

2005 DRAFTING REQUEST

Bill

Received: **02/24/2005**

Received By: **chanaman**

Wanted: **As time permits**

Identical to LRB:

For: **Jean Hundertmark (608) 266-3794**

By/Representing: **Jason Rostan**

This file may be shown to any legislator: **NO**

Drafter: **chanaman**

May Contact:

Adl. Drafters:

Subject: **Probate - trusts and trustees**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Hundertmark@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Principal and income allocations by fiduciaries and regulating fiduciary investments

Instructions:

See Attached--companion bill to 05-2204/1

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	chanaman 02/24/2005	kfollett 02/24/2005		_____			S&L
/1			jfrantze 02/24/2005	_____	lnorthro 02/24/2005		S&L
/2	chanaman 02/25/2005	kfollett 02/25/2005	chaugen 02/25/2005	_____	sbasford 02/25/2005	lnorthro 02/25/2005	

FE Sent For:

<END>

AA
Intro.

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/?	chanaman	11/18 2/24		J/Self 2/24			

FE Sent For:

<END>

2/24
Today or
2/25 am

-2269/1
LRB-2204/1
CMH:kjf/f ✓

Companion
bill
no changes

2005 BILL

repeal

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), 701.24 (3) and 705.21 (12) (am) of
 4 the statutes; **relating to:** providing rules for allocations between principal and
 5 income for trusts and estates and authorizing the conversion of a trust to a
 6 unitrust.

Analysis by the Legislative Reference Bureau

This bill generally replaces the Revised Uniform Principal and Income Act of 1962 with the Uniform Principal and Income Act of 1997. The Uniform Principal and Income Act of 1997 addresses the same issues but is more extensive and detailed, takes into account the widespread use of revocable living trusts as will replacements, and provides rules related to financial instruments and transactions that were not in use previously.

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

BILL

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.

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 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. Under the bill, a trustee is also authorized to convert a trust to a unitrust under specified circumstances.

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 or whether to convert a trust to a unitrust, unless the court determines that the decision was an abuse of the fiduciary's discretion. If the court determines that the decision was an abuse, 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.

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.

BILL

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

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

17 23.0918 (2) Unless the natural resources board determines otherwise in a
18 specific case, only the income from the gifts, grants, or bequests in the fund is
19 available for expenditure. The natural resources board may authorize expenditures
20 only for preserving, developing, managing, or maintaining land under the
21 jurisdiction of the department that is used for any of the purposes specified in s. 23.09

BILL

1 (2) (d). In this subsection, unless otherwise provided in a gift, grant, or bequest,
2 principal and income are determined as provided under s. 701.20 (3).

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

4 **25.70 Historical society trust fund.** There is established a separate
5 nonlapsible trust fund designated as the historical society trust fund, consisting of
6 all endowment principal and income and all cash balances of the historical society.
7 Unless the board of curators of the historical society determines otherwise in each
8 case, only the income from the assets in the historical society trust fund is available
9 for expenditure. In this section, unless otherwise provided in the gift, grant, or
10 bequest, principal and income are determined as provided under s. 701.20 (3).

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

12 701.12 (3) Nothing in this section shall prevent revocation, modification, or
13 termination of a trust pursuant to its terms or otherwise in accordance with law or
14 prevent conversion of a trust to a unitrust under s. 701.20 (4g).

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

16 **701.20 Principal and income. (2) DEFINITIONS.** In this section:

17 (a) “Accounting period” means a calendar year, unless a fiduciary selects
18 another 12-month period, and includes a portion of a calendar year or other
19 12-month period that begins when an income interest begins or that ends when an
20 income interest ends.

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

BILL

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

4 (d) “Income” means money or property that a fiduciary receives as current
5 return from a principal asset. “Income” includes a portion of receipts from a sale,
6 exchange, or liquidation of a principal asset, to the extent provided in subs. (10) to
7 (24).

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

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

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

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

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

22 (j) “Principal” means property held in trust for distribution to a remainder
23 beneficiary when the trust terminates.

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

BILL

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

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

5 2. An agent for an incapacitated beneficiary.

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

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

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

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

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

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

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

BILL

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.

BILL

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.

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.

BILL

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.

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 terms of the trust do not permit the exercise of the power by that cotrustee.

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

BILL

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

5 **(4c) NOTICE TO BENEFICIARIES OF PROPOSED ACTION.** (b) A trustee may, but is not
6 required to, obtain approval of a proposed action under sub. (4) (a) by providing a
7 written notice that complies with all of the following:

8 1. Is given at least 30 days before the proposed effective date of the proposed
9 action.

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

12 3. Is given to all sui juris beneficiaries who are income beneficiaries currently
13 eligible to receive income from the trust or who are remainder beneficiaries who
14 would receive, if no powers of appointment were exercised, a distribution of principal
15 if the trust were to terminate immediately before the giving of the notice.

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

18 a. The identification of the trustee.

19 b. A description of the proposed action.

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

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

BILL

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

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

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

10 (f) If a trustee receives a written objection to a proposed action within the time
11 specified in the notice under par. (b) 4. c., either the trustee or the beneficiary making
12 the written objection may petition the court to have the proposed action approved,
13 modified, or prohibited. In the court proceeding, the beneficiary objecting to the
14 proposed action has the burden of proving that the proposed action should be
15 prohibited. A beneficiary who did not make the written objection may oppose the
16 proposed action in the court proceeding.

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

19 **(4g) CONVERSION TO UNITRUST.** (a) Subject to par. (d), a trust may be converted
20 to a unitrust in any of the following ways:

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

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

BILL

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

5 c. There is at least one sui juris beneficiary who is an income beneficiary who
6 is currently eligible to receive income from the trust and at least one other sui juris
7 beneficiary who is a remainder beneficiary who would receive, if no powers of
8 appointment were exercised, a distribution of principal if the trust were to terminate
9 immediately before the notice under subd. 1. b. is given.

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

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

14 f. The trustee invests and manages the trust assets as provided in s. 881.01.

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

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

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

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

BILL

1 (c) 1. If a trust is converted to a unitrust under this subsection by the trustee
2 or a court, notwithstanding sub. (3) (a) 1. and 4. and s. 701.21 (4) the trustee shall
3 make distributions in accordance with the creating instrument, except that any
4 reference in the creating instrument to “income” means a fixed percentage of the net
5 fair market value of the unitrust’s assets, whether such assets otherwise would be
6 considered income or principal under this section, averaged over a 3-year period or
7 the period since the original trust was created, whichever is less.

8 2. a. Subject to subd. 2. b., if the trust is converted to a unitrust under par. (a)
9 1., the trustee shall determine the fixed percentage to be applied under subd. 1., and
10 the notice under par. (a) 1. b. must state the fixed percentage. If the trust is converted
11 to a unitrust under par. (a) 2., the court shall determine the fixed percentage to be
12 applied under subd. 1.

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

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

18 a. Convert the unitrust back to the original trust under the creating
19 instrument.

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

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

23 a. The frequency of distributions during the year.

24 b. Standards for prorating a distribution for a short year in which a
25 beneficiary’s right to payments commences or ceases.

BILL

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

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

4 e. The valuation dates to use.

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

7 g. Any other matters necessary for the proper functioning of the unitrust.

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

10 6. Unless otherwise provided by the creating instrument, a unitrust
11 distribution shall be paid as follows:

12 a. From net income, determined as if the trust were not a unitrust.

13 b. To the extent that net income under subd. 6. a. is insufficient, from net
14 realized short-term capital gains.

15 c. To the extent that net income under subd. 6. a. and short-term capital gains
16 under subd. 6. b. are insufficient, from net realized long-term capital gains.

17 d. To the extent that net income under subd. 6. a., short-term capital gains
18 under subd. 6. b., and net realized long-term capital gains under subd. 6. c. are
19 insufficient, from principal.

20 7. A court may, on the petition of the trustee or a beneficiary, do any of the
21 following:

22 a. Change the fixed percentage that was determined under subd. 2. by the
23 trustee or by a prior court order.

24 b. If necessary to preserve a tax benefit, provide for a distribution of net income,
25 determined as if the trust were not a unitrust, that exceeds the unitrust distribution.

BILL

1 c. Average the valuation of the unitrust's assets over a period other than that
2 specified in subd. 1.

3 d. Require the unitrust to be converted back to the original trust under the
4 creating instrument.

5 8. Conversion to a unitrust under this subsection does not affect a provision in
6 the creating instrument that directs or authorizes the trustee to distribute principal
7 or that authorizes a beneficiary to withdraw a portion or all of the principal.

8 (d) 1. A trust may not be converted under this subsection to a unitrust if any
9 of the following applies:

10 a. The creating instrument specifically prohibits the conversion.

11 b. Payment of the unitrust distribution will change the amount payable to a
12 beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets.

13 c. The unitrust distribution will be made from any amount that is permanently
14 set aside for charitable purposes under the creating instrument and for which a
15 federal estate or gift tax deduction has been taken, unless both income and principal
16 are so set aside.

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

20 e. Converting to a unitrust will cause all or a part of the trust assets to be
21 subject to federal estate or gift tax with respect to an individual and the trust assets
22 would not be subject to federal estate or gift tax with respect to the individual if the
23 trust were not converted.

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

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

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

7 **(4m)** JUDICIAL REVIEW OF DISCRETIONARY POWER. (a) Nothing in this section
8 requires a trustee to make an adjustment under sub. (4) or to convert a trust to a
9 unitrust under sub. (4g) (a) 1. Unless it determines that the decision to make an
10 adjustment or to convert to a unitrust was an abuse of the fiduciary's discretion, a
11 court may not grant relief from any decision a fiduciary makes regarding the exercise
12 of a discretionary power conferred by sub. (4) or (4g).

13 (am) An action taken under sub. (4) or (4g) is not an abuse of a fiduciary's
14 discretion if the fiduciary gave written notice of the proposed action under sub. (4c)
15 and did not receive a timely written objection to the notice.

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

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

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

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1 will restore the beneficiary, in whole or in part, to the beneficiary's appropriate
2 position.

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

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

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

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

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

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

9 1. Including in net income all income from property used to discharge
10 liabilities.

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

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

23 (c) A fiduciary shall distribute to a beneficiary, including a trustee, who receives
24 a pecuniary amount not determined by a pecuniary formula interest at the legal rate
25 set forth in s. 138.04 on any unpaid portion of the pecuniary amount for the period

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1 commencing one year after the decedent's death or after the income interest in the
2 trust ends. The interest under this paragraph shall be distributed from net income
3 determined under par. (b) or from principal to the extent that net income is
4 insufficient.

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

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

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

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1 date, to the net income the fiduciary has received after the date of death or
2 terminating event or earlier distribution date but has not distributed as of the
3 current distribution date.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (b) A trustee shall allocate to income an income receipt or disbursement if its
25 due date occurs on or after the date on which a decedent dies or an income interest

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1 begins and it is a periodic due date. An income receipt or disbursement must be
2 treated as accruing from day to day if its due date is not periodic or it has no due date.
3 The portion of the receipt or disbursement accruing before the date of death or an
4 income interest begins must be allocated to principal and the balance must be
5 allocated to income.

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

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

19 (b) When a mandatory income interest ends, the trustee shall pay to a
20 mandatory income beneficiary who survives that date, or to the estate of a deceased
21 mandatory income beneficiary whose death causes the interest to end, the
22 beneficiary’s share of the undistributed income that is not disposed of under the
23 terms of the trust unless the beneficiary has an unqualified power to revoke more
24 than 5 percent of the trust immediately before the income interest ends. In the latter

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1 case, the undistributed income from the portion of the trust that may be revoked
2 must be added to principal.

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

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

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

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

16 1. Property other than money.

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

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

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

23 (d) Money is received in partial liquidation:

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

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

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

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

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

21 **(12) BUSINESS AND OTHER ACTIVITIES CONDUCTED BY TRUSTEE.** (a) If a trustee who
22 conducts a business or other activity determines that it is in the best interest of all
23 the beneficiaries to account separately for the business or activity instead of
24 accounting for it as part of the trust's general accounting records, the trustee may

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1 maintain separate accounting records for its transactions, whether or not its assets
2 are segregated from other trust assets.

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

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

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

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

23 (a) To the extent not allocated to income under this section, assets received from
24 a transferor during the transferor's lifetime, a decedent's estate, a trust with a

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1 terminating income interest, or a payer under a contract naming the trust or its
2 trustee as beneficiary.

3 (b) Money or other property received from the sale, exchange, liquidation, or
4 change in form of a principal asset, including realized profit, subject to subs. (10) to
5 (24).

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

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

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

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

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

23 **(15) OBLIGATION TO PAY MONEY.** (a) An amount received as interest, whether
24 determined at a fixed, variable, or floating rate, on an obligation to pay money to the

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1 trustee, including an amount received as consideration for prepaying principal, must
2 be allocated to income without any provision for amortization of premium.

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

10 (c) This subsection does not apply to an obligation to which sub. (18), (19), (20),
11 (21), (23), or (24) applies.

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

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

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

23 **(17) INSUBSTANTIAL ALLOCATIONS NOT REQUIRED.** If a trustee determines that an
24 allocation between principal and income required by sub. (15) (b), (18), (19), (20), (21),
25 or (24) is insubstantial, the trustee may allocate the entire amount to principal

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1 unless one of the circumstances described in sub. (4) (c) applies to the allocation. This
2 power may be exercised by a cotrustee in the circumstances described in sub. (4) (d)
3 and may be released for the reasons and in the manner described in sub. (4) (e). An
4 allocation is presumed to be insubstantial if:

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

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

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

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

23 (c) 1. In this paragraph, "plan income" means any of the following:

24 a. With respect to payments received from a plan that maintains separate
25 accounts or funds for its participants or account holders, such as defined contribution

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1 retirement plans, individual retirement accounts, Roth individual retirement
2 accounts, and some types of deferred compensation plans, either the amount of the
3 plan account or fund held for the benefit of the trust that, if the plan account or fund
4 were a trust, would be allocated to income under pars. (b) and (d) for that accounting
5 period, or 4 percent of the value of the plan account or fund on the first day of the
6 accounting period. The trustee shall, in his or her discretion, choose the method of
7 determining “plan income” under this subd. 1. a., and may change the method of
8 determining “plan income” under this subd. 1. a. for any subsequent accounting
9 period.

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

16 2. For each accounting period of a trust in which the trust receives a payment
17 but no part of any payment is allocated to income under par. (b), the trustee shall
18 allocate to income that portion of the aggregate value of all payments received by the
19 trustee in that accounting period that is equal to the amount of plan income that is
20 attributable to the trust’s interest in the plan from which payment is received for that
21 accounting period. The trustee shall allocate the balance of any payments to
22 principal.

23 (d) If, to obtain an estate or gift tax marital deduction for an interest in a trust,
24 a trustee must allocate more of a payment to income than provided for by this

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1 subsection, the trustee shall allocate to income the additional amount necessary to
2 obtain the marital deduction.

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

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

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

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

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

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

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

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

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

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

10 (d) If a trust owns an interest in minerals, water, or other natural resources on
11 the effective date of this paragraph [revisor inserts date], the trustee may allocate
12 receipts from the interest as provided in this subsection or in the manner used by the
13 trustee before the effective date of this paragraph [revisor inserts date]. If the
14 trust acquires an interest in minerals, water, or other natural resources after the
15 effective date of this paragraph [revisor inserts date], the trustee shall allocate
16 receipts from the interest as provided in this subsection.

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

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

23 2. To principal to the extent that the amount of timber removed from the land
24 exceeds the rate of growth of the timber or the net receipts are from the sale of
25 standing timber.

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

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

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

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

11 (d) If a trust owns an interest in timberland on the effective date of this
12 paragraph [revisor inserts date], the trustee may allocate net receipts from the
13 sale of timber and related products as provided in this subsection or in the manner
14 used by the trustee before the effective date of this paragraph [revisor inserts
15 date]. If the trust acquires an interest in timberland after the effective date of this
16 paragraph [revisor inserts date], the trustee shall allocate net receipts from the
17 sale of timber and related products as provided in this subsection.

18 **(22) PROPERTY NOT PRODUCTIVE OF INCOME.** (a) If a marital deduction is allowed
19 for all or part of a trust whose assets consist substantially of property that does not
20 provide the surviving spouse with sufficient income from or use of the trust assets,
21 and if the amounts that the trustee transfers from principal to income under sub. (4)
22 and distributes to the spouse from principal in accordance with the terms of the trust
23 are insufficient to provide the spouse with the beneficial enjoyment required to
24 obtain the marital deduction, the spouse may require the trustee to make property
25 productive of income, convert property within a reasonable time, or exercise the

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1 power conferred by sub. (4) (a). The trustee may decide which action or combination
2 of actions to take.

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

6 **(23) DERIVATIVES AND OPTIONS.** (a) In this subsection, “derivative” means a
7 contract or financial instrument or a combination of contracts and financial
8 instruments that gives a trust the right or obligation to participate in some or all
9 changes in the price of a tangible or intangible asset or group of assets, or changes
10 in a rate, an index of prices or rates, or another market indicator for an asset or a
11 group of assets.

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

15 (c) If a trustee grants an option to buy property from the trust, whether or not
16 the trust owns the property when the option is granted, grants an option that permits
17 another person to sell property to the trust, or acquires an option to buy property for
18 the trust or an option to sell an asset owned by the trust, and the trustee or other
19 owner of the asset is required to deliver the asset if the option is exercised, an amount
20 received for granting the option must be allocated to principal. An amount paid to
21 acquire the option must be paid from principal. A gain or loss realized upon the
22 exercise of an option, including an option granted to a settlor of the trust for services
23 rendered, must be allocated to principal.

24 **(24) ASSET-BACKED SECURITIES.** (a) In this subsection, “asset-backed security”
25 means an asset whose value is based upon the right it gives the owner to receive

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1 distributions from the proceeds of financial assets that provide collateral for the
2 security. The term includes an asset that gives the owner the right to receive from
3 the collateral financial assets only the interest or other current return or only the
4 proceeds other than interest or current return. The term does not include an asset
5 to which sub. (10) or (18) applies.

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

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

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

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

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

23 (c) All of the other ordinary expenses incurred in connection with the
24 administration, management, or preservation of trust property and the distribution
25 of income, including interest, ordinary repairs, regularly recurring taxes assessed

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1 against principal, and expenses of a proceeding or other matter that concerns
2 primarily the income interest.

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

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

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

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

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

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

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

17 6. Estate, inheritance, and other transfer taxes, including penalties,
18 apportioned to the trust.

19 7. Disbursements related to environmental matters, including reclamation,
20 assessing environmental conditions, remedying and removing environmental
21 contamination, monitoring remedial activities and the release of substances,
22 preventing future releases of substances, collecting amounts from persons liable or
23 potentially liable for the costs of those activities, penalties imposed under
24 environmental laws or regulations and other payments made to comply with those

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1 laws or regulations, statutory or common law claims by 3rd parties, and defending
2 claims based on environmental matters.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 1. From income to the extent that receipts from the entity are allocated to
25 income.

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1 2. From principal to the extent that:

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

3 b. The trust's share of the entity's taxable income exceeds the total receipts
4 described in subs. 1. and 2. a.

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

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

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

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

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

20 (b) If the amount of an estate tax marital deduction or charitable contribution
21 deduction is reduced because a fiduciary deducts an amount paid from principal for
22 income tax purposes instead of deducting it for estate tax purposes, and as a result
23 estate taxes paid from principal are increased and income taxes paid by an estate,
24 trust, or beneficiary are decreased, each estate, trust, or beneficiary that benefits
25 from the decrease in income tax shall reimburse the principal from which the

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1 increase in estate tax is paid. The total reimbursement must equal the increase in
2 the estate tax to the extent that the principal used to pay the increase would have
3 qualified for a marital deduction or charitable contribution deduction but for the
4 payment. The proportionate share of the reimbursement for each estate, trust, or
5 beneficiary whose income taxes are reduced must be the same as its proportionate
6 share of the total decrease in income tax. An estate or trust shall reimburse principal
7 from income.

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

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

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

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

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

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

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1 701.21 (1) DISTRIBUTION OF INCOME. ~~Where~~ Except as otherwise determined by
2 the trustee or a court under s. 701.20 (4g) with respect to unitrust distributions, if
3 a beneficiary is entitled to receive income from a trust, but the creating instrument
4 fails to specify how frequently it is to be paid, the trustee shall distribute at least
5 annually the income to which such beneficiary is entitled.

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

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

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

15 701.24 (2) Section 701.20 (1) to (4c), (4g) (a) 2., and (4m) to (31) applies to every
16 trust or decedent's estate existing on the effective date of this subsection [revisor
17 inserts date], and to every trust or decedent's estate created or coming into existence
18 after that date, except as otherwise expressly provided in s. 701.20 or by the
19 decedent's will or the terms of the trust. With respect to a trust or decedent's estate
20 existing on the effective date of this subsection [revisor inserts date], s. 701.20 (5)
21 to (30) shall apply at the fiduciary's discretion at the beginning of the trust's or
22 estate's first accounting period, as defined in s. 701.20 (2) (a), that begins on or after
23 the effective date of this subsection [revisor inserts date].

24 **SECTION 9.** 701.24 (3) of the statutes is created to read:

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1 701.24 (3) Section 701.20 (4g) (a) 1. applies to every trust created under a
2 creating instrument that is executed on or after the effective date of this subsection
3 [revisor inserts date].

4 **SECTION 10.** 705.21 (12) (a) of the statutes is amended to read:

5 705.21 (12) (a) A reinvestment account associated with a security, a securities
6 account with a broker, a cash balance in a brokerage account, cash, cash equivalents,
7 interest, earnings or dividends earned or declared on a security in an account, a
8 reinvestment account or a brokerage account, whether or not credited to the account
9 before the owner's death.

10 **SECTION 11.** 705.21 (12) (am) of the statutes is created to read:

11 705.21 (12) (am) An investment management or custody account with a trust
12 company or a trust division of a bank with trust powers, including the securities in
13 the account, a cash balance in the account, and cash, cash equivalents, interest,
14 earnings, or dividends earned or declared on a security in the account, whether or
15 not credited to the account before the owner's death.

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

17 861.015 (2) For purposes of this section, property subject to a directive is valued
18 by its clear market value on the date of the decedent's death. Satisfaction of the
19 nonholding spouse's marital property interest in the property subject to the directive
20 shall be based on that value, plus any income from the property subject to the
21 directive after the death of the decedent and before satisfaction. For purposes of
22 determining the income from the property subject to a directive, such property shall
23 be treated as a legacy or devise of property other than money under s. 701.20 (5) ~~(b)~~
24 4.

25 **SECTION 13. Initial applicability.**

