CHAPTER ~~15.1~~ 10.

UNIFORM PRINCIPAL AND INCOME ACT.

Drafting note: Existing Chapter 15.1 of Title 55 has been relocated to proposed Chapter 10 of Subtitle III of Title 64.2. Proposed Subtitle III collects the various provisions dealing with trusts.

Existing Chapter 15.1 is based on the Uniform Principal and Income Act promulgated by the National Conference of Commissioners on Uniform State Laws in 1997, and there is little variation between the language of the Act as promulgated and as adopted in Virginia.

Article 1.

Definitions and Fiduciary Duties.

~~§ 55-277.1. Short title.~~

~~This chapter may be cited as the Uniform Principal and Income Act.~~

Drafting note: This section is deleted as unnecessary because of the title-wide application of § 1-244, which states that the caption of a subtitle, chapter, or article serves as a short title citation.

§ ~~55-277.2~~ 64.2-1000. Definitions.

In this chapter:

"Accounting period" means a calendar year unless another ~~twelve-month~~ 12-month period is selected by a fiduciary. The term includes a portion of a calendar year or other ~~twelve-month~~ 12-month period that begins when an income interest begins or ends when an income interest ends.

"Beneficiary" includes, in the case of a decedent's estate, an heir, legatee, and devisee and, in the case of a trust, an income beneficiary and a remainder beneficiary.

"Fiduciary" means a personal representative or a trustee. The term includes an executor, administrator, successor personal representative, special administrator, and a person performing substantially the same function.

"Income" means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in Article 4 (§ ~~55-277.10~~ 64.2-1009 et seq.) of this chapter.

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

"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.

"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.

"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 chapter to or from income during the period.

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

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

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

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

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

Drafting note: Technical changes.

§ ~~55-277.3~~ 64.2-1001. Fiduciary duties; general principles.

A. In allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of Articles 2 (§ ~~55-277.5~~ 64.2-1004 et seq.) and 3 (§ ~~55-277.7~~ 64.2-1006 et seq.) of this chapter, a fiduciary:

1. Shall 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 chapter;

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 chapter;

3. Shall administer a trust or estate in accordance with this chapter 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; and

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

B. In exercising the power to adjust under subsection A of § ~~55-277.4~~ 64.2-1002 or a discretionary power of administration regarding a matter within the scope of this chapter, whether granted by the terms of a trust, a will, or this chapter, 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 chapter is presumed to be fair and reasonable to all of the beneficiaries.

C. The power of a fiduciary to allocate receipts and expenses between income and principal, whether incorporated by reference, expressly conferred by the terms of a will or trust, or granted by a court pursuant to § ~~64.1-57.1~~ 64.2-106, does not alone constitute a discretionary power of administration for purposes of this section.

Drafting note: Technical changes.

§ ~~55-277.4~~ 64.2-1002. Fiduciary's power to adjust.

A. A fiduciary may adjust between principal and income to the extent the fiduciary considers necessary if the fiduciary invests and manages trust assets as a prudent investor, the terms of the trust describe the amount that may or ~~must~~ shall be distributed to a beneficiary by referring to the trust's income, and the fiduciary determines, after applying the rules in subsection A of § ~~55-277.3~~ 64.2-1001, that the fiduciary is unable to comply with subsection B of § ~~55-277.3~~ 64.2-1001.

B. In deciding whether and to what extent to exercise the power conferred by subsection A, a fiduciary 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 fiduciary or received from the settlor;

6. The net amount allocated to income under the other sections of this chapter and the increase or decrease in the value of the principal assets, which the fiduciary may estimate as to assets for which market values are not readily available;

7. Whether and to what extent the terms of the trust give the fiduciary the power to invade principal or accumulate income or prohibit the fiduciary from invading principal or accumulating income, and the extent to which the fiduciary 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; and

9. The anticipated tax consequences of an adjustment.

C. A fiduciary 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 spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the fiduciary 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 fiduciary 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 fiduciary or appoint a fiduciary, or both, and the assets would not be included in the estate of the individual if the fiduciary did not possess the power to make an adjustment;

7. If the fiduciary is a beneficiary of the trust; or

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

D. If subdivision C 5, 6, 7, or 8 applies to a fiduciary and there is more than one fiduciary, a cofiduciary to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining fiduciary or fiduciaries is not permitted by the terms of the trust. Any beneficiary or fiduciary may petition the circuit court for appointment of a cofiduciary who would be permitted to make an adjustment not permitted by the other fiduciary or fiduciaries.

E. A fiduciary may release the entire power conferred by subsection A or may release only the power to adjust from income to principal or the power to adjust from principal to income if the fiduciary is uncertain about whether possessing or exercising the power will cause a result described in subdivisions C 1 through 6 or subdivision C 8 or if the fiduciary 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 subsection 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 fiduciary to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the fiduciary the power of adjustment conferred by subsection A.

G. As used in this section and the application of this section elsewhere in this chapter, the term "trust" includes the assets under the control or management of a personal representative.

Drafting note: Technical changes.

§ ~~55-277.4:1~~ 64.2-1003. Total return unitrust.

A. As used in this section:

~~1.~~ "Disinterested person" means a person who is not a "related or subordinate ~~party" (~~ party," as that term is defined in § 672~~-~~(c) of the Internal Revenue Code~~, 26 U.S.C. § 1, et seq.,~~

(hereinafter referred to in this section as the "I.R.C.", and all such references shall include the specific section referred to and any successor provisions thereof)) with respect to the person then acting as trustee of the trust, and excludes the grantor of the trust and any interested trustee.

~~2.~~ "Grantor" means an individual who created an inter vivos or a testamentary trust.

~~3.~~ "Grantor-created unitrust" means a trust, created either by an inter vivos or a testamentary instrument~~, which~~ that provides that the trust shall be administered in the manner of a total return unitrust as provided in this section.

~~4.~~ "Income trust" means a trust, created by either an inter vivos or a testamentary instrument~~, which~~ that directs or permits the trustee to distribute the net income of the trust to one or more persons, either in fixed proportions or in amounts or proportions determined by the trustee, and regardless of whether the trust directs or permits the trustee to distribute the principal of the trust to one or more such persons.

~~5.~~ "Interested distributee" means a person to whom distributions of income or principal can currently be made who has the power to remove the existing trustee and designate as successor a person who may be a "related or subordinate party" as defined in I.R.C. § 672(c)~~, 26 U.S.C. § 672 (c)~~, with respect to such distributee.

~~6.~~ "Interested trustee" means~~:~~ (i) an individual trustee to whom the net income or principal of the trust can currently be distributed or would be distributed if the trust were then to terminate and be distributed; (ii) any trustee who may be removed and replaced by an interested distributee; or (iii) an individual trustee whose legal obligation to support a beneficiary may be satisfied by distributions of income and principal of the trust.

~~7.~~ "Total return unitrust" means (i) an income trust~~, which~~ that has been converted under and meets the provisions of this section; or (ii) a grantor-created unitrust.

~~8.~~ "Trustee" means all persons acting as trustee of the trust, except where expressly noted otherwise, whether acting in their discretion or at the direction of one or more persons acting in a fiduciary capacity.

~~9.~~ "Unitrust amount" means an amount computed as a percentage of the fair market value of the trust.

B. A trustee, other than an interested trustee, or where two persons are acting as trustees the trustee that is not an interested trustee, or where more than two persons are acting as trustee a majority of the trustees who are not an interested trustee, may, in~~ its~~ his sole discretion and without judicial approval, (i) convert an income trust to a total return unitrust; (ii) convert a total return unitrust to an income trust; or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust if:

1. The trustee adopts a written policy for the trust providing: (i) in the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income; (ii) in the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income rather than unitrust amounts;

or (iii) that the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed as stated in the policy;

2. The trustee sends notice in a manner authorized under § ~~55-541.09~~ 64.2-707 of ~~its~~ his intention to take such action, along with copies of such written policy and this section, to~~:~~ (i) the grantor of the trust, if living; (ii) without regard to the exercise of any power of appointment, the qualified beneficiaries of the trust then determined under §§ ~~55-541.03~~ 64.2-701 and ~~55-541.10~~ 64.2-708, other than the ~~attorney general of the Commonwealth~~ Attorney General; and (iii) all persons acting as advisor or protector of the trust. The representation provisions of §§ ~~55-543.01~~ 64.2-714, ~~55-543.03~~ 64.2-716, ~~55-543.04~~ 64.2-717, and ~~55-543.05~~ 64.2-718 shall apply to notice under this subdivision;

3. At least one member of each class of qualified beneficiaries receiving notice under clause (ii) of subdivision 2 is (i) legally competent, (ii) in the case of a charitable organization, then existing, or (iii) represented in the manner set forth in subdivision 2; and

4. No person receiving such notice objects, by written instrument delivered to the trustee, to the proposed action of the trustee within 30 days of receipt of such notice.

C. If there is no trustee of the trust other than an interested trustee, the interested trustee or, where two or more persons are acting as trustee and are interested trustees, a majority of such interested trustees may, in ~~its~~ his sole discretion and without judicial approval, (i) convert an income trust to a total return unitrust; (ii) convert a total return unitrust to an income trust; or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust if:

1. The trustee adopts a written policy for the trust providing: (i) in the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income; (ii) in the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income rather than unitrust amounts; or (iii) that the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed as stated in the policy;

2. The trustee appoints a disinterested person who, in ~~its~~ his sole discretion but acting in a fiduciary capacity: (i) in the case of conversion to a total return unitrust, determines for the trustee (a) the percentage to be used to calculate the unitrust amount, (b) the method to be used in determining the fair market value of the trust, and (c) which assets, if any, are to be excluded in determining the unitrust amount; and (ii) determines for the trustee that conversion is in the best interests of the trust;

3. The trustee sends notice in a manner authorized under § ~~55-541.09~~ 64.2-707 of ~~its~~ his intention to take such action, along with copies of such written policy and this section, to~~:~~ (i) the grantor of the trust, if living; (ii) without regard to the exercise of any power of appointment, the qualified beneficiaries of the trust then determined under §§ ~~55-541.03~~ 64.2-701 and ~~55-541.10~~ 64.2-708, other than the ~~attorney general of the Commonwealth~~ Attorney General; and (iii) all persons acting as advisor or protector of the trust. The representation provisions of §§ ~~55-543.01~~

64.2-714, ~~55-543.03~~ 64.2-716, ~~55-543.04~~ 64.2-717, and ~~55-543.05~~ 64.2-718 shall apply to notice under this subdivision;

4. At least one member of each class of qualified beneficiaries receiving notice under clause (ii) of subdivision 3 is (i) legally competent, (ii) in the case of a charitable organization, then existing, or (iii) represented in the manner set forth in subdivision 3; and

5. No person receiving such notice objects, by written instrument delivered to the trustee, to the proposed action of the trustee or the determinations of the disinterested person within 30 days of receipt of such notice.

D. If any trustee desires to convert an income trust to a total return unitrust, convert a total return unitrust to an income trust, or change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust but does not have the ability to or elects not to do it under the provisions of subsections B or C above, the trustee may petition the circuit court in which the trustee qualified, or if there is no such qualification, the circuit court for the jurisdiction in which the trustee or beneficiary resides, or if the trustee is a corporate trustee and there is no resident beneficiary, the circuit court where the trust account is administered, for such order as the trustee deems appropriate. In the event, however, there is only one trustee of such trust and such trustee is an interested trustee or in the event there are two or more trustees of such trust and a majority of them are interested trustees, the court, in its own discretion or on the petition of such trustee or trustees or any person interested in the trust, may appoint a disinterested person who, acting in a fiduciary capacity, shall present such information to the court as shall be necessary to enable the court to make its determinations hereunder. Any qualified beneficiary of the trust then determined under §§ ~~55-541.03~~ 64.2-701 and ~~55-541.10~~ 64.2-708, other than the ~~attorney general of the Commonwealth~~ Attorney General, may also petition such circuit court to convert an income trust to a total return unitrust, convert a total return unitrust to an income trust, or change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust assets.

E. The fair market value of the trust shall be determined at least annually, using such valuation date or dates or averages of valuation dates as are deemed appropriate. ~~Assets~~ Any asset for which a fair market value cannot be readily ascertained shall be valued using such valuation methods as are deemed reasonable and appropriate. ~~Such assets~~ Any such asset may be excluded from valuation, provided all income received with respect to such ~~assets~~ asset is distributed to the extent distributable in accordance with the terms of the governing instrument.

F. The percentage to be used in determining the unitrust amount shall be a reasonable current return from the trust, in any event no less than three percent nor more than five percent, either as provided by the grantor in the governing instrument in the case of a grantor-created unitrust, or otherwise taking into account the intentions of the grantor of the trust as expressed in the governing instrument, the needs of the beneficiaries, general economic conditions, projected current earnings and appreciation for the trust, and projected inflation and its impact on the trust.

G. Following the conversion of an income trust to a total return unitrust, or upon the creation of a grantor-created unitrust, the trustee:

1. Shall treat the unitrust amount as if it were net income of the trust for purposes of determining the amount available, from time to time, for distribution from the trust, and the distribution of the unitrust amount shall be considered in full satisfaction of the distribution of all of the net income of the trust;

2. May allocate to trust income for each taxable year of the trust, or portion thereof:

~~(i) net~~a. Net short-term capital gain described in I.R.C. § 1222(5)~~, 26 U.S.C. § 1222 (5)~~, for such year or portion thereof, but only to the extent that the amount so allocated together with all other amounts allocated to trust income for such year or portion thereof does not exceed the unitrust amount for such year or portion thereof; and

~~(ii) net~~b. Net long-term capital gain described in I.R.C. § 1222(7)~~, 26 U.S.C. § 1222 (7)~~, for such year or portion thereof but only to the extent that the amount so allocated together with all other amounts, including amounts described in~~ clause (i) of this~~ subdivision 2 a, allocated to trust income for such year, or portion thereof, does not exceed the unitrust amount for such year, or portion thereof; and

3. Shall treat the unitrust amount as if it were income of the trust for purposes of determining the amount of trustee compensation where the governing instrument directs that such compensation be based wholly or partially on income.

H. In administering a total return unitrust, the trustee may, in~~ its~~ his sole discretion but subject to the provisions of the governing instrument, determine~~:~~ (i) if the trust is converted to a total return unitrust, the effective date of the conversion; (ii) the timing of distributions, including provisions for prorating a distribution for a short year in which a beneficiary's right to payments commences or ceases; (iii) whether distributions are to be made in cash or in kind or partly in cash and partly in kind; (iv) if the trust is converted to an income trust, the effective date of such conversion; and (v) such other administrative matters as may be necessary or appropriate to carry out the purposes of this section.

I. Conversion to a total return unitrust under the provisions of this section shall not affect any other provision of the governing instrument, if any, regarding distributions of principal.

J. Subject to the provisions of the governing instrument, this section shall be construed as pertaining to the administration of a trust and shall be available to any trust that is administered under Virginia law, regardless of the date the trust was created, unless:

1. The governing instrument reflects an intention that the current beneficiary or beneficiaries are to receive an amount other than a reasonable current return from the trust;

2. The trust is a pooled income fund described in I.R.C. § 642(c)(5)~~, 26 U.S.C. § 642(c)(5)~~, or a charitable-remainder trust described in I.R.C. § 664(d)~~, 26 U.S.C. § 664(d)~~; or

3. The governing instrument expressly prohibits use of this section by specific reference to this section or expressly reflects the grantor's intent that net income not be calculated as a unitrust amount. A provision in the governing instrument that "The provisions of §~~ 55-277.4:1~~

64.2-1003, Code of Virginia, as amended, or any corresponding provision of future law, shall not be used in the administration of this trust," or "My trustee shall not determine the distributions to the income beneficiary as a unitrust amount", or similar words reflecting such intent shall be sufficient to preclude the use of this section.

K. Any trustee or disinterested person who in good faith takes or fails to take any action under this section shall not be liable to any person affected by such action or inaction, regardless of whether such person received written notice as provided in this section and regardless of whether such person was under a legal disability at the time of the delivery of such notice. Such person's exclusive remedy shall be to obtain an order of the court directing the trustee to convert an income trust to a total return unitrust, to convert from a total return unitrust to an income trust, or to change the percentage used to calculate the unitrust amount.

Drafting note: Technical changes.

Article 2.

Decedent's Estate or Terminating Income Interest.

§ ~~55-277.5~~ 64.2-1004. Determination and distribution of net income.

After a decedent dies, in the case of an estate, or after an income interest in a trust ends, the following rules apply:

1. 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 Articles 3 (§ 64.2-1006 et seq.) through 5 (§ ~~55-277~~ 64.2-1024 et seq.) ~~which~~ of this chapter that apply to trustees and the rules in subdivision 5. The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.

2. A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the rules in Articles 3 through 5 ~~which~~ that apply to trustees and by:

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

b. 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; and

c. 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.

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

4. A fiduciary shall distribute the net income remaining after distributions required by subdivision 3 in the manner described in § ~~55-277.6~~ 64.2-1005 to all other beneficiaries, including a beneficiary who receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

5. A fiduciary may not reduce principal or income receipts from property described in subdivision 1 because of a payment described in § ~~55-277.25~~ 64.2-1024 or ~~§ 55-277.26~~ 64.2-1025 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 third 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.

Drafting note: Technical changes.

§ ~~55-277.6~~ 64.2-1005. Distribution to residuary and remainder beneficiaries.

A. Each beneficiary described in subdivision 4 of § ~~55-277.5~~ 64.2-1004 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 section 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~~ shall be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust.

3. The beneficiary's fractional interest in the undistributed principal assets ~~must~~ shall 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 section 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 fiduciary may apply the rules in this section, to the extent that the fiduciary 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 section applies to the income from the asset.

Drafting note: Technical changes.

Article 3.

Apportionment at Beginning and End of Income Interest.

§ ~~55-277.7~~ 64.2-1006. 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; or

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

Drafting note: No change.

§~~ 55-277.8~~ 64.2-1007. Apportionment of receipts and disbursements when decedent dies or income interest begins.

A. A trustee shall allocate an income receipt or disbursement other than one to which subdivision 1 of §~~ 55-277.5~~ 64.2-1004 applies to principal 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 an income receipt or disbursement to income 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~~ shall 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 on which a decedent dies or an income interest begins ~~must~~ shall be allocated to principal and the balance ~~must~~ shall 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 chapter. Distributions to shareholders or other owners from an entity to which §~~ 55-277.10~~ 64.2-1009 applies are deemed to be 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~~ shall be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

Drafting note: Technical changes.

§~~ 55-277.9~~ 64.2-1008. Apportionment when income interest ends.

A. In this section, "undistributed income" means net income received before the date on which an income interest ends. The term 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 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 five 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~~ shall 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.

Drafting note: Technical changes.

Article 4.

Allocation of Receipts During Administration of Trust.

Part 1.

Receipts from Entities.

§ ~~55-277.10~~ 64.2-1009. Character of receipts.

A. In this section, "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 § ~~55-277.11~~ 64.2-1010 applies, a business or activity to which § ~~55-277.12~~ 64.2-1011 applies, or an asset-backed security to which § ~~55-277.24~~ 64.2-1023 applies.

B. Except as otherwise provided in this section, 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; and

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

D. Money is received in partial liquidation:

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

2. If the total amount of money and property received in a distribution or series of related distributions is greater than twenty percent 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 subdivision D 2, to the extent that it does not exceed the amount of income tax that a trustee or beneficiary ~~must~~ shall 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.

Drafting note: Technical changes.

§ ~~55-277.11~~ 64.2-1010. 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, § ~~55-277.10~~ 64.2-1009 or ~~§ 55-277.24~~ 64.2-1023 applies to a receipt from the trust.

Drafting note: Technical changes.

§ ~~55-277.12~~ 64.2-1011. 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~~ shall 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; and

7. Activities to which § ~~55-277.23~~ 64.2-1022 applies.

Drafting note: Technical changes.

Part 2.

Receipts Not Normally Apportioned.

§ ~~55-277.13~~ 64.2-1012. Principal receipts.

A trustee shall allocate to principal:

1. To the extent not allocated to income under this chapter, 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;

2. Money or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit, subject to this article;

3. Amounts recovered from third parties to reimburse the trust because of disbursements described in subdivision A 7 of § ~~55-277.26~~ 64.2-1025 or for other reasons to the extent not based on the loss of income;

4. 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;

5. Net income received in an accounting period during which there is no beneficiary to whom a trustee may or ~~must~~ shall distribute income; and

6. Other receipts as provided in §§ ~~55-277.17~~ 64.2-1016 through ~~55-277.24~~ 64.2-1023.

Drafting note: Technical changes.

§ ~~55-277.14~~ 64.2-1013. Rental property.

To the extent that a trustee accounts for receipts from rental property pursuant to this section, 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~~ shall 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.

Drafting note: Technical changes.

§ ~~55-277.15~~ 64.2-1014. 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~~ shall 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 it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust ~~must~~ shall be allocated to income.

C. This section does not apply to an obligation to which §§ ~~55-277.18~~ 64.2-1017, ~~55-277.19, 55-277.20, 55-277.21~~ through 64.2-1020, ~~55-277.23~~ § 64.2-1022, or § ~~55-277.24~~ 64.2-1023 applies.

Drafting note: Technical changes.

§ ~~55-277.16~~ 64.2-1015. Insurance policies and similar.

A. Except as otherwise provided in subsection 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 § ~~55-277.12~~ 64.2-1011, loss of profits from a business.

C. This section does not apply to a contract to which § ~~55-277.18~~ 64.2-1017 applies.

Drafting note: Technical changes.

Part 3.

Receipts Normally Apportioned.

§ ~~55-277.17~~ 64.2-1016. Insubstantial allocations not required.

If a trustee determines that an allocation between principal and income required by §§ ~~55-277.18, 55-277.19, 55-277.20, 55-277.21,~~ 64.2-1017 through 64.2-1020 or § ~~55-277.24~~ 64.2-1023 is insubstantial, the trustee may allocate the entire amount to principal unless one of the circumstances described in subsection C of § ~~55-277.4~~ 64.2-1002 applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in subsection D of § ~~55-277.4~~ 64.2-1002 and may be released for the reasons and in the manner described in subsection E of § ~~55-277.4~~ 64.2-1002. An allocation is presumed to be insubstantial if:

1. The amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than ~~ten~~ 10 percent; or

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

Drafting note: Technical changes.

§ ~~55-277.18~~ 64.2-1017. Deferred compensation, annuities, and similar payments.

A. In this section, "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. For purposes of subsections D, E, F, and G, the term also includes any payment from a separate fund, regardless of the reason for the payment.

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. If no part of a payment is characterized as interest, a dividend, or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income ~~ten~~ 10 percent of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

D. Except as otherwise provided in subsection E, subsections F and G apply, and subsections B and C do not apply, in determining the allocation of a payment made from a separate fund to:

1. A trust to which an election to qualify for a marital deduction under § 2056(b)(7) of the Internal Revenue Code of 1986, as amended, has been made; or

2. A trust that qualifies for the marital deduction under § 2056(b)(5) of the Internal Revenue Code of 1986, as amended.

E. Subsections D, F, and G do not apply if and to the extent that the series of payments would, without the application of subsection D, qualify for the marital deduction under § 2056(b)(7)(C) of the Internal Revenue Code of 1986, as amended.

F. A trustee shall determine the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to this ~~Act~~ chapter. Upon request of the surviving spouse, the trustee shall demand that the person administering the separate fund distribute the internal income to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and distribute that amount to the surviving spouse. The trustee shall allocate the balance of the payment to principal. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent the internal income of the separate fund exceeds payments made from the separate fund to the trust during the accounting period.

G. If a trustee cannot determine the internal income of a separate fund but can determine the value of the separate fund, the internal income of the separate fund is deemed to equal at least four percent of the fund's value, according to the most recent statement of value preceding the beginning of the accounting period. If the trustee can determine neither the internal income of the separate fund nor the fund's value, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments, as determined under § 7520 of the Internal Revenue Code of 1986, as amended, for the month preceding the accounting period for which the computation is made.

H. Subsections D, E, F and G apply to a trust described in subsection D on and after the following dates: (i) if the trust is not funded as of July 1, 2009, the date of the decedent's death, (ii) if the trust is initially funded in the calendar year beginning January 1, 2009, the date of the decedent's death, or (iii) if the trust is not described in (i) or (ii), January 1, 2009.

I. This section does not apply to a payment to which § ~~55-277.19~~ 64.2-1018 applies.

Drafting note: Technical changes.

§~~ 55-277.19~~ 64.2-1018. Liquidating asset.

A. In this section, "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, or royalty right, and a 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 §~~ 55-277.18~~ 64.2-1017, resources subject to §~~ 55-277.20~~ 64.2-1019, timber subject to §~~ 55-277.21~~ 64.2-1020, an activity subject to §~~ 55-277.23~~ 64.2-1022, an asset subject to §~~ 55-277.24~~ 64.2-1023, or any asset for which the trustee establishes a reserve for depreciation under §~~ 55-277.27~~ 64.2-1026.

B. A trustee shall allocate to income~~ ten~~ 10 percent of the receipts from a liquidating asset and the balance to principal.

Drafting note: Technical changes.

§~~ 55-277.20~~ 64.2-1019. 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 pursuant to this section, the trustee shall allocate them as follows:

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

2. If received from a production payment, a receipt~~ must~~ shall 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~~ shall 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,~~ ninety~~ 90 percent~~ must~~ shall 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 subdivision 1, 2, or 3,~~ ninety~~ 90 percent of the net amount received~~ must~~ shall be allocated to principal and the balance to income.

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

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

D. If a trust owns an interest in minerals, water, or other natural resources on January 1, 2000, the trustee may allocate receipts from the interest as provided in this chapter or in the manner used by the trustee before January 1, 2000. If the trust acquires an interest in minerals, water, or other natural resources after January 1, 2000, the trustee shall allocate receipts from the interest as provided in this chapter.

Drafting note: Technical changes.

§ ~~55-277.21~~ 64.2-1020. Timber.

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

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

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

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

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

B. In determining net receipts to be allocated pursuant to subsection A, a trustee shall deduct and transfer to principal a reasonable amount for depletion.

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

D. If a trust owns an interest in timberland on January 1, 2000, the trustee may allocate net receipts from the sale of timber and related products as provided in this chapter or in the manner used by the trustee before January 1, 2000. If the trust acquires an interest in timberland after January 1, 2000, the trustee shall allocate net receipts from the sale of timber and related products as provided in this chapter.

Drafting note: No change.

§ ~~55-277.22~~ 64.2-1021. 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 spouse with sufficient income from or use of the trust assets, and if the amounts that the trustee transfers from principal to income under § ~~55-277.4~~ 64.2-1002 and distributes to the spouse from principal pursuant to 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 subsection A of § ~~55-277.4~~ 64.2-1002. The trustee may decide which action or combination of actions to take.

B. In cases not governed by subsection 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.

Drafting note: Technical changes.

§ ~~55-277.23~~ 64.2-1022. Derivatives and options.

A. In this section, "derivative" means a contract or financial instrument or a combination of contracts and financial instruments ~~which~~ 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 other market indicator for an asset or a group of assets.

B. To the extent that a trustee does not account under § ~~55-277.12~~ 64.2-1011 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~~ shall be allocated to principal. An amount paid to acquire the option ~~must~~ shall 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~~ shall be allocated to principal.

Drafting note: Technical changes.

§ ~~55-277.24~~ 64.2-1023. Asset-backed securities.

A. In this section, "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 § ~~55-277.10~~ 64.2-1009 or ~~§ 55-277.18~~ 64.2-1017 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 ~~which~~ 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 ~~ten~~ 10 percent of the payment to income and the balance to principal.

Drafting note: Technical changes.

Article 5.

Allocation of Disbursements During Administration of Trust.

§ ~~55-277.25~~ 64.2-1024. Disbursements from income.

A trustee shall make the following disbursements from income to the extent that they are not disbursements to which subdivision 2 b or 2 c of § ~~55-277.5~~ 64.2-1004 applies:

1. One-half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee;

2. One-half of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests;

3. 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; and

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

Drafting note: Technical changes.

§ ~~55-277.26~~ 64.2-1025. Disbursements from principal.

A. A trustee shall make the following disbursements from principal:

1. The remaining one-half of the disbursements described in subdivisions 1 and 2 of § ~~55-277.25~~ 64.2-1024;

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 subdivision 4 of § ~~55-277.25~~ 64.2-1024 of which the trust is the owner and beneficiary;

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

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 third 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.

Drafting note: Technical changes.

§ ~~55-277.27~~ 64.2-1026. Transfers from income to principal for depreciation.

A. In this section, "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; or

3. Under this section if the trustee is accounting under § ~~55-277.12~~ 64.2-1011 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.

Drafting note: Technical changes.

§ ~~55-277.28~~ 64.2-1027. Transfers from income to reimburse principal.

A. If a trustee makes or expects to make a principal disbursement described in this section, 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 subsection 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 third 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 broker's 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; and

5. Disbursements described in subdivision A 7 of § ~~55-277.26~~ 64.2-1025.

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 subsection A.

Drafting note: Technical changes.

§ ~~55-277.29~~ 64.2-1028. Income taxes.

A. A tax required to be paid by a trustee based on receipts allocated to income ~~must~~ shall be paid from income.

B. A tax required to be paid by a trustee based on receipts allocated to principal ~~must~~ shall 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~~ shall be paid:

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

2. From principal to the extent that receipts from the entity are allocated only to principal;

3. Proportionately from principal and income to the extent that receipts from the entity are allocated to both income and principal; and

4. From principal to the extent that the tax exceeds the total receipts from the entity.

D. After applying subsections A through C, the trustee shall adjust income or principal receipts to the extent that the trust's taxes are reduced because the trust receives a deduction for payments made to a beneficiary.

Drafting note: Technical changes.

§ ~~55-277.30~~ 64.2-1029. 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~~ that arise from:

1. Elections and decisions, other than those described in subsection 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; or

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, trust, or 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~~ shall 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~~ shall be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.

Drafting note: Technical changes.

Article 6.

Miscellaneous Provisions.

§ ~~55-277.31~~ 64.2-1030. Expenses and receipts; nontrust estates.

A. The provisions of this chapter concerning the allocation and apportionment of receipts and expenses to principal and income shall govern the allocation and apportionment of receipts and expenses between a tenant and a remainderman where no trust has been created, except as otherwise provided in subsection B or C, and except for any provision that requires the exercise of a discretionary power by a trustee.

B. The cost of, or special taxes or assessments for, an improvement representing an addition of value to property forming part of the principal shall be paid by the tenant, when such improvement cannot reasonably be expected to outlast the estate of the tenant. In all other cases a portion thereof only shall be paid by the tenant, while the remainder shall be paid by the remainderman. Such portion shall be ascertained by taking that percentage of the total ~~which~~ that is found by dividing the present value of the tenant's estate by the present value of an estate corresponding to the reasonably expected duration of the improvement. The computation of present values of the estate shall be made on the expectancy basis set forth in § 55-269.1 and no other evidence of duration or expectancy shall be considered. When either tenant or remainderman has incurred an expense for the benefit of his own estate and without the consent or agreement of the other, he shall pay such expense in full.

C. The rules of this section are subject to any agreement of the parties.

Drafting note: Technical changes.

§ ~~55-277.32~~ 64.2-1031. Uniformity of application and construction.

In applying and construing this ~~Act~~ uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.

Drafting note: Technical changes.

§ ~~55-277.33~~ 64.2-1032. Application of chapter to existing trusts decedent's estates and nontrust estates.

This chapter applies to every trust, decedent's estate, or nontrust estate existing on January 1, 2000, except as otherwise expressly provided in the will or the terms of the trust, any other governing document, or in this chapter.

Drafting note: Technical changes.