

1 **UNIFORM FIDUCIARY INCOME AND PRINCIPAL ACT**

2 **AMENDMENTS**

3 2020 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Lyle W. Hillyard**

6 House Sponsor: V. Lowry Snow

8 **LONG TITLE**

9 **General Description:**

10 This bill amends provisions of the Uniform Fiduciary Income and Principal Act.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ modifies definitions;
- 14 ▶ clarifies language of the Uniform Fiduciary Income and Principal Act;
- 15 ▶ resolves a conflict between the Uniform Fiduciary Income and Principal Act and the
- 16 Uniform Directed Trust Act regarding the terms of a trust;
- 17 ▶ modifies dates to reflect the effective date of the Uniform Fiduciary Income and
- 18 Principal Act; and
- 19 ▶ makes technical and conforming changes.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 This bill provides a special effective date.

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **22-3-102 (Effective 07/01/20)**, as repealed and reenacted by Laws of Utah 2019,
27 Chapter 495

28 **22-3-104 (Effective 07/01/20)**, as repealed and reenacted by Laws of Utah 2019,
29 Chapter 495

30 **22-3-201 (Effective 07/01/20)**, as repealed and reenacted by Laws of Utah 2019,
31 Chapter 495
32 **22-3-202 (Effective 07/01/20)**, as repealed and reenacted by Laws of Utah 2019,
33 Chapter 495
34 **22-3-203 (Effective 07/01/20)**, as enacted by Laws of Utah 2019, Chapter 495
35 **22-3-301 (Effective 07/01/20)**, as repealed and reenacted by Laws of Utah 2019,
36 Chapter 495
37 **22-3-302 (Effective 07/01/20)**, as repealed and reenacted by Laws of Utah 2019,
38 Chapter 495
39 **22-3-303 (Effective 07/01/20)**, as repealed and reenacted by Laws of Utah 2019,
40 Chapter 495
41 **22-3-304 (Effective 07/01/20)**, as enacted by Laws of Utah 2019, Chapter 495
42 **22-3-305 (Effective 07/01/20)**, as enacted by Laws of Utah 2019, Chapter 495
43 **22-3-307 (Effective 07/01/20)**, as enacted by Laws of Utah 2019, Chapter 495
44 **22-3-308 (Effective 07/01/20)**, as enacted by Laws of Utah 2019, Chapter 495
45 **22-3-309 (Effective 07/01/20)**, as enacted by Laws of Utah 2019, Chapter 495
46 **22-3-401 (Effective 07/01/20)**, as repealed and reenacted by Laws of Utah 2019,
47 Chapter 495
48 **22-3-402 (Effective 07/01/20)**, as repealed and reenacted by Laws of Utah 2019,
49 Chapter 495
50 **22-3-403 (Effective 07/01/20)**, as repealed and reenacted by Laws of Utah 2019,
51 Chapter 495
52 **22-3-404 (Effective 07/01/20)**, as repealed and reenacted by Laws of Utah 2019,
53 Chapter 495
54 **22-3-405 (Effective 07/01/20)**, as repealed and reenacted by Laws of Utah 2019,
55 Chapter 495
56 **22-3-407 (Effective 07/01/20)**, as repealed and reenacted by Laws of Utah 2019,
57 Chapter 495

58 **22-3-409 (Effective 07/01/20)**, as repealed and reenacted by Laws of Utah 2019,
59 Chapter 495
60 **22-3-411 (Effective 07/01/20)**, as repealed and reenacted by Laws of Utah 2019,
61 Chapter 495
62 **22-3-412 (Effective 07/01/20)**, as repealed and reenacted by Laws of Utah 2019,
63 Chapter 495
64 **22-3-414 (Effective 07/01/20)**, as repealed and reenacted by Laws of Utah 2019,
65 Chapter 495
66 **22-3-415 (Effective 07/01/20)**, as repealed and reenacted by Laws of Utah 2019,
67 Chapter 495
68 **22-3-505 (Effective 07/01/20)**, as repealed and reenacted by Laws of Utah 2019,
69 Chapter 495
70 **22-3-506 (Effective 07/01/20)**, as repealed and reenacted by Laws of Utah 2019,
71 Chapter 495
72 **22-3-507 (Effective 07/01/20)**, as enacted by Laws of Utah 2019, Chapter 495
73 **22-3-601 (Effective 07/01/20)**, as repealed and reenacted by Laws of Utah 2019,
74 Chapter 495
75 **22-3-602 (Effective 07/01/20)**, as repealed and reenacted by Laws of Utah 2019,
76 Chapter 495
77 **22-3-701 (Effective 07/01/20)**, as enacted by Laws of Utah 2019, Chapter 495
78 **22-3-702 (Effective 07/01/20)**, as enacted by Laws of Utah 2019, Chapter 495
79 **22-3-703 (Effective 07/01/20)**, as enacted by Laws of Utah 2019, Chapter 495
80 **22-3-801 (Effective 07/01/20)**, as enacted by Laws of Utah 2019, Chapter 495
81 **22-3-803 (Effective 07/01/20)**, as enacted by Laws of Utah 2019, Chapter 495
82 **22-3-804 (Effective 07/01/20)**, as enacted by Laws of Utah 2019, Chapter 495
83 **75-7-103 (Superseded 07/01/20)**, as last amended by Laws of Utah 2019, Chapter 153
84 **75-7-103 (Effective 07/01/20)**, as last amended by Laws of Utah 2019, Chapters 153
85 and 495

86

87 *Be it enacted by the Legislature of the state of Utah:*

88 Section 1. Section **22-3-102 (Effective 07/01/20)** is amended to read:

89 **22-3-102 (Effective 07/01/20). Definitions.**

90 In this chapter:

91 (1) (a) "Accounting period" means a calendar year, unless a fiduciary selects another
92 period of 12 calendar months or approximately 12 calendar months.

93 (b) "Accounting period" includes a part of a calendar year or another period of 12
94 calendar months or approximately 12 calendar months that begins when an income interest
95 begins or ends when an income interest ends.

96 (2) (a) "Asset-backed security" means a security that is serviced primarily by the cash
97 flows of a discrete pool of fixed or revolving receivables or other financial assets that by [~~their~~]
98 the financial assets' terms convert into cash within a finite time.

99 (b) "Asset-backed security" includes rights or other assets that ensure the servicing or
100 timely distribution of proceeds to the holder of the asset-backed security.

101 (c) "Asset-backed security" does not include an asset to which Section [22-3-401](#),
102 [22-3-409](#), or [22-3-414](#) applies.

103 (3) "Beneficiary" includes:

104 (a) for a trust:

105 (i) a current beneficiary, including a current income beneficiary and a beneficiary that
106 may receive only principal;

107 (ii) a remainder beneficiary; and

108 (iii) any other successor beneficiary;

109 (b) for an estate, an heir and devisee; and

110 (c) for a life estate or term interest, a person that holds a life estate, term interest, or
111 remainder, or other interest following a life estate or term interest.

112 (4) "Court" means a court [~~of competent jurisdiction in the state~~] in this state with
113 jurisdiction over a trust or estate, or a life estate or other term interest described in Subsection

114 [22-3-103\(2\)](#).

115 (5) "Current income beneficiary" means a beneficiary to which a fiduciary may
116 distribute net income, ~~whether~~ even if the fiduciary also may distribute principal to the
117 beneficiary.

118 (6) (a) "Distribution" means a payment or transfer by a fiduciary to a beneficiary in the
119 beneficiary's capacity as a beneficiary, made under the terms of the trust, without consideration
120 other than the beneficiary's right to receive the payment or transfer under the terms of the trust.

121 (b) "Distribute," "distributed," and "distributee" have corresponding meanings.

122 (7) (a) "Estate" means a decedent's estate.

123 (b) "Estate" includes the property of the decedent as the estate is originally constituted
124 and the property of the estate as it exists at any time during administration.

125 (8) "Fiduciary" includes:

126 (a) a trustee, trust director as defined in Section 75-12-102, personal representative, life
127 tenant, holder of a term interest, and person acting under a delegation from a fiduciary;

128 (b) a person that holds property for a successor beneficiary whose interest may be
129 affected by an allocation of receipts and expenditures between income and principal; and

130 (c) if there are two or more co-fiduciaries, all co-fiduciaries acting under the terms of
131 the trust and applicable law.

132 (9) (a) "Income" means money or other property a fiduciary receives as current return
133 from principal.

134 (b) "Income" includes a part of receipts from a sale, exchange, or liquidation of a
135 principal asset to the extent provided in Part 4, Allocation of Receipts.

136 (10) (a) "Income interest" means the right of a current income beneficiary to receive all
137 or part of net income, whether the terms of the trust require the net income to be distributed or
138 authorize the net income to be distributed in the fiduciary's discretion.

139 (b) "Income interest" includes the right of a current beneficiary to use property held by
140 a fiduciary.

141 (11) "Independent person" means a person that is not:

- 142 (a) for a trust:
- 143 (i) a qualified beneficiary as determined under Section 75-7-103;
- 144 (ii) a settlor of the trust; or
- 145 (iii) an individual whose legal obligation to support a beneficiary may be satisfied by a
- 146 distribution from the trust;
- 147 (b) for an estate, a beneficiary;
- 148 (c) a spouse, parent, brother, sister, or issue of an individual described in Subsection
- 149 (11)(a) or (b);
- 150 (d) a corporation, partnership, limited liability company, or other entity in which
- 151 persons described in Subsections (11)(a) through (c), in the aggregate, have voting control; or
- 152 (e) an employee of a person described in Subsection (11)(a), (b), (c), or (d).
- 153 (12) "Mandatory income interest" means the right of a current income beneficiary to
- 154 receive net income that the terms of the trust require the fiduciary to distribute.
- 155 (13) (a) "Net income" means:
- 156 (i) the total allocations during an accounting period to income under the terms of a trust
- 157 and this chapter minus the disbursements during the accounting period, other than
- 158 distributions, allocated to income under the terms of the trust and this chapter; and
- 159 (ii) to the extent the trust is a unitrust under Part 3, Unitrust, the unitrust amount
- 160 determined under Part 3, Unitrust.
- 161 (b) "Net income" includes an adjustment from principal to income under Section
- 162 22-3-203.
- 163 (c) "Net income" does not include an adjustment from income to principal under
- 164 Section 22-3-203.
- 165 (14) "Person" means:
- 166 (a) an individual[;];
- 167 (b) an estate[;];
- 168 (c) a trust[;];
- 169 (d) a business or nonprofit entity[;];

170 (e) a public corporation, government or governmental subdivision, agency, or
171 instrumentality[;]; or

172 (f) any other legal entity.

173 (15) "Personal representative" means an executor, administrator, successor personal
174 representative, special administrator, or person that performs substantially the same function
175 with respect to an estate under the law governing the person's status.

176 (16) "Principal" means property held in trust for distribution to, production of income
177 for, or use by a current or successor beneficiary.

178 (17) "Record" means information that is inscribed on a tangible medium or that is
179 stored in an electronic or other medium and is retrievable in perceivable form.

180 (18) "Settlor" means the same as that term is defined in Section 75-7-103.

181 (19) "Special tax benefit" means:

182 (a) exclusion of a transfer to a trust from gifts described in Section 2503(b) of the
183 Internal Revenue Code because of the qualification of an income interest in the trust as a
184 present interest in property;

185 (b) status as a qualified subchapter S trust described in Section 1361(d)(3) of the
186 Internal Revenue Code at a time the trust holds stock of an S corporation described in Section
187 1361(a)(1) of the Internal Revenue Code;

188 (c) an estate or gift tax marital deduction for a transfer to a trust under Section 2056 or
189 2523 of the Internal Revenue Code that depends or depended in whole or in part on the right of
190 the settlor's spouse to receive the net income of the trust;

191 (d) exemption in whole or in part of a trust from the federal generation-skipping
192 transfer tax imposed by Section 2601 of the Internal Revenue Code because the trust was
193 irrevocable on September 25, 1985, if there is any possibility that:

194 (i) a taxable distribution, as defined in Section 2612(b) of the Internal Revenue Code,
195 could be made from the trust; or

196 (ii) a taxable termination, as defined in Section 2612(a) of the Internal Revenue Code,
197 could occur with respect to the trust; or

198 (e) an inclusion ratio, as defined in Section 2642(a) of the Internal Revenue Code, of
199 the trust which is less than one, if there is any possibility that:

200 (i) a taxable distribution, as defined in Section 2612(b) of the Internal Revenue Code,
201 could be made from the trust; or

202 (ii) a taxable termination, as defined in Section 2612(a) of the Internal Revenue Code,
203 could occur with respect to the trust.

204 (20) "Successive interest" means the interest of a successor beneficiary.

205 (21) "Successor beneficiary" means a person entitled to receive income or principal or
206 to use property when an income interest or other current interest ends.

207 (22) "Terms of a trust" means:

208 (a) except as otherwise provided in Subsection (22)(b), the manifestation of the
209 settlor's intent regarding a trust's provisions as:

210 (i) expressed in the trust instrument; or

211 (ii) established by other evidence that would be admissible in a judicial proceeding;

212 (b) the trust's provisions as established, determined, or amended by:

213 (i) a trustee or trust director in accordance with applicable law;

214 (ii) a court order; or

215 (iii) a nonjudicial settlement agreement under Section [75-7-110](#);

216 (c) for an estate, a will; or

217 (d) for a life estate or term interest, the corresponding manifestation of the rights of the
218 beneficiaries.

219 (23) (a) "Trust" includes:

220 (i) an express trust, private or charitable, with additions to the trust, wherever and
221 however created; and

222 (ii) a trust created or determined by judgment or decree under which the trust is to be
223 administered in the manner of an express trust.

224 (b) "Trust" does not include:

225 (i) a constructive trust;

226 (ii) a resulting trust, conservatorship, guardianship, multi-party account, custodial
227 arrangement for a minor, business trust, voting trust, security arrangement, liquidation trust, or
228 trust for the primary purpose of paying debts, dividends, interest, salaries, wages, profits,
229 pensions, retirement benefits, or employee benefits of any kind; or

230 (iii) an arrangement under which a person is a nominee, escrowee, or agent for another.

231 (24) (a) "Trustee" means a person, other than a personal representative, that owns or
232 holds property for the benefit of a beneficiary.

233 (b) "Trustee" includes an original, additional, or successor trustee, whether appointed
234 or confirmed by a court.

235 (25) (a) "Will" means any testamentary instrument recognized by applicable law
236 [which] that makes a legally effective disposition of an individual's property[;] effective at the
237 individual's death.

238 (b) "Will" includes a codicil or other amendment to a testamentary instrument.

239 Section 2. Section **22-3-104 (Effective 07/01/20)** is amended to read:

240 **22-3-104 (Effective 07/01/20). Governing law.**

241 (1) Except as otherwise provided in the terms of a trust or this chapter, this chapter
242 applies when this state is:

243 (a) the principal place of administration of a trust or estate; or

244 (b) the situs of property that is not held in a trust or estate and is subject to a life estate
245 or other term interest described in Subsection **22-3-103(2)**.

246 (2) By accepting the trusteeship of a trust having [its] the trust's principal place of
247 administration in this state or by moving the principal place of administration of a trust to this
248 state, the trustee submits to the application of this chapter to any matter within the scope of this
249 chapter involving the trust.

250 Section 3. Section **22-3-201 (Effective 07/01/20)** is amended to read:

251 **22-3-201 (Effective 07/01/20). Fiduciary duties -- General principles.**

252 (1) In making an allocation or determination or exercising discretion under this
253 chapter, a fiduciary shall:

254 (a) act in good faith, based on what is fair and reasonable to all beneficiaries;
255 (b) administer a trust or estate impartially, except to the extent the terms of the trust
256 manifest an intent that the fiduciary shall or may favor one or more beneficiaries;
257 (c) administer the trust or estate in accordance with the terms of the trust, even if there
258 is a different provision in this chapter; and

259 (d) administer the trust or estate in accordance with this chapter, except to the extent
260 the terms of the trust provide otherwise or authorize the fiduciary to determine otherwise.

261 (2) (a) A fiduciary's allocation, determination, or exercise of discretion under this
262 chapter is presumed to be fair and reasonable to all beneficiaries.

263 (b) A fiduciary may exercise a discretionary power of administration given to the
264 fiduciary by the terms of the trust, and an exercise of the power that produces a result different
265 from a result required or permitted by this chapter does not create an inference that the
266 fiduciary abused the fiduciary's discretion.

267 (3) A fiduciary shall:

268 (a) add a receipt to principal, to the extent neither the terms of the trust nor this chapter
269 allocates the receipt between income and principal; and

270 (b) charge a disbursement to principal, to the extent neither the terms of the trust nor
271 this chapter allocates the disbursement between income and principal.

272 (4) ~~[A] If a fiduciary determines an exercise of discretionary power will assist the~~
273 ~~fiduciary to administer the trust or estate impartially, the fiduciary may:~~

274 ~~(a) exercise the power to adjust under Section 22-3-203[;];~~

275 ~~(b) convert an income trust to a unitrust under Subsection 22-3-303(1)(a)[;];~~

276 ~~(c) change the percentage or method used to calculate a unitrust amount under~~
277 ~~Subsection 22-3-303(1)(b)[;]; or~~

278 ~~(d) convert a unitrust to an income trust under Subsection 22-3-303(1)(c)[, if the~~
279 ~~fiduciary determines the exercise of the power will assist the fiduciary to administer the trust or~~
280 ~~estate impartially].~~

281 ~~[(5) Factors the fiduciary must consider in making the determination under Subsection~~

282 ~~(4) include:]~~

283 (5) In making the determination under Subsection (4), the fiduciary shall consider the
284 following factors:

- 285 (a) the terms of the trust;
- 286 (b) the nature, distribution standards, and expected duration of the trust;
- 287 (c) the effect of the allocation rules, including specific adjustments between income
288 and principal, under Part 4, Allocation of Receipts, Part 5, Allocation of Disbursements, Part 6,
289 Death of Individual or Termination of Income Interest, and Part 7, Apportionment at Beginning
290 and End of Income Interest;

- 291 (d) the desirability of liquidity and regularity of income;
- 292 (e) the desirability of the preservation and appreciation of principal;
- 293 (f) the extent to which an asset is used or may be used by a beneficiary;
- 294 (g) the increase or decrease in the value of principal assets, reasonably determined by
295 the fiduciary;

- 296 (h) whether and to what extent the terms of the trust;
- 297 (i) give the fiduciary power to accumulate income or invade principal; or
- 298 (ii) prohibit the fiduciary from accumulating income or invading principal;
- 299 (i) the extent to which the fiduciary has accumulated income or invaded principal in
300 preceding accounting periods;

- 301 (j) the effect of current and reasonably expected economic conditions; and
- 302 (k) the reasonably expected tax consequences of the exercise of the power.

303 Section 4. Section **22-3-202 (Effective 07/01/20)** is amended to read:

304 **22-3-202 (Effective 07/01/20). Judicial review of exercise of discretionary power --**
305 **Request for instruction.**

- 306 (1) In this section, "fiduciary decision" means:
- 307 (a) a fiduciary's allocation between income and principal or other determination
308 regarding income and principal required or authorized by the terms of the trust or this chapter;
- 309 (b) the fiduciary's exercise or nonexercise of a discretionary power regarding income

- 310 and principal granted by the terms of the trust or this chapter, including the power to:
- 311 (i) adjust under Section 22-3-203[;];
- 312 (ii) convert an income trust to a unitrust under Subsection 22-3-303(1)(a)[;];
- 313 (iii) change the percentage or method used to calculate a unitrust amount under
- 314 Subsection 22-3-303(1)(b)[;]; or
- 315 (iv) convert a unitrust to an income trust under Subsection 22-3-303(1)(c); or
- 316 (c) the fiduciary's implementation of a decision described in Subsection (1)(a) or (b).
- 317 (2) The court may not order a fiduciary to change a fiduciary decision, unless the court
- 318 determines that the fiduciary decision was an abuse of the fiduciary's discretion.
- 319 (3) (a) If the court determines that a fiduciary decision was an abuse of the fiduciary's
- 320 discretion, the court may order a remedy authorized by law, including a remedy authorized in
- 321 Section 75-7-1001.
- 322 (b) To place the beneficiaries in the positions that the beneficiaries would have
- 323 occupied if there had not been an abuse of the fiduciary's discretion, the court may order:
- 324 (i) the fiduciary to exercise or refrain from exercising the power to adjust under Section
- 325 22-3-203;
- 326 (ii) the fiduciary to exercise or refrain from exercising the power to:
- 327 (A) convert an income trust to a unitrust under Subsection 22-3-303(1)(a)[;];
- 328 (B) change the percentage or method used to calculate a unitrust amount under
- 329 Subsection 22-3-303(1)(b)[;]; or
- 330 (C) convert a unitrust to an income trust under Subsection 22-3-303(1)(c);
- 331 (iii) the fiduciary to distribute an amount to a beneficiary;
- 332 (iv) a beneficiary to return some or all of a distribution; or
- 333 (v) the fiduciary to withhold an amount from one or more future distributions to a
- 334 beneficiary.
- 335 (4) (a) On petition by a fiduciary for instruction, the court may determine whether a
- 336 proposed fiduciary decision will result in an abuse of the fiduciary's discretion.
- 337 (b) A beneficiary that opposes the proposed decision has the burden to establish that

338 the proposed decision will result in an abuse of the fiduciary's discretion if the petition:

- 339 (i) describes the proposed decision;
- 340 (ii) contains sufficient information to inform the beneficiary of the reasons for making
- 341 the proposed decision and the facts on which the fiduciary relies; and
- 342 (iii) explains how the beneficiary will be affected by the proposed decision.

343 Section 5. Section **22-3-203 (Effective 07/01/20)** is amended to read:

344 **22-3-203 (Effective 07/01/20). Fiduciary's power to adjust.**

345 (1) Except as otherwise provided in the terms of a trust or this section, a fiduciary, in a
346 record, without court approval, may adjust between income and principal if the fiduciary
347 determines the exercise of the power to adjust will assist the fiduciary to administer the trust or
348 estate impartially.

349 (2) This section does not create a duty to exercise or consider the power to adjust under
350 Subsection (1) or to inform a beneficiary about the applicability of this section.

351 (3) A fiduciary that in good faith exercises or fails to exercise the power to adjust under
352 Subsection (1) is not liable to a person affected by the exercise or failure to exercise.

353 (4) In deciding whether and to what extent to exercise the power to adjust under
354 Subsection (1), a fiduciary shall consider all factors the fiduciary considers relevant, including
355 the relevant factors in Subsection 22-3-201(5) and the application of Subsection 22-3-401(9),
356 Section 22-3-408, and Section 22-3-413.

357 (5) A fiduciary may not exercise the power to make an adjustment under Subsection
358 (1) [~~to make an adjustment~~] or the power to make a determination that an allocation is
359 insubstantial under Section 22-3-408 [~~to make a determination that an allocation is~~
360 ~~insubstantial~~] if:

361 (a) the adjustment or determination would reduce the amount payable to a current
362 income beneficiary from a trust that qualifies for a special tax benefit, except to the extent the
363 adjustment is made to provide for a reasonable apportionment of the total return of the trust
364 between the current income beneficiary and successor beneficiaries;

365 (b) the adjustment or determination would change the amount payable to a beneficiary,

366 as a fixed annuity or a fixed fraction of the value of the trust assets, under the terms of the trust;

367 (c) the adjustment or determination would reduce an amount that is permanently set
368 aside for a charitable purpose under the terms of the trust, unless both income and principal are
369 set aside for the charitable purpose;

370 (d) possessing or exercising the power would cause a person to be treated as the owner
371 of all or part of the trust for federal income tax purposes;

372 (e) possessing or exercising the power would cause all or part of the value of the trust
373 assets to be included in the gross estate of an individual for federal estate tax purposes;

374 (f) possessing or exercising the power would cause an individual to be treated as
375 making a gift for federal gift tax purposes;

376 (g) the fiduciary is not an independent person;

377 (h) the trust is irrevocable and provides for income to be paid to the settlor and
378 possessing or exercising the power would cause the adjusted principal or income to be
379 considered an available resource or available income under a public-benefit program; or

380 (i) the trust is a unitrust under Part 3, Unitrust.

381 (6) If Subsection (5)(d), (e), (f), or (g) applies to a fiduciary:

382 (a) a co-fiduciary to which Subsections (5)(d) through (g) do not apply may exercise
383 the power to adjust, unless the exercise of the power to adjust by the remaining co-fiduciary or
384 co-fiduciaries is not permitted by the terms of the trust or law other than this chapter; or

385 (b) (i) if there is no co-fiduciary to which Subsections (5)(d) through (g) do not
386 apply~~[-];~~;

387 (A) ~~except as otherwise provided in Subsection (6)(b)(ii)(A), the fiduciary may appoint~~
388 ~~a co-fiduciary to which Subsections (5)(d) through (g) do not apply[-], which may be a special~~
389 ~~fiduciary with limited powers, and];~~

390 (B) ~~except as otherwise provided in Subsection (6)(b)(ii)(B), the appointed co-fiduciary~~
391 ~~may exercise the power to adjust under Subsection (1)[-], unless the appointment of a~~
392 ~~co-fiduciary or the exercise of the power by a co-fiduciary is not permitted by the terms of the~~
393 ~~trust or law other than this chapter.]; and~~

394 (C) the appointed co-fiduciary may be a special fiduciary with limited powers.

395 (ii) (A) If the appointment of a co-fiduciary is not permitted by the terms of the trust or
396 by a provision of law outside this chapter, a fiduciary may not appoint a co-fiduciary.

397 (B) If the exercise of the power to adjust by a co-fiduciary is not permitted by the terms
398 of the trust or by a provision of law outside this chapter, the co-fiduciary may not exercise the
399 power to adjust under Subsection (1).

400 (7) A fiduciary may release or delegate to a co-fiduciary the power to adjust under
401 Subsection (1) if the fiduciary determines that the fiduciary's possession or exercise of the
402 power to adjust will or may:

403 (a) cause a result described in Subsections (5)(a) through (f) or (h); or

404 (b) deprive the trust of a tax benefit or impose a tax burden not described in
405 Subsections (5)(a) through (f).

406 (8) A fiduciary's release or delegation to a co-fiduciary under Subsection (7) of the
407 power to adjust under Subsection (1):

408 (a) must be in a record;

409 (b) applies to the entire power to adjust, unless the release or delegation provides a
410 limitation, which may be a limitation to the power to adjust:

411 (i) from income to principal;

412 (ii) from principal to income;

413 (iii) for specified property; or

414 (iv) in specified circumstances;

415 (c) for a delegation, may be modified by a redelegation under this subsection by the
416 co-fiduciary to which the delegation is made; and

417 (d) subject to Subsection (8)(c), is permanent, unless the release or delegation provides
418 a specified period, including a period measured by the life of an individual or the lives of more
419 than one individual.

420 (9) Terms of a trust [~~which~~] that deny or limit the power to adjust between income and
421 principal do not affect the application of this section, unless the terms of the trust expressly

422 deny or limit the power to adjust under Subsection (1).

423 (10) The exercise of the power to adjust under Subsection (1) in any accounting period
424 may apply to the current accounting period, the immediately preceding accounting period, and
425 one or more subsequent accounting periods.

426 (11) A description of the exercise of the power to adjust under Subsection (1) [~~must~~]
427 shall be:

428 (a) included in a report, if any, sent to beneficiaries under Subsection 75-7-811(3); or

429 (b) communicated at least annually to the qualified beneficiaries determined under
430 Subsection 75-7-103(1)(h).

431 Section 6. Section 22-3-301 (Effective 07/01/20) is amended to read:

432 **22-3-301 (Effective 07/01/20). Definitions.**

433 In this part:

434 (1) "Applicable value" means the amount of the net fair market value of a trust taken
435 into account under Section 22-3-307.

436 (2) "Express unitrust" means a trust for which, under the terms of the trust without
437 regard to this part, income or net income [~~must or may~~] is permitted or required to be
438 calculated as a unitrust amount.

439 (3) "Income trust" means a trust that is not a unitrust.

440 (4) "Net fair market value of a trust" means the fair market value of the assets of the
441 trust[~~, less~~] minus the noncontingent liabilities of the trust.

442 (5) (a) "Unitrust" means a trust for which net income is a unitrust amount.

443 (b) "Unitrust" includes an express unitrust.

444 (6) "Unitrust amount" means:

445 (a) an amount computed by multiplying a determined value of a trust by a determined
446 percentage; and

447 (b) for a unitrust administered under a unitrust policy, the applicable value[;]
448 multiplied by the unitrust rate.

449 (7) "Unitrust policy" means a policy described in Sections 22-3-305 through 22-3-309

450 and adopted under Section 22-3-303.

451 (8) "Unitrust rate" means the rate used to compute the unitrust amount under
452 Subsection (6) for a unitrust administered under a unitrust policy.

453 Section 7. Section 22-3-302 (Effective 07/01/20) is amended to read:

454 **22-3-302 (Effective 07/01/20). Application -- Duties and remedies.**

455 (1) Except as otherwise provided in Subsection (2), this part applies to:

456 (a) an income trust, unless the terms of the trust expressly prohibit use of this part by:

457 (i) a specific reference to this part; or

458 (ii) an explicit expression of intent that net income not be calculated as a unitrust
459 amount; and

460 (b) an express unitrust, except to the extent the terms of the trust explicitly:

461 (i) prohibit use of this part by a specific reference to this part;

462 (ii) prohibit conversion to an income trust; or

463 (iii) limit changes to the method of calculating the unitrust amount.

464 (2) This part does not apply to a trust described in Section 170(f)(2)(B), 642(c)(5),
465 664(d), 2702(a)(3)(A)(ii) or (iii), or 2702(b) of the Internal Revenue Code.

466 (3) (a) An income trust to which this part applies under Subsection (1)(a) may be
467 converted to a unitrust under this part regardless of the terms of the trust concerning
468 distributions.

469 (b) Conversion to a unitrust under this part does not affect other terms of the trust
470 concerning distributions of income or principal.

471 (4) (a) This part applies to an estate only to the extent a trust is a beneficiary of the
472 estate.

473 (b) To the extent of the trust's interest in the estate, and in the same manner as for a
474 trust under this part:

475 (i) the estate may be administered as a unitrust[;];

476 (ii) the administration of the estate as a unitrust may be discontinued[;]; or

477 (iii) the percentage or method used to calculate the unitrust amount may be changed[;];

478 ~~in the same manner as for a trust under this part].~~

479 (5) This part does not create a duty to take or consider action under this part or to
480 inform a beneficiary about the applicability of this part.

481 (6) A fiduciary that in good faith takes or fails to take an action under this part is not
482 liable to a person affected by the action or inaction of the fiduciary.

483 Section 8. Section **22-3-303 (Effective 07/01/20)** is amended to read:

484 **22-3-303 (Effective 07/01/20). Authority of fiduciary.**

485 (1) A fiduciary, without court approval, by complying with Subsections (2) and (6),
486 may:

487 (a) convert an income trust to a unitrust if the fiduciary adopts₂ in a record₂ a unitrust
488 policy for the trust providing:

489 (i) that₂ in administering the trust₂ the net income of the trust will be a unitrust amount
490 rather than net income determined without regard to this part; and

491 (ii) the percentage and method used to calculate the unitrust amount;

492 (b) change the percentage or method used to calculate a unitrust amount for a unitrust
493 if the fiduciary adopts in a record a unitrust policy or an amendment or replacement of a
494 unitrust policy providing changes in the percentage or method used to calculate the unitrust
495 amount; or

496 (c) convert a unitrust to an income trust if the fiduciary adopts₂ in a record₂ a
497 determination that, in administering the trust, the net income of the trust will be net income
498 determined without regard to this part rather than a unitrust amount.

499 (2) A fiduciary may take an action under Subsection (1) if:

500 (a) the fiduciary determines that the action will assist the fiduciary to administer a trust
501 impartially;

502 (b) the fiduciary sends a notice in a record, in the manner required by Section
503 [22-3-304](#), describing and proposing to take the action;

504 (c) the fiduciary sends a copy of the notice under Subsection (2)(b) to each settlor of
505 the trust which is:

506 (i) if an individual, living; or
507 (ii) if not an individual, in existence;
508 (d) at least one member of each class of the qualified beneficiaries determined under
509 Subsection 75-7-103(1)(h) receiving the notice under Subsection (2)(b) is:

510 (i) if an individual, legally competent;
511 (ii) if not an individual, in existence; or
512 (iii) represented in the manner provided in Subsection 22-3-304(2); and
513 (e) the fiduciary does not receive, by the date specified in the notice under Subsection
514 22-3-304(4)(e), an objection in a record to the action proposed under Subsection (2)(b) from a
515 person to which the notice under Subsection (2)(b) is sent.

516 (3) (a) If a fiduciary receives, not later than the date stated in the notice under
517 Subsection 22-3-304(4)(e), an objection in a record described in Subsection 22-3-304(4)(d) to a
518 proposed action, the fiduciary or a beneficiary may request that the court [~~to have the proposed~~
519 ~~action taken as proposed, taken with modifications, or prevented.]:~~

520 (i) require the fiduciary to take the proposed action;
521 (ii) require the fiduciary to take the proposed action with modifications; or
522 (iii) prevent the proposed action.

523 (b) A person described in Subsection 22-3-304(1) may oppose the proposed action in
524 the proceeding under [~~this subsection,~~] Subsection (3)(a), regardless of whether the person:

525 (i) consented under Subsection 22-3-304(3); or
526 (ii) objected under Subsection 22-3-304(4)(d).

527 (4) If, after sending a notice under Subsection (2)(b), a fiduciary decides not to take the
528 action proposed in the notice, the fiduciary shall notify [~~in a record~~] each person described in
529 Subsection 22-3-304(1) in a record of the decision not to take the action and the reasons for the
530 decision.

531 (5) If a beneficiary requests in a record that a fiduciary take an action described in
532 Subsection (1) and the fiduciary declines to act or does not act within 90 days after receiving
533 the request, the beneficiary may request the court to direct the fiduciary to take the action

534 requested.

535 (6) In deciding whether and how to take an action authorized by Subsection (1), or
 536 whether and how to respond to a request by a beneficiary under Subsection (5), a fiduciary
 537 shall consider all factors relevant to the trust and the beneficiaries, including the relevant
 538 factors in Subsection [22-3-201](#)(5).

539 (7) ~~[A] For a reason described in Subsection [22-3-203](#)(7), and in the manner described~~
 540 ~~in Subsection [22-3-203](#)(8), a fiduciary may:~~

541 ~~(a) release or delegate the power to convert an income trust to a unitrust under~~
 542 ~~Subsection (1)(a);~~

543 ~~(b) change the percentage or method used to calculate a unitrust amount under~~
 544 ~~Subsection (1)(b); or~~

545 ~~(c) convert a unitrust to an income trust under Subsection (1)(c);~~ ~~for a reason~~
 546 ~~described in Subsection [22-3-203](#)(7) and in the manner described in Subsection [22-3-203](#)(8)].~~

547 Section 9. Section **22-3-304 (Effective 07/01/20)** is amended to read:

548 **22-3-304 (Effective 07/01/20). Notice.**

549 (1) A fiduciary shall send a notice required by Subsection [22-3-303](#)(2)(b) ~~[must be~~
 550 ~~sent]~~ in a manner authorized under Section [75-7-109](#) to:

551 (a) the qualified beneficiaries determined under Subsection [75-7-103](#)(1)(h); ~~[and]~~

552 ~~[(b) each person that is granted a power over the trust by the terms of the trust, to the~~
 553 ~~extent the power is exercisable when the person is not then serving as a trustee;]~~

554 ~~[(i) including a:]~~

555 ~~[(A) power over the investment, management, or distribution of trust property or other~~
 556 ~~matters of trust administration; and]~~

557 ~~[(B) power to appoint or remove a trustee or person described in this subsection; and]~~

558 ~~[(ii) excluding a:]~~

559 ~~[(A) power of appointment;]~~

560 ~~[(B) power of a beneficiary over the trust, to the extent the exercise or nonexercise of~~
 561 ~~the power affects the beneficial interest of the beneficiary or another beneficiary represented by~~

562 the beneficiary under Sections ~~75-7-301~~ through ~~75-7-305~~ with respect to the exercise or
563 nonexercise of the power; and]

564 [~~(C) power over the trust if the terms of the trust provide that the power is held in a~~
565 ~~nonfiduciary capacity and the power must be held in a nonfiduciary capacity to achieve a tax~~
566 ~~objective under the Internal Revenue Code.]~~

567 (b) each person acting, in accordance with Title 75, Chapter 12, Uniform Directed
568 Trust Act, as trust director of the trust; and

569 (c) each person that is granted a power by the terms of the trust to appoint or remove a
570 trustee or person described in Subsection (1)(b), to the extent the power is exercisable when the
571 person that exercises the power is not then serving as trustee or is a person described in
572 Subsection (1)(b).

573 (2) The representation provisions of Sections ~~75-7-301~~ through ~~75-7-305~~ apply to
574 notice under this section.

575 (3) (a) A person may consent in a record at any time to action proposed under
576 Subsection ~~22-3-303~~(2)(b).

577 [~~(b) A notice required by Subsection ~~22-3-303~~(2)(b) need not be sent to a person that~~
578 ~~consents under this subsection.]~~

579 (b) If a person required to receive a notice under Subsection (1) consents under
580 Subsection (3)(a) to not receive the notice, the fiduciary is not required to send the person the
581 notice.

582 (4) A notice required by Subsection ~~22-3-303~~(2)(b) ~~[must]~~ shall include:

583 (a) the action proposed under Subsection ~~22-3-303~~(2)(b);

584 (b) for a conversion of an income trust to a unitrust, a copy of the unitrust policy
585 adopted under Subsection ~~22-3-303~~(1)(a);

586 (c) for a change in the percentage or method used to calculate the unitrust amount, a
587 copy of the unitrust policy or amendment or replacement of the unitrust policy adopted under
588 Subsection ~~22-3-303~~(1)(b);

589 (d) a statement that the person to which the notice is sent may object to the proposed

590 action by stating in a record the basis for the objection and sending or delivering the record to
591 the fiduciary;

592 (e) the date by which the fiduciary shall receive an objection under Subsection (4)(d)
593 [~~must be received by the fiduciary, which must~~], which shall be at least 30 days after the date
594 the notice is sent;

595 (f) the date on which the action is proposed to be taken and the date on which the
596 action is proposed to take effect;

597 (g) the name and contact information of the fiduciary; and

598 (h) the name and contact information of a person that may be contacted for additional
599 information.

600 Section 10. Section **22-3-305 (Effective 07/01/20)** is amended to read:

601 **22-3-305 (Effective 07/01/20). Unitrust policy.**

602 (1) In administering a unitrust under this part, a fiduciary shall follow a unitrust policy:

603 (a) adopted under Subsection **22-3-303(1)(a)** or (b); or

604 (b) amended or replaced under Subsection **22-3-303(1)(b)**.

605 (2) A unitrust policy [~~must~~] shall provide:

606 (a) the unitrust rate or the method for determining the unitrust rate under Section
607 **22-3-306**;

608 (b) the method for determining the applicable value under Section **22-3-307**; and

609 (c) the rules described in Sections **22-3-306** through **22-3-309** [~~which~~] that apply in the
610 administration of the unitrust, [~~whether~~] regardless of whether the rules are:

611 (i) mandatory, as provided in Subsections **22-3-307(1)** and **22-3-308(1)**; or

612 (ii) optional, as provided in Section **22-3-306** and Subsections **22-3-307(2)**,
613 **22-3-308(2)**, and **22-3-309(1)**, to the extent the fiduciary elects to adopt those rules.

614 Section 11. Section **22-3-307 (Effective 07/01/20)** is amended to read:

615 **22-3-307 (Effective 07/01/20). Applicable value.**

616 (1) A unitrust policy [~~must~~] shall provide the method for determining the fair market
617 value of an asset for the purpose of determining the unitrust amount, including:

618 (a) the frequency of valuing the asset, which need not require a valuation in every
619 period; and

620 (b) the date for valuing the asset in each period [~~in which~~] that the asset is valued.

621 (2) Except as otherwise provided in Subsection 22-3-309(2)(b), a unitrust policy may
622 provide methods for determining the amount of the net fair market value of the trust to take
623 into account in determining the applicable value, including:

624 (a) obtaining an appraisal of an asset for which fair market value is not readily
625 available;

626 (b) exclusion of specific assets or groups or types of assets;

627 (c) other exceptions or modifications of the treatment of specific assets or groups or
628 types of assets;

629 (d) identification and treatment of cash or property held for distribution;

630 (e) use of:

631 (i) an average of fair market values over a stated number of preceding periods; or

632 (ii) another mathematical blend of fair market values over a stated number of preceding
633 periods;

634 (f) a limit on how much the applicable value of all assets, groups of assets, or
635 individual assets may increase over:

636 (i) the corresponding applicable value for the preceding period; or

637 (ii) a mathematical blend of applicable values over a stated number of preceding time
638 periods;

639 (g) a limit on how much the applicable value of all assets, groups of assets, or
640 individual assets may decrease below:

641 (i) the corresponding applicable value for the preceding period; or

642 (ii) a mathematical blend of applicable values over a stated number of preceding
643 periods;

644 (h) the treatment of accrued income and other features of an asset [~~which~~] that affect
645 value; and

646 (i) determining the liabilities of the trust, including treatment of liabilities to conform
647 with the treatment of assets under Subsections (2)(a) through (h).

648 Section 12. Section **22-3-308 (Effective 07/01/20)** is amended to read:

649 **22-3-308 (Effective 07/01/20). Period.**

650 (1) (a) A unitrust policy [~~must~~] shall provide the period used under Sections **22-3-306**
651 and **22-3-307**.

652 (b) Except as otherwise provided in Subsection **22-3-309(2)(c)**, the period may be:

653 (i) a calendar year;

654 (ii) a 12-month period other than a calendar year;

655 (iii) a calendar quarter;

656 (iv) a three-month period other than a calendar quarter; or

657 (v) another period.

658 (2) Except as otherwise provided in Subsection **22-3-309(2)**, a unitrust policy may
659 provide standards for:

660 (a) using fewer preceding periods under Subsection **22-3-306(1)(b)(ii)**, (2)(c), or (2)(d)

661 if:

662 (i) the trust was not in existence in a preceding period; or

663 (ii) market indices or other published data are not available for a preceding period;

664 (b) using fewer preceding periods under Subsection **22-3-307(2)(e)(i)** or (ii), (f)(ii), or

665 (g)(ii) if:

666 (i) the trust was not in existence in a preceding period; or

667 (ii) fair market values are not available for a preceding period; and

668 (c) prorating the unitrust amount on a daily basis for a part of a period in which the

669 trust or the administration of the trust as a unitrust or the interest of any beneficiary commences

670 or terminates.

671 Section 13. Section **22-3-309 (Effective 07/01/20)** is amended to read:

672 **22-3-309 (Effective 07/01/20). Special tax benefits -- Other rules.**

673 (1) A unitrust policy may:

- 674 (a) provide methods and standards for:
- 675 (i) determining the timing of distributions;
- 676 (ii) making distributions in cash or in kind or partly in cash and partly in kind; or
- 677 (iii) correcting an underpayment or overpayment to a beneficiary based on the unitrust
- 678 amount if there is an error in calculating the unitrust amount;
- 679 (b) specify sources and the order of sources, including categories of income for federal
- 680 income tax purposes, from which distributions of a unitrust amount are paid; or
- 681 (c) provide other standards and rules the fiduciary determines serve the interests of the
- 682 beneficiaries.

683 (2) If a trust qualifies for a special tax benefit or a fiduciary is not an independent
684 person:

685 (a) the unitrust rate established under Section 22-3-306 may not be less than 3% or
686 more than 5%;

687 (b) the only provisions of Section 22-3-307 [which] that apply are Subsections
688 22-3-307(1) and (2)(a), (d), (e)(i), and (i);

689 (c) the only period that may be used under Section 22-3-308 is a calendar year under
690 Subsection 22-3-308(1); and

691 (d) the only other provisions of Section 22-3-308 that apply are Subsection
692 22-3-308(2)(b)(i) and (c).

693 Section 14. Section 22-3-401 (Effective 07/01/20) is amended to read:

694 **22-3-401 (Effective 07/01/20). Receipts from entity -- Character of receipts from**
695 **entity.**

696 (1) In this section:

697 (a) "Capital distribution" means an entity distribution of money [which] that is a:

- 698 (i) return of capital; or
- 699 (ii) distribution in total or partial liquidation of the entity.

700 (b) (i) "Entity" means a corporation, partnership, limited liability company, regulated
701 investment company, real estate investment trust, common trust fund, or any other organization

702 or arrangement in which a fiduciary owns or holds an interest, [~~whether or not~~] regardless of
703 whether the entity is a taxpayer for federal income tax purposes.

704 (ii) "Entity" does not include:

705 (A) a trust or estate to which Section 22-3-402 applies;

706 (B) a business or other activity to which Section 22-3-403 applies that is not conducted
707 by an entity described in Subsection (1)(b)(i);

708 (C) an asset-backed security; or

709 (D) an instrument or arrangement to which Section 22-3-416 applies.

710 (c) "Entity distribution" means a payment or transfer by an entity made to a person in
711 the person's capacity as an owner or holder of an interest in the entity.

712 (2) In this section, an attribute or action of an entity includes an attribute or action of
713 any other entity in which the entity owns or holds an interest, including an interest owned or
714 held indirectly through another entity.

715 (3) Except as otherwise provided in Subsections (4)(b) through (d), a fiduciary shall
716 allocate to income:

717 (a) money received in an entity distribution; and

718 (b) tangible personal property of nominal value received from the entity.

719 (4) A fiduciary shall allocate to principal:

720 (a) property received in an entity distribution [~~which~~] that is not:

721 (i) money; or

722 (ii) tangible personal property of nominal value;

723 (b) money received in an entity distribution in an exchange for part or all of the
724 fiduciary's interest in the entity, to the extent the entity distribution reduces the fiduciary's
725 interest in the entity relative to the interests of other persons that own or hold interests in the
726 entity;

727 (c) money received in an entity distribution that the fiduciary determines or estimates is
728 a capital distribution; and

729 (d) money received in an entity distribution from an entity that is:

730 (i) a regulated investment company or real estate investment trust if the money
731 received is a capital gain dividend for federal income tax purposes; or

732 (ii) treated for federal income tax purposes [~~comparably~~] in a comparable manner to
733 the treatment described in Subsection (4)(d)(i).

734 (5) A fiduciary may determine or estimate that money received in an entity distribution
735 is a capital distribution:

736 (a) by relying without inquiry or investigation on a characterization of the entity
737 distribution provided by or on behalf of the entity, unless the fiduciary:

738 (i) determines, on the basis of information known to the fiduciary, that the
739 characterization is or may be incorrect; or

740 (ii) owns or holds more than 50% of the voting interest in the entity;

741 (b) by determining or estimating, on the basis of information known to the fiduciary or
742 provided to the fiduciary by or on behalf of the entity, that the total amount of money and
743 property received by the fiduciary in the entity distribution or a series of related entity
744 distributions is or will be greater than 20% of the fair market value of the fiduciary's interest in
745 the entity; or

746 (c) if neither Subsection (5)(a) nor (b) applies, by considering the factors in Subsection
747 (6) and the information known to the fiduciary or provided to the fiduciary by or on behalf of
748 the entity.

749 (6) In making a determination or estimate under Subsection (5)(c), a fiduciary may
750 consider:

751 (a) a characterization of an entity distribution provided by or on behalf of the entity;

752 (b) the amount of money or property received in:

753 (i) the entity distribution; or

754 (ii) what the fiduciary determines is or will be a series of related entity distributions;

755 (c) the amount described in Subsection (6)(b) compared to the amount that the
756 fiduciary determines or estimates is, during the current or preceding accounting periods:

757 (i) the entity's operating income;

- 758 (ii) the proceeds of the entity's sale or other disposition of:
759 (A) all or part of the business or other activity conducted by the entity;
760 (B) one or more business assets that are not sold to customers in the ordinary course of
761 the business or other activity conducted by the entity; or
762 (C) one or more assets other than business assets, unless the entity's primary activity is
763 to invest in assets to realize gain on the disposition of all or some of the assets;
764 (iii) if the entity's primary activity is to invest in assets to realize gain on the disposition
765 of all or some of the assets, the gain realized on the disposition;
766 (iv) the entity's regular, periodic entity distributions;
767 (v) the amount of money that the entity has accumulated;
768 (vi) the amount of money that the entity has borrowed;
769 (vii) the amount of money that the entity has received from the sources described in
770 Sections [22-3-407](#), [22-3-410](#), [22-3-411](#), and [22-3-412](#); and
771 (viii) the amount of money that the entity has received from a source not otherwise
772 described in this subsection; and
773 (d) any other factor the fiduciary determines is relevant.
774 (7) If, after applying Subsections (3) through (6), a fiduciary determines that a part of
775 an entity distribution is a capital distribution but the fiduciary is in doubt about the amount of
776 the entity distribution [~~which~~] that is a capital distribution, the fiduciary shall allocate to
777 principal the amount of the entity distribution [~~which~~] that is in doubt.
778 (8) If a fiduciary receives additional information about the application of this section to
779 an entity distribution before the fiduciary has paid part of the entity distribution to a
780 beneficiary, the fiduciary may consider the additional information before making the payment
781 to the beneficiary and may change a decision to make the payment to the beneficiary.
782 (9) If a fiduciary receives additional information about the application of this section to
783 an entity distribution after the fiduciary has paid part of the entity distribution to a beneficiary,
784 the fiduciary is not required to change or recover the payment to the beneficiary but may
785 consider that information in determining whether to exercise the power to adjust under Section

786 22-3-203.

787 Section 15. Section 22-3-402 (Effective 07/01/20) is amended to read:

788 22-3-402 (Effective 07/01/20). Receipts from entity -- Distribution from trust or
789 estate.

790 (1) A fiduciary shall allocate:

791 (a) to income an amount received as a distribution of income, including a unitrust
792 distribution under Part 3, Unitrust, from a trust or estate in which the fiduciary has an interest,
793 other than an interest the fiduciary purchased in a trust that is an investment entity~~], and shall~~
794 ~~allocate]; and~~

795 (b) to principal an amount received as a distribution of principal from the trust or
796 estate.

797 (2) If a fiduciary purchases, or receives from a settlor, an interest in a trust that is an
798 investment entity, Section 22-3-401, 22-3-415, or 22-3-416 applies to a receipt from the trust.

799 Section 16. Section 22-3-403 (Effective 07/01/20) is amended to read:

800 22-3-403 (Effective 07/01/20). Receipts from entity -- Business or other activity
801 conducted by fiduciary.

802 (1) This section applies to a business or other activity conducted by a fiduciary if the
803 fiduciary determines that it is in the interests of the beneficiaries to account separately for the
804 business or other activity instead of:

805 (a) accounting for the business or other activity as part of the fiduciary's general
806 accounting records; or

807 (b) conducting the business or other activity through an entity described in Subsection
808 22-3-401(1)(b)(i).

809 (2) A fiduciary may account separately under this section for the transactions of a
810 business or other activity, whether or not assets of the business or other activity are segregated
811 from other assets held by the fiduciary.

812 (3) A fiduciary that accounts separately under this section for a business or other
813 activity:

814 (a) may determine:

815 (i) the extent to which the net cash receipts of the business or other activity [~~must~~] shall

816 be retained for:

817 (A) working capital;

818 (B) the acquisition or replacement of fixed assets; and

819 (C) other reasonably foreseeable needs of the business or other activity; and

820 (ii) the extent [~~to which~~] that the remaining net cash receipts are accounted for as

821 principal or income in the fiduciary's general accounting records for the trust;

822 (b) may make a determination under Subsection (3)(a) separately and differently from

823 the fiduciary's decisions concerning distributions of income or principal; and

824 (c) shall account for the net amount received from the sale of an asset of the business

825 or other activity, other than a sale in the ordinary course of the business or other activity, as

826 principal in the fiduciary's general accounting records for the trust, to the extent the fiduciary

827 determines that the net amount received is no longer required in the conduct of the business or

828 other activity.

829 (4) [~~Activities for which a~~] A fiduciary may account separately under this section

830 [~~include~~] for activities that include:

831 (a) retail, manufacturing, service, and other traditional business activities;

832 (b) farming;

833 (c) raising and selling livestock and other animals;

834 (d) managing rental properties;

835 (e) extracting minerals, water, and other natural resources;

836 (f) growing and cutting timber;

837 (g) an activity to which Section 22-3-414, 22-3-415, or 22-3-416 applies; and

838 (h) any other business conducted by the fiduciary.

839 Section 17. Section 22-3-404 (Effective 07/01/20) is amended to read:

840 **22-3-404 (Effective 07/01/20). Receipts not normally apportioned -- Principal**

841 **receipts.**

- 842 A fiduciary shall allocate to principal:
- 843 (1) to the extent not allocated to income under this chapter, an asset received from:
- 844 (a) an individual during the individual's lifetime;
- 845 (b) an estate;
- 846 (c) a trust on termination of an income interest; or
- 847 (d) a payor under a contract naming the fiduciary as beneficiary;
- 848 (2) except as otherwise provided in this part, money or other property received from
- 849 the sale, exchange, liquidation, or change in form of a principal asset;
- 850 (3) an amount recovered from a third party to reimburse the fiduciary because of a
- 851 disbursement described in Subsection 22-3-502(1) or for another reason to the extent not based
- 852 on loss of income;
- 853 (4) proceeds of property taken by eminent domain, except that proceeds awarded for
- 854 loss of income in an accounting period are income if a current income beneficiary had a
- 855 mandatory income interest during the accounting period;
- 856 (5) net income received in an accounting period during which there is no beneficiary to
- 857 which a fiduciary [~~may or must~~] is permitted or required to distribute income; and
- 858 (6) other receipts as provided in Part 3, Unitrust.

859 Section 18. Section 22-3-405 (Effective 07/01/20) is amended to read:

860 **22-3-405 (Effective 07/01/20). Receipts not normally apportioned -- Rental**

861 **property.**

- 862 (1) To the extent a fiduciary does not account for the management of rental property as
- 863 a business under Section 22-3-403, the fiduciary shall allocate to income an amount received as
- 864 rent of real or personal property, including an amount received for cancellation or renewal of a
- 865 lease.
- 866 (2) An amount received as a refundable deposit, including a security deposit or a
- 867 deposit that is to be applied as rent for future periods:
- 868 (a) [~~must~~] shall be added to principal and held subject to the terms of the lease, except
- 869 as otherwise provided by law other than this chapter; and

870 (b) is not allocated to income or available for distribution to a beneficiary until the
871 fiduciary's contractual obligations have been satisfied with respect to that amount.

872 Section 19. Section 22-3-407 (Effective 07/01/20) is amended to read:

873 **22-3-407 (Effective 07/01/20). Receipts not normally apportioned -- Insurance**
874 **policy or contract.**

875 (1) This section does not apply to a contract to which Section 22-3-409 applies.

876 (2) (a) Except as otherwise provided in Subsection (3), a fiduciary shall allocate to
877 principal the proceeds of a life insurance policy or other contract received by the fiduciary as
878 beneficiary, including a contract that insures against damage to, destruction of, or loss of title to
879 an asset.

880 (b) The fiduciary shall allocate dividends on an insurance policy:

881 (i) to income, to the extent premiums on the policy are paid from income; and

882 (ii) to principal, to the extent premiums on the policy are paid from principal.

883 (3) A fiduciary shall allocate to income proceeds of a contract that insures the fiduciary
884 against loss of:

885 (a) occupancy or other use by a current income beneficiary;

886 (b) income; or

887 (c) subject to Section 22-3-403, profits from a business.

888 Section 20. Section 22-3-409 (Effective 07/01/20) is amended to read:

889 **22-3-409 (Effective 07/01/20). Receipts normally apportioned -- Deferred**
890 **compensation, annuity, or similar payment.**

891 (1) In this section:

892 (a) "Internal income of a separate fund" means the amount determined under
893 Subsection (2).

894 (b) "Marital trust" means a trust:

895 (i) of which the settlor's surviving spouse is the only current income beneficiary and is
896 entitled to a distribution of all the current net income of the trust; and

897 (ii) that qualifies for a marital deduction with respect to the settlor's estate under

898 Section 2056 of the Internal Revenue Code because:

899 (A) an election to qualify for a marital deduction under Section 2056(b)(7) of the
900 Internal Revenue Code has been made; or

901 (B) the trust qualifies for a marital deduction under Section 2056(b)(5) of the Internal
902 Revenue Code.

903 (c) (i) "Payment" means an amount a fiduciary may receive over a fixed number of
904 years or during the life of one or more individuals because of services rendered or property
905 transferred to the payor in exchange for future amounts the fiduciary may receive.

906 (ii) "Payment" includes an amount received in money or property from the payor's
907 general assets or from a separate fund created by the payor.

908 (d) "Separate fund" includes a private or commercial annuity, an individual retirement
909 account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

910 (2) For each accounting period, [~~the following rules apply to a~~] and for each separate
911 fund:

912 (a) the fiduciary shall determine the internal income of the separate fund as if the
913 separate fund were a trust subject to this chapter;

914 (b) if the fiduciary cannot determine the internal income of the separate fund under
915 Subsection (2)(a), the internal income of the separate fund is deemed to equal 3% of the value
916 of the separate fund, according to the most recent statement of value preceding the beginning of
917 the accounting period; and

918 (c) if the fiduciary cannot determine the value of the separate fund under Subsection
919 (2)(b), the value of the separate fund is deemed to equal the present value of the expected
920 future payments, as determined under Section 7520 of the Internal Revenue Code, for the
921 month preceding the beginning of the accounting period for which the computation is made.

922 (3) A fiduciary shall allocate a payment received from a separate fund during an
923 accounting period to income, to the extent of the internal income of the separate fund during
924 the accounting period, and the balance to principal.

925 (4) The fiduciary of a marital trust shall:

926 (a) withdraw from a separate fund the amount the current income beneficiary of the
927 trust requests the fiduciary to withdraw, not greater than the amount by which the internal
928 income of the separate fund during the accounting period exceeds the amount the fiduciary
929 otherwise receives from the separate fund during the accounting period;

930 (b) transfer from principal to income the amount the current income beneficiary
931 requests the fiduciary to transfer, not greater than the amount by which the internal income of
932 the separate fund during the accounting period exceeds the amount the fiduciary receives from
933 the separate fund during the accounting period after the application of Subsection (4)(a); and

934 (c) distribute to the current income beneficiary as income:

935 (i) the amount of the internal income of the separate fund received or withdrawn during
936 the accounting period; and

937 (ii) the amount transferred from principal to income under Subsection (4)(b).

938 (5) For a trust, other than a marital trust, of which one or more current income
939 beneficiaries are entitled to a distribution of all the current net income, the fiduciary shall
940 transfer from principal to income the amount by which the internal income of a separate fund
941 during the accounting period exceeds the amount the fiduciary receives from the separate fund
942 during the accounting period.

943 Section 21. Section **22-3-411 (Effective 07/01/20)** is amended to read:

944 **22-3-411 (Effective 07/01/20). Receipts normally apportioned -- Minerals, water,**
945 **and other natural resources.**

946 (1) To the extent that a fiduciary does not account for a receipt from an interest in
947 minerals, water, or other natural resources as a business under Section [22-3-403](#), the fiduciary
948 shall allocate the receipt:

949 (a) to income, to the extent received:

950 (i) as delay rental or annual rent on a lease;

951 (ii) as a factor for interest or the equivalent of interest under an agreement creating a
952 production payment; or

953 (iii) on account of an interest in renewable water;

954 (b) to principal, if received from a production payment, to the extent that Subsection
955 (1)(a)(ii) does not apply; or

956 (c) between income and principal equitably, to the extent received:

957 (i) on account of an interest in nonrenewable water;

958 (ii) as a royalty, shut-in-well payment, take-or-pay payment, or bonus; or

959 (iii) from a working interest or any other interest not provided for in Subsection (1)(a)
960 or (b) or Subsection (1)(c)(i) or (ii).

961 (2) This section applies to an interest owned or held by a fiduciary [~~whether or not~~]
962 regardless of whether a settlor was extracting minerals, water, or other natural resources before
963 the fiduciary owned or held the interest.

964 (3) An allocation of a receipt under Subsection (1)(c) is presumed to be equitable if the
965 amount allocated to principal is equal to the amount allowed by the Internal Revenue Code as a
966 deduction for depletion of the interest.

967 (4) (a) If a fiduciary owns or holds an interest in minerals, water, or other natural
968 resources before July 1, [~~2019~~] 2020, the fiduciary may allocate receipts from the interest as
969 provided in this section or in the manner used by the fiduciary before July 1, [~~2019~~] 2020.

970 (b) If the fiduciary acquires an interest in minerals, water, or other natural resources on
971 or after July 1, [~~2019~~] 2020, the fiduciary shall allocate receipts from the interest as provided in
972 this section.

973 Section 22. Section **22-3-412 (Effective 07/01/20)** is amended to read:

974 **22-3-412 (Effective 07/01/20). Receipts normally apportioned -- Timber.**

975 (1) To the extent that a fiduciary does not account for receipts from the sale of timber
976 and related products as a business under Section **22-3-403**, the fiduciary shall allocate the net
977 receipts:

978 (a) to income, to the extent that the amount of timber cut from the land does not exceed
979 the rate of growth of the timber;

980 (b) to principal, to the extent that the amount of timber cut from the land exceeds the
981 rate of growth of the timber or the net receipts are from the sale of standing timber;

982 (c) between income and principal if the net receipts are from the lease of land used for
983 growing and cutting timber or from a contract to cut timber from land, by determining the
984 amount of timber cut from the land under the lease or contract and applying the rules in
985 Subsections (1)(a) and (b); or

986 (d) to principal, to the extent that advance payments, bonuses, and other payments are
987 not allocated under Subsection (1)(a), (b), or (c).

988 (2) In determining net receipts to be allocated under Subsection (1), a fiduciary shall
989 deduct and transfer to principal a reasonable amount for depletion.

990 (3) This section applies to land owned or held by a fiduciary [~~whether or not~~]
991 regardless of whether a settlor was cutting timber from the land before the fiduciary owned or
992 held the property.

993 (4) (a) If a fiduciary owns or holds an interest in land used for growing and cutting
994 timber before July 1, [~~2019~~] 2020, the fiduciary may allocate net receipts from the sale of
995 timber and related products as provided in this section or in the manner used by the fiduciary
996 before July 1, [~~2019~~] 2020.

997 (b) If the fiduciary acquires an interest in land used for growing and cutting timber on
998 or after July 1, [~~2019~~] 2020, the fiduciary shall allocate net receipts from the sale of timber and
999 related products as provided in this section.

1000 Section 23. Section **22-3-414 (Effective 07/01/20)** is amended to read:

1001 **22-3-414 (Effective 07/01/20). Receipts normally apportioned -- Derivative or**
1002 **option.**

1003 (1) In this section:

1004 (a) "Derivative" means a contract, instrument, other arrangement, or combination of
1005 contracts, instruments, or other arrangements, for which the value, rights, and obligations [~~of~~
1006 ~~which~~] are, in whole or in part, dependent on or derived from an underlying tangible or
1007 intangible asset, group of tangible or intangible assets, index, or occurrence of an event.

1008 (b) "Derivative" includes stocks, fixed income securities, and financial instruments and
1009 arrangements based on indices, commodities, interest rates, weather-related events, and

1010 credit-default events.

1011 (2) To the extent that a fiduciary does not account for a transaction in derivatives as a
1012 business under Section 22-3-403, the fiduciary shall allocate:

1013 (a) 10% of receipts from the transaction and 10% of disbursements made in connection
1014 with the transaction to income; and

1015 (b) the balance to principal.

1016 (3) Subsection (4) applies if:

1017 (a) a fiduciary:

1018 (i) grants an option to buy property from a trust, [~~whether or not~~] regardless of whether
1019 the trust owns the property when the option is granted;

1020 (ii) grants an option that permits another person to sell property to the trust; or

1021 (iii) acquires an option to buy property for the trust or an option to sell an asset owned
1022 by the trust; and

1023 (b) the fiduciary or other owner of the asset is required to deliver the asset if the option
1024 is exercised.

1025 (4) If this subsection applies, the fiduciary shall allocate 10% to income and the
1026 balance to principal of the following amounts:

1027 (a) an amount received for granting the option;

1028 (b) an amount paid to acquire the option; and

1029 (c) gain or loss realized on the exercise, exchange, settlement, offset, closing, or
1030 expiration of the option.

1031 Section 24. Section 22-3-415 (Effective 07/01/20) is amended to read:

1032 **22-3-415 (Effective 07/01/20). Receipts normally apportioned -- Asset-backed**
1033 **security.**

1034 (1) Except as otherwise provided in Subsection (2), a fiduciary shall allocate:

1035 (a) to income, a receipt from or related to an asset-backed security, to the extent that
1036 the payor identifies the payment as being from interest or other current return[;]; and

1037 (b) to principal, the balance of the receipt.

1038 (2) If a fiduciary receives one or more payments in exchange for part or all of the
1039 fiduciary's interest in an asset-backed security, including a liquidation or redemption of the
1040 fiduciary's interest in the security, the fiduciary shall allocate:

1041 (a) to income, 10% of receipts from the transaction and 10% of disbursements made in
1042 connection with the transaction[;]; and

1043 (b) to principal, the balance of the receipts and disbursements.

1044 Section 25. Section **22-3-505 (Effective 07/01/20)** is amended to read:

1045 **22-3-505 (Effective 07/01/20). Reimbursement of principal from income.**

1046 (1) If a fiduciary makes or expects to make a principal disbursement described in
1047 Subsection (2), the fiduciary may transfer an appropriate amount from income to principal in
1048 one or more accounting periods to reimburse principal or provide a reserve for future principal
1049 disbursements.

1050 (2) To the extent that a fiduciary has not been and does not expect to be reimbursed by
1051 a third party, principal disbursements to which Subsection (1) applies include:

1052 (a) an amount chargeable to income but paid from principal because income is not
1053 sufficient;

1054 (b) the cost of an improvement to principal, regardless of whether the improvement is a
1055 change to an existing asset or the construction of a new asset, including a special assessment;

1056 (c) a disbursement made to prepare property for rental, including tenant allowances,
1057 leasehold improvements, and commissions;

1058 (d) a periodic payment on an obligation secured by a principal asset, to the extent that
1059 the amount transferred from income to principal for depreciation is less than the periodic
1060 payment; and

1061 (e) a disbursement described in Subsection [22-3-502\(1\)](#).

1062 (3) If an asset whose ownership gives rise to a principal disbursement becomes subject
1063 to a successive interest after an income interest ends, the fiduciary may continue to make
1064 transfers under Subsection (1).

1065 Section 26. Section **22-3-506 (Effective 07/01/20)** is amended to read:

1066 **22-3-506 (Effective 07/01/20). Income taxes.**

1067 (1) A tax required to be paid by a fiduciary that is based on receipts allocated to income
1068 [~~must~~] shall be paid from income.

1069 (2) A tax required to be paid by a fiduciary that is based on receipts allocated to
1070 principal [~~must~~] shall be paid from principal, even if the tax is called an income tax by the
1071 taxing authority.

1072 (3) Subject to Subsection (4) and Sections 22-3-504, 22-3-505, and 22-3-507, a tax
1073 required to be paid by a fiduciary on a share of an entity's taxable income in an accounting
1074 period [~~must~~] shall be paid from:

1075 (a) income and principal proportionately to the allocation between income and
1076 principal of receipts from the entity in the period; and

1077 (b) principal, to the extent that the tax exceeds the receipts from the entity in the
1078 accounting period.

1079 (4) After applying Subsections (1) through (3), a fiduciary shall adjust income or
1080 principal receipts, to the extent that the taxes the fiduciary pays are reduced because of a
1081 deduction for a payment made to a beneficiary.

1082 Section 27. Section 22-3-507 (Effective 07/01/20) is amended to read:

1083 **22-3-507 (Effective 07/01/20). Adjustment between income and principal because**
1084 **of taxes.**

1085 (1) A fiduciary may make an adjustment between income and principal to offset the
1086 shifting of economic interests or tax benefits between current income beneficiaries and
1087 successor beneficiaries that arises from:

1088 (a) an election or decision the fiduciary makes regarding a tax matter, other than a
1089 decision to claim an income tax deduction to which Subsection (2) applies;

1090 (b) an income tax or other tax imposed on the fiduciary or a beneficiary as a result of a
1091 transaction involving the fiduciary or a distribution by the fiduciary; or

1092 (c) ownership by the fiduciary of an interest in an entity, a part of whose taxable
1093 income, [~~whether or not~~] regardless of whether the taxable income is distributed, is includable

1094 in the taxable income of the fiduciary or a beneficiary.

1095 (2) (a) If the amount of an estate tax marital or charitable deduction is reduced because
1096 a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting
1097 ~~[it]~~ the amount for estate tax purposes and, as a result, estate taxes paid from principal are
1098 increased and income taxes paid by the fiduciary or a beneficiary are decreased, the fiduciary
1099 shall charge each beneficiary that benefits from the decrease in income tax to reimburse the
1100 principal from which the increase in estate tax is paid.

1101 (b) The total reimbursement must equal the increase in the estate tax, to the extent that
1102 the principal used to pay the increase would have qualified for a marital or charitable deduction
1103 but for the payment.

1104 (c) The share of the reimbursement for each fiduciary or beneficiary whose income
1105 taxes are reduced ~~[must]~~ shall be the same as ~~[its]~~ the fiduciary's or beneficiary's share of the
1106 total decrease in income tax.

1107 (3) A fiduciary that charges a beneficiary under Subsection (2) may offset the charge
1108 by obtaining payment from the beneficiary, withholding an amount from future distributions to
1109 the beneficiary, or adopting another method or combination of methods.

1110 Section 28. Section **22-3-601 (Effective 07/01/20)** is amended to read:

1111 **22-3-601 (Effective 07/01/20). Determination and distribution of net income.**

1112 (1) This section applies when:

1113 (a) the death of an individual results in the creation of an estate or trust; or

1114 (b) an income interest in a trust terminates, regardless of whether the trust continues or
1115 is distributed.

1116 (2) A fiduciary of an estate or trust with an income interest that terminates shall:

1117 (a) determine, ~~[under]~~ in accordance with Subsection ~~[(7)]~~ (8) and Part 4, Allocation of
1118 Receipts, Part 5, Allocation of Disbursements, and Part 7, Apportionment at Beginning and
1119 End of Income Interest, the amount of net income and net principal receipts received from
1120 property specifically given to a beneficiary; and

1121 (b) distribute the net income and net principal receipts to the beneficiary that is to

1122 receive the specific property.

1123 (3) ~~[A]~~ Subject to Subsection (4), a fiduciary shall determine the income and net
 1124 income of an estate or income interest in a trust that terminates, other than the amount of net
 1125 income determined ~~[under]~~ in accordance with Subsection (2), ~~[under]~~ and in accordance with
 1126 Part 4, Allocation of Receipts, Part 5, Allocation of Disbursements, and Part 7, Apportionment
 1127 at Beginning and End of Income Interest, and by:

1128 (a) including in net income all income from property used or sold to discharge
 1129 liabilities;

1130 (b) paying from income or principal, in the fiduciary's discretion~~[-];~~:

1131 (i) fees of attorneys, accountants, and fiduciaries~~[-];~~

1132 (ii) court costs and other expenses of administration~~[-and];~~

1133 (iii) interest on estate ~~[and]~~ taxes, inheritance taxes, and other taxes imposed because
 1134 of the decedent's death~~[-but the fiduciary may pay the expenses from income of property~~
 1135 ~~passing to a trust for which the fiduciary claims a federal estate tax marital or charitable~~
 1136 ~~deduction only to the extent.]; and~~

1137 ~~[(i) the payment of the expenses from income will not cause the reduction or loss of the~~
 1138 ~~deduction; or]~~

1139 ~~[(ii) the fiduciary makes an adjustment under Subsection [22-3-507\(2\)](#); and]~~

1140 (c) paying from principal other disbursements made or incurred in connection with the
 1141 settlement of the estate or the winding up of an income interest that terminates, including:

1142 (i) to the extent authorized by the decedent's will, the terms of the trust, or applicable
 1143 law, debts, funeral expenses, disposition of remains, family allowances, estate and inheritance
 1144 taxes, and other taxes imposed because of the decedent's death; and

1145 (ii) related penalties that are apportioned, by the decedent's will, the terms of the trust,
 1146 or applicable law, to the estate or income interest that terminates.

1147 (4) A fiduciary may pay the expenses from income of property passing to a trust for
 1148 which the fiduciary claims a federal estate tax marital or charitable deduction only to the
 1149 extent:

1150 (a) the payment of the expenses from income will not cause the reduction or loss of the
1151 deduction; or

1152 (b) the fiduciary makes an adjustment under Subsection 22-3-507(2).

1153 ~~[(4)]~~ (5) If a decedent's will, the terms of a trust, or applicable law provides for the
1154 payment of interest or the equivalent of interest to a beneficiary that receives a pecuniary
1155 amount outright, the fiduciary shall make the payment from net income determined under
1156 Subsection (3) or from principal to the extent that net income is insufficient.

1157 ~~[(5)]~~ (6) If a beneficiary is to receive a pecuniary amount outright from a trust after an
1158 income interest ends because of an income beneficiary's death, and no payment of interest or
1159 the equivalent of interest is provided for by the terms of the trust or applicable law, the
1160 fiduciary shall pay the interest or the equivalent of interest to which the beneficiary would be
1161 entitled under applicable law if the pecuniary amount were required to be paid under a will.

1162 ~~[(6)]~~ (7) A fiduciary shall distribute net income remaining after payments required by
1163 Subsections ~~[(4)]~~ (5) and ~~[(5)]~~ (6) in the manner described in Section 22-3-602 to all other
1164 beneficiaries, including a beneficiary that receives a pecuniary amount in trust, even if the
1165 beneficiary holds an unqualified power to withdraw assets from the trust or other presently
1166 exercisable general power of appointment over the trust.

1167 ~~[(7)]~~ (8) (a) A fiduciary may not reduce principal or income receipts from property
1168 described in Subsection (2) because of a payment described in Section 22-3-501 or 22-3-502,
1169 to the extent the decedent's will, the terms of the trust, or applicable law requires the fiduciary
1170 to make the payment from assets other than the property or to the extent the fiduciary recovers
1171 or expects to recover the payment from a third party.

1172 (b) The net income and principal receipts from the property ~~[must]~~ shall be determined
1173 by including the amount the fiduciary receives or pays regarding the property, whether the
1174 amount accrued or became due before, on, or after the date of the decedent's death or an
1175 income interest's terminating event, and making a reasonable provision for an amount the estate
1176 or income interest may become obligated to pay after the property is distributed.

1177 Section 29. Section 22-3-602 (Effective 07/01/20) is amended to read:

1178 **22-3-602 (Effective 07/01/20). Distribution to successor beneficiary.**

1179 (1) (a) Except to the extent Part 3, Unitrust, applies for a beneficiary that is a trust, each
1180 beneficiary described in Subsection 22-3-601(6) is entitled to receive a share of the net income
1181 equal to the beneficiary's fractional interest in undistributed principal assets, using values of the
1182 undistributed principal assets as of the distribution date.

1183 (b) If a fiduciary makes more than one distribution of assets to beneficiaries to which
1184 this section applies, each beneficiary, including a beneficiary that does not receive part of the
1185 distribution, is entitled, as of each distribution date, to a share of the net income the fiduciary
1186 received after the decedent's death, an income interest's other terminating event, or the
1187 preceding distribution by the fiduciary.

1188 (2) In determining a beneficiary's share of net income under Subsection (1) ~~[, the~~
1189 ~~following rules apply]~~:

1190 (a) ~~[The]~~ the beneficiary is entitled to receive a share of the net income equal to the
1191 beneficiary's fractional interest in the undistributed principal assets immediately before the
1192 distribution date~~[-]~~;

1193 (b) ~~[The]~~ the beneficiary's fractional interest under Subsection (2)(a) ~~[must]~~ shall be
1194 calculated:

1195 (i) on the aggregate value of the assets as of the distribution date without reducing the
1196 value by any unpaid principal obligation; and

1197 (ii) without regard to:

1198 (A) property specifically given to a beneficiary under the decedent's will or the terms of
1199 the trust; and

1200 (B) property required to pay pecuniary amounts not in trust~~[-]~~; and

1201 (c) ~~[The]~~ the distribution date under Subsection (2)(a) may be the date ~~[as of]~~ on which
1202 the fiduciary calculates the value of the assets if that date is reasonably near the date on which
1203 the assets are distributed.

1204 (3) To the extent that a fiduciary does not distribute under this section all the collected
1205 but undistributed net income to each beneficiary ~~[as of]~~ on or before a distribution date, the

1206 fiduciary shall maintain records showing the interest of each beneficiary in the net income.

1207 (4) If this section applies to income from an asset, a fiduciary may apply [~~the rules in~~
1208 ~~this section~~] Subsection (2) to net gain or loss realized from the disposition of the asset after
1209 the decedent's death, an income interest's terminating event, or the preceding distribution by the
1210 fiduciary.

1211 Section 30. Section **22-3-701 (Effective 07/01/20)** is amended to read:

1212 **22-3-701 (Effective 07/01/20). When right to income begins and ends.**

1213 (1) (a) An income beneficiary is entitled to net income in accordance with the terms of
1214 the trust from the date on which an income interest begins.

1215 (b) The income interest begins on the date that is specified in the terms of the trust or,
1216 if no date is specified, on the date an asset becomes subject to:

1217 (i) the trust for the current income beneficiary; or

1218 (ii) a successive interest for a successor beneficiary.

1219 (2) An asset becomes subject to a trust under Subsection (1)(b)(i):

1220 (a) for an asset that is transferred to the trust during the settlor's life, on the date the
1221 asset is transferred;

1222 (b) for an asset that becomes subject to the trust because of a decedent's death, on the
1223 date of the decedent's death, even if there is an intervening period of administration of the
1224 decedent's estate; or

1225 (c) for an asset that is transferred to a fiduciary by a third party because of a decedent's
1226 death, on the date of the decedent's death.

1227 (3) An asset becomes subject to a successive interest under Subsection (1)(b)(ii) on the
1228 day after the preceding income interest ends, as determined under Subsection (4), even if there
1229 is an intervening period of administration to wind up the preceding income interest.

1230 (4) An income interest ends on the day before an income beneficiary dies or another
1231 terminating event occurs or on the last day of a period during which there is no beneficiary to
1232 which a fiduciary [~~may or must~~] is permitted or required to distribute income.

1233 Section 31. Section **22-3-702 (Effective 07/01/20)** is amended to read:

1234 **22-3-702 (Effective 07/01/20). Apportionment of receipts and disbursements**
1235 **when decedent dies or income interest begins.**

1236 (1) A fiduciary shall allocate an income receipt or disbursement, other than a receipt to
1237 which Subsection 22-3-601(2) applies, to principal if [its] the due date of the income receipt or
1238 disbursement occurs before the date on which:

1239 (a) for an estate, the decedent died; or

1240 (b) for a trust or successive interest, an income interest begins.

1241 (2) If the due date of a periodic income receipt or disbursement occurs on or after the
1242 date on which a decedent died or an income interest begins, a fiduciary shall allocate the
1243 receipt or disbursement to income.

1244 (3) If an income receipt or disbursement is not periodic or has no due date, a fiduciary
1245 shall:

1246 (a) treat the receipt or disbursement under this section as accruing from day to day; and

1247 (b) allocate:

1248 (i) to principal, the portion of the receipt or disbursement accruing before the date on
1249 which a decedent died or an income interest begins[;]; and

1250 (ii) to income, the balance.

1251 (4) A receipt or disbursement is periodic under Subsections (2) and (3) if:

1252 (a) the receipt or disbursement [must] shall be paid at regular intervals under an
1253 obligation to make payments; or

1254 (b) the payor customarily makes payments at regular intervals.

1255 (5) (a) An item of income or obligation is due under this section on the date on which
1256 the payor is required to make a payment.

1257 (b) If a payment date is not stated, there is no due date.

1258 (6) Distributions to shareholders or other owners from an entity to which Section

1259 22-3-401 applies are due:

1260 (a) on the date fixed by or on behalf of the entity for determining the persons entitled to
1261 receive the distribution;

1262 (b) if no date is fixed, on the date of the decision by or on behalf of the entity to make
1263 the distribution; or

1264 (c) if no date is fixed and the fiduciary does not know the date of the decision by or on
1265 behalf of the entity to make the distribution, on the date the fiduciary learns of the decision.

1266 Section 32. Section **22-3-703 (Effective 07/01/20)** is amended to read:

1267 **22-3-703 (Effective 07/01/20). Apportionment when income interest ends.**

1268 (1) In this section:

1269 (a) "Undistributed income" means net income received on or before the date on which
1270 an income interest ends.

1271 (b) "Undistributed income" does not include an item of income or expense [~~which~~] that
1272 is due or accrued or net income that has been added or is required to be added, to principal
1273 under the terms of the trust.

1274 (2) Except as otherwise provided in Subsection (3), when a mandatory income interest
1275 of a beneficiary ends, the fiduciary shall pay the beneficiary's share of the undistributed income
1276 that is not disposed of under the terms of the trust to the beneficiary or, if the beneficiary does
1277 not survive the date that the interest ends, to the beneficiary's estate.

1278 (3) If a beneficiary has an unqualified power to withdraw more than 5% of the value of
1279 a trust immediately before an income interest ends:

1280 (a) the fiduciary shall allocate to principal the undistributed income from the portion of
1281 the trust [~~which~~] that may be withdrawn; and

1282 (b) Subsection (2) applies only to the balance of the undistributed income.

1283 (4) When a fiduciary's obligation to pay a fixed annuity or a fixed fraction of the value
1284 of assets ends, the fiduciary shall prorate the final payment as required to preserve an income
1285 tax, gift tax, estate tax, or other tax benefit.

1286 Section 33. Section **22-3-801 (Effective 07/01/20)** is amended to read:

1287 **22-3-801 (Effective 07/01/20). Uniformity of application and construction.**

1288 In applying and construing this uniform act, consideration must be given to the need to
1289 promote uniformity of the law with respect to [~~its~~] the uniform act's subject matter among

1290 states that enact it.

1291 Section 34. Section **22-3-803 (Effective 07/01/20)** is amended to read:

1292 **22-3-803 (Effective 07/01/20). Application to trust or estate.**

1293 This chapter applies to a trust or estate existing or created on or after July 1, [~~2019~~

1294 2020, except as otherwise expressly provided in the terms of the trust or this chapter.

1295 Section 35. Section **22-3-804 (Effective 07/01/20)** is amended to read:

1296 **22-3-804 (Effective 07/01/20). Severability.**

1297 If any provision of this chapter or [~~its~~] the application of this chapter to any person or
1298 circumstance is held invalid, the invalidity does not affect other provisions or applications of
1299 this chapter [~~which~~] that can be given effect without the invalid provision or application, and to
1300 this end the provisions of this chapter are severable.

1301 Section 36. Section **75-7-103 (Superseded 07/01/20)** is amended to read:

1302 **75-7-103 (Superseded 07/01/20). Definitions.**

1303 (1) In this chapter:

1304 (a) "Action," with respect to an act of a trustee, includes a failure to act.

1305 (b) "Beneficiary" means a person that:

1306 (i) has a present or future beneficial interest in a trust, vested or contingent; or

1307 (ii) in a capacity other than that of trustee, holds a power of appointment over trust
1308 property.

1309 (c) "Charitable trust" means a trust, or portion of a trust, created for a charitable
1310 purpose described in Subsection [75-7-405\(1\)](#).

1311 (d) "Environmental law" means a federal, state, or local law, rule, regulation, or
1312 ordinance relating to protection of the environment.

1313 (e) "Interests of the beneficiaries" means the beneficial interests provided in the terms
1314 of the trust.

1315 (f) "Jurisdiction," with respect to a geographic area, includes a state or country.

1316 (g) "Power of withdrawal" means a presently exercisable general power of appointment
1317 other than a power exercisable only upon consent of the trustee or a person holding an adverse

1318 interest.

1319 (h) "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's
1320 qualification is determined:

1321 (i) is a current distributee or permissible distributee of trust income or principal; or

1322 (ii) would be a distributee or permissible distributee of trust income or principal if the
1323 trust terminated on that date.

1324 (i) "Resident estate" or "resident trust" means:

1325 (i) an estate of a decedent who at death was domiciled in this state;

1326 (ii) a trust, or a portion of a trust, consisting of property transferred by will of a
1327 decedent who at his death was domiciled in this state; or

1328 (iii) a trust administered in this state.

1329 (j) "Revocable," as applied to a trust, means revocable by the settlor without the
1330 consent of the trustee or a person holding an adverse interest.

1331 (k) "Settlor" means a person, including a testator, who creates, or contributes property
1332 to, a trust. If more than one person creates or contributes property to a trust, each person is a
1333 settlor of the portion of the trust property attributable to that person's contribution except to the
1334 extent another person has the power to revoke or withdraw that portion.

1335 (l) "Spendthrift provision" means a term of a trust which restrains both voluntary and
1336 involuntary transfer or encumbrance of a beneficiary's interest.

1337 (m) "Terms of a trust" means:

1338 (i) ~~subject to~~ except as otherwise provided in Subsection (1)(m)(ii), the manifestation
1339 of the settlor's intent regarding a trust's provisions as:

1340 (A) expressed in the trust instrument; or

1341 (B) established by other evidence that would be admissible in a judicial proceeding; or

1342 (ii) the trust's provisions, as established, determined, or amended by:

1343 (A) a trustee or ~~other person~~ trust director in accordance with applicable law;

1344 (B) a court order; or

1345 (C) a nonjudicial settlement agreement under Section [75-7-110](#).

1346 (n) "Trust instrument" means an instrument executed by the settlor that contains terms
1347 of the trust, including any amendments thereto.

1348 (2) Terms not specifically defined in this section have the meanings provided in
1349 Section 75-1-201.

1350 Section 37. Section 75-7-103 (Effective 07/01/20) is amended to read:

1351 **75-7-103 (Effective 07/01/20). Definitions.**

1352 (1) In this chapter:

1353 (a) "Action," with respect to an act of a trustee, includes a failure to act.

1354 (b) "Beneficiary" means a person that:

1355 (i) has a present or future beneficial interest in a trust, vested or contingent; or

1356 (ii) in a capacity other than that of trustee, holds a power of appointment over trust
1357 property.

1358 (c) "Charitable trust" means a trust, or portion of a trust, created for a charitable
1359 purpose described in Subsection 75-7-405(1).

1360 (d) "Environmental law" means a federal, state, or local law, rule, regulation, or
1361 ordinance relating to protection of the environment.

1362 (e) "Interests of the beneficiaries" means the beneficial interests provided in the terms
1363 of the trust.

1364 (f) "Jurisdiction," with respect to a geographic area, includes a state or country.

1365 (g) "Power of withdrawal" means a presently exercisable general power of appointment
1366 other than a power exercisable only upon consent of the trustee or a person holding an adverse
1367 interest.

1368 (h) "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's
1369 qualification is determined:

1370 (i) is a current distributee or permissible distributee of trust income or principal; or

1371 (ii) would be a distributee or permissible distributee of trust income or principal if the
1372 trust terminated on that date.

1373 (i) "Resident estate" or "resident trust" means:

- 1374 (i) an estate of a decedent who at death was domiciled in this state;
- 1375 (ii) a trust, or a portion of a trust, consisting of property transferred by will of a
1376 decedent who at his death was domiciled in this state; or
- 1377 (iii) a trust administered in this state.
- 1378 (j) "Revocable," as applied to a trust, means revocable by the settlor without the
1379 consent of the trustee or a person holding an adverse interest.
- 1380 (k) "Settlor" means a person, including a testator, who creates, or contributes property
1381 to, a trust. If more than one person creates or contributes property to a trust, each person is a
1382 settlor of the portion of the trust property attributable to that person's contribution except to the
1383 extent another person has the power to revoke or withdraw that portion.
- 1384 (l) "Spendthrift provision" means a term of a trust which restrains both voluntary and
1385 involuntary transfer or encumbrance of a beneficiary's interest.
- 1386 (m) "Terms of a trust" means:
- 1387 (i) except as otherwise provided in Subsection (1)(m)(ii), the manifestation of the
1388 settlor's intent regarding a trust's provisions as:
- 1389 (A) expressed in the trust instrument; or
- 1390 (B) established by other evidence that would be admissible in a judicial proceeding;
- 1391 (ii) the trust's provisions as established, determined, or amended by:
- 1392 (A) a trustee or trust director in accordance with the applicable law;
- 1393 (B) court order; or
- 1394 (C) a nonjudicial settlement agreement under Section 75-7-110[;].
- 1395 [~~(iii) for an estate, a will, or~~]
- 1396 [~~(iv) for a life estate or term interest, the corresponding manifestation of the rights of~~
1397 ~~the beneficiaries.~~]
- 1398 (n) "Trust instrument" means an instrument executed by the settlor that contains terms
1399 of the trust, including any amendments thereto.
- 1400 (2) Terms not specifically defined in this section have the meanings provided in
1401 Section 75-1-201.

1402 Section 38. **Effective date.**

1403 (1) Except as provided in Subsection (2), the amendments to Section [75-7-103](#)

1404 (Superseded 07/01/20) in this bill take effect on May 12, 2020.

1405 (2) This bill takes effect on July 1, 2020.