WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1953

ENROLLED
Committee substitute for
HOUSE BILL No. 85
Originating in the Committee
(By Mr. on the Judiciary)

PASSED March 13, 1953
In Effect thirty days from Passage
ENROLLED

COMMITTEE SUBSTITUTE FOR

House Bill No. 85

(Originating in the Committee on the Judiciary)

[Passed March 13, 1953; in effect ninety days from passage.]

AN ACT to amend chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, to be designated article six, relating to the ascertainment of principal and income and the apportionment of receipts and expenses among tenants and remaindermen, and to make uniform the law with reference thereto.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, to be designated article six, to read as follows:

Section 1. Definition of Terms.—“Principal” as used in this article means any realty or personalty which has been so set aside or limited by the owner thereof or a
person thereto legally empowered that it and any substi-
tutions for it are eventually to be conveyed, delivered
or paid to a person, while the return therefrom or use
thereof or any part of such return or use is in the mean-
time to be taken or received by or held for accumulation
for the same or another person;

"Income" as used in this article means the return
derived from principal;

"Tenant" as used in this article means the person to
whom income is presently or currently payable, or for
whom it is accumulated or who is entitled to the beneficial
use of the principal presently and for a time prior to its
distribution;

"Remainderman" as used in this article means the
person ultimately entitled to the principal, whether
named or designated by the terms of the transaction by
which the principal was established or determined by
operation of law;

"Trustee" as used in this article includes the original
trustee of any trust to which the principal may be subject
and also any succeeding or added trustee.
Sec. 2. Application of the Act—Powers of Settlor.—

This article shall govern the ascertainment of income and principal, and the apportionment of receipts and expenses between tenants and remaindermen, in all cases where a principal has been established with or, unless otherwise stated hereinafter, without the interposition of a trust; except that in the establishment of the principal provision may be made touching all matters covered by this article, and the person establishing the principal may himself direct the manner of ascertainment of income and principal and the apportionment of receipts and expenses or grant discretion to the trustee or other person to do so, and such provision and direction, where not otherwise contrary to law, shall control notwithstanding this article.

Sec. 3. Income and Principal—Disposition.—(1) All receipts of money or other property paid or delivered as rent of realty or hire of personalty or dividends on corporate shares payable other than in shares of the corporation itself, or interest on money loaned, or interest on or the rental or use value of property wrongfully
withheld or tortiously damaged, or otherwise in return for the use of principal, shall be deemed income unless otherwise expressly provided in this article.

(2) All receipts of money or other property paid or delivered as the consideration for the sale or other transfer, not a leasing or letting, of property forming a part of the principal, or as a repayment of loans, or in liquidation of the assets of a corporation, or as the proceeds of property taken on eminent domain proceedings where separate awards to tenant and remainderman are not made, or as proceeds of insurance upon property forming a part of the principal except where such insurance has been issued for the benefit of either tenant or remainderman alone, or otherwise as a refund or replacement or change in form or principal, shall be deemed principal unless otherwise expressly provided in this article. Any profit or loss resulting upon any change in form of principal shall enure to or fall upon principal.

(3) All income after payment of expenses properly chargeable to it shall be paid and delivered to the tenant or retained by him if already in his possession or held for
accumulation where legally so directed by the terms of the
transaction by which the principal was established; while
the principal shall be held for ultimate distribution as
determined by the terms of the transaction by which
it was established or by law.

Sec. 4. *Apportionment of Income.*—Whenever a tenant
shall have the right to income from periodic payments,
which shall include rent, interest on loans, and annuities,
but shall not include dividends on corporate shares, and
such right shall cease and determine by death or in any
other manner at a time other than the date when such
periodic payments should be paid, he or his personal
representative shall be entitled to that portion of any
such income next payable, which amounts to the same
percentage thereof as the time elapsed from the last due
date of such periodic payments to and including the day
of the determination of his right is of the total period
during which such income would normally accrue. The
remaining income shall be paid to the person next entitled
to income by the terms of the transaction by which the
principal was established. But no action shall be brought
by the trustee or tenant to recover such apportioned in-
come or any portion thereof until after the day on which
it would have become due to the tenant but for the
determination of the right of the tenant entitled thereto.
The provisions of this section shall apply whether an
ultimate remainderman is specifically named or not.
Likewise when the right of the first tenant accrues at a
time other than the payment dates of such periodic pay-
ments, he shall only receive that portion of such income
which amounts to the same percentage thereof as the
time during which he has been so entitled is of the total
period during which such income would normally accrue;
the balance shall be a part of the principal.

Sec. 5. Corporate Dividends and Share Rights.—(1) All
dividends on shares of a corporation forming a part of
the principal which are payable in the shares of the
corporation shall be deemed principal. Subject to the
provisions of this section, all dividends payable otherwise
than in the shares of the corporation itself, including
ordinary and extraordinary dividends and dividends pay-
able in shares or other securities or obligations of corpora-
tions other than the declaring corporation, shall be deemed income. Where the trustee shall have the option of receiving a dividend either in cash or in the shares of the declaring corporation, it shall be considered as a cash dividend and deemed income, irrespective of the choice made by the trustee.

(2) All rights to subscribe to the shares or other securities or obligations of a corporation accruing on account of the ownership of shares or other securities in such corporation, and the proceeds of any sale of such rights, shall be deemed principal. All rights to subscribe to the shares or other securities or obligations of a corporation accruing on account of the ownership of shares or other securities in another corporation, and the proceeds of any sale of such rights, shall be deemed income.

(3) Where the assets of a corporation are liquidated, amounts paid upon corporate shares as cash dividends declared before such liquidation occurred or as arrears of preferred or guaranteed dividends shall be deemed income; all other amounts paid upon corporate shares on disbursement of the corporate assets to the stockholders
shall be deemed principal. All disbursements of corporate
assets to the stockholders, whenever made, which are
designated by the corporation as a return of capital or
division of corporate property shall be deemed principal.

(4) Where a corporation succeeds another by merger,
consolidation or reorganization or otherwise acquires its
assets, and the corporate shares of the succeeding corpora-
tion are issued to the shareholders of the original cor-
poration in like proportion to, or in substitution for,
their shares of the original corporation, the two corpora-
tions shall be considered a single corporation in applying
the provisions of this section. But two corporations shall
not be considered a single corporation under this section
merely because one owns corporate shares of or other-
wise controls or directs the other.

(5) In applying this section the date when a dividend
accrues to the person who is entitled to it shall be held
to be the date specified by the corporation as the one on
which the stockholders entitled thereto are determined,
or in default thereof the date of declaration of the
dividend.
Sec. 6. Premiums and Discount Bonds.—(1) Where any part of the principal consists of bonds or other obligations for the payment of money, they shall be deemed principal at their inventory value or in default thereof at their market value at the time the principal was established, or at their cost where purchased later, regardless of their par or maturity value; and upon their respective maturities or upon their sale any loss or gain realized thereon shall fall upon or enure to the principal.

(2) When any part of the principal of a trust consists of a bond or other obligation for the payment of money, bearing no stated interest but redeemable at maturity or a future time at an amount in excess of the amount in consideration of which it was issued, the amount of such accretion earned during the period that such bond or other obligation was held by the trustee, shall enure to income.

(3) When any part of the principal of a trust consists of a bond or other obligation for the payment of money, bearing interest at a stated rate payable at stated times, but redeemable prior to maturity at an amount less than
the amount in consideration of which it was issued, the full amount of such interest payments received during the period that such bond or other obligation was held by the trustee, shall enure to income.

(4) When said bonds or other obligations are held as principal of a trust, the income of which is payable at a time or times prior to the maturity of said bonds or other obligations, the trustee or other fiduciary may pay to the tenant the amount of the increment described in subsection (2) above and may make payment from any principal funds in his hands or may transfer from principal account to income account the amount of such increment, and in case such payment or transfer is so made, the increment in value of such bond or other obligation shall be added to and held as a part of the principal of the trust; and the trustee or other fiduciary may pay to the tenant the full amount of interest received described in subsection (3) above, but in the event said bonds or other obligations are redeemed prior to maturity at an amount less than the cost thereof, the difference between cost and redemption value shall be transferred from the
income account to the principal account and shall be added to and held as a part of the principal of the trust.

Sec. 7. Principal Used in Business.—(1) Whenever a trustee or a tenant is authorized by the terms of the transaction by which the principal was established, or by law to use any part of the principal in the continuance of a business which the original owner of the property comprising the principal had been carrying on, the net profits of such business attributable to such principal shall be deemed income.

(2) Where such business consists of buying and selling property, the net profits for any period shall be ascertained by deducting from the gross returns during and the inventory value of the property at the end of such period, the expenses during and the inventory value of the property at the beginning of such period.

(3) Where such business does not consist of buying and selling property, the net income shall be computed in accordance with the customary practice of such business, but not in such way as to decrease the principal.

(4) Any increase in the value of the principal used
in such business shall be deemed principal, and all losses
in any one calendar year, after the income from such
business for that year has been exhausted, shall fall upon
principal.

Sec. 8. Principal Comprising Animals.—Where any part
of the principal consists of animals employed in business,
the provisions of section seven shall apply; and in other
cases where the animals are held as a part of the principal,
partly or wholly because of the offspring or increase
which they are expected to produce, all offspring or in-
crease shall be deemed principal to the extent necessary
to maintain the original number of such animals and
the remainder shall be deemed income; and in all other
cases such offspring or increase shall be deemed income.

Sec. 9. Disposition of Natural Resources.—Where any
part of the principal consists of property in lands from
which may be taken timber, minerals, oils, gas or other
natural resources and the trustee or tenant is authorized
by law or by the terms of the transaction by which the
principal was established to sell, lease or otherwise de-
velop such natural resources, and no provision is made
for the disposition of the net proceeds thereof after the
payment of expenses and carrying charges on such
property, such proceeds, if received as rent on a lease,
shall be deemed income, but if received as consideration,
whether as royalties or otherwise, for the permanent
severance of such natural resources from the lands, shall
be deemed principal to be invested to produce income.
Nothing in this section shall be construed to abrogate or
extend any right which may otherwise have accrued by
law to a tenant to develop or work such natural resources
for his own benefit.

Sec. 10. Principal Subject to Depletion.—Where any
part of the principal consists of property subject to de-
pletion, such as leaseholds, patents, copyrights and royalty
rights, other than royalties from natural resources, and the
trustee or tenant in possession is not under a duty to
change the form of the investment of the principal, the
full amount of rents, royalties or return from the property
shall be income to the tenant; but where the trustee or
tenant is under a duty, arising either by law or by the
terms of the transaction by which the principal was estab-
lished, to change the form of the investment, either at once or as soon as it may be done without loss, then the return from such property not in excess of five per centum per annum of its fair inventory value or in default thereof its market value at the time the principal was established, or at its cost where purchased later, shall be deemed income and the remainder principal.

Sec. 11. Unproductive Estate.—(1) Where any part of a principal in the possession of a trustee consists of realty or personalty which for more than a year and until disposed of as hereinafter stated has not produced an average net income of at least one per centum per annum of its fair inventory value or in default thereof its market value at the time the principal was established or of its cost where purchased later, and the trustee is under a duty to change the form of the investment as soon as it may be done without sacrifice of value and such change is delayed, but is made before the principal is finally distributed, then the tenant, or in case of his death his personal representa-
14 from the property as delayed income to the extent herein-
15 after stated.
16 (2) Such income shall be the difference between the
17 net proceeds received from the property and the amount
18 which, had it been placed at simple interest at the rate
19 of five per centum per annum for the period during which
20 the change was delayed, would have produced the net
21 proceeds at the time of change. The net proceeds shall
22 consist of the gross proceeds received from the property
23 less any expenses incurred in disposing of it and less all
24 carrying charges which have been paid out of principal
25 during the period while it has been unproductive.
26 (3) The change shall be taken to have been delayed
27 from the time when the duty to make it first arose, which
28 shall be presumed, in the absence of evidence to the con-
29 trary, to be one year after the trustee first received the
30 property if then unproductive, otherwise one year after
31 it became unproductive.
32 (4) If the tenant has received any income from the
33 property or has had any beneficial use thereof during the
34 period while the change has been delayed, his share of the
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35 delayed income shall be reduced by the amount of such income received or the value of the use had.

37 (5) In the case of successive tenants the delayed income shall be divided among them or their representatives according to the length of the period for which each was entitled to income.

Sec. 12. Expenses—Trust Estates.—(1) All ordinary expenses incurred in connection with the trust estate or with its administration and management, including regularly recurring taxes assessed against any portion of the principal, water rates, premiums on insurance taken upon the estates of both tenant and remainderman, interest on mortgages on the principal, ordinary repairs, trustees' compensation except commissions computed on principal, compensation of assistants, and court costs and attorneys' and other fees on regular accountings, shall be paid out of income. But such expenses where incurred in disposing of, or as carrying charges on, unproductive estate as defined in section eleven, shall be paid out of principal, subject to the provisions of subsection two of section eleven.

(2) All other expenses, including trustee's commissions
computed upon principal, cost of investing or reinvesting
principal, attorneys' fees and other costs incurred in main-
taining or defending any action to protect the trust or
the property or assure the title thereof, unless due to the
fault or cause of the tenant, and costs of, or assessments
for, improvements to property forming part of the prin-
cipal, shall be paid out of principal. Any tax levied by
any authority, federal, state or foreign, upon profit or
gain defined as principal under the terms of subsection
two of section three shall be paid out of principal, not-
withstanding said tax may be denominated a tax upon
income by the taxing authority.

(3) Expenses paid out of income according to subsec-
tion one which represents regularly recurring charges
shall be considered to have accrued from day to day, and
shall be apportioned on that basis whenever the right of
the tenant begins or ends at some date other than the
payment date of the expenses. Where the expenses to
be paid out of income are of unusual amount, the trustee
may distribute them throughout an entire year or part
thereof, or throughout a series of years. After such dis-
tribution, where the right of the tenant ends during the period, the expenses shall be apportioned between tenant and remainderman on the basis of such distribution.

(4) Where the costs of, or special taxes or assessments for, an improvement representing an addition of value to property held by the trustee as part of principal are paid out of principal, as provided in subsection two, the trustee shall reserve out of income and add to the principal each year a sum equal to the cost of the improvement divided by the number of years of the reasonably expected duration of the improvement.

Sec. 13. Expenses—Non-Trust Estates.—(1) The provisions of section twelve, so far as applicable and excepting those dealing with costs of, or special taxes or assessments for, improvements to property, shall govern the apportionment of expenses between tenants and remaindermen where no trust has been created, subject, however, to any legal agreement of the parties or any specific direction of the taxing or other statutes; but where either tenant or remainderman has incurred an expense for the
benefit of his own estate and without the consent or agree-
ment of the other, he shall pay such expense in full.

(2) Subject to the exceptions stated in subsection one
the cost of, or special taxes or assessments for, an im-
provement representing an addition of value to property
forming part of the principal shall be paid by the tenant,
where such improvement cannot reasonably be expected
to outlast the estate of the tenant. In all other cases a
portion thereof only shall be paid by the tenant, while the
remainder shall be paid by the remainderman. Such por-
tion shall be ascertained by taking that percentage of the
total which is found by dividing the present value of the
tenant's estate by the present value of an estate of the
same form as that of the tenant except that it is limited
for a period corresponding to the reasonably expected
duration of the improvement. The computation of present
values of the estates shall be made on the expectancy basis
set forth in article two of chapter forty-three of the code
of West Virginia, one thousand nine hundred thirty-one,
and no other evidence of duration or expectance shall be
considered.
Sec. 14. *Uniformity of Interpretation.*—This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Sec. 15. *Short Title.*—This article may be cited as the "Uniform Principal and Income Act."

Sec. 16. *Repeal.*—All acts or parts of acts which are inconsistent with the provisions of this article are hereby repealed.

Sec. 17. *Time of Taking Effect.*—This article shall apply to all estates of tenants or remaindermen which become legally effective after June thirty, one thousand nine hundred fifty-three.
The Joint Committee on Enrolled Bills hereby certifies that
the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the House of Delegates

Takes effect forty days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within approved this the 20th
day of March, 1953.

[Signature]
Governor

[Signature]
Secretary of State

MAR 20, 1953
D. Pitt O'Brien,