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# **WEST VIRGINIA CODE CHAPTER 44B**

*WV Legislature*

**§44B-1-101. Short title.**

This chapter may be cited as the "Uniform Principal and Income Act."

WV Legislature

**§44B-1-102. Definitions.**

- (a) "Accounting period" means a calendar year unless another twelve-month period is selected by a fiduciary. The term includes a portion of a calendar year or other twelve-month period that begins when an income interest begins or ends when an income interest ends.
- (b) "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.
- (c) "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.
- (d) "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 article four of this chapter.
- (e) "Income beneficiary" means a person to whom net income of a trust is or may be payable.
- (f) "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.
- (g) "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.
- (h) "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 chapter to or from income during the period.
- (i) "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.
- (j) "Principal" means property held in trust for distribution to a remainder beneficiary when the trust terminates.
- (k) "Remainder beneficiary" means a person entitled to receive principal when an income interest ends.
- (l) "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.
- (m) "Trustee" includes an original, additional or successor trustee, whether or not appointed or confirmed by a court.

**§44B-1-103. 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 articles two and three of this chapter, 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 chapter;

(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 chapter, and no inference that the fiduciary has improperly exercised the discretion arises from the fact that the fiduciary has made an allocation contrary to a provision of this chapter;

(3) Shall administer a trust or estate in accordance with this chapter 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 chapter do not provide a rule for allocating the receipt or disbursement to or between principal and income.

(b) In exercising the power to adjust under subsection (a), section one hundred four of this article, or a discretionary power of administration regarding a matter within the scope of this chapter, whether granted by the terms of a trust, a will or this chapter, including the trustee's power to adjust under subsection (a), section one hundred four of this article, 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. The exercise of discretion in accordance with this chapter is presumed to be fair and reasonable to all of the beneficiaries.

**§44B-1-104. Trustee's power to adjust.**

(a) Subject to the provisions of subsection (b) of this section, a trustee may make an adjustment between principal and income to the extent the trustee considers necessary if all of the following conditions are satisfied:

- (1) The trustee invests and manages trust assets under the prudent investor rule.
- (2) The trust describes the amount that shall or may be distributed to a beneficiary by referring to the trust's income.
- (3) The trustee determines, after applying the rules in subsection (a), section one hundred three of this article, and considering any power the trustee may have under the trust to invade principal or accumulate income, that the trustee is unable to comply with subsection (b), section one hundred three of this article.

(b) A trustee may not make an adjustment between principal and income in any of the following circumstances:

- (1) Where it would diminish the income interest in a trust (A) that requires all of the income to be paid at least annually to a spouse and (B) for which, if the trustee did not have the power to make the adjustment, an estate tax or gift tax marital deduction would be allowed, in whole or in part.
- (2) Where it would reduce 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) Where it would change the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets.
- (4) Where it would be made from any amount that is permanently set aside for charitable purposes under a will or trust, unless both income and principal are so set aside.
- (5) Where possessing or exercising the power to make an adjustment would cause 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) Where possessing or exercising the power to make an adjustment would cause 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) Where the trustee is a beneficiary of the trust.

(c) Notwithstanding any provision to the contrary, if subdivision (5), (6), or (7) of subsection (b) 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 trust.

(d) 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 in either of the following circumstances:

(1) If the trustee is uncertain about whether possessing or exercising the power will cause a result described in subdivisions (1) to (6), inclusive, of subsection (b) of this section.

(2) 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 (b) of this section.

(e) A release under subsection (d) of this section may be permanent or for a specified period, including a period measured by the life of an individual.

(f) A trust that limits the power of a trustee to make an adjustment between principal and income does not affect the application of this section unless it is clear from the trust that it is intended to deny the trustee the power of adjustment provided by subsection (a) of this section.

(g) Nothing in this section or in this chapter is intended to create or imply a duty to make an adjustment, and a trustee is not liable for not considering whether to make an adjustment or for choosing not to make an adjustment.

**§44B-1-104a. Total return unitrust.**

(a) As used in this section:

(1) "Disinterested person" means a person who is not a "related or subordinate party", as defined in I.R.C. §672(c) et seq., with respect to the person then acting as trustee of the trust, and excludes the grantor of the trust and any interested trustee.

(2) "Income Trust" means a trust, created by either an inter vivos or a testamentary instrument, which directs or permits the trustee to distribute the net income of the trust to one or more persons, either in fixed proportions or in amounts or proportions determined by the trustee, and regardless of whether the trust directs or permits the trustee to distribute the principal of the trust to one or more such persons.

(3) "Interested distributee" means a person to whom distributions of income or principal can currently be made who has the power to remove the existing trustee and designate as successor a person who may be a "related or subordinate party" as defined in I.R.C. §672(c) with respect to such distributee.

(4) "Interested trustee" means: (i) An individual trustee to whom the net income or principal of the trust can currently be distributed or would be distributed if the trust were then to terminate and be distributed; (ii) any individual trustee who may be removed and replaced by an interested distributee; or (iii) an individual trustee whose legal obligation to support a beneficiary may be satisfied by distributions of income and principal of the trust.

(5) "Total return unitrust" means an income trust, which has been converted under and meets the provisions of this section.

(6) "Trustee" means all persons acting as trustee of the trust, except where expressly noted otherwise, whether acting in their discretion or at the direction of one or more persons acting in a fiduciary capacity.

(7) "Grantor" means an individual who created an inter vivos or a testamentary trust.

(8) "Unitrust amount" means an amount computed as a percentage of the fair market value of the trust.

(b) A trustee, other than an interested trustee, or where two or more persons are acting as trustee a majority of the trustees who are not an interested trustee, may, in its sole discretion and without judicial approval: (i) Convert an income trust to a total return unitrust; (ii) reconvert a total return unitrust to an income trust; or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust if:

(1) The trustee adopts a written policy for the trust providing: (i) In the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust

amounts rather than net income; (ii) in the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income rather than unitrust amounts; or (iii) that the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed as stated in the policy; and

(2) The trustee sends written notice of its intention to take such action, along with copies of such written policy and this section, to: (i) The grantor of the trust, if living; (ii) all living persons who are currently receiving or eligible to receive distributions of income of the trust; (iii) all living persons who would receive principal of the trust if the trust were to terminate at the time of the giving of such notice, without regard to the exercise of any power of appointment, or, if the trust does not provide for its termination, all living persons who would receive or be eligible to receive distributions of income or principal of the trust if the persons identified in clause (ii) of this subdivision (2) were deceased; and (iv) all persons acting as advisor or protector of the trust; and at least one person receiving notice under each of clauses (ii) and (iii) of subdivision (2) is legally competent.

(A) Notice of the proposed action need not be given to any person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.

(B) The notice of the proposed action shall state that it is given pursuant to this section and shall state all of the following:

(i) The name and mailing address of the trustee;

(ii) The name and telephone number of a person who may be contacted for additional information;

(iii) A description of the action proposed to be taken and an explanation of the reasons for the action;

(iv) The time within which objections to the proposed action can be made, which shall be at least thirty days from the mailing of the notice of proposed action; and

(v) The date on or after which the proposed action may be taken or is effective.

(C) A beneficiary may object to the proposed action by mailing a written objection to the trustee at the address stated in the notice of proposed action within the time period specified in the notice of proposed action.

(D) A trustee is not liable to a beneficiary for an action regarding a matter governed by this chapter if the trustee does not receive a written objection to the proposed action from the beneficiary within the applicable period and the other requirements of this section are satisfied. If no beneficiary entitled to notice objects under this section, the trustee is not liable to any current or future beneficiary with respect to the proposed action.

(c) If there is no trustee of the trust other than an interested trustee, the interested trustee or, where two or more persons are acting as trustee and are interested trustees, a majority of such interested trustees may, in its sole discretion and without judicial approval: (i) Convert an income trust to a total return unitrust; (ii) reconvert a total return unitrust to an income trust; or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust if:

(1) The trustee adopts a written policy for the trust providing: (i) In the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income; (ii) in the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income rather than unitrust amounts; or (iii) that the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed as stated in the policy;

(2) The trustee appoints a disinterested person who, in its sole discretion but acting in a fiduciary capacity, determines for the trustee: (i) The percentage to be used to calculate the unitrust amount; (ii) the method to be used in determining the fair market value of the trust; and (iii) which assets, if any, are to be excluded in determining the unitrust amount;

(3) The trustee sends written notice of its intention to take such action, along with copies of such written policy and this section, to: (i) The grantor of the trust, if living; (ii) all living persons who are currently receiving or eligible to receive distributions of income of the trust; (iii) all living persons who would receive principal of the trust if the trust were to terminate at the time of the giving of such notice, without regard to the exercise of any power of appointment, or, if the trust does not provide for its termination, all living persons who would receive or be eligible to receive distributions of income or principal of the trust if the persons identified in clause (ii) of subdivision (2) of this section were deceased; and (iv) all persons acting as advisor or protector of the trust; and at least one person receiving notice under each of clauses (ii) and (iii) of subdivision (2) of this section is legally competent.

(A) Notice of the proposed action need not be given to any person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.

(B) The notice of the proposed action shall state that it is given pursuant to this section and shall state all of the following:

(i) The name and mailing address of the trustee;

(ii) The name and telephone number of a person who may be contacted for additional information;

(iii) A description of the action proposed to be taken and an explanation of the reasons for

the action;

(iv) The time within which objections to the proposed action can be made, which shall be at least thirty days from the mailing of the notice of proposed action; and

(v) The date on or after which the proposed action may be taken or is effective.

(C) A beneficiary may object to the proposed action by mailing a written objection to the trustee at the address stated in the notice of proposed action within the time period specified in the notice of proposed action.

(D) A trustee is not liable to a beneficiary for an action regarding a matter governed by this chapter if the trustee does not receive a written objection to the proposed action from the beneficiary within the applicable period and the other requirements of this section are satisfied. If no beneficiary entitled to notice objects under this section, the trustee is not liable to any current or future beneficiary with respect to the proposed action.

(d) If any trustee desires to convert an income trust to a total return unitrust, reconvert a total return unitrust to an income trust or change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust but does not have the ability to or elects not to do it under the provisions of subsections (b) or (c) of this section, the trustee may petition the circuit court of the county in which the trustee or beneficiary resides, or if the trustee is a corporate trustee and there is no resident beneficiary, the circuit court of the county where the trust account is administered, for such order as the trustee deems appropriate. In the event, however, there is only one trustee of the trust and the trustee is an interested trustee or in the event there are two or more trustees of the trust and a majority of them are interested trustees, the court, in its own discretion or on the petition of such trustee or trustees or any person interested in the trust, may appoint a disinterested person who, acting in a fiduciary capacity, shall present such information to the court as shall be necessary to enable the court to make its determinations hereunder.

(e) The fair market value of the trust shall be determined at least annually, using a valuation date or dates or averages of valuation dates as are deemed appropriate. Assets for which a fair market value cannot be readily ascertained shall be valued using the valuation methods as are deemed reasonable and appropriate. Assets may be excluded from valuation, provided all income received with respect to the assets is distributed to the extent distributable in accordance with the terms of the governing instrument.

(f) The percentage to be used in determining the unitrust amount shall be a reasonable current return from the trust, in any event no less than three percent nor more than five percent, taking into account the intentions of the grantor of the trust as expressed in the governing instrument, the needs of the beneficiaries, general economic conditions, projected current earnings and appreciation for the trust and projected inflation and its impact on the trust.

(g) Following the conversion of an income trust to a total return unitrust, the trustee:

(1) Shall consider the unitrust amount as paid from net accounting income determined as if the trust were not a unitrust;

(2) Shall then consider the unitrust amount as paid from ordinary income not allocable to net accounting income;

(3) After calculating the trust's capital gain net income described in I.R.C. §1222(9), 26 U.S.C. §1222(9), may consider the unitrust amount as paid from net short-term capital gain described in I.R.C. §1222(5), 26 U.S.C. §1222(5) and then from net long-term capital gain described in I.R.C. §1222(7), 26 U.S.C. §1222(7); and

(4) Shall then consider the unitrust amount as coming from the principal of the trust.

(h) In administering a total return unitrust, the trustee may, in its sole discretion but subject to the provisions of the governing instrument, determine: (i) The effective date of the conversion; (ii) the timing of distributions, including provisions for prorating a distribution for a short year in which a beneficiary's right to payments commences or ceases; (iii) whether distributions are to be made in cash or in kind or partly in cash and partly in kind; (iv) if the trust is reconverted to an income trust, the effective date of such reconversion; and (v) such other administrative matters as may be necessary or appropriate to carry out the purposes of this section.

(i) In the case of a trust for which a marital deduction has been taken for federal tax purposes under I.R.C. §2056 or §2523, 26 U.S.C. §2056 or §2523, the spouse otherwise entitled to receive the net income of the trust shall have the right, by written instrument delivered to the trustee, to compel the reconversion during his or her lifetime of the trust from a total return unitrust to an income trust, notwithstanding anything in this section to the contrary.

(j) Conversion to a total return unitrust under the provisions of this section shall not affect any other provision of the governing instrument, if any, regarding distributions of principal.

(k) This section shall be construed as pertaining to the administration of a trust and shall be available to any trust that is administered under West Virginia law unless:

(1) The governing instrument reflects an intention that the current beneficiary or beneficiaries are to receive an amount other than a reasonable current return from the trust;

(2) The trust is a trust described in I.R.C. §170(f)(2)(B) or I.R.C. §664 (d); or

(3) The governing instrument expressly prohibits use of this section by specific reference to this section or expressly reflects the grantor's intent that net income not be calculated as a unitrust amount.

(l) Any trustee or disinterested person who in good faith takes or fails to take any action

under this section shall not be liable to any person affected by the action or inaction, regardless of whether such person received written notice as provided in this section and regardless of whether the person was under a legal disability at the time of the delivery of the notice. The person's exclusive remedy shall be to obtain an order of the court directing the trustee to convert an income trust to a total return unitrust, to reconvert from a total return unitrust to an income trust or to change the percentage used to calculate the unitrust amount.

(m) The following provisions shall apply to a trust that, by its governing instrument, requires or permits the distribution, at least annually, of a unitrust amount equal to a fixed percentage of not less than three nor more than five percent per year of the fair market value of the trust's assets, valued at least annually, the trust to be referred to in this section as an "express total return unitrust."

(1) The unitrust amount for an express total return unitrust may be determined by reference to the fair market value of the trust's assets in one year or more than one year.

(2) Distribution of a fixed percentage unitrust amount is considered a distribution of all of the income of the express total return unitrust.

(3) An express total return unitrust may or may not provide a mechanism for changing the unitrust percentage similar to the mechanism provided under this section, based upon the factors noted therein, and may or may not provide for a conversion from a unitrust to an income trust and/or a reconversion of an income trust to a unitrust similar to the mechanism under this section.

(4) If an express total return unitrust does not specifically or by reference to this section deny a power to change the unitrust percentage or to convert to an income trust, then the trustee shall have such power.

(5) The distribution of a fixed percentage of not less than three percent nor more than five percent reasonably apportions the total return of an express total return unitrust.

(6) The trust instrument may grant discretion to the trustee to adopt a consistent practice of treating capital gains as part of the unitrust distribution, to the extent that the unitrust distribution exceeds the net accounting income, or it may specify the ordering of such classes of income.

(7) Unless the terms of the trust specifically provide otherwise, a distribution of the unitrust amount from an express total return unitrust shall be considered to have been made from the following sources in order of priority:

(A) From net accounting income determined as if the trust were not a unitrust;

(B) From ordinary income not allocable to net accounting income;

(C) After calculating the trust's capital gain net income as described in Internal Revenue Code 26 U.S.C. §1, et seq. §1222(9), 26 U.S.C. §1222(9), from net realized short-term capital gain as described in I.R.C. §1222(5), 26 U.S.C. § 1222(5) and then from net realized long-term capital gain described in I.R.C. §1222(7), 26 U. S.C. §1222(7); and

(D) From the principal of the trust.

(8) The trust instrument may provide that:

(A) Assets for which a fair market value cannot be readily ascertained shall be valued using such valuation methods as are deemed reasonable and appropriate; and

(B) Assets used by a trust beneficiary, such as a residence property or tangible personal property, may be excluded from the net fair market value for computing the unitrust amount.

**§44B-1-105. Trustee's right to give notice.**

(a) A trustee may but is not required to give a notice of proposed action regarding a matter governed by this chapter as provided in this section. For the purpose of this section, a proposed action includes a course of action and a decision not to take action.

(b) The trustee shall mail notice of the proposed action to all adult beneficiaries who are receiving, or are entitled to receive, income under the trust or to receive a distribution of principal if the trust were terminated at the time the notice is given.

(c) Notice of proposed action need not be given to any person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.

(d) The notice of proposed action shall state that it is given pursuant to this section and shall state all of the following:

(1) The name and mailing address of the trustee;

(2) The name and telephone number of a person who may be contacted for additional information;

(3) A description of the action proposed to be taken and an explanation of the reasons for the action;

(4) The time within which objections to the proposed action can be made, which shall be at least thirty days from the mailing of the notice of proposed action;

(5) The date on or after which the proposed action may be taken or is effective.

(e) A beneficiary may object to the proposed action by mailing a written objection to the trustee at the address stated in the notice of proposed action within the time period specified in the notice of proposed action.

(f) A trustee is not liable to a beneficiary for an action regarding a matter governed by this chapter if the trustee does not receive a written objection to the proposed action from the beneficiary within the applicable period and the other requirements of this section are satisfied. If no beneficiary entitled to notice objects under this section, the trustee is not liable to any current or future beneficiary with respect to the proposed action.

(g) If the trustee receives a written objection within the applicable period, either the trustee or a beneficiary may petition the court to have the proposed action taken as proposed, taken with modifications, or denied. In the proceeding, a beneficiary objecting to the proposed action has the burden of proving that the trustee's proposed action should not be taken. A beneficiary who has not objected is not estopped from opposing the proposed action in the proceeding. If the trustee decides not to implement the proposed action, the trustee shall

notify the beneficiaries of the decision not to take the action and the reasons for the decision, and the trustee's decision not to implement the proposed action does not itself give rise to liability to any current or future beneficiary. A beneficiary may petition the court to have the action taken, and has the burden of proving that it should be taken.

(h) In a proceeding with respect to a trustee's exercise or nonexercise of the power to make an adjustment under section one hundred four, the sole remedy is to direct, deny, or devise an adjustment between principal and income.

(i) Nothing in this section is intended to create or imply a duty to give notice and a trustee is not liable for choosing not to give notice or for not considering whether to give notice.

(j) This chapter applies to any will and trust established under an instrument executed on or after the effective date of this chapter except as otherwise expressly provided in the will or terms of the trust or in this chapter, or if the trustee or personal representative elects in either's sole discretion to administer the trust or will under this chapter. With respect to any will or trust established under an instrument executed prior to the effective date of this chapter, this chapter applies if the trustee or personal representative elects, in either's sole discretion, to administer the trust or will under this chapter.

**§44B-2-201. 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:

(1) 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 given to a beneficiary under the rules in articles three through five which apply to trustees and the rules in subdivision (5) of this section. The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.

(2) A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the rules in articles three through five which apply to trustees and by:

(A) Including in net income all income from property used to discharge liabilities;

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

(C) Paying from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, including 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.

(3) 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 subdivision (2) 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.

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

(5) A fiduciary may not reduce principal or income receipts from property described in subdivision (1) of this section because of a payment described in section five hundred one or five hundred two, article five of this chapter 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.

**§44B-2-202. Distribution to residuary and remainder beneficiaries.**

(a) Each beneficiary described in subdivision (4), section two hundred one of this article 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 must 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 must 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 trustee may apply the rules in this section, to the extent that the trustee 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.

**§44B-3-301. 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.

**§44B-3-302. 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 subdivision (1), section two hundred one, article two of this chapter 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 must 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 must be allocated to principal and the balance must 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 chapter. Distributions to shareholders or other owners from an entity to which section four hundred one, article four of this chapter 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 must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

**§44B-3-303. Apportionment when income interest ends.**

(a) 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 must 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.

## **PART 1. RECEIPTS FROM ENTITIES.**

### **§44B-4-401. Character or receipts.**

(a) 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 four hundred two of this article applies, a business or activity to which section four hundred three of this article applies, or an asset-backed security to which section four hundred fifteen of this article 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 twenty 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 subdivision (2), 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.

**§44B-4-402. 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 four hundred one or four hundred fifteen of this article applies to a receipt from the trust.

**§44B-4-403. 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 must 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 414 applies.

## **PART 2. RECEIPTS NOT NORMALLY APPORTIONED.**

### **§44B-4-404. Principal receipts.**

A trustee shall allocate to principal:

- (1) To the extent not allocated to income under this chapter, 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;
- (2) Money or other property received from the sale, exchange, liquidation or change in form of a principal asset, including realized profit, subject to this article;
- (3) Amounts recovered from third parties to reimburse the trust because of disbursements described in subdivision (7), subsection (a), section five hundred two, article five of this chapter or for other reasons to the extent not based on the loss of income;
- (4) 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;
- (5) Net income received in an accounting period during which there is no beneficiary to whom a trustee may or must distribute income; and
- (6) Other receipts as provided in part 3 of this article.

**§44B-4-405. 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, must 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.

**§44B-4-406. 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, must 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 must be allocated to income.

(c) This section does not apply to an obligation to which section four hundred nine, four hundred ten, four hundred eleven, four hundred twelve, four hundred fourteen or four hundred fifteen of this article applies.

**§44B-4-407. Insurance policies and similar contracts.**

(a) Except as otherwise provided in subsection (b), 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 four hundred three of this article, loss of profits from a business.

(c) This section does not apply to a contract to which section four hundred nine of this article applies.

### **PART 3. RECEIPTS NORMALLY APPORTIONED.**

#### **§44B-4-408. Insubstantial allocations not required.**

(a) If a trustee determines that an allocation between principal and income required by section four hundred nine, four hundred ten, four hundred eleven, four hundred twelve or four hundred fifteen, of this article is insubstantial, the trustee may allocate the entire amount to principal unless one of the circumstances described in subsection (c), section one hundred four of this article applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in subsection (d) of said section and may be released for the reasons and in the manner described in subdivision (e) of said section. An allocation is presumed to be insubstantial if:

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

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

(b) Nothing in this section imposes a duty on the trustee to make an allocation under this section, and the trustee is not liable for failure to make an allocation under this section.

**§44B-4-409. Deferred compensation, annuities and similar payments.**

(a) In this section:

(1) "Payment" means a payment that a trustee may receive over a fixed number of years 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. For purposes of subsections (d), (e), (f), and (g), the term also includes any payment from any separate fund, regardless of the reason for the payment.

(2) "Separate fund" includes 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 payment is characterized as interest, a dividend, or a payment made in lieu of interest or a dividend, a trustee shall allocate the payment to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

(c) If no part of a payment is characterized as interest, a dividend, or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income ten 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) Except as otherwise provided in subsection (e), subsections (f) and (g) apply, and subsections (b) and (c) do not apply, in determining the allocation of a payment made from a separate fund to:

(1) A trust to which an election to qualify for a marital deduction under 26 U.S.C. § 2056(b)(7), as amended, has been made; or

(2) A trust that qualifies for the marital deduction under 26 U.S.C. § 2056(b)(5), as amended.

(e) Subsections (d), (f), and (g) do not apply if and to the extent that the series of payments would, without the application of subsection (d), qualify for the marital deduction under 26 U.S.C. § 2056(b)(7)(C), as amended.

(f) A trustee shall determine the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to this chapter. Upon request of the surviving spouse, the trustee shall demand that the person administering the separate fund distribute the internal income to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and

distribute that amount to the surviving spouse. The trustee shall allocate the balance of the payment to principal. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent the internal income of the separate fund exceeds payments made from the separate fund to the trust during the accounting period.

(g) If a trustee cannot determine the internal income of a separate fund but can determine the value of the separate fund, the internal income of the separate fund is deemed to equal four percent of the fund's value, according to the most recent statement of value preceding the beginning of the accounting period. If the trustee can determine neither the internal income of the separate fund nor the fund's value, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments, as determined under 26 U.S.C. § 7520, as amended, for the month preceding the accounting period for which the computation is made.

(h) This section does not apply to a payment to which section four hundred ten of this article applies.

**§44B-4-410. Liquidating asset.**

(a) 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 four hundred nine of this article, resources subject to section four hundred eleven of this article, timber subject to section four hundred twelve of this article, an activity subject to section four hundred fourteen of this article, an asset subject to section four hundred fifteen of this article or any asset for which the trustee establishes a reserve for depreciation under section five hundred three, article five of this chapter.

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

**§44B-4-411. 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 must be allocated to income;

(2) If received from a production payment, a receipt must 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 must 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, ninety percent must 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 subdivision (1), (2) or (3) of this subsection, ninety percent of the net amount received must be allocated to principal and the balance to income.

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

(c) This chapter 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 chapter, the trustee may allocate receipts from the interest as provided in this chapter or in the manner used by the trustee before the effective date of this chapter. If the trust acquires an interest in minerals, water or other natural resources after the effective date of this chapter, the trustee shall allocate receipts from the interest as provided in this chapter.

**§44B-4-412. 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 subdivisions (1) and (2) of this subsection; or

(4) To principal to the extent that advance payments, bonuses and other payments are not allocated pursuant to subdivision (1), (2) or (3) of this subsection.

(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 chapter 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 chapter, the trustee may allocate net receipts from the sale of timber and related products as provided in this chapter or in the manner used by the trustee before the effective date of this chapter. If the trust acquires an interest in timberland after the effective date of this chapter, the trustee shall allocate net receipts from the sale of timber and related products as provided in this chapter.

**§44B-4-413. 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 surviving 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 one hundred four of this article 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 said section. 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.

**§44B-4-414. Derivatives and options.**

(a) 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 accounts for transactions in derivatives pursuant to this section, 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 must be allocated to principal. An amount paid to acquire the option must 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, must be allocated to principal.

**§44B-4-415. Asset-backed securities.**

(a) 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 four hundred one or four hundred nine of this article 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 ten percent of the payment to income and the balance to principal.

**§44B-5-501. Disbursements from income.**

A trustee shall make the following disbursements from income to the extent that they are not disbursements to which paragraph (B) or (C), subdivision (2), section two hundred one, article two of this chapter applies:

- (1) Except as otherwise ordered by the court one half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee;
- (2) Except as otherwise ordered by the court one half of all expenses for accountings, judicial proceedings or other matters that involve both the income and remainder interests;
- (3) 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, ordinary repairs, regularly recurring taxes assessed against principal and expenses of a proceeding or other matter that concerns primarily the income interest; and
- (4) Recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

**§44B-5-502. Disbursements from principal.**

(a) A trustee shall make the following disbursements from principal:

(1) Except as otherwise ordered by the court the remaining one half of the disbursements described in subdivisions (1) and (2), section five hundred one of this article;

(2) Except as otherwise ordered by the court all of the trustee's compensation calculated on principal as a fee for acceptance, distribution or termination, and disbursements made to prepare property for sale;

(3) Payments on the principal of a trust debt;

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

(5) Premiums paid on a policy of insurance not described in subdivision (4), section five hundred one of this article of which the trust is the owner and beneficiary;

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

(7) 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 costs 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.

(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.

**§44B-5-503. Transfers from income to principal for depreciation.**

(a) 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, under generally accepted accounting principles, 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 four hundred three, article four of this chapter 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.

**§44B-5-504. Transfers 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) A capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments;

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

(4) 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; and

(5) Disbursements described in subdivision (7), subsection (a), section five hundred two of this article.

(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.

**§44B-5-505. Income taxes.**

(a) A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.

(b) A tax required to be paid by a trustee based on receipts allocated to principal must 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 must be paid:

(1) From income to the extent that receipts from the entity are allocated only to income;

(2) From principal to the extent that receipts from the entity are allocated only to principal;

(3) Proportionately from principal and income to the extent that receipts from the entity are allocated to both income and principal; and

(4) From principal to the extent that the tax exceeds the total receipts from the entity.

(d) After applying subsections (a) through (c), the trustee shall adjust income or principal receipts to the extent that the trust's taxes are reduced because the trust receives a deduction for payments made to a beneficiary.

**§44B-5-506. Adjustments between principal and income because of taxes.**

(a) A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries which arise from:

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

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

(3) The ownership by an estate or trust 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.

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

**§44B-5-507. Effect on marital deduction.**

If a marital deduction gift is made in trust, in addition to the other provisions of this chapter, each of the following provisions also applies to the marital deduction trust:

(a) The transferor's spouse is the only beneficiary of income or principal of the marital deduction property as long as the spouse is alive. Nothing in this subdivision precludes exercise by the transferor's spouse of a power of appointment included in a trust that qualifies as a general power of appointment marital deduction trust.

(b) Subject to the provisions of subdivision (d) of this section, the transferor's spouse is entitled to all of the income of the marital deduction property as long as the spouse is alive. Nothing in this subdivision precludes exercise by the transferor's spouse of a power of appointment included in a trust that qualifies as a general power of appointment marital deduction trust.

(c) The transferor's spouse has the right to require that the trustee of the trust make unproductive marital deduction property productive or to convert it into productive property within a reasonable time.

(d) Notwithstanding the provisions of section three hundred three, article three of this chapter, in the case of a qualified terminable interest property under 26 U.S.C. §2056 (b)(7) or 26 U.S.C. §2523 (f), as the same are in effect on the effective date of this chapter, on termination of the interest of the transferor's spouse in the trust all of the remaining accrued or undistributed income shall pass to the estate of the transferor's spouse, unless the instrument provides a different disposition that qualifies for the marital deduction.

**§44B-6-601. Uniformity of application and construction.**

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

WV Legislature

**§44B-6-602. Severability clause.**

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

WV Legislature

**§44B-6-603. Effective date.**

This chapter takes effect on July 1, 2000.

WV Legislature

**§44B-6-604. Application of chapter to existing trusts and estates.**

This chapter applies, to any will and trust established under an instrument executed on or after the effective date of this chapter except as otherwise expressly provided in the will or terms of the trust or in this chapter, or if the trustee or personal representative elects in either's sole discretion to administer the trust or will under this chapter.

With respect to any will or trust established under an instrument executed prior to the effective date of this chapter, this chapter applies if the trustee or personal representative elects, in either's sole discretion, to administer the trust or will under this chapter.

**§44B-6-606. Transitional Matters.**

Section four hundred nine, article four of this chapter, as amended during the regular session of the 2009 Legislature, applies to a trust described in subsection (d) of section four hundred nine, article four of this chapter on and after the following dates:

- (1) If the trust is not funded as of the effective date of the amendments to this chapter enacted during the regular session of the two thousand nine Legislature, the date of the decedent's death.
- (2) If the trust is initially funded in the calendar year beginning January 1, 2009, the date of the decedent's death.
- (3) If the trust is not described in paragraph (1) or (2), January 1, 2009.