

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 Twenty days from Passage



*58*  
~~*85*~~

**ENROLLED**

COMMITTEE SUBSTITUTE FOR

**House Bill No. 85**

(Originating in the Committee on the Judiciary)

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

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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  
2 in this article means any realty or personalty which has  
3 been so set aside or limited by the owner thereof or a

4 person thereto legally empowered that it and any substi-  
5 tutions for it are eventually to be conveyed, delivered  
6 or paid to a person, while the return therefrom or use  
7 thereof or any part of such return or use is in the mean-  
8 time to be taken or received by or held for accumulation  
9 for the same or another person;

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

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

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

22 "Trustee" as used in this article includes the original  
23 trustee of any trust to which the principal may be subject  
24 and also any succeeding or added trustee.

Sec. 2. *Application of the Act—Powers of Settlor.*—

2 This article shall govern the ascertainment of income  
3 and principal, and the apportionment of receipts and  
4 expenses between tenants and remaindermen, in all cases  
5 where a principal has been established with or, unless  
6 otherwise stated hereinafter, without the interposition of  
7 a trust; except that in the establishment of the principal  
8 provision may be made touching all matters covered by  
9 this article, and the person establishing the principal  
10 may himself direct the manner of ascertainment of in-  
11 come and principal and the apportionment of receipts  
12 and expenses or grant discretion to the trustee or other  
13 person to do so, and such provision and direction, where  
14 not otherwise contrary to law, shall control notwith-  
15 standing this article.

Sec. 3. *Income and Principal—Disposition.*—(1) All

2 receipts of money or other property paid or delivered  
3 as rent of realty or hire of personalty or dividends on  
4 corporate shares payable other than in shares of the  
5 corporation itself, or interest on money loaned, or interest  
6 on or the rental or use value of property wrongfully

7 withheld or tortiously damaged, or otherwise in return  
8 for the use of principal, shall be deemed income unless  
9 otherwise expressly provided in this article.

10 (2) All receipts of money or other property paid or  
11 delivered as the consideration for the sale or other trans-  
12 fer, not a leasing or letting, of property forming a part  
13 of the principal, or as a repayment of loans, or in liquida-  
14 tion of the assets of a corporation, or as the proceeds of  
15 property taken on eminent domain proceedings where  
16 separate awards to tenant and remainderman are not  
17 made, or as proceeds of insurance upon property forming  
18 a part of the principal except where such insurance has  
19 been issued for the benefit of either tenant or remainder-  
20 man alone, or otherwise as a refund or replacement or  
21 change in form or principal, shall be deemed principal  
22 unless otherwise expressly provided in this article. Any  
23 profit or loss resulting upon any change in form of princi-  
24 pal shall enure to or fall upon principal.

25 (3) All income after payment of expenses properly  
26 chargeable to it shall be paid and delivered to the tenant  
27 or retained by him if already in his possession or held for

28 accumulation where legally so directed by the terms of the  
29 transaction by which the principal was established; while  
30 the principal shall be held for ultimate distribution as  
31 determined by the terms of the transaction by which  
32 it was established or by law.

Sec. 4. *Apportionment of Income.*—Whenever a tenant  
2 shall have the right to income from periodic payments,  
3 which shall include rent, interest on loans, and annuities,  
4 but shall not include dividends on corporate shares, and  
5 such right shall cease and determine by death or in any  
6 other manner at a time other than the date when such  
7 periodic payments should be paid, he or his personal  
8 representative shall be entitled to that portion of any  
9 such income next payable, which amounts to the same  
10 percentage thereof as the time elapsed from the last due  
11 date of such periodic payments to and including the day  
12 of the determination of his right is of the total period  
13 during which such income would normally accrue. The  
14 remaining income shall be paid to the person next entitled  
15 to income by the terms of the transaction by which the  
16 principal was established. But no action shall be brought

17 by the trustee or tenant to recover such apportioned in-  
18 come or any portion thereof until after the day on which  
19 it would have become due to the tenant but for the  
20 determination of the right of the tenant entitled thereto.  
21 The provisions of this section shall apply whether an  
22 ultimate remainderman is specifically named or not.  
23 Likewise when the right of the first tenant accrues at a  
24 time other than the payment dates of such periodic pay-  
25 ments, he shall only receive that portion of such income  
26 which amounts to the same percentage thereof as the  
27 time during which he has been so entitled is of the total  
28 period during which such income would normally accrue;  
29 the balance shall be a part of the principal.

Sec. 5. *Corporate Dividends and Share Rights.*—(1) All  
2 dividends on shares of a corporation forming a part of  
3 the principal which are payable in the shares of the  
4 corporation shall be deemed principal. Subject to the  
5 provisions of this section, all dividends payable otherwise  
6 than in the shares of the corporation itself, including  
7 ordinary and extraordinary dividends and dividends pay-  
8 able in shares or other securities or obligations of corpora-

9 tions other than the declaring corporation, shall be  
10 deemed income. Where the trustee shall have the option  
11 of receiving a dividend either in cash or in the shares  
12 of the declaring corporation, it shall be considered as a  
13 cash dividend and deemed income, irrespective of the  
14 choice made by the trustee.

15 (2) All rights to subscribe to the shares or other  
16 securities or obligations of a corporation accruing on  
17 account of the ownership of shares or other securities in  
18 such corporation, and the proceeds of any sale of such  
19 rights, shall be deemed principal. All rights to subscribe  
20 to the shares or other securities or obligations of a corpora-  
21 tion accruing on account of the ownership of shares or  
22 other securities in another corporation, and the proceeds  
23 of any sale of such rights, shall be deemed income.

24 (3) Where the assets of a corporation are liquidated,  
25 amounts paid upon corporate shares as cash dividends  
26 declared before such liquidation occurred or as arrears  
27 of preferred or guaranteed dividends shall be deemed  
28 income; all other amounts paid upon corporate shares on  
29 disbursement of the corporate assets to the stockholders



30 shall be deemed principal. All disbursements of corporate  
31 assets to the stockholders, whenever made, which are  
32 designated by the corporation as a return of capital or  
33 division of corporate property shall be deemed principal.

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

45 (5) In applying this section the date when a dividend  
46 accrues to the person who is entitled to it shall be held  
47 to be the date specified by the corporation as the one on  
48 which the stockholders entitled thereto are determined,  
49 or in default thereof the date of declaration of the  
50 dividend.

Sec. 6. *Premiums and Discount Bonds.*—(1) Where  
2 any part of the principal consists of bonds or other obliga-  
3 tions for the payment of money, they shall be deemed  
4 principal at their inventory value or in default thereof  
5 at their market value at the time the principal was  
6 established, or at their cost where purchased later, regard-  
7 less of their par or maturity value; and upon their  
8 respective maturities or upon their sale any loss or gain  
9 realized thereon shall fall upon or enure to the principal.

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

18 (3) When any part of the principal of a trust consists  
19 of a bond or other obligation for the payment of money,  
20 bearing interest at a stated rate payable at stated times,  
21 but redeemable prior to maturity at an amount less than

22 the amount in consideration of which it was issued, the  
23 full amount of such interest payments received during  
24 the period that such bond or other obligation was held  
25 by the trustee, shall enure to income.

26 (4) When said bonds or other obligations are held as  
27 principal of a trust, the income of which is payable at a  
28 time or times prior to the maturity of said bonds or  
29 other obligations, the trustee or other fiduciary may pay  
30 to the tenant the amount of the increment described in  
31 subsection (2) above and may make payment from any  
32 principal funds in his hands or may transfer from princi-  
33 pal account to income account the amount of such incre-  
34 ment, and in case such payment or transfer is so made,  
35 the increment in value of such bond or other obligation  
36 shall be added to and held as a part of the principal of  
37 the trust; and the trustee or other fiduciary may pay to  
38 the tenant the full amount of interest received described  
39 in subsection (3) above, but in the event said bonds or  
40 other obligations are redeemed prior to maturity at an  
41 amount less than the cost thereof, the difference between  
42 cost and redemption value shall be transferred from the

43 income account to the principal account and shall be  
44 added to and held as a part of the principal of the trust.

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

9 (2) Where such business consists of buying and selling  
10 property, the net profits for any period shall be ascer-  
11 tained by deducting from the gross returns during and  
12 the inventory value of the property at the end of such  
13 period, the expenses during and the inventory value of  
14 the property at the beginning of such period.

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

19 (4) Any increase in the value of the principal used

20 in such business shall be deemed principal, and all losses  
21 in any one calendar year, after the income from such  
22 business for that year has been exhausted, shall fall upon  
23 principal.

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

Sec. 9. *Disposition of Natural Resources.*—Where any  
2 part of the principal consists of property in lands from  
3 which may be taken timber, minerals, oils, gas or other  
4 natural resources and the trustee or tenant is authorized  
5 by law or by the terms of the transaction by which the  
6 principal was established to sell, lease or otherwise de-  
7 velop such natural resources, and no provision is made

8 for the disposition of the net proceeds thereof after the  
9 payment of expenses and carrying charges on such  
10 property, such proceeds, if received as rent on a lease,  
11 shall be deemed income, but if received as consideration,  
12 whether as royalties or otherwise, for the permanent  
13 severance of such natural resources from the lands, shall  
14 be deemed principal to be invested to produce income.  
15 Nothing in this section shall be construed to abrogate or  
16 extend any right which may otherwise have accrued by  
17 law to a tenant to develop or work such natural resources  
18 for his own benefit.

Sec. 10. *Principal Subject to Depletion.*—Where any  
2 part of the principal consists of property subject to de-  
3 pletion, such as leaseholds, patents, copyrights and royalty  
4 rights, other than royalties from natural resources, and the  
5 trustee or tenant in possession is not under a duty to  
6 change the form of the investment of the principal, the  
7 full amount of rents, royalties or return from the property  
8 shall be income to the tenant; but where the trustee or  
9 tenant is under a duty, arising either by law or by the  
10 terms of the transaction by which the principal was estab-

11 lished, to change the form of the investment, either at  
12 once or as soon as it may be done without loss, then the  
13 return from such property not in excess of five per centum  
14 per annum of its fair inventory value or in default thereof  
15 its market value at the time the principal was established,  
16 or at its cost where purchased later, shall be deemed in-  
17 come and the remainder principal.

Sec. 11. *Unproductive Estate*.—(1) Where any part of  
2 a principal in the possession of a trustee consists of realty  
3 or personalty which for more than a year and until dis-  
4 posed of as hereinafter stated has not produced an average  
5 net income of at least one per centum per annum of its  
6 fair inventory value or in default thereof its market value  
7 at the time the principal was established or of its cost  
8 where purchased later, and the trustee is under a duty to  
9 change the form of the investment as soon as it may be  
10 done without sacrifice of value and such change is delayed,  
11 but is made before the principal is finally distributed, then  
12 the tenant, or in case of his death his personal representa-  
13 tive, shall be entitled to share in the net proceeds received

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



35 delayed income shall be reduced by the amount of such  
36 income received or the value of the use had.

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

Sec. 12. *Expenses—Trust Estates.*—(1) All ordinary  
2 expenses incurred in connection with the trust estate or  
3 with its administration and management, including regu-  
4 larly recurring taxes assessed against any portion of the  
5 principal, water rates, premiums on insurance taken upon  
6 the estates of both tenant and remainderman, interest on  
7 mortgages on the principal, ordinary repairs, trustees'  
8 compensation except commissions computed on principal,  
9 compensation of assistants, and court costs and attorneys'  
10 and other fees on regular accountings, shall be paid out  
11 of income. But such expenses where incurred in disposing  
12 of, or as carrying charges on, unproductive estate as de-  
13 fined in section eleven, shall be paid out of principal, sub-  
14 ject to the provisions of subsection two of section eleven.

15 (2) All other expenses, including trustee's commissions

16 computed upon principal, cost of investing or reinvesting  
17 principal, attorneys' fees and other costs incurred in main-  
18 taining or defending any action to protect the trust or  
19 the property or assure the title thereof, unless due to the  
20 fault or cause of the tenant, and costs of, or assessments  
21 for, improvements to property forming part of the prin-  
22 cipal, shall be paid out of principal. Any tax levied by  
23 any authority, federal, state or foreign, upon profit or  
24 gain defined as principal under the terms of subsection  
25 two of section three shall be paid out of principal, not-  
26 withstanding said tax may be denominated a tax upon  
27 income by the taxing authority.

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

37 tribution, where the right of the tenant ends during the  
38 period, the expenses shall be apportioned between tenant  
39 and remainderman on the basis of such distribution.

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

Sec. 13. *Expenses—Non-Trust Estates.*—(1) The pro-  
2 visions of section twelve, so far as applicable and except-  
3 ing those dealing with costs of, or special taxes or assess-  
4 ments for, improvements to property, shall govern the  
5 apportionment of expenses between tenants and remain-  
6 dermen where no trust has been created, subject, however,  
7 to any legal agreement of the parties or any specific direc-  
8 tion of the taxing or other statutes; but where either ten-  
9 ant or remainderman has incurred an expense for the

10 benefit of his own estate and without the consent or agree-  
11 ment of the other, he shall pay such expense in full.

12 (2) Subject to the exceptions stated in subsection one  
13 the cost of, or special taxes or assessments for, an im-  
14 provement representing an addition of value to property  
15 forming part of the principal shall be paid by the tenant,  
16 where such improvement cannot reasonably be expected  
17 to outlast the estate of the tenant. In all other cases a  
18 portion thereof only shall be paid by the tenant, while the  
19 remainder shall be paid by the remainderman. Such por-  
20 tion shall be ascertained by taking that percentage of the  
21 total which is found by dividing the present value of the  
22 tenant's estate by the present value of an estate of the  
23 same form as that of the tenant except that it is limited  
24 for a period corresponding to the reasonably expected  
25 duration of the improvement. The computation of present  
26 values of the estates shall be made on the expectancy basis  
27 set forth in article two of chapter forty-three of the code  
28 of West Virginia, one thousand nine hundred thirty-one,  
29 and no other evidence of duration or expectance shall be  
30 considered.

Sec. 14. *Uniformity of Interpretation.*—This article shall  
2 be so interpreted and construed as to effectuate its general  
3 purpose to make uniform the law of those states which  
4 enact it.

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

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

Sec. 17. *Time of Taking Effect.*—This article shall apply  
2 to all estates of tenants or remaindermen which become  
3 legally effective after June thirty, one thousand nine hun-  
4 dred fifty-three.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*J. M. Kinley*  
Chairman Senate Committee

*C. H. Cumber*  
Chairman House Committee

Originated in the House of Delegates

Takes effect *next day from* passage.

*Thomas Myers*  
Clerk of the Senate

*Joseph*  
Clerk of the House of Delegates

*Ralph Reed*  
President of the Senate

*W. E. Flannery*  
Speaker House of Delegates

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

*William C. Marland*  
Governor



FILED IN THE OFFICE OF THE SECRETARY OF STATE  
OF THE STATE OF VIRGINIA *MAR 20 1953*

**D. PITT O'BRIEN,**  
SECRETARY OF STATE