

**Effective 7/1/2020**

**Part 3  
Unitrust**

**Renumbered 9/1/2024**

**22-3-301 Definitions.**

In this part:

- (1) "Applicable value" means the amount of the net fair market value of a trust taken into account under Section 22-3-307.
- (2) "Express unitrust" means a trust for which, under the terms of the trust without regard to this part, income or net income is permitted or required to be calculated as a unitrust amount.
- (3) "Income trust" means a trust that is not a unitrust.
- (4) "Net fair market value of a trust" means the fair market value of the assets of the trust minus the noncontingent liabilities of the trust.
- (5)
  - (a) "Unitrust" means a trust for which net income is a unitrust amount.
  - (b) "Unitrust" includes an express unitrust.
- (6) "Unitrust amount" means:
  - (a) an amount computed by multiplying a determined value of a trust by a determined percentage; and
  - (b) for a unitrust administered under a unitrust policy, the applicable value multiplied by the unitrust rate.
- (7) "Unitrust policy" means a policy described in Sections 22-3-305 through 22-3-309 and adopted under Section 22-3-303.
- (8) "Unitrust rate" means the rate used to compute the unitrust amount under Subsection (6) for a unitrust administered under a unitrust policy.

Amended by Chapter 348, 2020 General Session

**Renumbered 9/1/2024**

**22-3-302 Application -- Duties and remedies.**

- (1) Except as otherwise provided in Subsection (2), this part applies to:
  - (a) an income trust, unless the terms of the trust expressly prohibit use of this part by:
    - (i) a specific reference to this part; or
    - (ii) an explicit expression of intent that net income not be calculated as a unitrust amount; and
  - (b) an express unitrust, except to the extent the terms of the trust explicitly:
    - (i) prohibit use of this part by a specific reference to this part;
    - (ii) prohibit conversion to an income trust; or
    - (iii) limit changes to the method of calculating the unitrust amount.
- (2) This part does not apply to a trust described in Section 170(f)(2)(B), 642(c)(5), 664(d), 2702(a)(3)(A)(ii) or (iii), or 2702(b) of the Internal Revenue Code.
- (3)
  - (a) An income trust to which this part applies under Subsection (1)(a) may be converted to a unitrust under this part regardless of the terms of the trust concerning distributions.
  - (b) Conversion to a unitrust under this part does not affect other terms of the trust concerning distributions of income or principal.
- (4)

- (a) This part applies to an estate only to the extent a trust is a beneficiary of the estate.
- (b) To the extent of the trust's interest in the estate, and in the same manner as for a trust under this part:
  - (i) the estate may be administered as a unitrust;
  - (ii) the administration of the estate as a unitrust may be discontinued; or
  - (iii) the percentage or method used to calculate the unitrust amount may be changed.
- (5) This part does not create a duty to take or consider action under this part or to inform a beneficiary about the applicability of this part.
- (6) A fiduciary that in good faith takes or fails to take an action under this part is not liable to a person affected by the action or inaction of the fiduciary.

Amended by Chapter 348, 2020 General Session

***Renumbered 9/1/2024***

**22-3-303 Authority of fiduciary.**

- (1) A fiduciary, without court approval, by complying with Subsections (2) and (6), may:
  - (a) convert an income trust to a unitrust if the fiduciary adopts, in a record, a unitrust policy for the trust providing:
    - (i) that, in administering the trust, the net income of the trust will be a unitrust amount rather than net income determined without regard to this part; and
    - (ii) the percentage and method used to calculate the unitrust amount;
  - (b) change the percentage or method used to calculate a unitrust amount for a unitrust if the fiduciary adopts in a record a unitrust policy or an amendment or replacement of a unitrust policy providing changes in the percentage or method used to calculate the unitrust amount; or
  - (c) convert a unitrust to an income trust if the fiduciary adopts, in a record, a determination that, in administering the trust, the net income of the trust will be net income determined without regard to this part rather than a unitrust amount.
- (2) A fiduciary may take an action under Subsection (1) if:
  - (a) the fiduciary determines that the action will assist the fiduciary to administer a trust impartially;
  - (b) the fiduciary sends a notice in a record, in the manner required by Section 22-3-304, describing and proposing to take the action;
  - (c) the fiduciary sends a copy of the notice under Subsection (2)(b) to each settlor of the trust which is:
    - (i) if an individual, living; or
    - (ii) if not an individual, in existence;
  - (d) at least one member of each class of the qualified beneficiaries determined under Subsection 75-7-103(1)(h) receiving the notice under Subsection (2)(b) is:
    - (i) if an individual, legally competent;
    - (ii) if not an individual, in existence; or
    - (iii) represented in the manner provided in Subsection 22-3-304(2); and
  - (e) the fiduciary does not receive, by the date specified in the notice under Subsection 22-3-304(4)(e), an objection in a record to the action proposed under Subsection (2)(b) from a person to which the notice under Subsection (2)(b) is sent.
- (3)
  - (a) If a fiduciary receives, not later than the date stated in the notice under Subsection 22-3-304(4)(e), an objection in a record described in Subsection 22-3-304(4)(d) to a proposed action, the fiduciary or a beneficiary may request that the court:

- (i) require the fiduciary to take the proposed action;
  - (ii) require the fiduciary to take the proposed action with modifications; or
  - (iii) prevent the proposed action.
- (b) A person described in Subsection 22-3-304(1) may oppose the proposed action in the proceeding under Subsection (3)(a), regardless of whether the person:
- (i) consented under Subsection 22-3-304(3); or
  - (ii) objected under Subsection 22-3-304(4)(d).
- (4) If, after sending a notice under Subsection (2)(b), a fiduciary decides not to take the action proposed in the notice, the fiduciary shall notify each person described in Subsection 22-3-304(1) in a record of the decision not to take the action and the reasons for the decision.
- (5) If a beneficiary requests in a record that a fiduciary take an action described in Subsection (1) and the fiduciary declines to act or does not act within 90 days after receiving the request, the beneficiary may request the court to direct the fiduciary to take the action requested.
- (6) In deciding whether and how to take an action authorized by Subsection (1), or whether and how to respond to a request by a beneficiary under Subsection (5), a fiduciary shall consider all factors relevant to the trust and the beneficiaries, including the relevant factors in Subsection 22-3-201(5).
- (7) For a reason described in Subsection 22-3-203(7), and in the manner described in Subsection 22-3-203(8), a fiduciary may:
- (a) release or delegate the power to convert an income trust to a unitrust under Subsection (1)(a);
  - (b) change the percentage or method used to calculate a unitrust amount under Subsection (1)(b); or
  - (c) convert a unitrust to an income trust under Subsection (1)(c).

Amended by Chapter 348, 2020 General Session

**Renumbered 9/1/2024**

**22-3-304 Notice.**

- (1) A fiduciary shall send a notice required by Subsection 22-3-303(2)(b) in a manner authorized under Section 75-7-109 to:
- (a) the qualified beneficiaries determined under Subsection 75-7-103(1)(h);
  - (b) each person acting, in accordance with Title 75, Chapter 12, Uniform Directed Trust Act, as trust director of the trust; and
  - (c) each person that is granted a power by the terms of the trust to appoint or remove a trustee or person described in Subsection (1)(b), to the extent the power is exercisable when the person that exercises the power is not then serving as trustee or is a person described in Subsection (1)(b).
- (2) The representation provisions of Sections 75-7-301 through 75-7-305 apply to notice under this section.
- (3)
- (a) A person may consent in a record at any time to action proposed under Subsection 22-3-303(2)(b).
  - (b) If a person required to receive a notice under Subsection (1) consents under Subsection (3)(a) to not receive the notice, the fiduciary is not required to send the person the notice.
- (4) A notice required by Subsection 22-3-303(2)(b) shall include:
- (a) the action proposed under Subsection 22-3-303(2)(b);

- (b) for a conversion of an income trust to a unitrust, a copy of the unitrust policy adopted under Subsection 22-3-303(1)(a);
- (c) for a change in the percentage or method used to calculate the unitrust amount, a copy of the unitrust policy or amendment or replacement of the unitrust policy adopted under Subsection 22-3-303(1)(b);
- (d) a statement that the person to which the notice is sent may object to the proposed action by stating in a record the basis for the objection and sending or delivering the record to the fiduciary;
- (e) the date by which the fiduciary shall receive an objection under Subsection (4)(d), which shall be at least 30 days after the date the notice is sent;
- (f) the date on which the action is proposed to be taken and the date on which the action is proposed to take effect;
- (g) the name and contact information of the fiduciary; and
- (h) the name and contact information of a person that may be contacted for additional information.

Amended by Chapter 348, 2020 General Session

***Renumbered 9/1/2024***

**22-3-305 Unitrust policy.**

- (1) In administering a unitrust under this part, a fiduciary shall follow a unitrust policy:
  - (a) adopted under Subsection 22-3-303(1)(a) or (b); or
  - (b) amended or replaced under Subsection 22-3-303(1)(b).
- (2) A unitrust policy shall provide:
  - (a) the unitrust rate or the method for determining the unitrust rate under Section 22-3-306;
  - (b) the method for determining the applicable value under Section 22-3-307; and
  - (c) the rules described in Sections 22-3-306 through 22-3-309 that apply in the administration of the unitrust, regardless of whether the rules are:
    - (i) mandatory, as provided in Subsections 22-3-307(1) and 22-3-308(1); or
    - (ii) optional, as provided in Section 22-3-306 and Subsections 22-3-307(2), 22-3-308(2), and 22-3-309(1), to the extent the fiduciary elects to adopt those rules.

Amended by Chapter 348, 2020 General Session

***Renumbered 9/1/2024***

**22-3-306 Unitrust rate.**

- (1) Except as otherwise provided in Subsection 22-3-309(2)(a), a unitrust rate may be:
  - (a) a fixed unitrust rate; or
  - (b) a unitrust rate that is determined for each period using:
    - (i) a market index or other published data; or
    - (ii) a mathematical blend of market indices or other published data over a stated number of preceding periods.
- (2) Except as otherwise provided in Subsection 22-3-309(2)(a), a unitrust policy may provide:
  - (a) a limit on how high the unitrust rate determined under Subsection (1)(b) may rise;
  - (b) a limit on how low the unitrust rate determined under Subsection (1)(b) may fall;
  - (c) a limit on how much the unitrust rate determined under Subsection (1)(b) may increase over the unitrust rate for the preceding period or a mathematical blend of unitrust rates over a stated number of preceding periods;

- (d) a limit on how much the unitrust rate determined under Subsection (1)(b) may decrease below the unitrust rate for the preceding period or a mathematical blend of unitrust rates over a stated number of preceding periods; or
- (e) a mathematical blend of any of the unitrust rates determined under Subsection (1)(b) and Subsections (2)(a) through (d).

Enacted by Chapter 495, 2019 General Session

***Renumbered 9/1/2024***

**22-3-307 Applicable value.**

- (1) A unitrust policy shall provide the method for determining the fair market value of an asset for the purpose of determining the unitrust amount, including:
  - (a) the frequency of valuing the asset, which need not require a valuation in every period; and
  - (b) the date for valuing the asset in each period that the asset is valued.
- (2) Except as otherwise provided in Subsection 22-3-309(2)(b), a unitrust policy may provide methods for determining the amount of the net fair market value of the trust to take into account in determining the applicable value, including:
  - (a) obtaining an appraisal of an asset for which fair market value is not readily available;
  - (b) exclusion of specific assets or groups or types of assets;
  - (c) other exceptions or modifications of the treatment of specific assets or groups or types of assets;
  - (d) identification and treatment of cash or property held for distribution;
  - (e) use of:
    - (i) an average of fair market values over a stated number of preceding periods; or
    - (ii) another mathematical blend of fair market values over a stated number of preceding periods;
  - (f) a limit on how much the applicable value of all assets, groups of assets, or individual assets may increase over:
    - (i) the corresponding applicable value for the preceding period; or
    - (ii) a mathematical blend of applicable values over a stated number of preceding time periods;
  - (g) a limit on how much the applicable value of all assets, groups of assets, or individual assets may decrease below:
    - (i) the corresponding applicable value for the preceding period; or
    - (ii) a mathematical blend of applicable values over a stated number of preceding periods;
  - (h) the treatment of accrued income and other features of an asset that affect value; and
  - (i) determining the liabilities of the trust, including treatment of liabilities to conform with the treatment of assets under Subsections (2)(a) through (h).

Amended by Chapter 348, 2020 General Session

***Renumbered 9/1/2024***

**22-3-308 Period.**

- (1)
  - (a) A unitrust policy shall provide the period used under Sections 22-3-306 and 22-3-307.
  - (b) Except as otherwise provided in Subsection 22-3-309(2)(c), the period may be:
    - (i) a calendar year;
    - (ii) a 12-month period other than a calendar year;
    - (iii) a calendar quarter;

- (iv) a three-month period other than a calendar quarter; or
  - (v) another period.
- (2) Except as otherwise provided in Subsection 22-3-309(2), a unitrust policy may provide standards for:
- (a) using fewer preceding periods under Subsection 22-3-306(1)(b)(ii), (2)(c), or (2)(d) if:
    - (i) the trust was not in existence in a preceding period; or
    - (ii) market indices or other published data are not available for a preceding period;
  - (b) using fewer preceding periods under Subsection 22-3-307(2)(e)(i) or (ii), (f)(ii), or (g)(ii) if:
    - (i) the trust was not in existence in a preceding period; or
    - (ii) fair market values are not available for a preceding period; and
  - (c) prorating the unitrust amount on a daily basis for a part of a period in which the trust or the administration of the trust as a unitrust or the interest of any beneficiary commences or terminates.

Amended by Chapter 348, 2020 General Session

***Renumbered 9/1/2024***

**22-3-309 Special tax benefits -- Other rules.**

- (1) A unitrust policy may:
- (a) provide methods and standards for:
    - (i) determining the timing of distributions;
    - (ii) making distributions in cash or in kind or partly in cash and partly in kind; or
    - (iii) correcting an underpayment or overpayment to a beneficiary based on the unitrust amount if there is an error in calculating the unitrust amount;
  - (b) specify sources and the order of sources, including categories of income for federal income tax purposes, from which distributions of a unitrust amount are paid; or
  - (c) provide other standards and rules the fiduciary determines serve the interests of the beneficiaries.
- (2) If a trust qualifies for a special tax benefit or a fiduciary is not an independent person:
- (a) the unitrust rate established under Section 22-3-306 may not be less than 3% or more than 5%;
  - (b) the only provisions of Section 22-3-307 that apply are Subsections 22-3-307(1) and (2)(a), (d), (e)(i), and (i);
  - (c) the only period that may be used under Section 22-3-308 is a calendar year under Subsection 22-3-308(1); and
  - (d) the only other provisions of Section 22-3-308 that apply are Subsection 22-3-308(2)(b)(i) and (c).

Amended by Chapter 348, 2020 General Session