



2001 SENATE BILL 109

March 28, 2001 - Introduced by Senators HUELSMAN and GEORGE, cosponsored by Representatives CULLEN and GUNDRUM, by request of Wisconsin Commission on Uniform State Laws. Referred to Committee on Judiciary, Consumer Affairs, and Campaign Finance Reform.

1 **AN ACT to renumber and amend** 701.24; **to amend** 20.907 (1), 23.0918 (2),
2 25.70, 36.29 (1), 40.82 (2), 66.0603 (1m) (b), 861.015 (2), 881.02 and 881.06; **to**
3 **repeal and recreate** 701.20 and 881.01; and **to create** 701.24 (2) of the
4 statutes; **relating to:** regulating the investments of personal representatives,
5 trustees, conservators, and guardians of the estate; and providing rules for
6 allocations between principal and income for trusts and estates.

Analysis by the Legislative Reference Bureau

Uniform Principal and Income Act

Current law contains a provision that is the Revised Uniform Principal and Income Act of 1962. The provision provides rules for trustees and personal representatives (fiduciaries) for apportioning trust and estate receipts and disbursements between principal and income. This bill replaces that provision with the Uniform Principal and Income Act of 1997 and an amendment to it. The Uniform Principal and Income Act of 1997 addresses essentially the same issues as the Revised Uniform Principal and Income Act of 1962, but is much more extensive and detailed, takes into account the widespread use today of revocable living trusts as will replacements, and provides rules related to financial instruments and transactions that were not in use previously, such as derivatives.

As under current law, the bill specifies that, in allocating receipts and disbursements between income and principal in the administration of trusts and

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estates, the terms of the trust or will control. The fiduciary may exercise discretion in the allocation if the trust or will gives the fiduciary such discretionary powers. If the trust or will does not contain a conflicting provision or provide discretionary powers, however, the fiduciary must follow the allocation rules provided in the bill in administering a trust or estate.

Under a trust, some beneficiaries may have a beneficial interest in receiving trust income, while other beneficiaries may receive the principal that remains after the trust terminates. The bill specifies which receipts by a trust are to be allocated to income and which are to be allocated to principal. Various types of receipts are addressed, including distributions from a trust or estate; receipts from the conduct of a business by the trustee; receipts from rental property; interest received on an obligation to pay money; proceeds from a life insurance policy or other contract; payments from a pension, individual retirement account, or annuity; receipts from an interest in minerals, water, or other natural resources; receipts from the sale of timber; distributions from the proceeds of financial assets that provide collateral for a security; and receipts from transactions in derivatives. Following are a few examples of how the bill provides rules for allocation of receipts between principal and income: 1) If part of a payment from an annuity, pension plan, or other retirement account is characterized as interest or dividend, that part of the payment must be allocated to income and the balance must be allocated to principal. If no part of such a payment is characterized as interest or dividend, however, 10% of the payment must be allocated to income and the balance must be allocated to principal. 2) Receipts from rental property must be allocated to income, but a refundable deposit, such as a security deposit, must be allocated to principal and may not be distributed to a beneficiary until the trustee's contractual obligations with respect to the amount have been satisfied. 3) Proceeds of a life insurance policy must be allocated to principal. Dividends on an insurance policy, however, must be allocated to income if the premiums on the policy are paid from income and allocated to principal if the premiums are paid from principal. 4) An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, however, 90% of the amount received must be allocated to principal and the balance must be allocated to income.

The bill specifies which distributions from a trust are to be made from income and which are to be made from principal. Generally, ordinary administrative expenses are paid from income. One-half of the trustee's regular compensation is paid from income and one-half from principal, but the trustee's compensation for certain activities, such as disbursements made to prepare property for sale, are paid from principal. Expenses of proceedings that concern primarily principal must be paid from principal. Estate, inheritance, and other transfer taxes must be paid from principal, but a tax that is based on receipts allocated to income must be paid from income.

Under the bill, a trustee is authorized to transfer to principal a reasonable amount of the cash receipts from a principal asset that is subject to depreciation and to transfer an appropriate amount from income to principal to reimburse principal or provide a reserve for future principal disbursements if the trustee makes or

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expects to make a principal disbursement of a type specified in the bill, such as a capital improvement to a principal asset or disbursements to prepare a property for rental. Under the bill, a fiduciary may make adjustments between principal and income to offset any inequities resulting from tax rules or tax elections.

The bill prohibits a court from granting relief from a fiduciary's decision to exercise or not to exercise a discretionary power conferred under the bill, such as whether and to what extent an amount should be transferred from principal to income or from income to principal, unless the court determines that the decision was an abuse of the fiduciary's discretion. In that case, the court may require certain actions to be taken to place the beneficiaries in the positions that they would have occupied had the discretion not been abused and may even require the fiduciary to pay one or more beneficiaries from the fiduciary's own funds.

The bill provides general rules for fiduciaries to use for distributing income to beneficiaries and principal to remainder beneficiaries in an estate or after an income interest in a trust ends, rules for determining when a right to income begins and ends in different circumstances, rules for allocating income receipts and disbursements between income and principal on the basis of the relation in time to the decedent's death or the date on which an income interest begins, and rules for distributing undistributed income after an income interest in a trust ends.

Uniform Prudent Investor Act

Under current law, personal representatives, guardians of the estate, and trustees (fiduciaries) are bound by the prudent person rule. That is, they are required to invest the assets of their trusts and estates conservatively. For example, no more than 50% of the assets may consist of common stocks. This bill replaces the prudent person rule with the Uniform Prudent Investor Act, which sets general standards for fiduciaries, allows them greater flexibility in choosing investments, specifies that their work is to be judged on the basis of the performance of all their investments, allows them to delegate investment decisions, and requires them to consider the tax consequences of investments. These changes affect state and local deferred compensation plans, the historical society's funds that are invested by the investment board, municipal cemetery funds, employe welfare funds, wards' estates, care funds, and preneed trust funds. The bill also adds conservators to the types of fiduciaries to which the Uniform Prudent Investor Act applies. A conservator is appointed by a court to manage the property or income of a person who is competent and who has requested that the conservator be appointed.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 20.907 (1) of the statutes is amended to read:
- 2 20.907 (1) ACCEPTANCE AND INVESTMENT. Unless otherwise provided by law, all
- 3 gifts, grants, bequests, and devises to the state or to any state agency for the benefit

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1 or advantage of the state, whether made to trustees or otherwise, shall be legal and
2 valid when approved by the joint committee on finance and shall be executed and
3 enforced according to the provisions of the instrument making the same, including
4 all provisions and directions in any such instrument for accumulation of the income
5 of any fund or rents and profits of any real estate without being subject to the
6 limitations and restrictions provided by law in other cases; but no such accumulation
7 shall be allowed to produce a fund more than 20 times as great as that originally
8 given. ~~When such gifts, grants, bequests or devises include common stocks or other~~
9 ~~investments which are not authorized by s. 881.01, such common stocks or other~~
10 ~~investments may be held and may be exchanged, invested or reinvested in similar~~
11 ~~types of investments without being subject to the limitations provided by law in other~~
12 ~~cases.~~

13 **SECTION 2.** 23.0918 (2) of the statutes is amended to read:

14 23.0918 (2) Unless the natural resources board determines otherwise in a
15 specific case, only the income from the gifts, grants, or bequests in the fund is
16 available for expenditure. The natural resources board may authorize expenditures
17 only for preserving, developing, managing, or maintaining land under the
18 jurisdiction of the department that is used for any of the purposes specified in s. 23.09
19 (2) (d). In this subsection, unless otherwise provided in a gift, grant, or bequest,
20 principal and income are determined as provided under s. 701.20 (3).

21 **SECTION 3.** 25.70 of the statutes is amended to read:

22 **25.70 Historical society trust fund.** There is established a separate
23 nonlapsible trust fund designated as the historical society trust fund, consisting of
24 all endowment principal and income and all cash balances of the historical society.
25 Unless the board of curators of the historical society determines otherwise in each

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1 case, only the income from the assets in the historical society trust fund is available
2 for expenditure. In this section, unless otherwise provided in the gift, grant, or
3 bequest, principal and income are determined as provided under s. 701.20 (3).

4 **SECTION 4.** 36.29 (1) of the statutes is amended to read:

5 36.29 (1) All gifts, grants, and bequests for the benefit or advantage of the
6 system or any of its institutions, departments, or facilities or to provide any means
7 of instruction, illustration, or knowledge in connection therewith, whether made to
8 trustees or otherwise, shall be valid notwithstanding any other provision of this
9 chapter except as otherwise provided in this subsection and shall be executed and
10 enforced according to the provisions of the instrument making the same, including
11 all provisions and directions in any such instrument for accumulation of the income
12 of any fund or rents and profits of any real estate without being subject to the
13 limitations and restrictions provided by law in other cases; but no such income
14 accumulation shall be allowed to produce a fund more than 20 times as great as that
15 originally given. ~~When such gifts, grants or bequests include common stocks or other~~
16 ~~investments which are not authorized by ch. 881, the board may continue to hold~~
17 ~~such common stocks or other investments and exchange, invest or reinvest the funds~~
18 ~~of such gift, grant or bequest in similar types of investments without being subject~~
19 ~~to the limitations and restrictions provided by law in other cases. No such~~
20 ~~investment of the funds of such gifts, grants, or bequests shall knowingly be made~~
21 ~~in any company, corporation, subsidiary, or affiliate which that practices or condones~~
22 ~~through its actions discrimination on the basis of race, religion, color, creed, or sex.~~
23 Except as otherwise provided in this section, the board may invest not to exceed 85%
24 of trust funds held and administered by the board in common stocks, ~~the limitation~~
25 ~~of 50% in s. 881.01 (2) to the contrary notwithstanding.~~ This subsection does not

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1 apply to a gift, grant, or bequest that the board declines to accept or that the board
2 is not authorized to accept under this section.

3 **SECTION 5.** 40.82 (2) of the statutes is amended to read:

4 40.82 (2) Compensation ~~which~~ that is withheld under a deferred compensation
5 plan contract between an employer and an employee may be invested by the
6 employer or a person other than the employer who is authorized by contract to
7 administer the funds. The employer may determine the types of investments in
8 which the deferred compensation funds may be invested. The deferred compensation
9 funds may be invested and reinvested in the same manner provided for investments
10 under s. 881.01 (1).

11 **SECTION 6.** 66.0603 (1m) (b) of the statutes is amended to read:

12 66.0603 (1m) (b) A town, city or village may invest surplus funds in any bonds
13 or securities issued under the authority of the municipality, whether the bonds or
14 securities create a general municipality liability or a liability of the property owners
15 of the municipality for special improvements, and may sell or hypothecate the bonds
16 or securities. Funds of an employer, as defined by s. 40.02 (28), in a deferred
17 compensation plan may also be invested and reinvested in the same manner
18 authorized for investments under s. 881.01 (1). Funds of any school district
19 operating under ch. 119, held in trust for pension plans intended to qualify under
20 section 401 (a) of the Internal Revenue Code, other than funds held in the public
21 employee trust fund, may be invested and reinvested in the same manner as is
22 authorized for investments under s. 881.01.

23 **SECTION 7.** 701.20 of the statutes is repealed and recreated to read:

24 **701.20 Uniform principal and income act. (1)** CITING SECTION. This section
25 may be cited as the Uniform Principal and Income Act.

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1 **(2) DEFINITIONS.** In this section:

2 (a) “Accounting period” means a calendar year, unless another 12-month
3 period is selected by a fiduciary, and includes a portion of a calendar year or other
4 12-month period that begins when an income interest begins or that ends when an
5 income interest ends.

6 (b) “Beneficiary” means a person who has a beneficial interest in a trust or an
7 estate and includes, in the case of a decedent’s estate, an heir, a legatee, and a devisee
8 and, in the case of a trust, an income beneficiary and a remainder beneficiary.

9 (c) “Fiduciary” means a personal representative or a trustee and includes an
10 executor, administrator, successor personal representative, special administrator,
11 and a person performing substantially the same function as any of those.

12 (d) “Income” means money or property that a fiduciary receives as current
13 return from a principal asset. “Income” includes a portion of receipts from a sale,
14 exchange, or liquidation of a principal asset, to the extent provided in subs. (10) to
15 (24).

16 (e) “Income beneficiary” means a person to whom net income of a trust is or may
17 be payable.

18 (f) “Income interest” means the right of an income beneficiary to receive all or
19 part of net income, whether the terms of the trust require it to be distributed or
20 authorize it to be distributed in the trustee’s discretion.

21 (g) “Mandatory income interest” means the right of an income beneficiary to
22 receive net income that the terms of the trust require the fiduciary to distribute.

23 (h) “Net income” means the total receipts allocated to income during an
24 accounting period, minus the disbursements made from income during the period,
25 plus or minus transfers under this section to or from income during the period.

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1 (i) "Person" means an individual; corporation; business trust; estate; trust;
2 partnership; limited liability company; association; joint venture; government;
3 governmental subdivision, agency, or instrumentality; public corporation; or any
4 other legal or commercial entity.

5 (j) "Principal" means property held in trust for distribution to a remainder
6 beneficiary when the trust terminates.

7 (k) "Remainder beneficiary" means a person entitled to receive principal when
8 an income interest ends.

9 (L) "Terms of a trust" means the manifestation of the intent of a settlor or
10 decedent with respect to a trust, expressed in a manner that admits of its proof in a
11 judicial proceeding, whether by written or spoken words or by conduct.

12 (m) "Trustee" includes an original, additional, or successor trustee, whether or
13 not appointed or confirmed by a court.

14 **(3) FIDUCIARY DUTIES; GENERAL PRINCIPLES.** (a) In allocating receipts and
15 disbursements to income or principal or between income and principal, and with
16 respect to any matter within the scope of subs. (5) to (9), a fiduciary:

17 1. Shall administer a trust or estate in accordance with the terms of the trust
18 or the will, even if there is a different provision in this section;

19 2. May administer a trust or estate by the exercise of a discretionary power of
20 administration given to the fiduciary by the terms of the trust or the will, even if the
21 exercise of the power produces a result different from a result required or permitted
22 by this section;

23 3. Shall administer a trust or estate in accordance with this section if the terms
24 of the trust or the will do not contain a different provision or do not give the fiduciary
25 a discretionary power of administration; and

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1 4. Shall add a receipt or charge a disbursement to principal to the extent that
2 the terms of the trust and this section do not provide a rule for allocating the receipt
3 or disbursement to principal or income or between principal and income.

4 (b) In exercising the power to adjust under sub. (4) (a) or a discretionary power
5 of administration regarding a matter within the scope of this section, whether
6 granted by the terms of a trust, a will, or this section, a fiduciary shall administer
7 a trust or estate impartially, based on what is fair and reasonable to all of the
8 beneficiaries, except to the extent that the terms of the trust or the will clearly
9 manifest an intention that the fiduciary shall or may favor one or more of the
10 beneficiaries. A determination in accordance with this section is presumed to be fair
11 and reasonable to all of the beneficiaries.

12 (4) TRUSTEE'S POWER TO ADJUST. (a) A trustee may adjust between principal and
13 income to the extent the trustee considers necessary if the trustee invests and
14 manages trust assets as a prudent investor, the terms of the trust describe the
15 amount that may or must be distributed to a beneficiary by referring to the trust's
16 income, and the trustee determines, after applying the rules in sub. (3) (a), that the
17 trustee is unable to comply with sub. (3) (b).

18 (b) In deciding whether and to what extent to exercise the power conferred by
19 par. (a), a trustee shall consider all factors relevant to the trust and its beneficiaries,
20 including the following factors to the extent they are relevant:

- 21 1. The nature, purpose, and expected duration of the trust;
- 22 2. The intent of the settlor;
- 23 3. The identity and circumstances of the beneficiaries;
- 24 4. The needs for liquidity, regularity of income, and preservation and
25 appreciation of capital;

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1 5. The assets held in the trust; the extent to which they consist of financial
2 assets, interests in closely held enterprises, tangible and intangible personal
3 property, or real property; the extent to which an asset is used by a beneficiary; and
4 whether an asset was purchased by the trustee or received from the settlor;

5 6. The net amount allocated to income under the other subsections of this
6 section and the increase or decrease in the value of the principal assets, which the
7 trustee may estimate in the case of assets for which market values are not readily
8 available;

9 7. Whether and to what extent the terms of the trust give the trustee the power
10 to invade principal or accumulate income or prohibit the trustee from invading
11 principal or accumulating income, and the extent to which the trustee has exercised
12 a power from time to time to invade principal or accumulate income;

13 8. The actual and anticipated effect of economic conditions on principal and
14 income and effects of inflation and deflation; and

15 9. The anticipated tax consequences of an adjustment.

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

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

21 2. That reduces the actuarial value of the income interest in a trust to which
22 a person transfers property with the intent to qualify for a gift tax exclusion;

23 3. That changes the amount payable to a beneficiary as a fixed annuity or a
24 fixed fraction of the value of the trust assets;

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1 4. From any amount that is permanently set aside for charitable purposes
2 under a will or the terms of a trust unless both income and principal are so set aside;

3 5. If possessing or exercising the power to make an adjustment causes an
4 individual to be treated as the owner of all or part of the trust for income tax purposes,
5 and the individual would not be treated as the owner if the trustee did not possess
6 the power to make an adjustment;

7 6. If possessing or exercising the power to make an adjustment causes all or
8 part of the trust assets to be included for estate tax purposes in the estate of an
9 individual who has the power to remove a trustee or appoint a trustee, or both, and
10 the assets would not be included in the estate of the individual if the trustee did not
11 possess the power to make an adjustment;

12 7. If the trustee is a beneficiary of the trust; or

13 8. If the trustee is not a beneficiary, but the adjustment would benefit the
14 trustee directly or indirectly.

15 (d) If par. (c) 5., 6., 7., or 8. applies to a trustee and there is more than one
16 trustee, a cotrustee to whom the provision does not apply may make the adjustment
17 unless the exercise of the power by the remaining trustee or trustees is not permitted
18 by the terms of the trust.

19 (e) A trustee may release the entire power conferred by par. (a) or may release
20 only the power to adjust from income to principal or the power to adjust from
21 principal to income if the trustee is uncertain about whether possessing or exercising
22 the power will cause a result described in par. (c) 1. to 6. or 8. or if the trustee
23 determines that possessing or exercising the power will or may deprive the trust of
24 a tax benefit or impose a tax burden not described in par. (c). The release may be

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1 permanent or for a specified period, including a period measured by the life of an
2 individual.

3 (f) Terms of a trust that limit the power of a trustee to make an adjustment
4 between principal and income do not affect the application of this subsection unless
5 it is clear from the terms of the trust that the terms are intended to deny the trustee
6 the power of adjustment conferred by par. (a).

7 **(4m) JUDICIAL REVIEW OF DISCRETIONARY POWER.** (a) Unless it determines that
8 the decision was an abuse of the fiduciary's discretion, a court may not grant relief
9 from a fiduciary's decision to exercise or not to exercise a discretionary power
10 conferred by this section, including:

11 1. A decision under sub. (4) (a) as to whether and to what extent an amount
12 should be transferred from principal to income or from income to principal.

13 2. A decision regarding the factors that are relevant to the trust and its
14 beneficiaries, the extent to which the factors are relevant, and the weight, if any, to
15 be given to those factors in deciding whether and to what extent to exercise the
16 discretionary power conferred under sub. (4) (a).

17 (b) A fiduciary's decision is not an abuse of discretion merely because the court
18 would have exercised the power in a different manner or would not have exercised
19 the power.

20 (c) If the court determines that a fiduciary has abused the fiduciary's discretion,
21 the court may place the income and remainder beneficiaries in the positions that they
22 would have occupied had the discretion not been abused, according to the following
23 rules:

24 1. To the extent that the abuse of discretion has resulted in no distribution to
25 a beneficiary or in a distribution that is too small, the court shall order the fiduciary

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1 to distribute from the trust to the beneficiary an amount that the court determines
2 will restore the beneficiary, in whole or in part, to the beneficiary's appropriate
3 position.

4 2. To the extent that the abuse of discretion has resulted in a distribution to a
5 beneficiary that is too large, the court shall place the beneficiaries, the trust, or both,
6 in whole or in part, in their appropriate positions by ordering the fiduciary to
7 withhold an amount from one or more future distributions to the beneficiary who
8 received the distribution that was too large or by ordering that beneficiary to return
9 some or all of the distribution to the trust.

10 3. To the extent that the court is unable, after applying subs. 1. and 2., to place
11 the beneficiaries, the trust, or both in the positions that they would have occupied
12 had the discretion not been abused, the court may order the fiduciary to pay an
13 appropriate amount from its own funds to one or more of the beneficiaries, the trust,
14 or both.

15 (d) Upon petition by the fiduciary, the court having jurisdiction over a trust
16 shall determine whether a proposed exercise or nonexercise by the fiduciary of a
17 discretionary power conferred under this section will result in an abuse of the
18 fiduciary's discretion. The petition must describe the proposed exercise or
19 nonexercise of the power and contain sufficient information to inform the
20 beneficiaries of the reasons for the proposal, the facts upon which the fiduciary relies,
21 and an explanation of how the income and remainder beneficiaries will be affected
22 by the proposed exercise or nonexercise of the power. A beneficiary who challenges
23 the proposed exercise or nonexercise of the power has the burden of establishing that
24 it will result in an abuse of discretion.

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1 **(5) DETERMINATION AND DISTRIBUTION OF NET INCOME.** After a decedent dies, in
2 the case of an estate, or after an income interest in a trust ends, the following rules
3 apply:

4 (a) A fiduciary of an estate or of a terminating income interest shall determine
5 the amount of net income and net principal receipts received from property
6 specifically given to a beneficiary under the rules in subs. (7) to (30) that apply to
7 trustees and the rules in par. (e). The fiduciary shall distribute the net income and
8 net principal receipts to the beneficiary who is to receive the specific property.

9 (b) A fiduciary shall determine the remaining net income of a decedent's estate
10 or a terminating income interest under the rules in subs. (7) to (30) that apply to
11 trustees and by:

12 1. Including in net income all income from property used to discharge
13 liabilities;

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

20 3. Paying from principal all other disbursements made or incurred in
21 connection with the settlement of a decedent's estate or the winding up of a
22 terminating income interest, including debts, funeral expenses, disposition of
23 remains, family allowances, and death taxes and related penalties that are
24 apportioned to the estate or terminating income interest by the will, the terms of the
25 trust, or applicable law.

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1 (c) A fiduciary shall distribute to a beneficiary who receives a pecuniary
2 amount outright the interest or any other amount provided by the will, the terms of
3 the trust, or applicable law from net income determined under par. (b) or from
4 principal to the extent that net income is insufficient. If a beneficiary is to receive
5 a pecuniary amount outright from a trust after an income interest ends and no
6 interest or other amount is provided for by the terms of the trust or applicable law,
7 the fiduciary shall distribute the interest or other amount to which the beneficiary
8 would be entitled under applicable law if the pecuniary amount were required to be
9 paid under a will.

10 (d) A fiduciary shall distribute the net income remaining after distributions
11 required by par. (c) in the manner described in sub. (6) to all other beneficiaries,
12 including a beneficiary who receives a pecuniary amount in trust, even if the
13 beneficiary holds an unqualified power to withdraw assets from the trust or other
14 presently exercisable general power of appointment over the trust.

15 (e) A fiduciary may not reduce principal or income receipts from property
16 described in par. (a) because of a payment described in sub. (25) or (26) to the extent
17 that the will, the terms of the trust, or applicable law requires the fiduciary to make
18 the payment from assets other than the property or to the extent that the fiduciary
19 recovers or expects to recover the payment from a third party. The net income and
20 principal receipts from the property are determined by including all of the amounts
21 the fiduciary receives or pays with respect to the property, whether those amounts
22 accrued or became due before, on, or after the date of a decedent's death or an income
23 interest's terminating event, and by making a reasonable provision for amounts that
24 the fiduciary believes the estate or terminating income interest may become
25 obligated to pay after the property is distributed.

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1 **(6) DISTRIBUTION TO RESIDUARY AND REMAINDER BENEFICIARIES.** (a) Each
2 beneficiary described in sub. (5) (d) is entitled to receive a portion of the net income
3 equal to the beneficiary's fractional interest in undistributed principal assets, using
4 values as of the distribution date. If a fiduciary makes more than one distribution
5 of assets to beneficiaries to whom this subsection applies, each beneficiary, including
6 one who does not receive part of the distribution, is entitled, as of each distribution
7 date, to the net income the fiduciary has received after the date of death or
8 terminating event or earlier distribution date but has not distributed as of the
9 current distribution date.

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

11 1. The beneficiary is entitled to receive a portion of the net income equal to the
12 beneficiary's fractional interest in the undistributed principal assets immediately
13 before the distribution date, including assets that later may be sold to meet principal
14 obligations.

15 2. The beneficiary's fractional interest in the undistributed principal assets
16 must be calculated without regard to property specifically given to a beneficiary and
17 property required to pay pecuniary amounts not in trust.

18 3. The beneficiary's fractional interest in the undistributed principal assets
19 must be calculated on the basis of the aggregate value of those assets as of the
20 distribution date without reducing the value by any unpaid principal obligation.

21 4. The distribution date for purposes of this subsection may be the date as of
22 which the fiduciary calculates the value of the assets if that date is reasonably near
23 the date on which assets are actually distributed.

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

4 (d) A trustee may apply the rules in this subsection, to the extent that the
5 trustee considers it appropriate, to net gain or loss realized after the date of death
6 or terminating event or earlier distribution date from the disposition of a principal
7 asset if this subsection applies to the income from the asset.

8 **(7) WHEN RIGHT TO INCOME BEGINS AND ENDS.** (a) An income beneficiary is
9 entitled to net income from the date on which the income interest begins. An income
10 interest begins on the date specified in the terms of the trust or, if no date is specified,
11 on the date an asset becomes subject to a trust or successive income interest.

12 (b) An asset becomes subject to a trust:

13 1. On the date it is transferred to the trust in the case of an asset that is
14 transferred to a trust during the transferor's life;

15 2. On the date of a testator's death in the case of an asset that becomes subject
16 to a trust by reason of a will, even if there is an intervening period of administration
17 of the testator's estate; or

18 3. On the date of an individual's death in the case of an asset that is transferred
19 to a fiduciary by a third party because of the individual's death.

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

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

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1 **(8)** APPORTIONMENT OF RECEIPTS AND DISBURSEMENTS WHEN DECEDENT DIES OR
2 INCOME INTEREST BEGINS. (a) A trustee shall allocate to principal an income receipt
3 or disbursement other than one to which sub. (5) (a) applies if its due date occurs
4 before a decedent dies in the case of an estate or before an income interest begins in
5 the case of a trust or successive income interest.

6 (b) A trustee shall allocate to income an income receipt or disbursement if its
7 due date occurs on or after the date on which a decedent dies or an income interest
8 begins and it is a periodic due date. An income receipt or disbursement must be
9 treated as accruing from day to day if its due date is not periodic or it has no due date.
10 The portion of the receipt or disbursement accruing before the date on which a
11 decedent dies or an income interest begins must be allocated to principal and the
12 balance must be allocated to income.

13 (c) An item of income or an obligation is due on the date the payer is required
14 to make a payment. If a payment date is not stated, there is no due date for the
15 purposes of this section. Distributions to shareholders or other owners from an
16 entity, as defined in sub. (10), are deemed to be due on the date fixed by the entity
17 for determining who is entitled to receive the distribution or, if no date is fixed, on
18 the declaration date for the distribution. A due date is periodic for receipts or
19 disbursements that must be paid at regular intervals under a lease or an obligation
20 to pay interest or if an entity customarily makes distributions at regular intervals.

21 **(9)** APPORTIONMENT WHEN INCOME INTEREST ENDS. (a) In this subsection,
22 “undistributed income” means net income received before the date on which an
23 income interest ends. “Undistributed income” does not include an item of income or
24 expense that is due or accrued or net income that has been added or is required to
25 be added to principal under the terms of the trust.

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1 (b) When a mandatory income interest ends, the trustee shall pay to a
2 mandatory income beneficiary who survives that date, or to the estate of a deceased
3 mandatory income beneficiary whose death causes the interest to end, the
4 beneficiary's share of the undistributed income that is not disposed of under the
5 terms of the trust unless the beneficiary has an unqualified power to revoke more
6 than 5% of the trust immediately before the income interest ends. In the latter case,
7 the undistributed income from the portion of the trust that may be revoked must be
8 added to principal.

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

13 **(10) CHARACTER OF RECEIPTS.** (a) In this subsection, "entity" means a
14 corporation, partnership, limited liability company, regulated investment company,
15 real estate investment trust, common trust fund, or any other organization in which
16 a trustee has an interest other than a trust or estate to which sub. (11) applies, a
17 business or activity to which sub. (12) applies, or an asset-backed security to which
18 sub. (24) applies.

19 (b) Except as otherwise provided in this subsection, a trustee shall allocate to
20 income money received from an entity.

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

22 1. Property other than money;

23 2. Money received in one distribution or a series of related distributions in
24 exchange for part or all of a trust's interest in the entity;

25 3. Money received in total or partial liquidation of the entity; and

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

4 (d) Money is received in partial liquidation:

5 1. To the extent that the entity, at or near the time of a distribution, indicates
6 that it is a distribution in partial liquidation; or

7 2. If the total amount of money and property received in a distribution or series
8 of related distributions is greater than 20% of the entity's gross assets, as shown by
9 the entity's year-end financial statements immediately preceding the initial receipt.

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

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

19 **(11) DISTRIBUTION FROM TRUST OR ESTATE.** A trustee shall allocate to income an
20 amount received as a distribution of income from a trust or an estate in which the
21 trust has an interest other than a purchased interest, and shall allocate to principal
22 an amount received as a distribution of principal from such a trust or estate. If a
23 trustee purchases an interest in a trust that is an investment entity, or a decedent
24 or donor transfers an interest in such a trust to a trustee, sub. (10) or (24) applies to
25 a receipt from the trust.

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1 **(12) BUSINESS AND OTHER ACTIVITIES CONDUCTED BY TRUSTEE.** (a) If a trustee who
2 conducts a business or other activity determines that it is in the best interest of all
3 the beneficiaries to account separately for the business or activity instead of
4 accounting for it as part of the trust's general accounting records, the trustee may
5 maintain separate accounting records for its transactions, whether or not its assets
6 are segregated from other trust assets.

7 (b) A trustee who accounts separately for a business or other activity may
8 determine the extent to which its net cash receipts must be retained for working
9 capital, the acquisition or replacement of fixed assets, and other reasonably
10 foreseeable needs of the business or activity and the extent to which the remaining
11 net cash receipts are accounted for as principal or income in the trust's general
12 accounting records. If a trustee sells assets of the business or other activity, other
13 than in the ordinary course of the business or activity, the trustee shall account for
14 the net amount received as principal in the trust's general accounting records to the
15 extent the trustee determines that the amount received is no longer required in the
16 conduct of the business.

17 (c) Activities for which a trustee may maintain separate accounting records
18 include:

- 19 1. Retail, manufacturing, service, and other traditional business activities;
- 20 2. Farming;
- 21 3. Raising and selling livestock and other animals;
- 22 4. Management of rental properties;
- 23 5. Extraction of minerals and other natural resources;
- 24 6. Timber operations; and
- 25 7. Activities to which sub. (23) applies.

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1 **(13) PRINCIPAL RECEIPTS.** A trustee shall allocate to principal:

2 (a) To the extent not allocated to income under this section, assets received from
3 a transferor during the transferor's lifetime, a decedent's estate, a trust with a
4 terminating income interest, or a payer under a contract naming the trust or its
5 trustee as beneficiary;

6 (b) Money or other property received from the sale, exchange, liquidation, or
7 change in form of a principal asset, including realized profit, subject to subs. (10) to
8 (24);

9 (c) Amounts recovered from third parties to reimburse the trust because of
10 disbursements described in sub. (26) (a) 7. or for other reasons to the extent not based
11 on the loss of income;

12 (d) Proceeds of property taken by eminent domain, but a separate award made
13 for the loss of income with respect to an accounting period during which a current
14 income beneficiary had a mandatory income interest is income;

15 (e) Net income received in an accounting period during which there is no
16 beneficiary to whom a trustee may or must distribute income; and

17 (f) Other receipts as provided in subs. (17) to (24).

18 **(14) RENTAL PROPERTY.** To the extent that a trustee accounts for receipts from
19 rental property in accordance with this subsection, the trustee shall allocate to
20 income an amount received as rent of real or personal property, including an amount
21 received for cancellation or renewal of a lease. An amount received as a refundable
22 deposit, including a security deposit or a deposit that is to be applied as rent for
23 future periods, must be added to principal and held subject to the terms of the lease
24 and is not available for distribution to a beneficiary until the trustee's contractual
25 obligations have been satisfied with respect to that amount.

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1 **(15) OBLIGATION TO PAY MONEY.** (a) An amount received as interest, whether
2 determined at a fixed, variable, or floating rate, on an obligation to pay money to the
3 trustee, including an amount received as consideration for prepaying principal, must
4 be allocated to income without any provision for amortization of premium.

5 (b) A trustee shall allocate to principal an amount received from the sale,
6 redemption, or other disposition of an obligation to pay money to the trustee more
7 than one year after it is purchased or acquired by the trustee, including an obligation
8 whose purchase price or value when it is acquired is less than its value at maturity.
9 If the obligation matures within one year after it is purchased or acquired by the
10 trustee, an amount received in excess of its purchase price or its value when acquired
11 by the trust must be allocated to income.

12 (c) This subsection does not apply to an obligation to which sub. (18), (19), (20),
13 (21), (23), or (24) applies.

14 **(16) INSURANCE POLICIES AND SIMILAR CONTRACTS.** (a) Except as otherwise
15 provided in par. (b), a trustee shall allocate to principal the proceeds of a life
16 insurance policy or other contract in which the trust or its trustee is named as
17 beneficiary, including a contract that insures the trust or its trustee against loss for
18 damage to, destruction of, or loss of title to, a trust asset. The trustee shall allocate
19 dividends on an insurance policy to income if the premiums on the policy are paid
20 from income, and to principal if the premiums are paid from principal.

21 (b) A trustee shall allocate to income proceeds of a contract that insures the
22 trustee against loss of occupancy or other use by an income beneficiary, loss of
23 income, or, subject to sub. (12), loss of profits from a business.

24 (c) This subsection does not apply to a contract to which sub. (18) applies.

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1 **(17) INSUBSTANTIAL ALLOCATIONS NOT REQUIRED.** If a trustee determines that an
2 allocation between principal and income required by sub. (18), (19), (20), (21), or (24)
3 is insubstantial, the trustee may allocate the entire amount to principal unless one
4 of the circumstances described in sub. (4) (c) applies to the allocation. This power
5 may be exercised by a cotrustee in the circumstances described in sub. (4) (d) and may
6 be released for the reasons and in the manner described in sub. (4) (e). An allocation
7 is presumed to be insubstantial if:

8 (a) The amount of the allocation would increase or decrease net income in an
9 accounting period, as determined before the allocation, by less than 10%; or

10 (b) The value of the asset producing the receipt for which the allocation would
11 be made is less than 10% of the total value of the trust's assets at the beginning of
12 the accounting period.

13 **(18) DEFERRED COMPENSATION, ANNUITIES, AND SIMILAR PAYMENTS.** (a) In this
14 subsection, "payment" means a payment that a trustee may receive over a fixed
15 number of years or during the life of one or more individuals because of services
16 rendered or property transferred to the payer in exchange for future payments. The
17 term includes a payment made in money or property from the payer's general assets
18 or from a separate fund created by the payer, including a private or commercial
19 annuity, an individual retirement account, and a pension, profit-sharing,
20 stock-bonus, or stock-ownership plan.

21 (b) To the extent that a payment is characterized as interest or a dividend or
22 a payment made in lieu of interest or a dividend, a trustee shall allocate it to income.
23 The trustee shall allocate to principal the balance of the payment and any other
24 payment received in the same accounting period that is not characterized as interest,
25 a dividend, or an equivalent payment.

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1 (c) If no part of a payment is characterized as interest, a dividend, or an
2 equivalent payment, and all or part of the payment is required to be made, a trustee
3 shall allocate to income 10% of the part that is required to be made during the
4 accounting period and the balance to principal. If no part of a payment is required
5 to be made or the payment received is the entire amount to which the trustee is
6 entitled, the trustee shall allocate the entire payment to principal. For purposes of
7 this paragraph, a payment is not required to be made to the extent that it is made
8 because the trustee exercises a right of withdrawal.

9 (d) If, to obtain an estate tax marital deduction for a trust, a trustee must
10 allocate more of a payment to income than provided for by this subsection, the trustee
11 shall allocate to income the additional amount necessary to obtain the marital
12 deduction.

13 (e) This subsection does not apply to payments to which sub. (19) applies.

14 **(19) LIQUIDATING ASSET.** (a) In this subsection, "liquidating asset" means an
15 asset whose value will diminish or terminate because the asset is expected to produce
16 receipts for a period of limited duration. The term includes a leasehold, patent,
17 copyright, royalty right, and right to receive payments during a period of more than
18 one year under an arrangement that does not provide for the payment of interest on
19 the unpaid balance. The term does not include a payment subject to sub. (18),
20 resources subject to sub. (20), timber subject to sub. (21), an activity subject to sub.
21 (23), an asset subject to sub. (24), or any asset for which the trustee establishes a
22 reserve for depreciation under sub. (27).

23 (b) A trustee shall allocate to income 10% of the receipts from a liquidating
24 asset and the balance to principal.

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1 **(20)** MINERALS, WATER, AND OTHER NATURAL RESOURCES. (a) To the extent that a
2 trustee accounts for receipts from an interest in minerals or other natural resources
3 in accordance with this subsection, the trustee shall allocate them as follows:

4 1. If received as nominal delay rental or nominal annual rent on a lease, a
5 receipt must be allocated to income.

6 2. If received from a production payment, a receipt must be allocated to income
7 if and to the extent that the agreement creating the production payment provides a
8 factor for interest or its equivalent. The balance must be allocated to principal.

9 3. If an amount received as a royalty, shut-in-well payment, take-or-pay
10 payment, bonus, or delay rental is more than nominal, 90% must be allocated to
11 principal and the balance to income.

12 4. If an amount is received from a working interest or any other interest not
13 provided for in subd. 1., 2., or 3., 90% of the net amount received must be allocated
14 to principal and the balance to income.

15 (b) An amount received on account of an interest in water that is renewable
16 must be allocated to income. If the water is not renewable, 90% of the amount must
17 be allocated to principal and the balance to income.

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

21 (d) If a trust owns an interest in minerals, water, or other natural resources on
22 the effective date of this paragraph [revisor inserts date], the trustee may allocate
23 receipts from the interest as provided in this subsection or in the manner used by the
24 trustee before the effective date of this paragraph [revisor inserts date]. If the
25 trust acquires an interest in minerals, water, or other natural resources after the

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1 effective date of this paragraph [revisor inserts date], the trustee shall allocate
2 receipts from the interest as provided in this subsection.

3 **(21) TIMBER.** (a) To the extent that a trustee accounts for receipts from the sale
4 of timber and related products in accordance with this subsection, the trustee shall
5 allocate the net receipts:

6 1. To income to the extent that the amount of timber removed from the land does
7 not exceed the rate of growth of the timber during the accounting periods in which
8 a beneficiary has a mandatory income interest;

9 2. To principal to the extent that the amount of timber removed from the land
10 exceeds the rate of growth of the timber or the net receipts are from the sale of
11 standing timber;

12 3. To income or principal or between income and principal if the net receipts
13 are from the lease of timberland or from a contract to cut timber from land owned by
14 a trust, by determining the amount of timber removed from the land under the lease
15 or contract and applying the rules in subs. 1. and 2.; or

16 4. To principal to the extent that advance payments, bonuses, and other
17 payments are not allocated under subd. 1., 2., or 3.

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

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

22 (d) If a trust owns an interest in timberland on the effective date of this
23 paragraph [revisor inserts date], the trustee may allocate net receipts from the
24 sale of timber and related products as provided in this subsection or in the manner
25 used by the trustee before the effective date of this paragraph [revisor inserts

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1 date]. If the trust acquires an interest in timberland after the effective date of this
2 paragraph ... [revisor inserts date], the trustee shall allocate net receipts from the
3 sale of timber and related products as provided in this subsection.

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

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

17 **(23) DERIVATIVES AND OPTIONS.** (a) In this subsection, "derivative" means a
18 contract or financial instrument or a combination of contracts and financial
19 instruments that gives a trust the right or obligation to participate in some or all
20 changes in the price of a tangible or intangible asset or group of assets, or changes
21 in a rate, an index of prices or rates, or another market indicator for an asset or a
22 group of assets.

23 (b) To the extent that a trustee does not account under sub. (12) for transactions
24 in derivatives, the trustee shall allocate to principal receipts from and
25 disbursements made in connection with those transactions.

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1 (c) If a trustee grants an option to buy property from the trust, whether or not
2 the trust owns the property when the option is granted, grants an option that permits
3 another person to sell property to the trust, or acquires an option to buy property for
4 the trust or an option to sell an asset owned by the trust, and the trustee or other
5 owner of the asset is required to deliver the asset if the option is exercised, an amount
6 received for granting the option must be allocated to principal. An amount paid to
7 acquire the option must be paid from principal. A gain or loss realized upon the
8 exercise of an option, including an option granted to a settlor of the trust for services
9 rendered, must be allocated to principal.

10 **(24) ASSET-BACKED SECURITIES.** (a) In this subsection, “asset-backed security”
11 means an asset whose value is based upon the right it gives the owner to receive
12 distributions from the proceeds of financial assets that provide collateral for the
13 security. The term includes an asset that gives the owner the right to receive from
14 the collateral financial assets only the interest or other current return or only the
15 proceeds other than interest or current return. The term does not include an asset
16 to which sub. (10) or (18) applies.

17 (b) If a trust receives a payment from interest or other current return and from
18 other proceeds of the collateral financial assets, the trustee shall allocate to income
19 the portion of the payment that the payer identifies as being from interest or other
20 current return and shall allocate the balance of the payment to principal.

21 (c) If a trust receives one or more payments in exchange for the trust’s entire
22 interest in an asset-backed security in one accounting period, the trustee shall
23 allocate the payments to principal. If a payment is one of a series of payments that
24 will result in the liquidation of the trust’s interest in the security over more than one

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1 accounting period, the trustee shall allocate 10% of the payment to income and the
2 balance to principal.

3 **(25) DISBURSEMENTS FROM INCOME.** A trustee shall make the following
4 disbursements from income to the extent that they are not disbursements specified
5 in sub. (5) (b) 2. or 3.:

6 (a) One-half of the regular compensation of the trustee and of any person
7 providing investment advisory or custodial services to the trustee;

8 (b) One-half of all expenses for accountings, judicial proceedings, or other
9 matters that involve both the income and remainder interests;

10 (c) All of the other ordinary expenses incurred in connection with the
11 administration, management, or preservation of trust property and the distribution
12 of income, including interest, ordinary repairs, regularly recurring taxes assessed
13 against principal, and expenses of a proceeding or other matter that concerns
14 primarily the income interest; and

15 (d) Recurring premiums on insurance covering the loss of a principal asset or
16 the loss of income from or use of the asset.

17 **(26) DISBURSEMENTS FROM PRINCIPAL.** (a) A trustee shall make the following
18 disbursements from principal:

19 1. The remaining one-half of the disbursements described in sub. (25) (a) and
20 (b);

21 2. All of the trustee's compensation calculated on principal as a fee for
22 acceptance, distribution, or termination, and disbursements made to prepare
23 property for sale;

24 3. Payments on the principal of a trust debt;

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

3 5. Premiums paid on a policy of insurance not described in sub. (25) (d) of which
4 the trust is the owner and beneficiary;

5 6. Estate, inheritance, and other transfer taxes, including penalties,
6 apportioned to the trust; and

7 7. Disbursements related to environmental matters, including reclamation,
8 assessing environmental conditions, remedying and removing environmental
9 contamination, monitoring remedial activities and the release of substances,
10 preventing future releases of substances, collecting amounts from persons liable or
11 potentially liable for the costs of those activities, penalties imposed under
12 environmental laws or regulations and other payments made to comply with those
13 laws or regulations, statutory or common law claims by third parties, and defending
14 claims based on environmental matters.

15 (b) If a principal asset is encumbered with an obligation that requires income
16 from that asset to be paid directly to the creditor, the trustee shall transfer from
17 principal to income an amount equal to the income paid to the creditor in reduction
18 of the principal balance of the obligation.

19 **(27)** TRANSFERS FROM INCOME TO PRINCIPAL FOR DEPRECIATION. (a) In this
20 subsection, “depreciation” means a reduction in value due to wear, tear, decay,
21 corrosion, or gradual obsolescence of a fixed asset having a useful life of more than
22 one year.

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

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1 1. Of that portion of real property used or available for use by a beneficiary as
2 a residence or of tangible personal property held or made available for the personal
3 use or enjoyment of a beneficiary;

4 2. During the administration of a decedent's estate; or

5 3. Under this subsection if the trustee is accounting under sub. (12) for the
6 business or activity in which the asset is used.

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

8 **(28) TRANSFERS FROM INCOME TO REIMBURSE PRINCIPAL.** (a) If a trustee makes or
9 expects to make a principal disbursement described in this subsection, the trustee
10 may transfer an appropriate amount from income to principal in one or more
11 accounting periods to reimburse principal or to provide a reserve for future principal
12 disbursements.

13 (b) Principal disbursements to which par. (a) applies include the following, but
14 only to the extent that the trustee has not been and does not expect to be reimbursed
15 by a third party:

16 1. An amount chargeable to income but paid from principal because it is
17 unusually large, including extraordinary repairs;

18 2. A capital improvement to a principal asset, whether in the form of changes
19 to an existing asset or the construction of a new asset, including special assessments;

20 3. Disbursements made to prepare property for rental, including tenant
21 allowances, leasehold improvements, and brokers' commissions;

22 4. Periodic payments on an obligation secured by a principal asset to the extent
23 that the amount transferred from income to principal for depreciation is less than the
24 periodic payments; and

25 5. Disbursements described in sub. (26) (a) 7.

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1 (c) If the asset whose ownership gives rise to the disbursements becomes
2 subject to a successive income interest after an income interest ends, a trustee may
3 continue to transfer amounts from income to principal as provided in par. (a).

4 **(29) INCOME TAXES.** (a) A tax required to be paid by a trustee based on receipts
5 allocated to income must be paid from income.

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

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

11 1. From income to the extent that receipts from the entity are allocated to
12 income; and

13 2. From principal to the extent that:

14 a. Receipts from the entity are allocated to principal; and

15 b. The trust's share of the entity's taxable income exceeds the total receipts
16 described in subds. 1. and 2. a.

17 (d) For purposes of this subsection, receipts allocated to principal or income
18 must be reduced by the amount distributed to a beneficiary from principal or income
19 for which the trust receives a deduction in calculating the tax.

20 **(30) ADJUSTMENTS BETWEEN PRINCIPAL AND INCOME BECAUSE OF TAXES.** (a) A
21 fiduciary may make adjustments between principal and income to offset the shifting
22 of economic interests or tax benefits between income beneficiaries and remainder
23 beneficiaries which arise from:

24 1. Elections and decisions, other than those described in par. (b), that the
25 fiduciary makes from time to time regarding tax matters;

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

4 3. The ownership by an estate or trust of an interest in an entity whose taxable
5 income, whether or not distributed, is includable in the taxable income of the estate
6 or trust or of a beneficiary.

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

20 **(31) UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In applying and construing
21 the Uniform Principal and Income Act, consideration shall be given to the need to
22 promote uniformity of the law with respect to the subject matter of the Uniform
23 Principal and Income Act among states that enact it.

24 **SECTION 8.** 701.24 of the statutes is renumbered 701.24 (1) and amended to
25 read:

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1 701.24 (1) Except as otherwise provided in s. 701.19 (9) (a) and (10), ss. 701.01
2 to 701.19, 701.21, 701.22, and 701.23 are applicable to a trust existing on July 1, 1971,
3 as well as a trust created after such date and shall govern trustees acting under such
4 trusts. If application of any provision of ss. 701.01 to 701.19, 701.21, 701.22 ,and
5 701.23 to a trust in existence on August 1, 1971, is unconstitutional, it shall not affect
6 application of the provision to a trust created after that date.

7 **SECTION 9.** 701.24 (2) of the statutes is created to read:

8 701.24 (2) Section 701.20 applies to every trust or decedent's estate existing on
9 the effective date of this subsection [revisor inserts date], and to every trust or
10 decedent's estate created or coming into existence after that date, except as otherwise
11 expressly provided in s. 701.20 or by the decedent's will or the terms of the trust.

12 **SECTION 10.** 861.015 (2) of the statutes is amended to read:

13 861.015 (2) For purposes of this section, property subject to a directive is valued
14 by its clear market value on the date of the decedent's death. Satisfaction of the
15 nonholding spouse's marital property interest in the property subject to the directive
16 shall be based on that value, plus any income from the property subject to the
17 directive after the death of the decedent and before satisfaction. For purposes of
18 determining the income from the property subject to a directive, such property shall
19 be treated as a legacy or devise of property other than money under s. 701.20 ~~(5)(b)~~
20 1.

21 **SECTION 11.** 881.01 of the statutes is repealed and recreated to read:

22 **881.01 Uniform prudent investor act. (1) DEFINITION.** In this section:

23 (a) "Beneficiary", with respect to a guardianship of the estate, means a ward
24 for whom a guardian of the estate has been appointed and, with respect to a
25 conservator, means a person for whose estate a conservator has been appointed.

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1 (b) "Fiduciary" means personal representative, trustee, conservator, or
2 guardian of the estate.

3 (2) PRUDENT INVESTOR RULE. (a) Except as otherwise provided in par. (b), a
4 fiduciary who invests and manages assets owes a duty to the beneficiaries to comply
5 with the prudent investor rule set forth in this section.

6 (b) The prudent investor rule, a default rule, may be expanded, restricted,
7 eliminated or otherwise altered by the provisions of a will, trust, or court order. A
8 fiduciary is not liable to a beneficiary to the extent that the fiduciary acted in
9 reasonable reliance on the provisions of the will, trust, or court order.

10 (3) STANDARD OF CARE; PORTFOLIO STRATEGY; RISK AND RETURN OBJECTIVES. (a) A
11 fiduciary shall invest and manage assets as a prudent investor would, by considering
12 the purposes, terms, distribution requirements, and other circumstances of the
13 estate, trust, conservatorship, or guardianship. In satisfying this standard, the
14 fiduciary shall exercise reasonable care, skill, and caution.

15 (b) A fiduciary's investment and management decisions about individual assets
16 shall be evaluated not in isolation but in the context of the portfolio as a whole and
17 as a part of an overall investment strategy having risk and return objectives
18 reasonably suited to the estate, trust, conservatorship, or guardianship.

19 (c) Among circumstances that a fiduciary shall consider in investing and
20 managing assets are those of the following that are relevant to the estate, trust,
21 conservatorship, or guardianship or its beneficiaries:

- 22 1. General economic conditions.
- 23 2. The possible effect of inflation or deflation.
- 24 3. The expected tax consequences of investment decisions or strategies.

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1 4. The role that each investment or course of action plays within the overall
2 portfolio, which may include financial assets, interests in closely held enterprises,
3 tangible and intangible personal property, and real property.

4 5. The expected total return from income and the appreciation of capital.

5 6. Other resources of the beneficiaries.

6 7. Needs for liquidity, regularity of income, and preservation or appreciation
7 of capital.

8 8. An asset's special relationship or special value to the purposes of the estate,
9 trust, conservatorship, or guardianship or to one or more of the beneficiaries.

10 (d) A fiduciary shall make a reasonable effort to verify facts relevant to the
11 investment and management of assets.

12 (e) A fiduciary may invest in any kind of property or type of investment
13 consistent with the standards of this section.

14 (f) A fiduciary who has special skills or expertise, or is named fiduciary in
15 reliance upon the fiduciary's representation that the fiduciary has special skills or
16 expertise, has a duty to use those special skills or expertise.

17 **(4) DIVERSIFICATION.** A fiduciary shall diversify investments unless the
18 fiduciary reasonably determines that, because of special circumstances, the
19 purposes of the estate, trust, conservatorship, or guardianship are better served
20 without diversifying.

21 **(5) DUTIES AT INCEPTION.** Within a reasonable time after accepting a fiduciary
22 appointment or receiving assets, a fiduciary shall review the assets and make and
23 implement decisions concerning the retention and disposition of assets, in order to
24 bring the portfolio into compliance with the purposes, terms, distribution

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1 requirements, and other circumstances of the estate, trust, conservatorship, or
2 guardianship and with the requirements of this section.

3 (6) LOYALTY. A fiduciary shall invest and manage the assets solely in the
4 interest of the beneficiaries.

5 (7) IMPARTIALITY. If an estate, trust, conservatorship, or guardianship has 2 or
6 more beneficiaries, the fiduciary shall act impartially in investing and managing the
7 assets, taking into account the differences between the interests of the beneficiaries.

8 (8) INVESTMENT COSTS. In investing and managing assets, a fiduciary may incur
9 only costs that are appropriate and reasonable in relation to the assets, the purposes
10 of the estate, trust, conservatorship, or guardianship, and the skills of the fiduciary.

11 (9) REVIEWING COMPLIANCE. Compliance with the prudent investor rule is
12 determined in light of the facts and circumstances existing at the time of a fiduciary's
13 decision or action and not by hindsight.

14 (10) DELEGATION OF INVESTMENT AND MANAGEMENT FUNCTIONS. (a) A fiduciary
15 may delegate investment and management functions that a prudent fiduciary of
16 similar skills could properly delegate under the circumstances. The fiduciary shall
17 exercise reasonable care, skill, and caution in all of the following:

18 1. Selecting an agent.

19 2. Establishing the scope and terms of the delegation, consistent with the
20 purposes and terms of the estate, trust, conservatorship, or guardianship.

21 3. Periodically reviewing the agent's actions in order to monitor the agent's
22 performance and compliance with the terms of the delegation.

23 (b) In performing a delegated function, an agent owes a duty to the estate, trust,
24 conservatorship, or guardianship to exercise reasonable care to comply with the
25 terms of the delegation.

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1 (c) A fiduciary who complies with the requirements of par. (a) is not liable to
2 the beneficiaries or to the estate, trust, conservatorship, or guardianship for the
3 decisions or actions of the agent to whom a function was delegated.

4 (d) By accepting the delegation of a function from the fiduciary of an estate,
5 trust, conservatorship, or guardianship that is subject to the law of this state, an
6 agent submits to the jurisdiction of the courts of this state.

7 **(11) PHRASES INVOKING STANDARD OF THIS SECTION.** The following phrases or
8 similar phrases in a will, trust, or court order, unless otherwise limited or modified,
9 authorize any investment or strategy permitted under this section: “investments
10 permissible by law for investment of trust funds”; “legal investments”; “authorized
11 investments”; “using the judgment and care under the circumstances then
12 prevailing that persons of prudence, discretion, and intelligence exercise in the
13 management of their own affairs, not in regard to speculation but in regard to the
14 permanent disposition of their funds, considering the probable income as well as the
15 probable safety of their capital”; “prudent man rule”; “prudent trustee rule”;
16 “prudent person rule”; and “prudent investor rule”.

17 **(12) APPLICATION TO EXISTING ESTATES, TRUSTS, CONSERVATORSHIPS, AND**
18 **GUARDIANSHIPS.** This section applies to estates, trusts, conservatorships, and
19 guardianships of the estate existing on, or created on or after, the effective date of
20 this subsection [revisor inserts date]. As applied to estates, trusts,
21 conservatorships, and guardianships of the estate existing on the effective date of
22 this subsection [revisor inserts date], this section governs only decisions or actions
23 occurring after that date.

24 **(13) UNIFORMITY OF APPLICATION AND CONSTRUCTION.** This section shall be
25 applied and construed to effectuate its general purpose to make uniform the law with

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1 respect to the subject of this section among the states that have enacted this uniform
2 legislation.

3 **SECTION 12.** 881.02 of the statutes is amended to read:

4 **881.02 Construction; court orders; written instruments.** Nothing
5 contained in this chapter shall be construed as authorizing any departure from, or
6 variation of, the express terms or limitations set forth in any will, agreement, court
7 order, or other instrument creating or defining the fiduciary's duties and powers, but
8 the terms "legal investment" or "authorized investment" or words of similar import,
9 as used in any such instrument, shall be taken to mean any investment which is
10 permitted by the terms of this chapter.

11 **SECTION 13.** 881.06 of the statutes is amended to read:

12 **881.06 Law governing existing instruments.** This Subject to s. 881.01 (12),
13 this chapter shall govern fiduciaries, including personal representatives, guardians
14 of the estate, conservators, and trustees acting under wills, agreements, court
15 orders, and other instruments now existing or hereafter made.

16 (END)