Part 1
Definitions and Fiduciary Duties

22-3-101 Title.

This chapter is known as the "Uniform Principal and Income Act."

Enacted by Chapter 285, 2004 General Session

22-3-102 Definitions.

In this chapter:

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

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

(3) "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.

(4) "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 Part 4, Allocation of Receipts During Administration of Trust.

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

(6) "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.

(7) "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.

(8) "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.

(9) "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.

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

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

(12) "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.

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

Enacted by Chapter 285, 2004 General Session

22-3-103 Fiduciary duties -- General principles.

(1) In allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of Part 2, Decedent's Estate or Terminating Income Interest, and Part 3, Apportionment at Beginning and End of Income Interest, a fiduciary:
(a) 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;
(b) 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;
(c) 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
(d) 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.
(2) In exercising the power to adjust under Subsection 22-3-104(1) 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.

Enacted by Chapter 285, 2004 General Session

22-3-104 Trustee's power to adjust.
(1) 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 shall be distributed to a beneficiary by referring to the trust's income, and the trustee determines, after applying the rules in Subsection 22-3-103(1), that the trustee is unable to comply with Subsection 22-3-103(2).
(2) In deciding whether and to what extent to exercise the power conferred by Subsection (1), a trustee shall consider all factors relevant to the trust and its beneficiaries, including the following factors to the extent they are relevant:
(a) the nature, purpose, and expected duration of the trust;
(b) the intent of the settlor;
(c) the identity and circumstances of the beneficiaries;
(d) the needs for liquidity, regularity of income, and preservation and appreciation of capital;
(e)
(i) the assets held in the trust;
(ii) the extent to which the assets consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property;
(iii) the extent to which an asset is used by a beneficiary; and
(iv) whether an asset was purchased by the trustee or received from the settlor;
(f) 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 trustee may estimate as to assets for which market values are not readily available;
(g) 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;

(h) the actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and

(i) the anticipated tax consequences of an adjustment.

(3) A trustee may not make an adjustment:

(a) 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 trustee did not have the power to make the adjustment;

(b) 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;

(c) that changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

(d) 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;

(e) 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;

(f) 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;

(g) if the trustee is a beneficiary of the trust; or

(h) if the trustee is not a beneficiary, but the adjustment would benefit the trustee directly or indirectly.

(4) If Subsection (3)(e), (f), (g), or (h) 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 exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.

(5) A trustee may release the entire power conferred by Subsection (1) 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 Subsections (3)(a) through (f) or Subsection (3)(h) 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 Subsection (3). The release may be permanent or for a specified period, including a period measured by the life of an individual.

(6) 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 section 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 Subsection (1).

Amended by Chapter 297, 2011 General Session

22-3-105 Judicial control of discretionary power.

(1) The court may not order a fiduciary to change a decision to exercise or not to exercise a discretionary power conferred by this chapter unless it determines that the decision was an abuse of the fiduciary's discretion. 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.

(2) The decisions to which Subsection (1) applies include:

(a) A decision under Subsection 22-3-104(1) as to whether and to what extent an amount should be transferred from principal to income or from income to principal.

(b) A decision regarding the factors that are relevant to the trust and its beneficiaries, the extent to which the factors are relevant, and the weight, if any, to be given to those factors, in deciding whether and to what extent to exercise the discretionary power conferred by Subsection 22-3-104(1).

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

(a) 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.

(b) To the extent that the abuse of discretion has resulted in a distribution to a beneficiary which 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 ordering that beneficiary to return some or all of the distribution to the trust.

(c) To the extent that the court is unable, after applying Subsections (3)(a) and (b), to place the beneficiaries, the trust, or both, in the positions they would have occupied if the discretion had 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 or the trust or both.

(4) Upon petition by the fiduciary, the court having jurisdiction over a trust or estate shall determine whether a proposed exercise or nonexercise by the fiduciary of a discretionary power conferred by this chapter will result in an abuse of the fiduciary's discretion. If the petition describes the proposed exercise or nonexercise of the power and contains 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 has the burden of establishing that it will result in an abuse of discretion.

Enacted by Chapter 285, 2004 General Session

22-3-106 Adjustments.

Nothing in this chapter is intended to create or imply a duty to make an adjustment, and a trustee is not liable for not considering whether to make an adjustment or for choosing not to make an adjustment.

Enacted by Chapter 285, 2004 General Session

22-3-107 Notice of proposed action -- Objections by beneficiary -- Liability of trustee -- Proceedings.

(1) A trustee may give a notice of proposed action regarding a matter governed by this chapter as provided in this section. For the purpose of this section, a proposed action includes a course of action and a decision not to take action.

(2) The trustee shall mail notice of the proposed action to all adult beneficiaries who are receiving, or are entitled to receive, income under the trust or to receive a distribution of principal if the trust were terminated at the time the notice is given.

(3) Notice of proposed action need not be given to any person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.

(4) The notice of proposed action shall state that it is given pursuant to this section and the following:

(a) the name and mailing address of the trustee;

(b) the name and telephone number of a person who may be contacted for additional information;

(c) a description of the action proposed to be taken and an explanation of the reasons for the action;

(d) the time within which objections to the proposed action can be made, which shall be at least 30 days from the mailing of the notice of proposed action; and

(e) the date on or after which the proposed action may be taken or is effective.

(5) A beneficiary may object to the proposed action by mailing a written objection to the trustee at the address stated in the notice of proposed action within the time period specified in the notice of proposed action.

(6) A trustee is not liable to a beneficiary for an action regarding a matter governed by this chapter if the trustee does not receive a written objection to the proposed action from a beneficiary within the applicable period and the other requirements of this section are satisfied. If no beneficiary entitled to notice objects under this section, the trustee is not liable to any current or future beneficiary with respect to the proposed action.

(7) If the trustee receives a written objection within the applicable period, either the trustee or a beneficiary may petition the court to have the proposed action taken as proposed, taken with modifications, or denied. In the proceeding, a beneficiary objecting to the proposed action has the burden of proving that the trustee's proposed action should not be taken. A beneficiary who has not objected is not estopped from opposing the proposed action in the proceeding.

(8) If the trustee decides not to implement the proposed action, the trustee shall notify the beneficiaries of the decision not to take the action and the reasons for the decision. The trustee's decision not to implement the proposed action does not give rise to liability to any current or future beneficiary.

(9) A beneficiary may petition the court to have the action taken, and has the burden of proving that it should be taken.

Enacted by Chapter 285, 2004 General Session