

# SENATE BILL No. 48

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 29-1-7.5-3; IC 30-2-14; IC 30-4-1; IC 30-4-5.

**Synopsis:** Uniform Principal and Income act. Adopts the Uniform Principal and Income Act. Makes conforming changes. Repeals superseded statutes.

**Effective:** July 1, 2001.

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## Simpson

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January 8, 2001, read first time and referred to Committee on Judiciary.

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First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

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# SENATE BILL No. 48



A BILL FOR AN ACT to amend the Indiana Code concerning trusts and fiduciaries.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 29-1-7.5-3, AS AMENDED BY P.L.182-1999,  
2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2001]: Sec. 3. Subject to section 2(d) of this chapter, a  
4 personal representative who administers an estate under this chapter  
5 may do the following without order of the court:  
6 (1) retain assets owned by the decedent pending distribution or  
7 liquidation including those in which the representative is  
8 personally interested or which are otherwise improper for trust  
9 investment;  
10 (2) receive assets from fiduciaries or other sources;  
11 (3) perform, compromise, or refuse performance of the decedent's  
12 contracts that continue as obligations of the estate, as he may  
13 determine under the circumstances. In performing enforceable  
14 contracts by the decedent to convey or lease land, the personal  
15 representative, among other possible courses of action, may:  
16 (i) execute and deliver a deed of conveyance for cash payment  
17 of all sums remaining due or the purchaser's note for the sum



- 1 remaining due secured by a mortgage or deed of trust on the  
2 land; or  
3 (ii) deliver a deed in escrow with directions that the proceeds,  
4 when paid in accordance with the escrow agreement, be paid  
5 to the successors of the decedent, as designated in the escrow  
6 agreement;
- 7 (4) satisfy written charitable pledges of the decedent irrespective  
8 of whether the pledges constituted binding obligations of the  
9 decedent or were properly presented as claims, if in the judgment  
10 of the personal representative the decedent would have wanted  
11 the pledges completed under the circumstances;
- 12 (5) if funds are not needed to meet debts and expenses currently  
13 payable and are not immediately distributable, deposit or invest  
14 liquid assets of the estate, including moneys received from the  
15 sale of other assets, in federally insured interest-bearing accounts,  
16 readily marketable secured loan arrangements or other prudent  
17 investments which would be reasonable for use by trustees  
18 generally;
- 19 (6) acquire or dispose of an asset, including land in this or another  
20 state, for cash or on credit, at public or private sale; and manage,  
21 develop, improve, exchange, partition, change the character of, or  
22 abandon an estate asset;
- 23 (7) make ordinary or extraordinary repairs or alterations in  
24 buildings or other structures, demolish any improvements, raze  
25 existing or erect new party walls or buildings;
- 26 (8) subdivide, develop, or dedicate land to public use; make or  
27 obtain the vacation of plats and adjust boundaries; or adjust  
28 differences in valuation on exchange or partition by giving or  
29 receiving considerations; or dedicate easements to public use  
30 without consideration;
- 31 (9) enter for any purpose into a lease as lessor or lessee, with or  
32 without option to purchase or renew, for a term within or  
33 extending beyond the period of administration;
- 34 (10) enter into a lease or arrangement for exploration and removal  
35 of minerals or other natural resources or enter into a pooling or  
36 unitization agreement;
- 37 (11) abandon property when, in the opinion of the personal  
38 representatives, it is valueless, or is so encumbered, or is in  
39 condition that it is of no benefit to the estate;
- 40 (12) vote stocks or other securities in person or by general or  
41 limited proxy;
- 42 (13) pay calls, assessments, and other sums chargeable or

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- 1 accruing against or on account of securities, unless barred by the  
 2 provisions relating to claims;  
 3 (14) hold a security in the name of a nominee or in other form  
 4 without disclosure of the interest of the estate but the personal  
 5 representative is liable for any act of the nominee in connection  
 6 with the security so held;  
 7 (15) insure the assets of the estate against damage, loss and  
 8 liability and himself against liability as to third persons;  
 9 (16) borrow money with or without security to be repaid from the  
 10 estate assets or otherwise and advance money for the protection  
 11 of the estate;  
 12 (17) effect a fair and reasonable compromise with any debtor or  
 13 obligor, or extend, renew, or in any manner modify the terms of  
 14 any obligation owing to the estate. If the personal representative  
 15 holds a mortgage, pledge, or other lien upon property of another  
 16 person, he may, in lieu of foreclosure, accept a conveyance or  
 17 transfer of encumbered assets from the owner thereof in  
 18 satisfaction of the indebtedness secured by lien;  
 19 (18) pay taxes, assessments, compensation of the personal  
 20 representative, and other expenses incident to the administration  
 21 of the estate;  
 22 (19) sell or exercise stock subscription or conversion rights and  
 23 consent, directly or through a committee or other agent, to the  
 24 reorganization, consolidation, merger, dissolution, or liquidation  
 25 of a corporation or other business enterprise;  
 26 (20) allocate items of income or expense to either estate income  
 27 or principal, as permitted or provided by law; **IC 30-2-14;**  
 28 (21) employ persons, including attorneys, auditors, investment  
 29 advisors, or agents, even if they are associated with the personal  
 30 representative, to advise or assist the personal representative in  
 31 the performance of his administrative duties; act without  
 32 independent investigation upon their recommendations; and  
 33 instead of acting personally, employ one (1) or more agents to  
 34 perform any act of administration, whether or not discretionary;  
 35 (22) prosecute or defend claims or proceedings in any jurisdiction  
 36 for the protection of the estate and of the personal representative  
 37 in the performance of his duties;  
 38 (23) sell, mortgage, or lease any real or personal property of the  
 39 estate or any interest therein for cash, credit, or for part cash and  
 40 part credit, and with or without security for unpaid balances;  
 41 (24) continue any unincorporated business or venture in which the  
 42 decedent was engaged at the time of his death:

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- 1 (i) in the same business form for a period of not more than five  
 2 (5) months from the date of appointment of a general personal  
 3 representative if continuation is a reasonable means of  
 4 preserving the value of the business including good will;  
 5 (ii) in the same business form for any additional period of time  
 6 that may be approved by order of the court in a formal  
 7 proceeding to which the persons interested in the estate are  
 8 parties; or  
 9 (iii) throughout the period of administration if the business is  
 10 incorporated by the personal representative and if none of the  
 11 probable distributees of the business who are competent adults  
 12 object to its incorporations and retention in the estate;  
 13 (25) incorporate any business or venture in which the decedent  
 14 was engaged at the time of his death;  
 15 (26) satisfy and settle claims;  
 16 (27) distribute assets of the estate upon such terms as he may  
 17 impose; and  
 18 (28) perform any other act necessary or appropriate to administer  
 19 the estate.

20 SECTION 2. IC 30-2-14 IS ADDED TO THE INDIANA CODE AS  
 21 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
 22 1, 2001]:

23 **Chapter 14. Uniform Principal and Income Act**

24 **Sec. 1. As used in this chapter, "accounting period" means a**  
 25 **calendar year unless another twelve (12) month period is selected**  
 26 **by a fiduciary. The term includes a portion of a calendar year or**  
 27 **other twelve (12) month period that begins when an income**  
 28 **interest begins or ends when an income interest ends.**

29 **Sec. 2. As used in this chapter, "beneficiary" includes, in the**  
 30 **case of a decedent's estate, an heir and a devisee and, in the case of**  
 31 **a trust, an income beneficiary and a remainder beneficiary.**

32 **Sec. 3. As used in this chapter, "fiduciary" means a personal**  
 33 **representative or a trustee. The term includes an executor,**  
 34 **administrator, successor personal representative, special**  
 35 **administrator, and a person performing substantially the same**  
 36 **function.**

37 **Sec. 4. As used in this chapter, "income" means money or**  
 38 **property that a fiduciary receives as current return from a**  
 39 **principal asset. The term includes a portion of receipts from a sale,**  
 40 **exchange, or liquidation of a principal asset, to the extent provided**  
 41 **in sections 21 through 35 of this chapter.**

42 **Sec. 5. As used in this chapter, "income beneficiary" means a**

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1 person to whom net income of a trust is or may be payable.

2 Sec. 6. As used in this chapter, "income interest" means the  
3 right of an income beneficiary to receive all or part of net income,  
4 whether the terms of the trust require it to be distributed or  
5 authorize it to be distributed in the trustee's discretion.

6 Sec. 7. As used in this chapter, "mandatory income interest"  
7 means the right of an income beneficiary to receive net income that  
8 the terms of the trust require the fiduciary to distribute.

9 Sec. 8. As used in this chapter, "net income" means the total  
10 receipts allocated to income during an accounting period minus the  
11 disbursements made from income during the period, plus or minus  
12 transfers under this chapter to or from income during the period.

13 Sec. 9. As used in this chapter, "person" means an individual,  
14 corporation, business trust, estate, trust, partnership, limited  
15 liability company, association, joint venture, government;  
16 governmental subdivision, agency, or instrumentality; public  
17 corporation, or any other legal or commercial entity.

18 Sec. 10. As used in this chapter, "principal" means property  
19 held in trust for distribution to a remainder beneficiary when the  
20 trust terminates.

21 Sec. 11. As used in this chapter, "remainder beneficiary" means  
22 a person entitled to receive principal when an income interest ends.

23 Sec. 12. As used in this chapter, "terms of a trust" means the  
24 manifestation of the intent of a settlor or decedent with respect to  
25 the trust, expressed in a manner that admits of its proof in a  
26 judicial proceeding, whether by written or spoken words or by  
27 conduct.

28 Sec. 13. As used in this chapter, "trustee" includes an original,  
29 additional, or successor trustee, whether or not appointed or  
30 confirmed by a court.

31 Sec. 14. (a) In allocating receipts and disbursements to or  
32 between principal and income, and with respect to any matter  
33 within the scope of sections 16 through 20 of this chapter, a  
34 fiduciary:

35 (1) shall administer a trust or estate in accordance with the  
36 terms of the trust or the will, even if there is a different  
37 provision in this chapter;

38 (2) may administer a trust or estate by the exercise of a  
39 discretionary power of administration given to the fiduciary  
40 by the terms of the trust or the will, even if the exercise of the  
41 power produces a result different from a result required or  
42 permitted by this chapter;

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1 (3) shall administer a trust or estate in accordance with this  
 2 chapter if the terms of the trust or the will do not contain a  
 3 different provision or do not give the fiduciary a discretionary  
 4 power of administration; and

5 (4) shall add a receipt or charge a disbursement to principal  
 6 to the extent that the terms of the trust and this chapter do  
 7 not provide a rule for allocating the receipt or disbursement  
 8 to or between principal and income.

9 (b) In exercising the power to adjust under section 15 of this  
 10 chapter or a discretionary power of administration regarding a  
 11 matter within the scope of this chapter, whether granted by the  
 12 terms of a trust, a will, or this chapter, a fiduciary shall administer  
 13 a trust or estate impartially, based on what is fair and reasonable  
 14 to all of the beneficiaries, except to the extent that the terms of the  
 15 trust or the will clearly manifest an intention that the fiduciary  
 16 shall or may favor one (1) or more of the beneficiaries. A  
 17 determination in accordance with this chapter is presumed to be  
 18 fair and reasonable to all of the beneficiaries.

19 Sec. 15. (a) A trustee may adjust between principal and income  
 20 to the extent the trustee considers necessary if the trustee invests  
 21 and manages trust assets as a prudent investor, the terms of the  
 22 trust describe the amount that may or must be distributed to a  
 23 beneficiary by referring to the trust's income, and the trustee  
 24 determines, after applying the rules in section 14(a) of this chapter,  
 25 that the trustee is unable to comply with section 14(b) of this  
 26 chapter.

27 (b) In deciding whether and to what extent to exercise the power  
 28 conferred by subsection (a), a trustee shall consider all factors  
 29 relevant to the trust and its beneficiaries, including the following  
 30 factors to the extent they are relevant:

- 31 (1) The nature, purpose, and expected duration of the trust.  
 32 (2) The intent of the settlor.  
 33 (3) The identity and circumstances of the beneficiaries.  
 34 (4) The needs for liquidity, regularity of income, and  
 35 preservation and appreciation of capital.  
 36 (5) The assets held in the trust; the extent to which they  
 37 consist of financial assets, interests in closely held enterprises,  
 38 tangible and intangible personal property, or real property;  
 39 the extent to which an asset is used by a beneficiary; and  
 40 whether an asset was purchased by the trustee or received  
 41 from the settlor.  
 42 (6) The net amount allocated to income under this chapter

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1 and the increase or decrease in the value of the principal  
2 assets, which the trustee may estimate as to assets for which  
3 market values are not readily available.

4 (7) Whether and to what extent the terms of the trust give the  
5 trustee the power to invade principal or accumulate income  
6 or prohibit the trustee from invading principal or  
7 accumulating income, and the extent to which the trustee has  
8 exercised a power from time to time to invade principal or  
9 accumulate income.

10 (8) The actual and anticipated effect of economic conditions  
11 on principal and income and effects of inflation and deflation.

12 (9) The anticipated tax consequences of an adjustment.

13 (c) A trustee may not make an adjustment:

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

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

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

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

27 (5) if possessing or exercising the power to make an  
28 adjustment causes an individual to be treated as the owner of  
29 all or part of the trust for income tax purposes, and the  
30 individual would not be treated as the owner if the trustee did  
31 not possess the power to make an adjustment;

32 (6) if possessing or exercising the power to make an  
33 adjustment causes all or part of the trust assets to be included  
34 for estate tax purposes in the estate of an individual who has  
35 the power to remove a trustee or appoint a trustee, or both,  
36 and the assets would not be included in the estate of the  
37 individual if the trustee did not possess the power to make an  
38 adjustment;

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

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

42 (d) If subsection (c)(5), (c)(6), (c)(7), or (c)(8) applies to a trustee

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1 and there is more than one (1) trustee, a cotrustee to whom the  
 2 provision does not apply may make the adjustment unless the  
 3 exercise of the power by the remaining trustee or trustees is not  
 4 permitted by the terms of the trust.

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

15 (f) Terms of a trust that limit the power of a trustee to make an  
 16 adjustment between principal and income do not affect the  
 17 application of this section unless it is clear from the terms of the  
 18 trust that the terms are intended to deny the trustee the power of  
 19 adjustment conferred by subsection (a).

20 **Sec. 16.** After an individual dies, in the case of an estate, or after  
 21 an income interest in a trust ends, the following rules apply:

22 (1) A fiduciary of an estate or of a terminating income interest  
 23 shall determine the amount of net income and net principal  
 24 receipts received from property specifically given to a  
 25 beneficiary under the rules in sections 18 through 41 of this  
 26 chapter that apply to trustees and the rules in subdivision (5).  
 27 The fiduciary shall distribute the net income and net principal  
 28 receipts to the beneficiary who is to receive the specific  
 29 property.

30 (2) A fiduciary shall determine the remaining net income of a  
 31 decedent's estate or a terminating income interest under the  
 32 rules in sections 18 through 41 of this chapter that apply to  
 33 trustees and by:

34 (A) including in net income all income from property used  
 35 to discharge liabilities;

36 (B) paying from income or principal, in the fiduciary's  
 37 discretion, fees of attorneys, accountants, and fiduciaries;  
 38 court costs and other expenses of administration; and  
 39 interest on death taxes, but the fiduciary may pay those  
 40 expenses from income of property passing to a trust for  
 41 which the fiduciary claims an estate tax marital or  
 42 charitable deduction only to the extent that the payment of

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1 those expenses from income will not cause the reduction or  
 2 loss of the deduction; and

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

11 (3) A fiduciary shall distribute to a beneficiary who receives  
 12 a pecuniary amount outright the interest or any other amount  
 13 provided by the will, the terms of the trust, or applicable law  
 14 from net income determined under subdivision (2) or from  
 15 principal to the extent that net income is insufficient. If a  
 16 beneficiary is to receive a pecuniary amount outright from a  
 17 trust after an income interest ends and no interest or other  
 18 amount is provided for by the terms of the trust or applicable  
 19 law, the fiduciary shall distribute the interest or other amount  
 20 to which the beneficiary would be entitled under applicable  
 21 law if the pecuniary amount were required to be paid under  
 22 a will.

23 (4) A fiduciary shall distribute the net income remaining after  
 24 distributions required by subdivision (3) in the manner  
 25 described in section 17 of this chapter to all other  
 26 beneficiaries, including a beneficiary who receives a  
 27 pecuniary amount in trust, even if the beneficiary holds an  
 28 unqualified power to withdraw assets from the trust or other  
 29 presently exercisable general power of appointment over the  
 30 trust.

31 (5) A fiduciary may not reduce principal or income receipts  
 32 from property described in subdivision (1) because of a  
 33 payment described in section 36 or 37 of this chapter to the  
 34 extent that the will, the terms of the trust, or applicable law  
 35 requires the fiduciary to make the payment from assets other  
 36 than the property or to the extent that the fiduciary recovers  
 37 or expects to recover the payment from a third party. The net  
 38 income and principal receipts from the property are  
 39 determined by including all of the amounts the fiduciary  
 40 receives or pays with respect to the property, whether those  
 41 amounts accrued or became due before, on, or after the date  
 42 of an individual's death or an income interest's terminating

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1 event, and by making a reasonable provision for amounts that  
 2 the fiduciary believes the estate or terminating income  
 3 interest may become obligated to pay after the property is  
 4 distributed.

5 **Sec. 17. (a)** Each beneficiary described in section 16(4) of this  
 6 chapter is entitled to receive a portion of the net income equal to  
 7 the beneficiary's fractional interest in undistributed principal  
 8 assets, using values as of the distribution date. If a fiduciary makes  
 9 more than one (1) distribution of assets to beneficiaries to whom  
 10 this section applies, each beneficiary, including one who does not  
 11 receive part of the distribution, is entitled, as of each distribution  
 12 date, to the net income the fiduciary has received after the date of  
 13 death or terminating event or earlier distribution date but has not  
 14 distributed as of the current distribution date.

15 **(b)** In determining a beneficiary's share of net income, the  
 16 following rules apply:

17 **(1)** The beneficiary is entitled to receive a portion of the net  
 18 income equal to the beneficiary's fractional interest in the  
 19 undistributed principal assets immediately before the  
 20 distribution date, including assets that later may be sold to  
 21 meet principal obligations.

22 **(2)** The beneficiary's fractional interest in the undistributed  
 23 principal assets must be calculated without regard to property  
 24 specifically given to a beneficiary and property required to  
 25 pay pecuniary amounts not in trust.

26 **(3)** The beneficiary's fractional interest in the undistributed  
 27 principal assets must be calculated on the basis of the  
 28 aggregate value of those assets as of the distribution date  
 29 without reducing the value by any unpaid principal  
 30 obligation.

31 **(4)** The distribution date for purposes of this section may be  
 32 the date as of which the fiduciary calculates the value of the  
 33 assets if that date is reasonably near the date on which assets  
 34 are actually distributed.

35 **(c)** If a fiduciary does not distribute all of the collected but  
 36 undistributed net income to each person as of a distribution date,  
 37 the fiduciary shall maintain appropriate records showing the  
 38 interest of each beneficiary in that net income.

39 **(d)** A fiduciary may apply the rules in this section, to the extent  
 40 that the fiduciary considers it appropriate, to net gain or loss  
 41 realized after the date of death or terminating event or earlier  
 42 distribution date from the disposition of a principal asset if this

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1 section applies to the income from the asset.

2 **Sec. 18. (a) An income beneficiary is entitled to net income from**  
 3 **the date on which the income interest begins. An income interest**  
 4 **begins on the date specified in the terms of the trust or, if no date**  
 5 **is specified, on the date an asset becomes subject to a trust or**  
 6 **successive income interest.**

7 **(b) An asset becomes subject to a trust:**

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

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

14 **(3) on the date of an individual's death in the case of an asset**  
 15 **that is transferred to a fiduciary by a third party because of**  
 16 **the individual's death.**

17 **(c) An asset becomes subject to a successive income interest on**  
 18 **the day after the preceding income interest ends, as determined**  
 19 **under subsection (d), even if there is an intervening period of**  
 20 **administration to wind up the preceding income interest.**

21 **(d) An income interest ends on the day before an income**  
 22 **beneficiary dies or another terminating event occurs, or on the last**  
 23 **day of a period during which there is no beneficiary to whom a**  
 24 **trustee may distribute income.**

25 **Sec. 19. (a) A trustee shall allocate an income receipt or**  
 26 **disbursement other than one to which section 16(1) of this chapter**  
 27 **applies to principal if its due date occurs before an individual dies**  
 28 **in the case of an estate or before an income interest begins in the**  
 29 **case of a trust or successive income interest.**

30 **(b) A trustee shall allocate an income receipt or disbursement**  
 31 **to income if its due date occurs on or after the date on which an**  
 32 **individual dies or an income interest begins and it is a periodic due**  
 33 **date. An income receipt or disbursement must be treated as**  
 34 **accruing from day to day if its due date is not periodic or it has no**  
 35 **due date. The portion of the receipt or disbursement accruing**  
 36 **before the date on which an individual dies or an income interest**  
 37 **begins must be allocated to principal and the balance must be**  
 38 **allocated to income.**

39 **(c) An item of income or an obligation is due on the date the**  
 40 **payer is required to make a payment. If a payment date is not**  
 41 **stated, there is no due date for the purposes of this chapter.**  
 42 **Distributions to shareholders or other owners from an entity to**



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1 which section 21 of this chapter applies are deemed to be due on  
 2 the date fixed by the entity for determining who is entitled to  
 3 receive the distribution or, if no date is fixed, on the declaration  
 4 date for the distribution. A due date is periodic for receipts or  
 5 disbursements that must be paid at regular intervals under a lease  
 6 or an obligation to pay interest or if an entity customarily makes  
 7 distributions at regular intervals.

8 **Sec. 20. (a)** As used in this section, "undistributed income"  
 9 means net income received before the date on which an income  
 10 interest ends. The term does not include an item of income or  
 11 expense that is due or accrued or net income that has been added  
 12 or is required to be added to principal under the terms of the trust.

13 **(b)** When a mandatory income interest ends, the trustee shall  
 14 pay to a mandatory income beneficiary who survives that date, or  
 15 the estate of a deceased mandatory income beneficiary whose death  
 16 causes the interest to end, the beneficiary's share of the  
 17 undistributed income that is not disposed of under the terms of the  
 18 trust unless the beneficiary has an unqualified power to revoke  
 19 more than five percent (5%) of the trust immediately before the  
 20 income interest ends. In the latter case, the undistributed income  
 21 from the portion of the trust that may be revoked must be added  
 22 to principal.

23 **(c)** When a trustee's obligation to pay a fixed annuity or a fixed  
 24 fraction of the value of the trust's assets ends, the trustee shall  
 25 prorate the final payment if and to the extent required by  
 26 applicable law to accomplish a purpose of the trust or its settlor  
 27 relating to income, gift, estate, or other tax requirements.

28 **Sec. 21. (a)** As used in this section, "entity" means a  
 29 corporation, partnership, limited liability company, regulated  
 30 investment company, real estate investment trust, common trust  
 31 fund, or any other organization in which a trustee has an interest  
 32 other than a trust or an estate to which section 22 of this chapter  
 33 applies, a business or activity to which section 23 of this chapter  
 34 applies, or an asset backed security to which section 35 of this  
 35 chapter applies.

36 **(b)** Except as otherwise provided in this section, a trustee shall  
 37 allocate to income money received from an entity.

38 **(c)** A trustee shall allocate the following receipts from an entity  
 39 to principal:

40 **(1)** Property other than money.

41 **(2)** Money received in one distribution or a series of related  
 42 distributions in exchange for part or all of a trust's interest in

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the entity.

**(3) Money received in total or partial liquidation of the entity.**

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

**(d) Money is received in partial liquidation:**

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

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

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

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

**Sec. 22. A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest, and shall allocate to principal an amount received as a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, sections 21 or 35 of this chapter apply to a receipt from the trust.**

**Sec. 23. (a) If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.**

**(b) A trustee who accounts separately for a business or other**

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

12 (c) Activities for which a trustee may maintain separate  
 13 accounting records include:

- 14 (1) retail, manufacturing, service, and other traditional  
 15 business activities;
- 16 (2) farming;
- 17 (3) raising and selling livestock and other animals;
- 18 (4) management of rental properties;
- 19 (5) extraction of minerals and other natural resources;
- 20 (6) timber operations; and
- 21 (7) activities to which section 34 of this chapter applies.

22 **Sec. 24. A trustee shall allocate to principal:**

- 23 (1) to the extent not allocated to income under this chapter,  
 24 assets received from a transferor during the transferor's  
 25 lifetime, a decedent's estate, a trust with a terminating income  
 26 interest, or a payer under a contract naming the trust or its  
 27 trustee as beneficiary;
- 28 (2) money or other property received from the sale, exchange,  
 29 liquidation, or change in form of a principal asset, including  
 30 realized profit, subject to this sections 21 through 35 of this  
 31 chapter;
- 32 (3) amounts recovered from third parties to reimburse the  
 33 trust because of disbursements described in section 37(a)(7)  
 34 of this chapter or for other reasons to the extent not based on  
 35 the loss of income;
- 36 (4) proceeds of property taken by eminent domain, but a  
 37 separate award made for the loss of income with respect to an  
 38 accounting period during which a current income beneficiary  
 39 had a mandatory income interest is income;
- 40 (5) net income received in an accounting period during which  
 41 there is no beneficiary to whom a trustee may or must  
 42 distribute income; and

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1           **(6) other receipts as provided in sections 28 through 35 of this**  
 2           **chapter.**

3           **Sec. 25. To the extent that a trustee accounts for receipts from**  
 4           **rental property under this section, the trustee shall allocate to**  
 5           **income an amount received as rent of real or personal property,**  
 6           **including an amount received for cancellation or renewal of a**  
 7           **lease. An amount received as a refundable deposit, including a**  
 8           **security deposit or a deposit that is to be applied as rent for future**  
 9           **periods, must be added to principal and held subject to the terms**  
 10           **of the lease and is not available for distribution to a beneficiary**  
 11           **until the trustee's contractual obligations have been satisfied with**  
 12           **respect to that amount.**

13           **Sec. 26. (a) An amount received as interest, whether determined**  
 14           **at a fixed, variable, or floating rate, on an obligation to pay money**  
 15           **to the trustee, including an amount received as consideration for**  
 16           **prepaying principal, must be allocated to income without any**  
 17           **provision for amortization of premium.**

18           **(b) A trustee shall allocate to principal an amount received from**  
 19           **the sale, redemption, or other disposition of an obligation to pay**  
 20           **money to the trustee more than one (1) year after it is purchased**  
 21           **or acquired by the trustee, including an obligation whose purchase**  
 22           **price or value when it is acquired is less than its value at maturity.**  
 23           **If the obligation matures within one (1) year after it is purchased**  
 24           **or acquired by the trustee, an amount received in excess of its**  
 25           **purchase price or its value when acquired by the trust must be**  
 26           **allocated to income.**

27           **(c) This section does not apply to an obligation to which section**  
 28           **29, 30, 31, 32, 34, or 35 of this chapter apply.**

29           **Sec. 27. (a) Except as otherwise provided in subsection (b), a**  
 30           **trustee shall allocate to principal the proceeds of a life insurance**  
 31           **policy or other contract in which the trust or its trustee is named**  
 32           **as beneficiary, including a contract that insures the trust or its**  
 33           **trustee against loss for damage to, destruction of, or loss of title to**  
 34           **a trust asset. The trustee shall allocate dividends on an insurance**  
 35           **policy to income if the premiums on the policy are paid from**  
 36           **income, and to principal if the premiums are paid from principal.**

37           **(b) A trustee shall allocate to income proceeds of a contract that**  
 38           **insures the trustee against loss of occupancy or other use by an**  
 39           **income beneficiary, loss of income, or, subject to section 23 of this**  
 40           **chapter, loss of profits from a business.**

41           **(c) This section does not apply to a contract to which section 29**  
 42           **of this chapter applies.**

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1           **Sec. 28.** If a trustee determines that an allocation between  
 2 principal and income required by section 29, 30, 31, 32, or 35 of  
 3 this chapter is insubstantial, the trustee may allocate the entire  
 4 amount to principal unless one (1) of the circumstances described  
 5 in section 15(c) of this chapter applies to the allocation. This power  
 6 may be exercised by a cotrustee in the circumstances described in  
 7 section 15(d) of this chapter and may be released for the reasons  
 8 and in the manner described in section 15(e) of this chapter. An  
 9 allocation is presumed to be insubstantial if:

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

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

17           **Sec. 29. (a)** As used in this section, "payment" means a payment  
 18 that a trustee may receive over a fixed number of years or during  
 19 the life of one (1) or more individuals because of services rendered  
 20 or property transferred to the payer in exchange for future  
 21 payments. The term includes a payment made in money or  
 22 property from the payer's general assets or from a separate fund  
 23 created by the payer, including a private or commercial annuity,  
 24 an individual retirement account, and a pension, profit sharing,  
 25 stock bonus, or stock ownership plan.

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

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

42           (d) If, to obtain an estate tax marital deduction for a trust, a

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1 trustee must allocate more of a payment to income than provided  
 2 for by this section, the trustee shall allocate to income the  
 3 additional amount necessary to obtain the marital deduction.

4 (e) This section does not apply to payments to which section 30  
 5 of this chapter applies.

6 Sec. 30. (a) As used in this section, "liquidating asset" means an  
 7 asset whose value will diminish or terminate because the asset is  
 8 expected to produce receipts for a period of limited duration. The  
 9 term includes a leasehold, patent, copyright, royalty right, and  
 10 right to receive payments during a period of more than one (1)  
 11 year under an arrangement that does not provide for the payment  
 12 of interest on the unpaid balance. The term does not include the  
 13 following:

- 14 (1) A payment subject to section 29 of this chapter.
- 15 (2) Resources subject to section 31 of this chapter.
- 16 (3) Timber subject to section 32 of this chapter.
- 17 (4) An activity subject to section 34 of this chapter.
- 18 (5) An asset subject to section 35 of this chapter.
- 19 (6) Any asset for which the trustee establishes a reserve for  
 20 depreciation under section 38 of this chapter.

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

23 Sec. 31. (a) To the extent that a trustee accounts for receipts  
 24 from an interest in minerals or other natural resources under this  
 25 section, the trustee shall allocate them as follows:

- 26 (1) If received as nominal delay rental or nominal annual rent  
 27 on a lease, a receipt must be allocated to income.
- 28 (2) If received from a production payment, a receipt must be  
 29 allocated to income if and to the extent that the agreement  
 30 creating the production payment provides a factor for interest  
 31 or its equivalent. The balance must be allocated to principal.
- 32 (3) If an amount received as a royalty, shut-in-well payment,  
 33 take-or-pay payment, bonus, or delay rental is more than  
 34 nominal, ninety percent (90%) must be allocated to principal  
 35 and the balance to income.
- 36 (4) If an amount is received from a working interest or any  
 37 other interest not provided for in subdivision (1), (2), or (3),  
 38 ninety percent (90%) of the net amount received must be  
 39 allocated to principal and the balance to income.

40 (b) An amount received on account of an interest in water that  
 41 is renewable must be allocated to income. If the water is not  
 42 renewable, ninety percent (90%) of the amount must be allocated

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to principal and the balance to income.

(c) This chapter applies whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

(d) If a trust owns an interest in minerals, water, or other natural resources on July 1, 2001, the trustee may allocate receipts from the interest as provided in this chapter or in the manner used by the trustee before July 1, 2001. If the trust acquires an interest in minerals, water, or other natural resources after June 30, 2001, the trustee shall allocate receipts from the interest as provided in this chapter.

Sec. 32. (a) To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts:

- (1) to income to the extent that the amount of timber removed from the land does not exceed the rate of growth of the timber during the accounting periods in which a beneficiary has a mandatory income interest;
- (2) to principal to the extent that the amount of timber removed from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;
- (3) to or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying the rules in subdivisions (1) and (2); or
- (4) to principal to the extent that advance payments, bonuses, and other payments are not allocated under subdivision (1), (2), or (3).

(b) In determining net receipts to be allocated under subsection (a), a trustee shall deduct and transfer to principal a reasonable amount for depletion.

(c) This chapter applies whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.

(d) If a trust owns an interest in timberland on July 1, 2001, the trustee may allocate net receipts from the sale of timber and related products as provided in this chapter or in the manner used by the trustee before July 1, 2001. If the trust acquires an interest in timberland after June 30, 2001, the trustee shall allocate net receipts from the sale of timber and related products as provided

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1 in this chapter.

2 **Sec. 33. (a) If a marital deduction is allowed for all or part of a**  
 3 **trust whose assets consist substantially of property that does not**  
 4 **provide the spouse with sufficient income from or use of the trust**  
 5 **assets, and if the amounts that the trustee transfers from principal**  
 6 **to income under section 15 of this chapter and distributes to the**  
 7 **spouse from principal under the terms of the trust are insufficient**  
 8 **to provide the spouse with the beneficial enjoyment required to**  
 9 **obtain the marital deduction, the spouse may require the trustee to**  
 10 **make property productive of income, convert property within a**  
 11 **reasonable time, or exercise the power conferred by section 15(a)**  
 12 **of this chapter. The trustee may decide which action or**  
 13 **combination of actions to take.**

14 **(b) In cases not governed by subsection (a), proceeds from the**  
 15 **sale or other disposition of an asset are principal without regard to**  
 16 **the amount of income the asset produces during any accounting**  
 17 **period.**

18 **Sec. 34. (a) As used in this section, "derivative" means a**  
 19 **contract or financial instrument or a combination of contracts and**  
 20 **financial instruments which gives a trust the right or obligation to**  
 21 **participate in some or all changes in the price of a tangible or**  
 22 **intangible asset or group of assets, or changes in a rate, an index of**  
 23 **prices or rates, or other market indicator for an asset or a group**  
 24 **of assets.**

25 **(b) To the extent that a trustee does not account under section**  
 26 **23 of this chapter for transactions in derivatives, the trustee shall**  
 27 **allocate to principal receipts from and disbursements made in**  
 28 **connection with those transactions.**

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

41 **Sec. 35. (a) As used in this section, "asset backed security"**  
 42 **means an asset whose value is based upon the right it gives the**

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1 owner to receive distributions from the proceeds of financial assets  
 2 that provide collateral for the security. The term includes an asset  
 3 that gives the owner the right to receive from the collateral  
 4 financial assets only the interest or other current return or only the  
 5 proceeds other than interest or current return. The term does not  
 6 include an asset to which sections 21 or 29 of this chapter apply.

7 (b) If a trust receives a payment from interest or other current  
 8 return and from other proceeds of the collateral financial assets,  
 9 the trustee shall allocate to income the portion of the payment  
 10 which the payer identifies as being from interest or other current  
 11 return and shall allocate the balance of the payment to principal.

12 (c) If a trust receives one (1) or more payments in exchange for  
 13 the trust's entire interest in an asset backed security in one (1)  
 14 accounting period, the trustee shall allocate the payments to  
 15 principal. If a payment is one (1) of a series of payments that will  
 16 result in the liquidation of the trust's interest in the security over  
 17 more than one (1) accounting period, the trustee shall allocate ten  
 18 percent (10%) of the payment to income and the balance to  
 19 principal.

20 Sec. 36. A trustee shall make the following disbursements from  
 21 income to the extent that they are not disbursements to which  
 22 section 16(2)(B) or 16(2)(C) of this chapter applies:

- 23 (1) one-half (1/2) of the regular compensation of the trustee  
 24 and of any person providing investment advisory or custodial  
 25 services to the trustee;  
 26 (2) one-half (1/2) of all expenses for accountings, judicial  
 27 proceedings, or other matters that involve both the income  
 28 and remainder interests;  
 29 (3) all of the other ordinary expenses incurred in connection  
 30 with the administration, management, or preservation of trust  
 31 property and the distribution of income, including interest,  
 32 ordinary repairs, regularly recurring taxes assessed against  
 33 principal, and expenses of a proceeding or other matter that  
 34 concerns primarily the income interest; and  
 35 (4) recurring premiums on insurance covering the loss of a  
 36 principal asset or the loss of income from or use of the asset.

37 Sec. 37. (a) A trustee shall make the following disbursements  
 38 from principal:

- 39 (1) the remaining one-half (1/2) of the disbursements  
 40 described in section 36(1) and 36(2) of this chapter;  
 41 (2) all of the trustee's compensation calculated on principal as  
 42 a fee for acceptance, distribution, or termination, and

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- 1           disbursements made to prepare property for sale;
- 2           (3) payments on the principal of a trust debt;
- 3           (4) expenses of a proceeding that concerns primarily
- 4           principal, including a proceeding to construe the trust or to
- 5           protect the trust or its property;
- 6           (5) premiums paid on a policy of insurance not described in
- 7           section 36(4) of this chapter of which the trust is the owner
- 8           and beneficiary;
- 9           (6) estate, inheritance, and other transfer taxes, including
- 10          penalties, apportioned to the trust; and
- 11          (7) disbursements related to environmental matters, including
- 12          reclamation, assessing environmental conditions, remedying
- 13          and removing environmental contamination, monitoring
- 14          remedial activities and the release of substances, preventing
- 15          future releases of substances, collecting amounts from persons
- 16          liable or potentially liable for the costs of those activities,
- 17          penalties imposed under environmental laws or regulations
- 18          and other payments made to comply with those laws or
- 19          regulations, statutory or common law claims by third parties,
- 20          and defending claims based on environmental matters.

21           (b) If a principal asset is encumbered with an obligation that  
 22           requires income from that asset to be paid directly to the creditor,  
 23           the trustee shall transfer from principal to income an amount  
 24           equal to the income paid to the creditor in reduction of the  
 25           principal balance of the obligation.

26           Sec. 38. (a) In this section, "depreciation" means a reduction in  
 27           value due to wear, tear, decay, corrosion, or gradual obsolescence  
 28           of a fixed asset having a useful life of more than one (1) year.

29           (b) A trustee may transfer to principal a reasonable amount of  
 30           the net cash receipts from a principal asset that is subject to  
 31           depreciation, but may not transfer any amount for depreciation:

- 32           (1) of that portion of real property used or available for use
- 33           by a beneficiary as a residence or of tangible personal
- 34           property held or made available for the personal use or
- 35           enjoyment of a beneficiary;
- 36           (2) during the administration of a decedent's estate; or
- 37           (3) under this section if the trustee is accounting under section
- 38           23 of this chapter for the business or activity in which the
- 39           asset is used.

40           (c) An amount transferred to principal need not be held as a  
 41           separate fund.

42           Sec. 39. (a) If a trustee makes or expects to make a principal

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1 disbursement described in this section, the trustee may transfer an  
 2 appropriate amount from income to principal in one (1) or more  
 3 accounting periods to reimburse principal or to provide a reserve  
 4 for future principal disbursements.

5 (b) Principal disbursements to which subsection (a) applies  
 6 include the following, but only to the extent that the trustee has not  
 7 been and does not expect to be reimbursed by a third party:

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

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

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

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

20 (5) disbursements described in section 37(a)(7) of this chapter.

21 (c) If the asset whose ownership gives rise to the disbursements  
 22 becomes subject to a successive income interest after an income  
 23 interest ends, a trustee may continue to transfer amounts from  
 24 income to principal as provided in subsection (a).

25 **Sec. 40. (a)** A tax required to be paid by a trustee based on  
 26 receipts allocated to income must be paid from income.

27 (b) A tax required to be paid by a trustee based on receipts  
 28 allocated to principal must be paid from principal, even if the tax  
 29 is called an income tax by the taxing authority.

30 (c) A tax required to be paid by a trustee on the trust's share of  
 31 an entity's taxable income must be paid proportionately:

32 (1) from income to the extent that receipts from the entity are  
 33 allocated to income; and

34 (2) from principal to the extent that:

35 (A) receipts from the entity are allocated to principal; and

36 (B) the trust's share of the entity's taxable income exceeds  
 37 the total receipts described in subdivisions (1) and (2)(A).

38 (d) For purposes of this section, receipts allocated to principal  
 39 or income must be reduced by the amount distributed to a  
 40 beneficiary from principal or income for which the trust receives  
 41 a deduction in calculating the tax.

42 **Sec. 41. (a)** A fiduciary may make adjustments between

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1 principal and income to offset the shifting of economic interests or  
 2 tax benefits between income beneficiaries and remainder  
 3 beneficiaries that arise from:

4 (1) elections and decisions, other than those described in  
 5 subsection (b), that the fiduciary makes from time to time  
 6 regarding tax matters;

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

10 (3) the ownership by an estate or trust of an interest in a  
 11 entity whose taxable income, whether or not distributed, is  
 12 includable in the taxable income of the estate, trust, or a  
 13 beneficiary.

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

30 Sec. 42. In applying and construing this uniform act,  
 31 consideration must be given to the need to promote uniformity of  
 32 the law with respect to its subject matter among states that enact  
 33 it.

34 Sec. 43. If any provision of this chapter or its application to any  
 35 person or circumstance is held invalid, the invalidity does not affect  
 36 other provisions or applications of this chapter that can be given  
 37 effect without the invalid provision or application, and to this end  
 38 the provisions of this chapter are severable.

39 SECTION 3. IC 30-4-1-1.5 IS AMENDED TO READ AS  
 40 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1.5. This article does  
 41 not repeal:

42 (1) IC 30-2-4 (the Uniform Fiduciaries Act); or

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1 (2) IC 30-2-5 (the Uniform Act for the Simplification of Fiduciary  
2 Security Transfers); **or**  
3 **(3) IC 30-2-14 (the Uniform Principal and Income Act).**  
4 SECTION 4. IC 30-4-1-2, AS AMENDED BY P.L.41-2000,  
5 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
6 JULY 1, 2001]: Sec. 2. As used in this article:  
7 (1) "Adult" means any person eighteen (18) years of age or older.  
8 (2) "Affiliate" means a parent, descendant, spouse, spouse of a  
9 descendant, brother, sister, spouse of a brother or sister,  
10 employee, director, officer, partner, joint venturer, a corporation  
11 subject to common control with the trustee, a shareholder, or  
12 corporation who controls the trustee or a corporation controlled  
13 by the trustee other than as a fiduciary.  
14 (3) "Beneficiary" ~~means any cestui que trust or person named or~~  
15 ~~a member of the class designated in the terms of the trust to be~~  
16 ~~any person or class of persons for whose benefit the title to the~~  
17 ~~trust property is held and for whom the trust is to be administered:~~  
18 **has the meaning set forth in IC 30-2-14-2.**  
19 (4) "Breach of trust" means a violation by the trustee of any duty  
20 which is owed to the settlor or beneficiary.  
21 (5) "Charitable trust" means a trust in which all the beneficiaries  
22 are the general public or organizations, including trusts,  
23 corporations, and associations, and that is organized and operated  
24 wholly for religious, charitable, scientific, public safety testing,  
25 literary, or educational purposes. The term does not include  
26 charitable remainder trusts, charitable lead trusts, pooled income  
27 funds, or any other form of split-interest charitable trust that has  
28 at least one (1) noncharitable beneficiary.  
29 (6) "Court" means a court having jurisdiction over trust matters.  
30 (7) "Income beneficiary" ~~means a beneficiary to whom income is~~  
31 ~~presently payable or for whom it is accumulated for distribution~~  
32 ~~as income:~~ **has the meaning set forth in IC 30-2-14-5.**  
33 (8) "Inventory value" means the cost of property to the settlor or  
34 the trustee at the time of acquisition or the market value of the  
35 property at the time it is delivered to the trustee, or the value of  
36 the property as finally determined for purposes of an estate or  
37 inheritance tax.  
38 (9) "Minor" means any person under the age of eighteen (18)  
39 years.  
40 (10) "Person" ~~means a natural person, corporation, or a unit,~~  
41 ~~agency, or other subdivision of national, state, or local~~  
42 ~~government:~~ **has the meaning set forth in IC 30-2-14-9.**

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1 (11) "Personal representative" means an executor or administrator  
 2 of a decedent's or absentee's estate, guardian of the person or  
 3 estate, guardian ad litem or other court appointed representative,  
 4 next friend, parent or custodian of a minor, attorney in fact, or  
 5 custodian of an incapacitated person (as defined in  
 6 IC 29-3-1-7.5).

7 (12) "Remainderman" means a beneficiary entitled to principal,  
 8 including income which has been accumulated and added to the  
 9 principal.

10 (13) "Settlor" means a person who establishes a trust including  
 11 the testator of a will under which a trust is created.

12 (14) "Trust estate" means the trust property and the income  
 13 derived from its use.

14 (15) "Trust for a benevolent public purpose" means a charitable  
 15 trust (as defined in subdivision (5)), a split-interest trust (as  
 16 defined in Section 4947 of the Internal Revenue Code), and any  
 17 other form of split-interest charitable trust that has both charitable  
 18 and noncharitable beneficiaries, including but not limited to  
 19 charitable remainder trusts, charitable lead trusts, and charitable  
 20 pooled income funds.

21 (16) "Trust property" means property either placed in trust or  
 22 purchased or otherwise acquired by the trustee for the trust  
 23 regardless of whether the trust property is titled in the name of the  
 24 trustee or the name of the trust.

25 (17) "Trustee" means the person who is charged with the  
 26 responsibility of administering the trust and includes a successor  
 27 or added trustee: **has the meaning set forth in IC 30-2-14-13.**

28 SECTION 5. IC 30-4-5-0.5 IS ADDED TO THE INDIANA  
 29 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 30 [EFFECTIVE JULY 1, 2001]: **Sec. 0.5. The Uniform Principal and**  
 31 **Income Act (IC 30-2-14) applies to the administration of a trust**  
 32 **under this article.**

33 SECTION 6. IC 30-4-5-1 IS AMENDED TO READ AS FOLLOWS  
 34 [EFFECTIVE JULY 1, 2001]: Sec. 1. (~~Duty of Trustee as to Receipts~~  
 35 ~~and Expenditures)~~

36 (a) A trust shall be administered with due regard to the respective  
 37 interests of income beneficiaries and remaindermen. A trust is so  
 38 administered with respect to the allocation of receipts and expenditures  
 39 if a receipt is credited or an expenditure is charged to income or  
 40 principal or partly to each:

41 (1) in accordance with the terms of the trust instrument,  
 42 notwithstanding contrary provisions of this article **or IC 30-2-14;**

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1 (2) in the absence of any contrary terms of the trust instrument, in  
 2 accordance with the provisions of ~~this article~~; **IC 30-2-14**; or  
 3 (3) if neither of the preceding rules of administration is  
 4 applicable, in accordance with what is reasonable and equitable  
 5 in view of the interests of those entitled to income as well as of  
 6 those entitled to principal, and in view of the manner in which  
 7 men of ordinary prudence, discretion and judgment would act in  
 8 the management of their own affairs.

9 (b) If the trust instrument gives the trustee discretion in crediting a  
 10 receipt or charging an expenditure to income or principal or partly to  
 11 each, no inference of imprudence or partiality arises from the fact that  
 12 the trustee has made an allocation contrary to the provisions of ~~this~~  
 13 ~~article~~: **IC 30-2-14**.

14 SECTION 7. IC 30-4-5-2 IS AMENDED TO READ AS FOLLOWS  
 15 [EFFECTIVE JULY 1, 2001]: Sec. 2. (a) Except as otherwise stated in  
 16 a trust agreement, income is ~~the return in money or property derived~~  
 17 ~~from the use of principal, including, but not limited to, return received~~  
 18 ~~as:~~

- 19 (1) ~~rent on real or personal property, including sums received for~~  
 20 ~~cancellation or renewal of a lease;~~
- 21 (2) ~~interest on money lent, including sums received as~~  
 22 ~~consideration for the privilege of prepayment of principal except~~  
 23 ~~as provided in section 5 of this chapter, on bond premium and~~  
 24 ~~bond discount;~~
- 25 (3) ~~corporate distributions as provided in section 4 of this chapter;~~
- 26 (4) ~~accrued increases on bonds or other obligations issued at~~  
 27 ~~discount as provided in section 5 of this chapter;~~
- 28 (5) ~~receipts from business and farming operations as provided in~~  
 29 ~~sections 6 and 7 of this chapter;~~
- 30 (6) ~~receipts from disposition of natural resources as provided in~~  
 31 ~~sections 8 and 9 of this chapter; and~~
- 32 (7) ~~receipts from other principal subject to depletion as provided~~  
 33 ~~in section 10 of this chapter: has the meaning set forth in~~  
 34 **IC 30-2-14-4.**

35 (b) ~~Principal is property, disposed of in trust, the income from which~~  
 36 ~~is payable to or to be accumulated for an income beneficiary and the~~  
 37 ~~title to which is either ultimately to vest in the remainderman or is to~~  
 38 ~~remain perpetually vested in the trustee. Principal includes but is not~~  
 39 ~~limited to:~~

- 40 (1) ~~consideration received by the trustee on the sale or other~~  
 41 ~~transfer of principal or on repayment of a loan or as refund or~~  
 42 ~~replacement or change in the form of principal;~~

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- 1 (2) proceeds of property taken in eminent domain proceedings;
- 2 (3) proceeds of insurance upon property forming part of the
- 3 principal except proceeds of insurance upon a separate interest of
- 4 an income beneficiary;
- 5 (4) stock dividends; receipts on liquidation of a corporation; and
- 6 other corporate distributions as provided in section 4 of this
- 7 chapter;
- 8 (5) receipts from the disposition of corporate securities as
- 9 provided in section 5 of this chapter;
- 10 (6) royalties and other receipts from disposition of natural
- 11 resources as provided in sections 8 and 9 of this chapter;
- 12 (7) receipts from other principal subject to depletion as provided
- 13 in section 10 of this chapter; and
- 14 (8) any allowances for depreciation established under sections 6,
- 15 7, and 11 of this chapter. **has the meaning set forth in**
- 16 **IC 30-2-14-10.**

17 SECTION 8. IC 30-4-5-3 IS AMENDED TO READ AS FOLLOWS  
 18 [EFFECTIVE JULY 1, 2001]: Sec. 3. (~~When Right to Income Arises;~~  
 19 ~~Apportionment of Income)~~

20 (a) An income beneficiary is entitled to income from the date  
 21 specified in the terms of the trust or, if none is specified, the date an  
 22 asset is ~~delivered to the trustee:~~ **becomes subject to a trust or**  
 23 **successive income interest as determined under IC 30-2-14-18.**  
 24 Receipts earned or accrued in whole or in part but not received before  
 25 the date on which the asset is ~~delivered to the trustee~~ **becomes subject**  
 26 **to a trust or successive income interest as determined under**  
 27 **IC 30-2-14-18** are ~~income:~~ **principal.**

28 (b) The character attributed to income received during the  
 29 administration of a decedent's estate shall be the same in the hands of  
 30 the trustee as it is in the hands of the executor under the applicable  
 31 probate law.

32 (c) When an income interest is terminated, the income beneficiary  
 33 whose interest is terminated, or his estate, is entitled to **a distribution**  
 34 **determined under IC 30-2-14-16.**

- 35 (1) ~~income undistributed on the date of termination;~~
- 36 (2) ~~income due but not paid to the trustee on the date of termination;~~
- 37 (3) ~~income in the form of periodic payments (other than corporate~~
- 38 ~~distributions to stockholders); including but not limited to rent; interest;~~
- 39 ~~or annuities; not due on the date of termination; accrued from day to~~
- 40 ~~day.~~

41 (d) Corporate distributions to stockholders are to be treated as due  
 42 on the day fixed by the corporation for determination of stockholders

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1 of record entitled to distribution or, if no date is fixed, on the date of  
2 declaration of the distribution by the corporation.

3 SECTION 9. IC 30-4-5-8 IS AMENDED TO READ AS  
4 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 8. (~~Disposition of~~  
5 ~~Natural Resources~~)

6 (a) If any part of the principal consists of a right to receive royalties,  
7 overriding or limited royalties, working interests, production payments,  
8 net profit interests, delay rentals, or other interests in minerals or other  
9 natural resources in, on, or under land, the receipts from taking the  
10 natural resources from the land shall be allocated as follows:

11 (1) If received as rent on a lease or extension payments on a lease,  
12 the receipts are income.

13 (2) If received from a production payment, the receipts are  
14 income to the extent of any factor for interest or its equivalent  
15 provided in the governing instrument. There shall be allocated to  
16 principal all delay rentals and the fraction of the balance of the  
17 receipts which the unrecovered cost of the production payments  
18 bears to the balance owed on the production payment, exclusive  
19 of any factor for interest or its equivalent. The receipts not  
20 allocated to principal are income:

21 (3) If received as a royalty, overriding or limited royalty, or bonus,  
22 or from a working interest, net profit interest, or any other interest  
23 in minerals or other natural resources, receipts not provided for in  
24 the preceding paragraphs of this section shall be apportioned on  
25 a yearly basis in accordance with this paragraph whether or not  
26 any natural resources were being taken from the land at the time  
27 the trust was established. Twenty-seven and one-half percent  
28 (27-1/2%) of the gross receipts (but not to exceed fifty percent  
29 (50%) of the net receipts computed without allowance for  
30 depletion) shall be added to principal as an allowance for  
31 depletion. The balance of the gross receipts, after payment  
32 therefrom of all expenses, direct and indirect, is income.

33 (b) If a trustee, on September 2, 1971, held an item of depletable  
34 property of a type specified in this section he may allocate receipts  
35 from the property in the manner used before September 2, 1971, but as  
36 to all depletable property acquired after September 2, 1971, by an  
37 existing or new trust, the method of allocation provided herein shall be  
38 used: **provided by IC 30-2-14-31.**

39 SECTION 10. IC 30-4-5-9 IS AMENDED TO READ AS  
40 FOLLOWS [EFFECTIVE JULY 1, 2001] : Sec. 9. (~~Timber~~) If any part  
41 of the principal consists of land from which merchantable timber may  
42 be removed, the receipts from taking the timber from the land shall be

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1 allocated in accordance with ~~30-4-5-1(a)(3)~~. **IC 30-2-14.**  
2 SECTION 11. THE FOLLOWING ARE REPEALED  
3 [EFFECTIVE JULY 1, 2001]: IC 30-4-5-4; IC 30-4-5-5; IC 30-4-5-6;  
4 IC 30-4-5-7; IC 30-4-5-11.  
5 SECTION 12. [EFFECTIVE JULY 1, 2001] **IC 30-2-14, as**  
6 **added by this act, applies to every trust or decedent's estate**  
7 **existing on or created after July 1, 2001, except as otherwise**  
8 **expressly provided:**  
9 (1) **in the decedent's will;**  
10 (2) **by the terms of the trust; or**  
11 (3) **in IC 30-2-14, as added by this act.**

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