 (1) ¹[the remaining one-half of the disbursements described in
7 subsections a. and b. of section 25 of this act] commissions allowed
8 by law to a trustee on principal receipts or distributions or on
9 termination of the trust estate¹;

10 (2) ¹[all of the trustee's compensation calculated on principal as a
11 fee for acceptance, distribution, or termination, and disbursements
12 made to prepare property for sale] the remaining one-half of the fees
13 paid to banks and other financial institutions for custodial services, if
14 properly chargeable to the trust¹;

15 (3) ¹[payments on the principal of a trust debt] fees paid to banks
16 and other financial institutions and registered investment advisors for
17 investment advisory or investment management services, if properly
18 chargeable to the trust¹;

19 (4) ¹[expenses of a proceeding that concerns primarily principal,
20 including a proceeding to construe the trust or to protect the trust or
21 its property] costs of investing and reinvesting principal and payments
22 on the principal of an indebtedness, including a mortgage or security
23 interest amortized by periodic payments of principal¹;

24 (5) ¹[premiums paid on a policy of insurance not described in
25 subsection d. of section 25 of this act of which the trust is the owner
26 and beneficiary] extraordinary repairs or expenses incurred in making
27 a capital improvement, including special assessments, and
28 disbursements made to prepare property for sale¹;

29 (6) ¹[estate, inheritance and other transfer taxes, including
30 penalties, apportioned to the trust] court costs, attorneys' fees,
31 accountants' fees and other fees, incurred on an accounting or judicial
32 proceeding or in maintaining or defending any action to construe a will
33 or a trust, protect it or the trust estate, or assure the title of any
34 property, unless properly chargeable to income under subsection c. of
35 section 24 of this act or the court otherwise directs¹; ¹[and]¹

36 (7) ¹[disbursements related to environmental matters, including
37 reclamation, assessing environmental conditions, remedying and
38 removing environmental contamination, monitoring remedial activities
39 and the release of substances, preventing future releases of substances,
40 collecting amounts from persons liable or potentially liable for the
41 costs of those activities, penalties imposed under environmental laws
42 or regulations and other payments made to comply with those laws or
43 regulations, statutory or common law claims by third parties and
44 defending claims based on environmental matters] premiums paid on
45 an insurance policy not described in subsection d. of section 24 of this

1 act of which the trust is the owner and beneficiary:

2 (8) estate, inheritance and other transfer taxes, including penalties
3 apportioned to the trust:

4 (9) disbursements related to environmental matters, including
5 reclamation, assessing environmental conditions, remedying and
6 removing environmental contamination, monitoring remedial activities
7 and the release of substances, preventing future releases of substances,
8 collecting amounts from persons liable or potentially liable for the cost
9 of those activities, penalties imposed under environmental laws or
10 regulations and other payments made to comply with those laws or
11 regulations, statutory or common law claims by third parties and
12 defending claims based on environmental matters; and

13 (10) if an estate or inheritance tax is levied in respect of a trust in
14 which both an income beneficiary and remainderman have an interest,
15 any amount apportioned to the trust, including penalties, even though
16 the income beneficiary also has rights in the principal¹.

17 b. If a principal asset is encumbered with an obligation that
18 requires income from that asset to be paid directly to the creditor, the
19 trustee shall transfer from principal to income an amount equal to the
20 income paid to the creditor in reduction of the principal balance of the
21 obligation.

22

23 ¹[27.] 26. Transfers from Income to Principal for Depreciation.¹

24 a. As used in this section, “depreciation” means a reduction in
25 value due to wear, tear, decay, corrosion or gradual obsolescence of
26 a fixed asset having a useful life of more than one year.

27 b. A trustee may transfer to principal a reasonable amount of the
28 net cash receipts from a principal asset that is subject to depreciation,
29 but may not transfer any amount for depreciation:

30 (1) of that portion of real property used or available for use by a
31 beneficiary as a residence or of tangible personal property held or
32 made available for the personal use or enjoyment of a beneficiary;

33 (2) during the administration of a decedent’s estate; or

34 (3) under this section if the trustee is accounting under section 12
35 of this act for the business or activity in which the asset is used.

36 c. An amount transferred to principal need not be held as a
37 separate fund.

38

39 ¹[28.] 27. Transfer from Income to Reimburse Principal.¹

40 a. If a trustee makes or expects to make a principal disbursement described
41 in this section, the trustee may transfer an appropriate amount from
42 income to principal in one or more accounting periods to reimburse
43 principal or to provide a reserve for future principal disbursements.

44 b. Principal disbursements to which subsection a. of this section
45 applies include the following, but only to the extent that the trustee
46 has not been and does not expect to be reimbursed by a third party:

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

3 (2) ¹[a capital improvement to a principal asset, whether in the
4 form of changes to an existing asset or the construction of a new asset,
5 including special assessments;

6 (3)]¹ disbursements made to prepare property for rental, including
7 tenant allowances, leasehold improvements and broker's commissions;
8 ¹and¹

9 ¹[(4)] (3) ¹periodic payments on an obligation secured by a
10 principal asset to the extent that the amount transferred from income
11 to principal for depreciation is less than the periodic payments ¹]; and

12 (5) disbursements described in paragraph (7) of subsection a. of
13 section 26 of this act]¹.

14 c. If the asset whose ownership gives rise to the disbursements
15 becomes subject to a successive income interest after an income
16 interest ends, a trustee may continue to transfer amounts from income
17 to principal as provided in subsection a. of this section.

18
19 ¹[29.] 28. Income Taxes.¹ a. A tax required to be paid by a
20 trustee based on receipts allocated to income shall be paid from
21 income.

22 b. A tax required to be paid by a trustee based on receipts allocated
23 to principal shall be paid from principal, even if the tax is called an
24 income tax by the taxing authority.

25 c. A tax required to be paid by a trustee on the trust's share of an
26 entity's taxable income shall be paid proportionately:

27 (1) from income to the extent that receipts from the entity are
28 allocated to income; and

29 (2) from principal to the extent that:

30 (a) receipts from the entity are allocated to principal; and

31 (b) the trust's share of the entity's taxable income exceeds the total
32 receipts described in paragraph (1) and subparagraph (a) of this
33 paragraph (2).

34 d. For purposes of this section, receipts allocated to principal or
35 income shall be reduced by the amount distributed to a beneficiary
36 from principal or income for which the trust receives a deduction in
37 calculating the tax.

38
39 ¹[30. a. A fiduciary may make adjustments between principal and
40 income to offset the shifting of economic interests or tax benefits
41 between income beneficiaries and remainder beneficiaries which arise
42 from:

43 (1) elections and decisions, other than those described in subsection
44 b. of this section, that the fiduciary makes from time to time regarding
45 tax matters;

46 (2) an income tax or any other tax that is imposed upon the

1 fiduciary or a beneficiary as a result of a transaction involving or a
2 distribution from the estate or trust; or

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

6 b. If the amount of an estate tax marital deduction or charitable
7 contribution deduction is reduced because a fiduciary deducts an
8 amount paid from principal for income tax purposes instead of
9 deducting it for estate tax purposes, and as a result estate taxes paid
10 from principal are increased and income taxes paid by an estate, trust
11 or beneficiary are decreased, each estate, trust or beneficiary that
12 benefits from the decrease in income tax shall reimburse the principal
13 from which the increase in estate tax is paid. The total reimbursement
14 shall equal the increase in the estate tax to the extent that the principal
15 used to pay the increase would have qualified for a marital deduction
16 or charitable contribution deduction but for the payment. The
17 proportionate share of the reimbursement for each estate, trust or
18 beneficiary whose income taxes are reduced shall be the same as its
19 proportionate share of the total decrease in income tax. An estate or
20 trust shall reimburse principal from income.]¹

21

22 ¹[31.] 29. Uniformity of Application and Construction.¹ In
23 applying and construing this act, consideration shall be given to the
24 fact that this is a uniform act, and there is a need to promote
25 uniformity of the act with respect to its subject matter among states
26 that enact it.

27

28 ¹[32.] 30. Application of Act to Existing and Future Trusts and
29 Estates.¹ This act applies to every trust or decedent's estate existing
30 on ¹or ¹after¹ the effective date of this act, except as otherwise
31 expressly provided in the will or terms of the trust or in this act.

32

33 ¹31. Judicial Control of Discretionary Powers. a. A court shall
34 not change a fiduciary's decision to exercise or not to exercise a
35 discretionary power conferred by this act unless it determines that the
36 decision was an abuse of discretion. A court shall not determine that
37 a fiduciary abused its discretion merely because the court would have
38 exercised the discretion in a different manner or would not have
39 exercised the discretion.

40 b. The decisions to which subsection a. of this section applies
41 include:

42 (1) A determination under subsection a. of section 4 of this act of
43 whether and to what extent an amount should be transferred from
44 principal to income or from income to principal.

45 (2) A determination of the factors that are relevant to the trust and
46 its beneficiaries, the extent to which they are relevant, and the weight,

1 if any, to be given to the relevant factors in deciding whether and to
2 what extent to exercise the powers conferred by subsection a. of
3 section 4 of this act.

4 c. If a court determines that a fiduciary has abused its discretion,
5 the remedy is to restore the income and remainder beneficiaries to the
6 position they would have occupied if the fiduciary had not abused its
7 discretion, according to the following rules:

8 (1) To the extent that the abuse of discretion has resulted in no
9 distribution to a beneficiary or a distribution that is too small, the
10 court shall require the fiduciary to distribute from the trust to the
11 beneficiary an amount that the court determines will restore the
12 beneficiary, in whole or in part, to his appropriate position.

13 (2) To the extent that an abuse of discretion has resulted in a
14 distribution to a beneficiary that is too large, the court shall restore the
15 beneficiaries, the trust, or both, in whole or in part, to their
16 appropriate position by requiring the fiduciary to withhold an amount
17 from one or more of future distributions to the beneficiary who
18 received the distribution that was too large or requiring that
19 beneficiary to return some or all of the distribution to the trust.

20 (3) To the extent that the court is unable, after applying paragraphs
21 (1) and (2) of this subsection to restore the beneficiaries, the trust, or
22 both, to the position they would have occupied if the fiduciary had not
23 abused its discretion, the court may require the fiduciary to pay an
24 appropriate amount from its own funds to one or more of the
25 beneficiaries or the trust or both.

26 d. Upon a petition by the fiduciary, the court having jurisdiction
27 over the trust or estate shall determine whether a proposed exercise or
28 nonexercise by the fiduciary of a discretionary power conferred by this
29 act will result in an abuse of the fiduciary's discretion. If the petition
30 describes the proposed exercise or nonexercise of the power and
31 contains sufficient information to inform the beneficiaries of the
32 reasons for the proposal, the facts upon which the fiduciary relies, and
33 an explanation of how the income and remainder beneficiaries will be
34 affected by the proposed exercise or nonexercise of the power, a
35 beneficiary who challenges the proposed exercise or nonexercise has
36 the burden of establishing that it will result in an abuse of discretion.¹

37
38 ¹[33.] 32. Repealer.¹ N.J.S.3B:19A-1 et seq. is repealed.

39
40 ¹[34.] 33. Effective Date.¹ This act shall take effect
41 ¹[immediately] on January 1 of the year following enactment¹.

42
43
44
45 Replaces "Revised Uniform Principal and Income Act" with "Uniform
46 Principal and Income Act of 2000."

CHAPTER 212

AN ACT concerning principal and income guidelines for trusts and estates and repealing N.J.S.3B:19A-1 et seq.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.3B:19B-1 Short title.

1. Short Title. This act shall be known and may be cited as the "Uniform Principal and Income Act of 2001."

C.3B:19B-2 Definitions.

2. Definitions. As used in this act:

"Accounting period" means a calendar year unless another 12-month period is selected by a fiduciary. The term includes a portion of a calendar year or other 12-month period that begins when an income interest begins or ends when an income interest ends.

"Beneficiary" includes, in the case of a decedent's estate, an heir, legatee and devisee and, in the case of a trust, an income beneficiary and a remainder beneficiary.

"Fiduciary" means a personal representative or a trustee. The term includes an executor, administrator, successor personal representative, special administrator and a person performing substantially the same function.

"Income" means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange or liquidation of a principal asset, to the extent provided in sections 10 through 23 of this act.

"Income beneficiary" means a person to whom net income of a trust is or may be payable.

"Income interest" means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee's discretion.

"Mandatory income interest" means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.

"Net income" means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under this act to or from income during the period.

"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, public corporation or any other legal or commercial entity.

"Principal" means property held in trust for distribution to a remainder beneficiary when the trust terminates.

"Remainder beneficiary" means a person entitled to receive principal when an income interest ends.

"Terms of a trust" means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.

"Trustee" includes an original, additional or successor trustee, whether or not appointed or confirmed by a court.

C.3B:19B-3 Fiduciary duties; general principles.

3. Fiduciary Duties; General Principles. a. In allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of sections 5 through 9 of this act, a fiduciary:

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

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

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

(4) shall add a receipt or charge a disbursement to principal to the extent that the terms of

the trust and this act do not provide a rule for allocating the receipt or disbursement to or between principal and income.

b. A fiduciary shall administer a trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an intention that the fiduciary shall or may favor one or more of the beneficiaries.

C.3B:19B-4 Trustee's power to adjust.

4. Trustee's Power to Adjust. a. A trustee may adjust between principal and income if the terms of the trust describe the amount that may or shall be distributed to a beneficiary by referring to the trust's income and the trustee determines, after applying the rules in subsection a. of section 3 of this act, that the trustee is unable to comply with subsection b. of section 3 of this act. A decision by a trustee to increase the distribution to the income beneficiary or beneficiaries in any accounting period to an amount not in excess of four percent, or to decrease that period's distributions to not less than six percent, of the net fair market value of the trust assets on the first business day of that accounting period shall be presumed to be fair and reasonable to all of the beneficiaries. Any adjustment by a trustee between income and principal with respect to any accounting period shall be made during that accounting period or within 65 days after the end of that period.

b. In deciding whether and to what extent to exercise the power conferred by subsection a. of this section, a trustee shall consider all factors relevant to the trust and its beneficiaries, including the following factors to the extent they are relevant:

- (1) the nature, purpose and expected duration of the trust;
- (2) the intent of the settlor;
- (3) the identity and circumstances of the beneficiaries;
- (4) the needs for liquidity, regularity of income and preservation and appreciation of capital;
- (5) the assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor;
- (6) the net amount allocated to income under the other sections of this act and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;
- (7) whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;
- (8) the actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation;
- (9) the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries that arise from elections and decisions regarding tax matters, the imposition of an income or other tax on the fiduciary or a beneficiary as a result of a transaction involving a distribution from the estate or trust, or the ownership of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust or a beneficiary; and
- (10) the anticipated tax consequences of an adjustment.

c. A trustee shall not make an adjustment:

- (1) that diminishes the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment;
- (2) that reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;
- (3) that changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;
- (4) from any amount that is permanently set aside for charitable purposes under a will or the

terms of a trust unless both income and principal are so set aside;

(5) if possessing or exercising the power to make an adjustment causes an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;

(6) if possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment;

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

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

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

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

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

C.3B:19B-5 Determination and distribution of net income.

5. Determination and Distribution of Net Income. After a decedent dies, in the case of an estate or after an income interest in a trust ends, the following rules apply:

a. A fiduciary of an estate or of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically devised to a beneficiary under the rules in sections 7 through 28 of this act which apply to trustees and the rules in subsection e. of this section. The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.

b. A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the rules in sections 7 through 28 of this act which apply to trustees and by:

(1) including in net income all income from property used to discharge liabilities; and

(2) paying from principal all disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, expenses of administration, including fees of attorneys, accountants and fiduciaries, court costs, debts, funeral expenses, disposition of remains, family allowances and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the terms of the trust or applicable law.

c. A fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright the interest or any other amount provided by the will, the terms of the trust or applicable law from net income determined under subsection b. of this section or from principal to the extent that net income is insufficient. If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends and no interest or other amount is provided for by the terms of the trust or applicable law, the fiduciary shall distribute the interest or other amount to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will.

d. A fiduciary shall distribute the net income remaining after distributions required by subsection c. of this section in the manner described in section 6 of this act to all other

beneficiaries, excluding a beneficiary who receives a pecuniary amount outright or in trust.

e. A fiduciary shall not reduce principal or income receipts from property described in subsection a. of this section because of a payment described in section 24 or 25 of this act to the extent that the will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property are determined by including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts accrued or became due before, on or after the date of a decedent's death or an income interest's terminating event, and by making a reasonable provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed.

C.3B:19B-6 Distribution to residuary and remainder beneficiaries.

6. Distribution to Residuary and Remainder Beneficiaries. a. Each beneficiary described in subsection d. of section 5 of this act is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

b. In determining a beneficiary's share of net income, the following rules apply:

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

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

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

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

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

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

C.3B:19B-7 When right to income begins and ends.

7. When Right to Income Begins and Ends. a. An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

b. An asset becomes subject to a trust:

(1) on the date it is transferred to the trust in the case of an asset that is transferred to a trust during the transferor's life;

(2) on the date of a testator's death in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate; or

(3) on the date of an individual's death in the case of an asset that is transferred to a fiduciary by a third party because of the individual's death.

c. An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under subsection d. of this section, even if there is an intervening period of administration to wind up the preceding income interest.

d. An income interest ends on the day before an income beneficiary dies or another terminating event occurs, or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

C.3B:19B-8 Apportionment of receipts and disbursements when decedent dies or income interest begins.

8. Apportionment of Receipts and Disbursements When Decedent Dies or Income Interest Begins. a. A trustee shall allocate an income receipt or disbursement, other than one to which subsection a. of section 5 of this act applies, to principal if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

b. A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement shall be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins shall be allocated to principal and the balance shall be allocated to income.

c. An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of this act. Distributions to shareholders or other owners from an entity to which section 10 of this act applies are deemed to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that are to be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

C.3B:19B-9 Apportionment when income interest ends.

9. Apportionment When Income Interest Ends. a. As used in this section, “undistributed income” means net income received before the date on which an income interest ends. The term does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.

b. When a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary’s share of the undistributed income that is not disposed of under the terms of the trust, unless the beneficiary has an unqualified power to revoke more than five percent of the trust immediately before the income interest ends. In the latter case, the undistributed income from the portion of the trust that may be revoked shall be added to principal.

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

C.3B:19B-10 Character of receipts.

10. Character of Receipts. a. As used in this section, “entity” means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund or any other organization in which a trustee has an interest other than a trust or estate to which section 11 of this act applies, a business or activity to which section 12 of this act applies or an asset-backed security to which section 23 of this act applies.

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

c. A trustee shall allocate the following receipts from an entity to principal:

(1) property other than money;

(2) money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity;

(3) money received in total or partial liquidation of the entity; and

(4) money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.

d. Money is received in partial liquidation:

(1) to the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or

(2) if the total amount of money and property received in a distribution or series of related distributions is greater than 20 percent of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt.

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

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

C.3B:19B-11 Distribution from trust or estate.

11. Distribution from Trust or Estate. A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest, and shall allocate to principal an amount received as a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, section 10 or 23 of this act applies to a receipt from the trust.

C.3B:19B-12 Business and other activities conducted by trustee.

12. Business and Other Activities Conducted by Trustee. a. If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

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

c. Activities for which a trustee may maintain separate accounting records include:

(1) retail, manufacturing, service and other traditional business activities;

(2) farming;

(3) raising and selling livestock and other animals;

(4) management of rental properties;

(5) extraction of minerals and other natural resources;

(6) timber operations; and

(7) activities to which section 22 of this act applies.

C.3B:19B-13 Principal receipts.

13. Principal Receipts. A trustee shall allocate to principal:

- a. To the extent not allocated to income under this act, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest or a payer under a contract naming the trust or its trustee as beneficiary;
- b. Money or other property received from the sale, exchange, liquidation or change in form of a principal asset, including realized profit, subject to sections 10 through 23 of this act;
- c. Amounts recovered from third parties to reimburse the trust because of disbursements described in paragraph (9) of subsection a. of section 25 of this act or for other reasons to the extent not based on the loss of income;
- d. Proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income;
- e. Net income received in an accounting period during which there is no beneficiary to whom a trustee may or shall distribute income; and
- f. Other receipts as provided in sections 17 through 23 of this act.

C.3B:19B-14 Rental property.

14. Rental Property. To the extent that a trustee accounts for receipts from rental property pursuant to this section, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, shall be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

C.3B:19B-15 Obligation to pay money.

15. Obligation to Pay Money. a. An amount received as interest, whether determined at a fixed, variable or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, shall be allocated to income without any provision for amortization of premium.

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

c. This section does not apply to an obligation to which section 17, 18, 19, 20, 22 or 23 of this act applies.

C.3B:19B-16 Insurance policies and similar contracts.

16. Insurance Policies and Similar Contracts. a. Except as otherwise provided in subsection b. of this section, a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income, and to principal if the premiums are paid from principal.

b. A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income or, subject to section 12 of this act, loss of profits from a business.

c. This section does not apply to a contract to which section 17 of this act applies.

C.3B:19B-17 Deferred compensation, retirement benefits, annuities, and similar payments.

17. Deferred Compensation, Retirement Benefits, Annuities, and Similar Payments. a. As used in this section, "payment" means a payment that a trustee may receive over a fixed period of time or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in

money or property from the payer's general assets or from a separate fund created by the payer or by another, including a private or commercial annuity, an individual retirement account and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

b. To the extent that a trustee can readily ascertain the part of a payment from a separate fund held for the benefit of the trust that represents the then undistributed net income of the fund realized since the trust acquired its interest in the fund, a trustee shall allocate that part to income. The trustee shall allocate to principal the balance of the payment.

c. If no part of a payment is allocated to income under subsection b. of this section, and all or part of the payment is required to be made, a trustee shall allocate to income 10 percent of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

d. If, to obtain an estate tax or gift tax marital deduction for a trust, the trustee must allocate more of a payment to income than provided for by this section, the trustee shall allocate to income the additional amount necessary to obtain the marital deduction.

e. This section does not apply to payments to which section 18 of this act applies.

C.3B:19B-18 Liquidating asset.

18. Liquidating Asset. a. As used in this section, "liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right and right to receive payments during a period of more than one year under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include a payment subject to section 17 of this act, resources subject to section 19 of this act, timber subject to section 20 of this act, an activity subject to section 22 of this act, an asset subject to section 23 of this act, or any asset for which the trustee establishes a reserve for depreciation under section 26 of this act.

b. A trustee shall allocate to income 10 percent of the receipts from a liquidating asset and the balance to principal.

C.3B:19B-19 Minerals, water and other natural resources.

19. Minerals, Water and Other Natural Resources. a. To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them as follows:

(1) if received as nominal delay rental or nominal annual rent on a lease, a receipt shall be allocated to income;

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

(3) if an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus or delay rental is more than nominal, 90 percent shall be allocated to principal and the balance to income;

(4) if an amount is received from a working interest or any other interest not provided for in paragraph (1), (2) or (3) of this subsection a., 90 percent of the net amount received shall be allocated to principal and the balance to income.

b. An amount received on account of an interest in water that is renewable shall be allocated to income. If the water is not renewable, 90 percent of the amount shall be allocated to principal and the balance to income.

c. This act applies whether or not a decedent or donor was extracting minerals, water or other natural resources before the interest became subject to the trust.

d. If a trust owns an interest in minerals, water, or other natural resources on the effective date of this act, the trustee may allocate receipts from the interest as provided in this act or in the manner used by the trustee before the effective date of this act. If the trust acquires an

interest in minerals, water or other natural resources after the effective date of this act, the trustee shall allocate receipts from the interest as provided in this act.

C.3B:19B-20 Timber.

20. Timber. a. To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts:

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

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

(3) to or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying the rules in paragraphs (1) and (2) of this subsection a.; or

(4) to principal to the extent that advance payments, bonuses and other payments are not allocated pursuant to paragraph (1), (2) or (3) of this subsection a.

b. In determining net receipts to be allocated pursuant to subsection a. of this section, a trustee shall deduct and transfer to principal a reasonable amount for depletion.

c. This section applies whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.

d. If a trust owns an interest in timberland on the effective date of this act, the trustee may allocate net receipts from the sale of timber and related products as provided in this act or in the manner used by the trustee before the effective date of this act. If the trust acquires an interest in timberland after the effective date of this act, the trustee shall allocate net receipts from the sale of timber and related products as provided in this act.

C.3B:19B-21 Property not productive of income.

21. Property Not Productive of Income. a. If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the spouse with sufficient income from or use of the trust assets, and if the amounts that the trustee transfers from principal to income under section 4 of this act and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee to make property productive of income, convert property within a reasonable time or exercise the power conferred by subsection a. of section 4 of this act. The trustee may decide which action or combination of actions to take.

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

C.3B:19B-22 Derivatives and options.

22. Derivatives and Options. a. As used in this section, "derivative" means a contract or financial instrument or a combination of contracts and financial instruments which gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates or other market indicator for an asset or a group of assets.

b. To the extent that a trustee does not account under section 12 of this act for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

c. If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option shall be allocated to

principal. An amount paid to acquire the option shall be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, shall be allocated to principal.

C.3B:19B-23 Asset-backed securities.

23. Asset-backed Securities. a. As used in this section, "asset-backed security" means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not include an asset to which section 10 or 17 of this act applies.

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

c. If a trust receives one or more payments in exchange for the trust's entire interest in an asset-backed security in one accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust's interest in the security over more than one accounting period, the trustee shall allocate 10 percent of the payment to income and the balance to principal.

C.3B:19B-24 Disbursements from income.

24. Disbursements from Income. A trustee shall make the following disbursements from income to the extent that they are not disbursements to which paragraph (1) or (2) of subsection b. of section 5 of this act applies:

a. commissions allowed by law to a trustee on income receipts, if properly chargeable to the trust;

b. one-half of the fees paid to banks and other financial institutions for custodial services to the fiduciary if properly chargeable to the trust;

c. all of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including interest paid by the trustee, including interest on death taxes, regularly recurring taxes assessed against any portion of the principal, water rates, bond premiums, and the expenses, including court costs, attorneys' fees, and accountants' fees, of an accounting, judicial proceeding or other matter that concerns primarily the income interest, unless the court directs otherwise; and

d. recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

C.3B:19B-25 Disbursements from principal.

25. Disbursements from Principal. a. A trustee shall make the following disbursements from principal:

(1) commissions allowed by law to a trustee on principal receipts or distributions or on termination of the trust estate;

(2) the remaining one-half of the fees paid to banks and other financial institutions for custodial services, if properly chargeable to the trust;

(3) fees paid to banks and other financial institutions and registered investment advisors for investment advisory or investment management services, if properly chargeable to the trust;

(4) costs of investing and reinvesting principal and payments on the principal of an indebtedness, including a mortgage or security interest amortized by periodic payments of principal;

(5) extraordinary repairs or expenses incurred in making a capital improvement, including special assessments, and disbursements made to prepare property for sale;

(6) court costs, attorneys' fees, accountants' fees and other fees, incurred on an accounting or judicial proceeding or in maintaining or defending any action to construe a will or a trust, protect it or the trust estate, or assure the title of any property, unless properly chargeable to

income under subsection c. of section 24 of this act or the court otherwise directs;

(7) premiums paid on an insurance policy not described in subsection d. of section 24 of this act of which the trust is the owner and beneficiary;

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

(9) disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the cost of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by third parties and defending claims based on environmental matters; and

(10) if an estate or inheritance tax is levied in respect of a trust in which both an income beneficiary and remainderman have an interest, any amount apportioned to the trust, including penalties, even though the income beneficiary also has rights in the principal.

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

C.3B:19B-26 Transfers from income to principal for depreciation.

26. Transfers from Income to Principal for Depreciation.

a. As used in this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion or gradual obsolescence of a fixed asset having a useful life of more than one year.

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

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

(2) during the administration of a decedent's estate; or

(3) under this section if the trustee is accounting under section 12 of this act for the business or activity in which the asset is used.

c. An amount transferred to principal need not be held as a separate fund.

C.3B:19B-27 Transfer from income to reimburse principal.

27. Transfer from Income to Reimburse Principal. a. If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

b. Principal disbursements to which subsection a. of this section applies include the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:

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

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

(3) periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments.

c. If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in subsection a. of this section.

C.3B:19B-28 Income taxes.

28. Income Taxes. a. A tax required to be paid by a trustee based on receipts allocated to income shall be paid from income.

b. A tax required to be paid by a trustee based on receipts allocated to principal shall be paid

from principal, even if the tax is called an income tax by the taxing authority.

c. A tax required to be paid by a trustee on the trust's share of an entity's taxable income shall be paid proportionately:

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

(2) from principal to the extent that:

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

(b) the trust's share of the entity's taxable income exceeds the total receipts described in paragraph (1) and subparagraph (a) of this paragraph (2).

d. For purposes of this section, receipts allocated to principal or income shall be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax.

C.3B:19B-29 Uniformity of application and construction.

29. Uniformity of Application and Construction. In applying and construing this act, consideration shall be given to the fact that this is a uniform act, and there is a need to promote uniformity of the act with respect to its subject matter among states that enact it.

C.3B:19B-30 Application of act to existing and future trusts and estates.

30. Application of Act to Existing and Future Trusts and Estates. This act applies to every trust or decedent's estate existing on or after the effective date of this act, except as otherwise expressly provided in the will or terms of the trust or in this act.

C.3B:19B-31 Judicial control of discretionary powers.

31. Judicial Control of Discretionary Powers. a. A court shall not change a fiduciary's decision to exercise or not to exercise a discretionary power conferred by this act unless it determines that the decision was an abuse of discretion. A court shall not determine that a fiduciary abused its discretion merely because the court would have exercised the discretion in a different manner or would not have exercised the discretion.

b. The decisions to which subsection a. of this section applies include:

(1) A determination under subsection a. of section 4 of this act of whether and to what extent an amount should be transferred from principal to income or from income to principal.

(2) A determination of the factors that are relevant to the trust and its beneficiaries, the extent to which they are relevant, and the weight, if any, to be given to the relevant factors in deciding whether and to what extent to exercise the powers conferred by subsection a. of section 4 of this act.

c. If a court determines that a fiduciary has abused its discretion, the remedy is to restore the income and remainder beneficiaries to the position they would have occupied if the fiduciary had not abused its discretion, according to the following rules:

(1) To the extent that the abuse of discretion has resulted in no distribution to a beneficiary or a distribution that is too small, the court shall require the fiduciary to distribute from the trust to the beneficiary an amount that the court determines will restore the beneficiary, in whole or in part, to his appropriate position.

(2) To the extent that an abuse of discretion has resulted in a distribution to a beneficiary that is too large, the court shall restore the beneficiaries, the trust, or both, in whole or in part, to their appropriate position by requiring the fiduciary to withhold an amount from one or more of future distributions to the beneficiary who received the distribution that was too large or requiring that beneficiary to return some or all of the distribution to the trust.

(3) To the extent that the court is unable, after applying paragraphs (1) and (2) of this subsection to restore the beneficiaries, the trust, or both, to the position they would have occupied if the fiduciary had not abused its discretion, the court may require the fiduciary to pay an appropriate amount from its own funds to one or more of the beneficiaries or the trust or both.

d. Upon a petition by the fiduciary, the court having jurisdiction over the trust or estate shall determine whether a proposed exercise or nonexercise by the fiduciary of a discretionary power conferred by this act will result in an abuse of the fiduciary's discretion. If the petition describes

the proposed exercise or nonexercise of the power and contains sufficient information to inform the beneficiaries of the reasons for the proposal, the facts upon which the fiduciary relies, and an explanation of how the income and remainder beneficiaries will be affected by the proposed exercise or nonexercise of the power, a beneficiary who challenges the proposed exercise or nonexercise has the burden of establishing that it will result in an abuse of discretion.

Repealer.

32. Repealer. N.J.S.3B:19A-1 et seq. is repealed.

33. Effective Date. This act shall take effect on January 1 of the year following enactment

Approved August 15, 2001.

Office of the Governor

PO BOX 004
TRENTON, NJ 08625

NEWS RELEASE

CONTACT: Rae Hutton
609-777-2600

RELEASE: Aug 16, 2001

Acting Governor Donald T. DiFrancesco signed the following legislation:

S-1310, sponsored by Senators Robert Martin (R-Essex/Morris/Passaic) and James Cafiero (R-Cape May/Atlantic/Cumberland) and Assembly members Carol Murphy (R-Essex/Morris/Passaic) and Richard Merkt (R-Morris), changes the post-retirement State Health Benefits Program eligibility requirements from the current threshold of 25 or more years of service credit in a single state or locally-administered retirement system to 25 or more years of nonconcurring service credit in one or more state or locally-administered retirement systems.

S-2428, sponsored by Senator Gerald Cardinale (R-Bergen) and Assemblywoman Clare Farragher (R-Monmouth), repeals the existing "New Jersey Insurance Producer Licensing Act" and replaces it with a new regulatory system designed to create uniform laws governing the licensure of both resident and nonresident insurance producers. The bill defines key terms and establishes uniform examination and licensing requirements. The bill provides for reciprocity among states for nonresident licensees

A-3261, sponsored by Senators Gerald Cardinale (R-Bergen) and John Adler (D-Camden) and Assembly members Kip Bateman (R-Morris/Somerset) and Peter Biondi (R-Morris/Somerset), The Uniform Principal & Income Act enhances a trustee's ability to satisfy fiduciary duties to the two types of beneficiaries of a trust whose interests often are in conflict: remainder beneficiaries, who benefit from a trust's principal, and income beneficiaries, who benefit from a trust's income distribution. The bill provides a trustee with the discretion to allocate trust assets either to principal or income, in conformity with rules established by the bill and with the "Prudent Investor Act".

A-2601, sponsored by Assemblyman Richard Bagger (R-Middlesex/Morris/Somerset/ Union), pushes back the deadline established in current law for filing certain nominating petitions for party offices and public offices from the 54th day to the 57th day prior to the day of the general election and would affect: a) petitions of candidates seeking the nomination of a political party at the primary election; b) petitions nominating candidates for party positions at the primary election; c) petitions seeking to have the name of a person seeking nomination to the office of President of the United States by a political party appear on the ballot with the names of the delegates and alternates to the national convention of the party.