

ASSEMBLY BILL 140 (LRB -2269)

An Act to renumber and amend 701.24; to amend 20.907 (1), 23.0918 (2), 25.70, 701.12 (3), 701.21 (1), 705.21 (12) (a) and 861.015 (2); to repeal and recreate 701.20; and to create 701.24 (2), 701.24 (3) and 705.21 (12) (am) of the statutes; relating to: providing rules for allocations between principal and income for trusts and estates and authorizing the conversion of a trust to a unitrust. (FE)

2005

03-03.	A.	Introduced by Representative Hundertmark ; cosponsored by Senator Stepp .	
02-28.	A.	Read first time and referred to committee on Financial Institutions	101
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03-07.	A.	Fiscal estimate received.	
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04-05.	A.	Executive action taken.	
04-05.	A.	Report Assembly Amendment 1 to Assembly Substitute Amendment 1 adoption, Ayes 15, Noes 0.	
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04-05.	A.	Report passage as amended recommended by committee on Financial Institutions, Ayes 15, Noes 0	161
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04-05.	A.	Placed on calendar 4-7-2005 by committee on Rules.	
04-07.	A.	Read a second time	171
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04-13.	S.	Withdrawn from committee on Judiciary, Corrections and Privacy and taken up.	
04-13.	S.	Read a second time.	
04-13.	S.	Ordered to a third reading.	
04-13.	S.	Rules suspended.	
04-13.	S.	Read a third time and concurred in .	
04-13.	S.	Ordered immediately messaged.	
04-15.	A.	Received from Senate concurred in.	

**2005
ENROLLED BILL**

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**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2005 ASSEMBLY BILL 140**

March 28, 2005 – Offered by Representative HUNDERTMARK.

1 **AN ACT to renumber and amend** 701.24; **to amend** 20.907 (1), 23.0918 (2),
2 25.70, 701.12 (3), 701.21 (1), 705.21 (12) (a) and 861.015 (2); **to repeal and**
3 **recreate** 701.20; and **to create** 701.24 (2) and 705.21 (12) (am) of the statutes;
4 **relating to:** providing rules for allocations between principal and income for
5 trusts and estates and authorizing the conversion of a trust to a unitrust.

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

6 **SECTION 1.** 20.907 (1) of the statutes is amended to read:
7 20.907 (1) ACCEPTANCE AND INVESTMENT. Unless otherwise provided by law, all
8 gifts, grants, bequests, and devises to the state or to any state agency for the benefit
9 or advantage of the state, whether made to trustees or otherwise, shall be legal and
10 valid when approved by the joint committee on finance and shall be executed and
11 enforced according to the provisions of the instrument making the same, including

1 all provisions and directions in any such instrument for accumulation of the income
2 of any fund or rents and profits of any real estate without being subject to the
3 limitations and restrictions provided by law in other cases; but no such accumulation
4 shall be allowed to produce a fund more than 20 times as great as that originally
5 given. ~~When such gifts, grants, bequests or devises include common stocks or other~~
6 ~~investments which are not authorized by s. 881.01, such common stocks or other~~
7 ~~investments may be held and may be exchanged, invested or reinvested in similar~~
8 ~~types of investments without being subject to the limitations provided by law in other~~
9 ~~cases.~~

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

11 23.0918 (2) Unless the natural resources board determines otherwise in a
12 specific case, only the income from the gifts, grants, or bequests in the fund is
13 available for expenditure. The natural resources board may authorize expenditures
14 only for preserving, developing, managing, or maintaining land under the
15 jurisdiction of the department that is used for any of the purposes specified in s. 23.09
16 (2) (d). In this subsection, unless otherwise provided in a gift, grant, or bequest,
17 principal and income are determined as provided under s. 701.20 (3).

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

19 **25.70 Historical society trust fund.** There is established a separate
20 nonlapsible trust fund designated as the historical society trust fund, consisting of
21 all endowment principal and income and all cash balances of the historical society.
22 Unless the board of curators of the historical society determines otherwise in each
23 case, only the income from the assets in the historical society trust fund is available
24 for expenditure. In this section, unless otherwise provided in the gift, grant, or
25 bequest, principal and income are determined as provided under s. 701.20 (3).

1 **SECTION 4.** 701.12 (3) of the statutes is amended to read:

2 701.12 (3) Nothing in this section shall prevent revocation, modification, or
3 termination of a trust pursuant to its terms or otherwise in accordance with law or
4 prevent conversion of a trust to a unitrust under s. 701.20 (4g).

5 **SECTION 5.** 701.20 of the statutes is repealed and recreated to read:

6 **701.20 Principal and income. (2) DEFINITIONS.** In this section:

7 (a) “Accounting period” means a calendar year, unless a fiduciary selects
8 another 12-month period, and includes a portion of a calendar year or other
9 12-month period that begins when an income interest begins or that ends when an
10 income interest ends.

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

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

17 (d) “Income” means money or property that a fiduciary receives as current
18 return from a principal asset. “Income” includes a portion of receipts from a sale,
19 exchange, or liquidation of a principal asset, to the extent provided in subs. (10) to
20 (24).

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

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

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

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

6 (i) “Person” means an individual; corporation; business trust; estate; trust;
7 partnership; limited liability company; association; joint venture; government;
8 governmental subdivision, agency, or instrumentality; public corporation; or any
9 other legal or commercial entity.

10 (j) “Principal” means property held in trust for distribution to a remainder
11 beneficiary when the trust terminates or property held in trust in perpetuity.

12 (k) “Remainder beneficiary” means a person entitled to receive principal when
13 an income interest ends.

14 (L) “Sui juris beneficiary” means a beneficiary not under a legal disability. The
15 term includes all of the following:

16 1. A court-appointed guardian of a beneficiary who is incompetent, as defined
17 in s. 880.01 (4).

18 2. An agent for an incapacitated beneficiary.

19 3. A court-appointed guardian of a minor beneficiary’s estate or, if there is no
20 court-appointed guardian, the parents of the minor beneficiary.

21 (m) “Terms of a trust” means the manifestation of the intent of a settlor or
22 decedent with respect to a trust, expressed in a manner that admits of its proof in a
23 judicial proceeding, whether by written or spoken words or by conduct.

24 (n) “Trustee” includes an original, additional, or successor trustee, whether or
25 not appointed or confirmed by a court.

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

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

6 2. May administer a trust or estate by the exercise of a discretionary power of
7 administration given to the fiduciary by the terms of the trust or the will, even if the
8 exercise of the power produces a result different from a result required or permitted
9 by this section.

10 3. Shall administer a trust or estate in accordance with this section if the terms
11 of the trust or the will do not contain a different provision or do not give the fiduciary
12 a discretionary power of administration.

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

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

24 **(4) TRUSTEE'S POWER TO ADJUST.** (a) A trustee may adjust between principal and
25 income to the extent the trustee considers necessary if the trustee invests and

1 manages trust assets as a prudent investor, the terms of the trust describe the
2 amount that may or must be distributed to a beneficiary by referring to the trust's
3 income, and the trustee determines, after applying the rules in sub. (3) (a), that the
4 trustee is unable to comply with sub. (3) (b).

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

8 1. The nature, purpose, and expected duration of the trust.

9 2. The intent of the settlor.

10 3. The identity and circumstances of the beneficiaries.

11 4. The needs for liquidity, regularity of income, and preservation and
12 appreciation of capital.

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

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

21 7. Whether and to what extent the terms of the trust give the trustee the power
22 to invade principal or accumulate income or prohibit the trustee from invading
23 principal or accumulating income, and the extent to which the trustee has exercised
24 a power from time to time to invade principal or accumulate income.

1 8. The actual and anticipated effect of economic conditions on principal and
2 income and effects of inflation and deflation.

3 9. The anticipated tax consequences of an adjustment.

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

5 1. If possessing or exercising the power to make an adjustment would
6 disqualify an estate tax or gift tax marital or charitable deduction in whole or in part.

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

9 3. That changes the amount payable to a beneficiary as a fixed annuity or a
10 fixed fraction of the value of the trust assets.

11 4. From any amount that is permanently set aside for charitable purposes
12 under a will or the terms of a trust and for which an estate tax or gift tax charitable
13 deduction has been taken unless both income and principal are so set aside.

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

18 6. If possessing or exercising the power to make an adjustment causes all or
19 part of the trust assets to be included for estate tax purposes in the estate of an
20 individual and the assets would not be included in the estate of the individual if the
21 trustee did not possess the power to make an adjustment.

22 7. If the trustee is a beneficiary of the trust.

23 8. If the trust has been converted under sub. (4g) to a unitrust.

24 9. If the trust is an express unitrust.

27-24

1 (d) If par. (c) 5., 6., or 7. applies to a trustee and there is more than one trustee,
2 a cotrustee to whom the provision does not apply may make the adjustment unless
3 the terms of the trust do not permit the exercise of the power by that cotrustee.

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

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

15 **(4c) NOTICE TO BENEFICIARIES OF PROPOSED ACTION.** (b) A trustee may, but is not
16 required to, obtain approval of a proposed action under sub. (4) (a) by providing a
17 written notice that complies with all of the following:

18 1. Is given at least 30 days before the proposed effective date of the proposed
19 action.

20 2. Is given in the manner provided in ch. 879, except that notice by publication
21 is not required.

22 3. Is given to all sui juris beneficiaries who are any of the following:

23 a. Income beneficiaries currently eligible to receive income from the trust.

1 b. Eligible to receive, if no powers of appointment were exercised, income from
2 the trust if the interest of all of those eligible to receive income under subd. 3. a. were
3 to terminate immediately before the giving of notice.

4 c. A recipient, if no powers of appointment were exercised, of a distribution of
5 principal if the trust were to terminate immediately before the giving of the notice.

6 4. States that it is given in accordance with this subsection and discloses the
7 following information:

8 a. The identification of the trustee.

9 b. A description of the proposed action.

10 c. The time within which a beneficiary may object to the proposed action, which
11 shall be at least 30 days after the giving of the notice.

12 d. The effective date of the proposed action if no objection is received from any
13 beneficiary within the time specified in subd. 4. c.

14 (c) If a trustee gives notice of a proposed action under this subsection, the
15 trustee is not required to give notice to a sui juris beneficiary who consents to the
16 proposed action in writing at any time before or after the proposed action is taken.

17 (d) A sui juris beneficiary may object to the proposed action by giving a written
18 objection to the trustee within the time specified in the notice under par. (b) 4. c.

19 (e) A trustee may decide not to take a proposed action after the trustee receives
20 a written objection to the proposed action or at any other time for any other reason.
21 In that case, the trustee shall give written notice to the sui juris beneficiaries of the
22 decision not to take the proposed action.

23 (f) If a trustee receives a written objection to a proposed action within the time
24 specified in the notice under par. (b) 4. c., either the trustee or the beneficiary making
25 the written objection may petition the court to have the proposed action approved,

1 modified, or prohibited. In the court proceeding, the beneficiary objecting to the
2 proposed action has the burden of proving that the proposed action should be
3 modified or prohibited. A beneficiary who did not make the written objection may
4 oppose the proposed action in the court proceeding.

5 (g) For purposes of this subsection, a proposed action under sub. (4) includes
6 a course of action or a decision not to take action under sub. (4).

7 **(4g) CONVERSION TO UNITRUST.** (a) Subject to par. (d), a trust may be converted
8 to a unitrust in any of the following ways:

9 1. By the trustee, at his or her own discretion or at the request of a beneficiary,
10 if all of the following apply:

11 a. The trustee determines that the conversion will enable the trustee to better
12 carry out the purposes of the trust.

13 b. The trustee provides notice in the same manner as provided in sub. (4c) (b)
14 of the trustee's intention to convert the trust to a unitrust, and the notice advises how
15 the unitrust will operate, including the fixed percentage under par. (c) 1. and any
16 other initial determinations under par. (c) 4. that the trustee intends to follow.

17 c. There is at least one sui juris beneficiary under sub. (4c) (b) 3. a. and at least
18 one other sui juris beneficiary under sub. (4c) (b) 3. b. or c.

19 d. Every sui juris beneficiary consents to the conversion to a unitrust in a
20 writing delivered to the trustee.

21 e. The terms of the trust describe the amount that may or must be distributed
22 by referring to the trust income.

23 2. By a court on the petition of the trustee or a beneficiary, if all of the following
24 apply:

1 a. The trustee or beneficiary has provided notice under sub. (4c) of the intention
2 to request the court to convert the trust to a unitrust, and the notice advises how the
3 unitrust will operate, including the fixed percentage under par. (c) 1. and any other
4 initial determinations under par. (c) 4. that will be requested.

5 b. The court determines that the conversion to a unitrust will enable the trustee
6 to better carry out the purposes of the trust.

7 (b) In deciding whether to convert the trust to a unitrust under par. (a) 1., the
8 trustee shall consider all relevant factors under sub. (4) (b) 1. to 9.

9 (c) 1. If a trust is converted to a unitrust under this subsection by the trustee
10 or a court, notwithstanding sub. (3) (a) 1. and 4. and s. 701.21 (4) the trustee shall
11 make distributions in accordance with the creating instrument, except that any
12 reference in the creating instrument to “income” means a fixed percentage of the net
13 fair market value of the unitrust’s assets, whether such assets otherwise would be
14 considered income or principal under this section, averaged over a preceding period
15 determined by the trustee, which is at least 3 years but not more than 5 years, or the
16 period since the original trust was created, whichever is less.

17 2. a. Subject to subd. 2. b., if the trust is converted to a unitrust under par. (a)
18 1., the trustee shall determine the fixed percentage to be applied under subd. 1., and
19 the notice under par. (a) 1. b. must state the fixed percentage. If the trust is converted
20 to a unitrust under par. (a) 2., the court shall determine the fixed percentage to be
21 applied under subd. 1.

22 b. Any fixed percentage under subd. 1. that is determined by a trustee may not
23 be less than 3 percent nor more than 5 percent.

1 3. After a trust is converted to a unitrust, the trustee may, subject to the notice
2 requirement under sub. (4c) and with the consent of every sui juris beneficiary, do
3 any of the following:

4 a. Convert the unitrust back to the original trust under the creating
5 instrument.

6 b. Change the fixed percentage under subd. 1., subject to subd. 2. b.

7 4. After a trust is converted to a unitrust, a trustee may determine or change
8 any of the following:

9 a. The frequency of distributions during the year.

10 b. Standards for prorating a distribution for a short year in which a
11 beneficiary's right to payments commences or ceases.

12 c. The effect on the valuation of the unitrust's assets of other payments from,
13 or contributions to, the unitrust.

14 d. How, and how frequently, to value the unitrust's assets.

15 e. The valuation dates to use.

16 f. Whether to omit from the calculation of the value of the unitrust's assets
17 unitrust property occupied by or in the possession of a beneficiary.

18 g. The averaging under subd. 1. to a different preceding period, which is at least
19 3 years but not more than 5 years.

20 h. Any other matters necessary for the proper functioning of the unitrust.

21 5. The trustee may not deduct from a unitrust distribution expenses that would
22 be deducted from income if the trust were not a unitrust.

23 6. Unless otherwise provided by the creating instrument, the unitrust
24 distribution is considered to have been paid from the following sources in the order
25 of priority:

- 1 a. Net income, determined as if the trust were not a unitrust.
- 2 b. Ordinary income for federal income tax purposes that is not net income
3 under subd. 6. a.
- 4 c. Net realized short-term capital gains for federal income tax purposes.
- 5 d. Net realized long-term capital gain for federal income tax purposes.
- 6 e. Principal.
- 7 7. A court may, on the petition of the trustee or a beneficiary, do any of the
8 following:
- 9 a. Change the fixed percentage that was determined under subd. 2. by the
10 trustee or by a prior court order.
- 11 b. If necessary to preserve a tax benefit, provide for a distribution of net income,
12 determined as if the trust were not a unitrust, that exceeds the unitrust distribution.
- 13 c. Average the valuation of the unitrust's assets over a period other than that
14 specified in subd. 1.
- 15 d. Require the unitrust to be converted back to the original trust under the
16 creating instrument.
- 17 8. Conversion to a unitrust under this subsection does not affect a provision in
18 the creating instrument that directs or authorizes the trustee to distribute principal
19 or that authorizes a beneficiary to withdraw a portion or all of the principal.
- 20 (d) 1. A trust may not be converted under this subsection to a unitrust if any
21 of the following applies:
- 22 a. The creating instrument specifically prohibits the conversion.
- 23 b. Payment of the unitrust distribution will change the amount payable to a
24 beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets.

1 c. The unitrust distribution will be made from any amount that is permanently
2 set aside for charitable purposes under the creating instrument and for which an
3 estate or gift tax charitable deduction has been taken, unless both income and
4 principal are so set aside.

5 d. Converting to a unitrust will cause an individual to be treated as the owner
6 of all or part of the trust for income tax purposes and the individual would not be
7 treated as the owner if the trust were not converted.

8 e. Converting to a unitrust will cause all or a part of the trust assets to be
9 subject to estate or gift tax with respect to an individual and the trust assets would
10 not be subject to estate or gift tax with respect to the individual if the trust were not
11 converted.

12 f. Converting to a unitrust will result in the disallowance of an estate or gift tax
13 marital deduction that would be allowed if the trust were not converted.

14 g. A trustee is a beneficiary of the trust.

15 2. Notwithstanding subd. 1., if a trust may not be converted to a unitrust solely
16 because subd. 1. g. applies to a trustee, a cotrustee, if any, to whom subd. 1. g. does
17 not apply may convert the trust to a unitrust under par. (a) 1., unless prohibited by
18 the creating instrument, or a court may convert the trust to a unitrust under par. (a)
19 2. on the petition of a trustee or beneficiary.

20 (e) A trustee may release the power conferred by par. (a) 1. if the trustee is
21 uncertain about whether possessing or exercising the power will cause a result
22 described in par. (d) 1. b. to f. or if the trustee determines that possessing or exercising
23 the power will or may deprive the trust of a tax benefit or impose a tax burden not
24 described in par. (d) 1. The release may be permanent or for a specified period,
25 including a period measured by the life of an individual.

1 **(4j) EXPRESS UNITRUSTS.** (a) In this subsection “express unitrust” means any
2 trust that by its governing instrument requires the distribution at least annually of
3 a unitrust amount equal to a fixed percentage of the net fair market value of the
4 trust’s assets, valued at least annually, other than a trust solely for charitable
5 purposes or a charitable split-interest trust under section 664 (d) or 170 (f) (2) (B)
6 of the Internal Revenue Code.

7 (b) The following apply to an express unitrust:

8 1. To the extent not otherwise provided for in the governing instrument, the
9 unitrust amount of not less than 3 percent nor more than 5 percent may be
10 determined by reference to the net fair market value of the trust’s assets averaged
11 over a preceding period determined by the trustee, which is at least 3 years but not
12 more than 5 years.

13 2. Distribution of such a fixed percentage unitrust amount of not less than 3
14 percent nor more than 5 percent is a distribution of all of the income of the unitrust
15 and is an income interest.

16 3. Such a distribution of a fixed percentage of not less than 3 percent nor more
17 than 5 percent is a reasonable apportionment of the total return of the trust.

18 4. A trust that provides for a fixed annual percentage payout in excess of 5
19 percent per year of the net fair market value of the trust is considered to be a 5
20 percent express unitrust, paying out all of the income of the unitrust, and to have
21 paid out principal of the trust to the extent that the fixed percentage payout exceeds
22 5 percent per year.

23 5. The governing instrument may grant discretion to the trustee to adopt a
24 consistent practice of treating capital gains as part of the unitrust distribution, to the

1 extent that the unitrust distribution exceeds the income determined as if the trust
2 were not a unitrust, or it may specify the ordering of such classes of income.

3 6. Unless the terms of the trust specifically provide otherwise, a distribution
4 of the unitrust amount is considered to have been made from the following sources
5 in the following order of priority:

6 a. Net income determined as if the trust were not a unitrust.

7 b. Ordinary income for federal income tax purposes that is not net income
8 under subd. 6. a.

9 c. Net realized short-term capital gains for federal income tax purposes.

10 d. Net realized long-term capital gains for federal income tax purposes.

11 e. Principal.

12 7. The trust document may provide that assets used by the trust beneficiary,
13 such as a residence or tangible personal property, may be excluded from the net fair
14 market value for computing the unitrust amount. Such use may be considered
15 equivalent to the income or unitrust amount.

16 8. In the absence of contrary provisions in the governing document of an
17 express unitrust, the provisions of sub. (4g) (c) 1., 4., and 5. apply.

18 **(4k) POWER TO TREAT CAPITAL GAINS AS PART OF A DISTRIBUTION.** Unless prohibited
19 by the governing instrument, a trustee may cause gains from the sale or exchange
20 of trust assets, as determined for federal income tax purposes, to be taxed for federal
21 income tax purposes as part of a distribution of income that has been increased by
22 an adjustment from principal to income under sub. (4), of a unitrust distribution, of
23 a fixed annuity distribution, or of a principal distribution to a beneficiary.

24 **(4m) JUDICIAL REVIEW OF DISCRETIONARY POWER.** (a) Nothing in this section
25 creates a duty to make an adjustment under sub. (4) or to convert a trust to a unitrust

1 under sub. (4g). Unless it determines that the decision to make an adjustment or to
2 convert to a unitrust was an abuse of the fiduciary's discretion, a court may not grant
3 relief from any decision a fiduciary makes regarding the exercise of a discretionary
4 power conferred by sub. (4) or (4g).

5 (am) An action taken under sub. (4) or (4g) is not an abuse of a fiduciary's
6 discretion if the fiduciary gave written notice of the proposed action under sub. (4c)
7 and did not receive a timely written objection to the notice. It is not an abuse of
8 discretion not to exercise the power to adjust under sub. (4) or to convert under sub.
9 (4g).

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

13 (c) If the court determines that a fiduciary has abused the fiduciary's discretion,
14 the remedy shall be to restore the income and remainder beneficiaries to the
15 positions that they would have occupied had the discretion not been abused,
16 according to the following rules:

17 1. To the extent that the abuse of discretion has resulted in no distribution to
18 a beneficiary or in a distribution that is too small, the court shall order the fiduciary
19 to distribute from the trust to the beneficiary an amount that the court determines
20 will restore the beneficiary, in whole or in part, to the beneficiary's appropriate
21 position.

22 2. To the extent that the abuse of discretion has resulted in a distribution to a
23 beneficiary that is too large, the court shall place the beneficiaries, the trust, or both,
24 in whole or in part, in their appropriate positions by ordering the fiduciary to
25 withhold an amount from one or more future distributions to the beneficiary who

1 received the distribution that was too large or by ordering that beneficiary to return
2 some or all of the distribution to the trust.

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

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

18 **(5) DETERMINATION AND DISTRIBUTION OF NET INCOME.** In the case of an estate of
19 a decedent or after an income interest in a trust ends, the following rules apply:

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

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

4 1. Including in net income all income from property used to discharge
5 liabilities.

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

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

18 (c) A fiduciary shall distribute to a beneficiary, including a trustee, who receives
19 a pecuniary amount not determined by a pecuniary formula interest at the legal rate
20 set forth in s. 138.04 on any unpaid portion of the pecuniary amount for the period
21 commencing one year after the decedent's death or after the income interest in the
22 trust ends. The interest under this paragraph shall be distributed from net income
23 determined under par. (b) or from principal to the extent that net income is
24 insufficient.

1 (d) A fiduciary shall distribute the net income remaining after distributions
2 required by par. (c) in the manner described in sub. (6) to all other beneficiaries,
3 including a beneficiary who receives a pecuniary amount determined by a pecuniary
4 formula.

5 (e) A fiduciary may not reduce principal or income receipts from property
6 described in par. (a) because of a payment described in sub. (25) or (26) to the extent
7 that the will, the terms of the trust, or applicable law requires the fiduciary to make
8 the payment from assets other than the property or to the extent that the fiduciary
9 recovers or expects to recover the payment from a 3rd party. The net income and
10 principal receipts from the property are determined by including all of the amounts
11 the fiduciary receives or pays with respect to the property, whether those amounts
12 accrued or became due before, on, or after the date of a decedent's death or an income
13 interest's terminating event, and by making a reasonable provision for amounts that
14 the fiduciary believes the estate or terminating income interest may become
15 obligated to pay after the property is distributed.

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

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

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

5 2. The beneficiary's fractional interest in the undistributed principal assets
6 must be calculated without regard to property specifically given to a beneficiary and
7 property required to pay pecuniary amounts not determined by a pecuniary formula.

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

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

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

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

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

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

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

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

6 3. On the date of an individual's death in the case of an asset that a 3rd party
7 transfers to a fiduciary because of the individual's death.

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

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

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

19 (b) A trustee shall allocate to income an income receipt or disbursement if its
20 due date occurs on or after the date on which a decedent dies or an income interest
21 begins and it is a periodic due date. An income receipt or disbursement must be
22 treated as accruing from day to day if its due date is not periodic or it has no due date.
23 The portion of the receipt or disbursement accruing before the date of death or an
24 income interest begins must be allocated to principal and the balance must be
25 allocated to income.

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

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

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

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

1 (10) CHARACTER OF RECEIPTS. (a) In this subsection, “entity” means a
2 corporation, partnership, limited liability company, regulated investment company,
3 real estate investment trust, common trust fund, or any other organization in which
4 a trustee has an interest other than a trust or estate to which sub. (11) applies, a
5 business or activity to which sub. (12) applies, or an asset-backed security to which
6 sub. (24) applies.

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

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

10 1. Property other than money.

11 2. Money received in one distribution or a series of related distributions in
12 exchange for part or all of a trust’s interest in the entity.

13 3. Money received in total or partial liquidation of the entity.

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

17 (d) Money is received in partial liquidation:

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

20 2. If the total amount of money and property distributed in a distribution or
21 series of related distributions is greater than 20 percent of the entity’s gross assets,
22 as shown by the entity’s year-end financial statements immediately preceding the
23 initial receipt.

24 (e) Money is not received in partial liquidation, nor may it be taken into account
25 under par. (d) 2., to the extent that it does not exceed the amount of income tax that

1 a trustee or beneficiary must pay on taxable income of the entity that distributes the
2 money.

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

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

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

21 (b) A trustee who accounts separately for a business or other activity may
22 determine the extent to which its net cash receipts must be retained for working
23 capital, the acquisition or replacement of fixed assets, and other reasonably
24 foreseeable needs of the business or activity and the extent to which the remaining
25 net cash receipts are accounted for as principal or income in the trust's general

1 accounting records. If a trustee sells assets of the business or other activity, other
2 than in the ordinary course of the business or activity, the trustee shall account for
3 the net amount received as principal in the trust's general accounting records to the
4 extent the trustee determines that the amount received is no longer required in the
5 conduct of the business.

6 (c) Activities for which a trustee may maintain separate accounting records
7 include:

- 8 1. Retail, manufacturing, service, and other traditional business activities.
- 9 2. Farming.
- 10 3. Raising and selling livestock and other animals.
- 11 4. Management of rental properties.
- 12 5. Extraction of minerals and other natural resources.
- 13 6. Timber operations.
- 14 7. Activities to which sub. (23) applies.

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

16 (a) To the extent not allocated to income under this section, assets received from
17 a transferor during the transferor's lifetime, a decedent's estate, a trust with a
18 terminating income interest, or a payer under a contract naming the trust or its
19 trustee as beneficiary.

20 (b) Money or other property received from the sale, exchange, liquidation, or
21 change in form of a principal asset, including realized profit, subject to subs. (10) to
22 (24).

23 (c) Amounts recovered from 3rd parties to reimburse the trust because of
24 disbursements described in sub. (26) (a) 7. or for other reasons to the extent not based
25 on the loss of income.

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

4 (e) Net income received in an accounting period during which there is no
5 beneficiary to whom a trustee may or must distribute income.

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

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

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

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

1 (c) This subsection does not apply to an obligation to which sub. (18), (19), (20),
2 (21), (23), or (24) applies.

3 (16) INSURANCE POLICIES AND SIMILAR CONTRACTS. (a) Except as provided in par.
4 (b), a trustee shall allocate to principal the proceeds of a life insurance policy or other
5 contract in which the trust or its trustee is named as beneficiary, including a contract
6 that insures the trust or its trustee against loss for damage to, destruction of, or loss
7 of title to, a trust asset. The trustee shall allocate dividends on an insurance policy
8 to income if the premiums on the policy are paid from income, and to principal if the
9 premiums are paid from principal.

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

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

14 (17) INSUBSTANTIAL ALLOCATIONS NOT REQUIRED. If a trustee determines that an
15 allocation between principal and income required by sub. (15) (b), (18), (19), (20), (21),
16 or (24) is insubstantial, the trustee may allocate the entire amount to principal
17 unless one of the circumstances described in sub. (4) (c) applies to the allocation. This
18 power may be exercised by a cotrustee in the circumstances described in sub. (4) (d)
19 and may be released for the reasons and in the manner described in sub. (4) (e). An
20 allocation is presumed to be insubstantial if:

21 (a) The amount of the allocation would increase or decrease net income in an
22 accounting period, as determined before the allocation, by less than 10 percent.

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

1 **(18) DEFERRED COMPENSATION, ANNUITIES, AND SIMILAR PAYMENTS.** (a) In this
2 subsection, “payment” means a payment that a trustee may receive over a fixed
3 number of years or during the life of one or more individuals because of services
4 rendered or property transferred to the payer in exchange for future payments. The
5 term includes a payment made in money or property from the payer’s general assets
6 or from a separate fund created by the payer, including a private or commercial
7 annuity, an individual retirement account, and a pension, profit-sharing,
8 stock-bonus, or stock-ownership plan.

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

14 (c) 1. In this paragraph, “plan income” means any of the following:

15 a. With respect to payments received from a plan that maintains separate
16 accounts or funds for its participants or account holders, such as defined contribution
17 retirement plans, individual retirement accounts, Roth individual retirement
18 accounts, and some types of deferred compensation plans, either the amount of the
19 plan account or fund held for the benefit of the trust that, if the plan account or fund
20 were a trust, would be allocated to income under pars. (b) and (d) for that accounting
21 period, or 4 percent of the value of the plan account or fund on the first day of the
22 accounting period. The trustee shall, in his or her discretion, choose the method of
23 determining “plan income” under this subd. 1. a., and may change the method of
24 determining “plan income” under this subd. 1. a. for any subsequent accounting
25 period.

1 b. With respect to payments received from a plan that does not maintain
2 separate accounts or funds for its participants or account holders, such as defined
3 benefit retirement plans and some types of deferred compensation plans, 4 percent
4 of the total present value of the trust's interest in the plan as of the first day of the
5 accounting period, based on reasonable actuarial assumptions as determined by the
6 trustee.

7 2. For each accounting period of a trust in which the trust receives a payment
8 but no part of any payment is allocated to income under par. (b), the trustee shall
9 allocate to income that portion of the aggregate value of all payments received by the
10 trustee in that accounting period that is equal to the amount of plan income that is
11 attributable to the trust's interest in the plan from which payment is received for that
12 accounting period. The trustee shall allocate the balance of any payments to
13 principal.

14 (d) If, to obtain an estate or gift tax marital deduction for an interest in a trust,
15 a trustee must allocate more of a payment to income than provided for by this
16 subsection, the trustee shall allocate to income the additional amount necessary to
17 obtain the marital deduction.

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

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

1 (23), an asset subject to sub. (24), or any asset for which the trustee establishes a
2 reserve for depreciation under sub. (27).

3 (b) A trustee shall allocate to income 10 percent of the receipts from a
4 liquidating asset and the balance to principal.

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

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

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

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

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

19 (b) An amount received on account of an interest in water that is renewable
20 must be allocated to income. If the water is not renewable, 90 percent of the amount
21 must be allocated to principal and the balance to income.

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

1 (d) If a trust owns an interest in minerals, water, or other natural resources on
2 the effective date of this paragraph [revisor inserts date], the trustee may allocate
3 receipts from the interest as provided in this subsection or in the manner used by the
4 trustee before the effective date of this paragraph [revisor inserts date]. If the
5 trust acquires an interest in minerals, water, or other natural resources after the
6 effective date of this paragraph [revisor inserts date], the trustee shall allocate
7 receipts from the interest as provided in this subsection.

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

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

14 2. To principal to the extent that the amount of timber removed from the land
15 exceeds the rate of growth of the timber or the net receipts are from the sale of
16 standing timber.

17 3. To income or principal or between income and principal if the net receipts
18 are from the lease of timberland or from a contract to cut timber from land owned by
19 a trust, by determining the amount of timber removed from the land under the lease
20 or contract and applying the rules in subds. 1. and 2.

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

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

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

3 (d) If a trust owns an interest in timberland on the effective date of this
4 paragraph [revisor inserts date], the trustee may allocate net receipts from the
5 sale of timber and related products as provided in this subsection or in the manner
6 used by the trustee before the effective date of this paragraph [revisor inserts
7 date]. If the trust acquires an interest in timberland after the effective date of this
8 paragraph [revisor inserts date], the trustee shall allocate net receipts from the
9 sale of timber and related products as provided in this subsection.

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

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

23 **(23) DERIVATIVES AND OPTIONS.** (a) In this subsection, “derivative” means a
24 contract or financial instrument or a combination of contracts and financial
25 instruments that gives a trust the right or obligation to participate in some or all

1 changes in the price of a tangible or intangible asset or group of assets, or changes
2 in a rate, an index of prices or rates, or another market indicator for an asset or a
3 group of assets.

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

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

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

23 (b) If a trust receives a payment from interest or other current return and from
24 other proceeds of the collateral financial assets, the trustee shall allocate to income

1 the portion of the payment that the payer identifies as being from interest or other
2 current return and shall allocate the balance of the payment to principal.

3 (c) If a trust receives one or more payments in exchange for the trust's entire
4 interest in an asset-backed security in one accounting period, the trustee shall
5 allocate the payments to principal. If a payment is one of a series of payments that
6 will result in the liquidation of the trust's interest in the security over more than one
7 accounting period, the trustee shall allocate 10 percent of the payment to income and
8 the balance to principal.

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

12 (a) One-half of the regular compensation of the trustee and of any person
13 providing investment advisory or custodial services to the trustee.

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

16 (c) All of the other ordinary expenses incurred in connection with the
17 administration, management, or preservation of trust property and the distribution
18 of income, including interest, ordinary repairs, regularly recurring taxes assessed
19 against principal, and expenses of a proceeding or other matter that concerns
20 primarily the income interest.

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

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

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

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

6 3. Payments on the principal of a trust debt.

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

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

11 6. Estate, inheritance, and other transfer taxes, including penalties,
12 apportioned to the trust.

13 7. Disbursements related to environmental matters, including reclamation,
14 assessing environmental conditions, remedying and removing environmental
15 contamination, monitoring remedial activities and the release of substances,
16 preventing future releases of substances, collecting amounts from persons liable or
17 potentially liable for the costs of those activities, penalties imposed under
18 environmental laws or regulations and other payments made to comply with those
19 laws or regulations, statutory or common law claims by 3rd parties, and defending
20 claims based on environmental matters.

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

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

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

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

11 2. During the administration of a decedent’s estate.

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

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

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

20 (b) Principal disbursements to which par. (a) applies include the following, but
21 only to the extent that the trustee has not been and does not expect to be reimbursed
22 by a 3rd party:

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

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

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

5 4. Periodic payments on an obligation secured by a principal asset to the extent
6 that the amount transferred from income to principal for depreciation is less than the
7 periodic payments.

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

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

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

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

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

19 1. From income to the extent that receipts from the entity are allocated to
20 income.

21 2. From principal to the extent that:

22 a. Receipts from the entity are allocated to principal.

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

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

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

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

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

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

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

1 beneficiary whose income taxes are reduced must be the same as its proportionate
2 share of the total decrease in income tax. An estate or trust shall reimburse principal
3 from income.

4 **(31) LIMITS ON LIABILITY.** (a) If a trustee sends to all beneficiaries a written
5 communication relating to the trust, any action against the trustee that is based on
6 the subject of the written communication shall be commenced within 2 years after
7 the trustee sends the written communication or be barred.

8 (b) 1. A written communication is sent to a sui juris beneficiary on the date on
9 which the written communication is delivered personally to the sui juris beneficiary
10 or on the date on which the written communication is postmarked if mailed to the
11 sui juris beneficiary at his or her last-known address.

12 2. A written communication is sent to a beneficiary who is not a sui juris
13 beneficiary on the date on which the written communication is delivered personally
14 to the beneficiary's parent or legal guardian or on the date on which the written
15 communication is postmarked if mailed to the beneficiary's parent or legal guardian
16 at his or her last-known address.

17 (c) The identity of all of the beneficiaries shall be determined on the date on
18 which the written communication is sent.

19 (d) Paragraph (a) does not apply to an action based on fraud or
20 misrepresentation with respect to the written communication.

21 **SECTION 6.** 701.21 (1) of the statutes is amended to read:

22 701.21 (1) DISTRIBUTION OF INCOME. ~~Where~~ Except as otherwise determined by
23 the trustee or a court under s. 701.20 (4g) with respect to unitrust distributions, if
24 a beneficiary is entitled to receive income from a trust, but the creating instrument

1 fails to specify how frequently it is to be paid, the trustee shall distribute at least
2 annually the income to which such beneficiary is entitled.

3 **SECTION 7.** 701.24 of the statutes is renumbered 701.24 (1) and amended to
4 read:

5 701.24 (1) Except as otherwise provided in s. 701.19 (9) (a) and (10), ss. 701.01
6 to 701.19, 701.21, 701.22, and 701.23 are applicable to a trust existing on July 1,
7 1971, as well as a trust created after such date and shall govern trustees acting under
8 such trusts. If application of any provision of ss. 701.01 to 701.19, 701.21, 701.22,
9 and 701.23 to a trust in existence on August 1, 1971, is unconstitutional, it shall not
10 affect application of the provision to a trust created after that date.

11 **SECTION 8.** 701.24 (2) of the statutes is created to read:

12 701.24 (2) Section 701.20 applies to every trust or decedent's estate existing on
13 the effective date of this subsection [revisor inserts date], and to every trust or
14 decedent's estate created or coming into existence after that date, except as otherwise
15 expressly provided in s. 701.20 or by the decedent's will or the terms of the trust. With
16 respect to a trust or decedent's estate existing on the effective date of this subsection
17 [revisor inserts date], s. 701.20 (5) to (30) shall apply at the beginning of the trust's
18 or estate's first accounting period, as defined in s. 701.20 (2) (a), that begins on or
19 after the effective date of this subsection [revisor inserts date].

20 **SECTION 9.** 705.21 (12) (a) of the statutes is amended to read:

21 705.21 (12) (a) A reinvestment account associated with a security, a securities
22 account with a broker, a cash balance in a brokerage account, cash, cash equivalents,
23 interest, earnings or dividends earned or declared on a security in an account, a
24 reinvestment account or a brokerage account, whether or not credited to the account
25 before the owner's death.

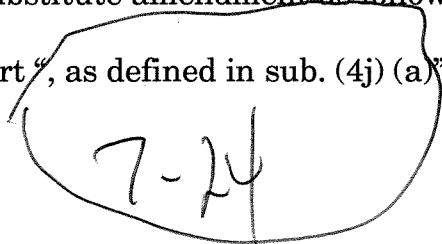
**ASSEMBLY AMENDMENT 1,
TO ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2005 ASSEMBLY BILL 140**

April 4, 2005 - Offered by Representative HUNDERTMARK.

1 At the locations indicated, amend the substitute amendment as follows:

2 1. Page 7, line 24: after "unitrust" insert ", as defined in sub. (4j) (a)".

3 (END)



7-24