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State of Wisconsin
2005 – 2006 LEGISLATURE

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2005 BILL

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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.

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.

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.

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:

SECTION 1. 20.907 (1) of the statutes is amended to read:

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

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

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

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

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

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

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

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

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

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

(a) "Accounting period" means a calendar year, unless a fiduciary selects another 12–month period, and includes a portion of a calendar year or other 12–month period that begins when an income interest begins or that ends when an income interest ends.

(b) "Beneficiary" means a person who has a beneficial interest in a trust or an estate and includes, in the case of a decedent's estate, an heir, a legatee, and a devisee and, in the case of a trust, an income beneficiary and a remainder beneficiary.

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

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

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

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

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

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

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

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

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

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

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

2. An agent for an incapacitated beneficiary.

3. A court–appointed guardian of a minor beneficiary's estate or, if there is no court–appointed guardian, the parents of the minor beneficiary.

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

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

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

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

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

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

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

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

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

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

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

2. The intent of the settlor.

3. The identity and circumstances of the beneficiaries.

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

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

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

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

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

9. The anticipated tax consequences of an adjustment.

(c) A trustee may not make an adjustment:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. The identification of the trustee.

b. A description of the proposed action.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. The frequency of distributions during the year.

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

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

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

e. The valuation dates to use.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. The creating instrument specifically prohibits the conversion.

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

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

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

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

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

g. A trustee is a beneficiary of the trust.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) An asset becomes subject to a trust:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Property other than money.

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

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

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

(d) Money is received in partial liquidation:

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

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

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

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

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

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

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

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

1. Retail, manufacturing, service, and other traditional business activities.

2. Farming.

3. Raising and selling livestock and other animals.

4. Management of rental properties.

5. Extraction of minerals and other natural resources.

6. Timber operations.

7. Activities to which sub. (23) applies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Payments on the principal of a trust debt.

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

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

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

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

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

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

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

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

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

2. During the administration of a decedent's estate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. From principal to the extent that:

a. Receipts from the entity are allocated to principal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 13. Initial applicability.

(1) The treatment of section 701.20 (31) of the statutes first applies to written communications sent on the effective date of this subsection.

(END)

Northrop, Lori

From: Rostan, Jason
Sent: Friday, February 25, 2005 12:32 PM
To: LRB.Legal
Subject: Draft review: LRB 05-2269/2 Topic: Principal and income allocations by fiduciaries and regulating fiduciary investments

It has been requested by <Rostan, Jason> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 05-2269/2 Topic: Principal and income allocations by fiduciaries and regulating fiduciary investments