

1 **UNIFORM FIDUCIARY INCOME AND PRINCIPAL ACT**

2 **AMENDMENTS**

3 2020 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Lyle W. Hillyard**

6 House Sponsor: \_\_\_\_\_

7 

---

---

**LONG TITLE**

8 **General Description:**

9 This bill amends provisions of the Uniform Fiduciary Income and Principal Act.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ modifies definitions;
- 13 ▶ clarifies language of the Uniform Fiduciary Income and Principal Act;
- 14 ▶ resolves a conflict between the Uniform Fiduciary Income and Principal Act and the
- 15 Uniform Directed Trust Act regarding the terms of a trust;
- 16 ▶ modifies dates to reflect the effective date of the Uniform Fiduciary Income and
- 17 Principal Act; and
- 18 ▶ makes technical and conforming changes.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 This bill provides a special effective date.

23 **Utah Code Sections Affected:**

24 AMENDS:

25 [22-3-102](#) (Effective 07/01/20), as repealed and reenacted by Laws of Utah 2019,  
26 Chapter 495  
27



- 28            [22-3-104](#) (Effective 07/01/20), as repealed and reenacted by Laws of Utah 2019,
- 29 Chapter 495
- 30            [22-3-201](#) (Effective 07/01/20), as repealed and reenacted by Laws of Utah 2019,
- 31 Chapter 495
- 32            [22-3-202](#) (Effective 07/01/20), as repealed and reenacted by Laws of Utah 2019,
- 33 Chapter 495
- 34            [22-3-203](#) (Effective 07/01/20), as enacted by Laws of Utah 2019, Chapter 495
- 35            [22-3-301](#) (Effective 07/01/20), as repealed and reenacted by Laws of Utah 2019,
- 36 Chapter 495
- 37            [22-3-302](#) (Effective 07/01/20), as repealed and reenacted by Laws of Utah 2019,
- 38 Chapter 495
- 39            [22-3-303](#) (Effective 07/01/20), as repealed and reenacted by Laws of Utah 2019,
- 40 Chapter 495
- 41            [22-3-304](#) (Effective 07/01/20), as enacted by Laws of Utah 2019, Chapter 495
- 42            [22-3-305](#) (Effective 07/01/20), as enacted by Laws of Utah 2019, Chapter 495
- 43            [22-3-307](#) (Effective 07/01/20), as enacted by Laws of Utah 2019, Chapter 495
- 44            [22-3-308](#) (Effective 07/01/20), as enacted by Laws of Utah 2019, Chapter 495
- 45            [22-3-309](#) (Effective 07/01/20), as enacted by Laws of Utah 2019, Chapter 495
- 46            [22-3-401](#) (Effective 07/01/20), as repealed and reenacted by Laws of Utah 2019,
- 47 Chapter 495
- 48            [22-3-402](#) (Effective 07/01/20), as repealed and reenacted by Laws of Utah 2019,
- 49 Chapter 495
- 50            [22-3-403](#) (Effective 07/01/20), as repealed and reenacted by Laws of Utah 2019,
- 51 Chapter 495
- 52            [22-3-404](#) (Effective 07/01/20), as repealed and reenacted by Laws of Utah 2019,
- 53 Chapter 495
- 54            [22-3-405](#) (Effective 07/01/20), as repealed and reenacted by Laws of Utah 2019,
- 55 Chapter 495
- 56            [22-3-407](#) (Effective 07/01/20), as repealed and reenacted by Laws of Utah 2019,
- 57 Chapter 495
- 58            [22-3-409](#) (Effective 07/01/20), as repealed and reenacted by Laws of Utah 2019,

- 59 Chapter 495
- 60 [22-3-411](#) (Effective 07/01/20), as repealed and reenacted by Laws of Utah 2019,
- 61 Chapter 495
- 62 [22-3-412](#) (Effective 07/01/20), as repealed and reenacted by Laws of Utah 2019,
- 63 Chapter 495
- 64 [22-3-414](#) (Effective 07/01/20), as repealed and reenacted by Laws of Utah 2019,
- 65 Chapter 495
- 66 [22-3-415](#) (Effective 07/01/20), as repealed and reenacted by Laws of Utah 2019,
- 67 Chapter 495
- 68 [22-3-505](#) (Effective 07/01/20), as repealed and reenacted by Laws of Utah 2019,
- 69 Chapter 495
- 70 [22-3-506](#) (Effective 07/01/20), as repealed and reenacted by Laws of Utah 2019,
- 71 Chapter 495
- 72 [22-3-507](#) (Effective 07/01/20), as enacted by Laws of Utah 2019, Chapter 495
- 73 [22-3-601](#) (Effective 07/01/20), as repealed and reenacted by Laws of Utah 2019,
- 74 Chapter 495
- 75 [22-3-602](#) (Effective 07/01/20), as repealed and reenacted by Laws of Utah 2019,
- 76 Chapter 495
- 77 [22-3-701](#) (Effective 07/01/20), as enacted by Laws of Utah 2019, Chapter 495
- 78 [22-3-702](#) (Effective 07/01/20), as enacted by Laws of Utah 2019, Chapter 495
- 79 [22-3-703](#) (Effective 07/01/20), as enacted by Laws of Utah 2019, Chapter 495
- 80 [22-3-801](#) (Effective 07/01/20), as enacted by Laws of Utah 2019, Chapter 495
- 81 [22-3-803](#) (Effective 07/01/20), as enacted by Laws of Utah 2019, Chapter 495
- 82 [22-3-804](#) (Effective 07/01/20), as enacted by Laws of Utah 2019, Chapter 495
- 83 [75-7-103](#) (Superseded 07/01/20), as last amended by Laws of Utah 2019, Chapter 153



85 *Be it enacted by the Legislature of the state of Utah:*

86 Section 1. Section **22-3-102 (Effective 07/01/20)** is amended to read:

87 **22-3-102 (Effective 07/01/20). Definitions.**

88 In this chapter:

89 (1) (a) "Accounting period" means a calendar year, unless a fiduciary selects another

90 period of 12 calendar months or approximately 12 calendar months.

91 (b) "Accounting period" includes a part of a calendar year or another period of 12  
92 calendar months or approximately 12 calendar months that begins when an income interest  
93 begins or ends when an income interest ends.

94 (2) (a) "Asset-backed security" means a security that is serviced primarily by the cash  
95 flows of a discrete pool of fixed or revolving receivables or other financial assets that by [~~their~~]  
96 the financial assets' terms convert into cash within a finite time.

97 (b) "Asset-backed security" includes rights or other assets that ensure the servicing or  
98 timely distribution of proceeds to the holder of the asset-backed security.

99 (c) "Asset-backed security" does not include an asset to which Section [22-3-401](#),  
100 [22-3-409](#), or [22-3-414](#) applies.

101 (3) "Beneficiary" includes:

102 (a) for a trust:

103 (i) a current beneficiary, including a current income beneficiary and a beneficiary that  
104 may receive only principal;

105 (ii) a remainder beneficiary; and

106 (iii) any other successor beneficiary;

107 (b) for an estate, an heir and devisee; and

108 (c) for a life estate or term interest, a person that holds a life estate, term interest, or  
109 remainder, or other interest following a life estate or term interest.

110 (4) "Court" means a court [~~of competent jurisdiction in the state~~] in this state with  
111 jurisdiction over a trust or estate, or a life estate or other term interest described in Subsection  
112 [22-3-103\(2\)](#).

113 (5) "Current income beneficiary" means a beneficiary to which a fiduciary may  
114 distribute net income, [~~whether~~] even if the fiduciary also may distribute principal to the  
115 beneficiary.

116 (6) (a) "Distribution" means a payment or transfer by a fiduciary to a beneficiary in the  
117 beneficiary's capacity as a beneficiary, made under the terms of the trust, without consideration  
118 other than the beneficiary's right to receive the payment or transfer under the terms of the trust.

119 (b) "Distribute," "distributed," and "distributee" have corresponding meanings.

120 (7) (a) "Estate" means a decedent's estate.

121 (b) "Estate" includes the property of the decedent as the estate is originally constituted  
122 and the property of the estate as it exists at any time during administration.

123 (8) "Fiduciary" includes:

124 (a) a trustee, trust director as defined in Section 75-12-102, personal representative, life  
125 tenant, holder of a term interest, and person acting under a delegation from a fiduciary;

126 (b) a person that holds property for a successor beneficiary whose interest may be  
127 affected by an allocation of receipts and expenditures between income and principal; and

128 (c) if there are two or more co-fiduciaries, all co-fiduciaries acting under the terms of  
129 the trust and applicable law.

130 (9) (a) "Income" means money or other property a fiduciary receives as current return  
131 from principal.

132 (b) "Income" includes a part of receipts from a sale, exchange, or liquidation of a  
133 principal asset to the extent provided in Part 4, Allocation of Receipts.

134 (10) (a) "Income interest" means the right of a current income beneficiary to receive all  
135 or part of net income, whether the terms of the trust require the net income to be distributed or  
136 authorize the net income to be distributed in the fiduciary's discretion.

137 (b) "Income interest" includes the right of a current beneficiary to use property held by  
138 a fiduciary.

139 (11) "Independent person" means a person that is not:

140 (a) for a trust:

141 (i) a qualified beneficiary as determined under Section 75-7-103;

142 (ii) a settlor of the trust; or

143 (iii) an individual whose legal obligation to support a beneficiary may be satisfied by a  
144 distribution from the trust;

145 (b) for an estate, a beneficiary;

146 (c) a spouse, parent, brother, sister, or issue of an individual described in Subsection  
147 (11)(a) or (b);

148 (d) a corporation, partnership, limited liability company, or other entity in which  
149 persons described in Subsections (11)(a) through (c), in the aggregate, have voting control; or

150 (e) an employee of a person described in Subsection (11)(a), (b), (c), or (d).

151 (12) "Mandatory income interest" means the right of a current income beneficiary to

152 receive net income that the terms of the trust require the fiduciary to distribute.

153 (13) (a) "Net income" means:

154 (i) the total allocations during an accounting period to income under the terms of a trust  
155 and this chapter minus the disbursements during the accounting period, other than

156 distributions, allocated to income under the terms of the trust and this chapter; and

157 (ii) to the extent the trust is a unitrust under Part 3, Unitrust, the unitrust amount  
158 determined under Part 3, Unitrust.

159 (b) "Net income" includes an adjustment from principal to income under Section  
160 [22-3-203](#).

161 (c) "Net income" does not include an adjustment from income to principal under  
162 Section [22-3-203](#).

163 (14) "Person" means:

164 (a) an individual[;];

165 (b) an estate[;];

166 (c) a trust[;];

167 (d) a business or nonprofit entity[;];

168 (e) a public corporation, government or governmental subdivision, agency, or  
169 instrumentality[;]; or

170 (f) any other legal entity.

171 (15) "Personal representative" means an executor, administrator, successor personal  
172 representative, special administrator, or person that performs substantially the same function  
173 with respect to an estate under the law governing the person's status.

174 (16) "Principal" means property held in trust for distribution to, production of income  
175 for, or use by a current or successor beneficiary.

176 (17) "Record" means information that is inscribed on a tangible medium or that is  
177 stored in an electronic or other medium and is retrievable in perceivable form.

178 (18) "Settlor" means the same as that term is defined in Section [75-7-103](#).

179 (19) "Special tax benefit" means:

180 (a) exclusion of a transfer to a trust from gifts described in Section 2503(b) of the  
181 Internal Revenue Code because of the qualification of an income interest in the trust as a  
182 present interest in property;

183 (b) status as a qualified subchapter S trust described in Section 1361(d)(3) of the  
184 Internal Revenue Code at a time the trust holds stock of an S corporation described in Section  
185 1361(a)(1) of the Internal Revenue Code;

186 (c) an estate or gift tax marital deduction for a transfer to a trust under Section 2056 or  
187 2523 of the Internal Revenue Code that depends or depended in whole or in part on the right of  
188 the settlor's spouse to receive the net income of the trust;

189 (d) exemption in whole or in part of a trust from the federal generation-skipping  
190 transfer tax imposed by Section 2601 of the Internal Revenue Code because the trust was  
191 irrevocable on September 25, 1985, if there is any possibility that:

192 (i) a taxable distribution, as defined in Section 2612(b) of the Internal Revenue Code,  
193 could be made from the trust; or

194 (ii) a taxable termination, as defined in Section 2612(a) of the Internal Revenue Code,  
195 could occur with respect to the trust; or

196 (e) an inclusion ratio, as defined in Section 2642(a) of the Internal Revenue Code, of  
197 the trust which is less than one, if there is any possibility that:

198 (i) a taxable distribution, as defined in Section 2612(b) of the Internal Revenue Code,  
199 could be made from the trust; or

200 (ii) a taxable termination, as defined in Section 2612(a) of the Internal Revenue Code,  
201 could occur with respect to the trust.

202 (20) "Successive interest" means the interest of a successor beneficiary.

203 (21) "Successor beneficiary" means a person entitled to receive income or principal or  
204 to use property when an income interest or other current interest ends.

205 (22) "Terms of a trust" means:

206 (a) except as otherwise provided in Subsection (22)(b), the manifestation of the  
207 settlor's intent regarding a trust's provisions as:

208 (i) expressed in the trust instrument; or

209 (ii) established by other evidence that would be admissible in a judicial proceeding;

210 (b) the trust's provisions as established, determined, or amended by:

211 (i) a trustee or [~~trust director in accordance with applicable law~~] a trust director as  
212 defined in Section 75-12-102;

213 (ii) a court order; or

214 (iii) a nonjudicial settlement agreement under Section [75-7-110](#);  
215 (c) for an estate, a will; or  
216 (d) for a life estate or term interest, the corresponding manifestation of the rights of the  
217 beneficiaries.

218 (23) (a) "Trust" includes:

219 (i) an express trust, private or charitable, with additions to the trust, wherever and  
220 however created; and

221 (ii) a trust created or determined by judgment or decree under which the trust is to be  
222 administered in the manner of an express trust.

223 (b) "Trust" does not include:

224 (i) a constructive trust;

225 (ii) a resulting trust, conservatorship, guardianship, multi-party account, custodial  
226 arrangement for a minor, business trust, voting trust, security arrangement, liquidation trust, or  
227 trust for the primary purpose of paying debts, dividends, interest, salaries, wages, profits,  
228 pensions, retirement benefits, or employee benefits of any kind; or

229 (iii) an arrangement under which a person is a nominee, escrowee, or agent for another.

230 (24) (a) "Trustee" means a person, other than a personal representative, that owns or  
231 holds property for the benefit of a beneficiary.

232 (b) "Trustee" includes an original, additional, or successor trustee, whether appointed  
233 or confirmed by a court.

234 (25) (a) "Will" means any testamentary instrument recognized by applicable law  
235 [~~which~~] that makes a legally effective disposition of an individual's property[;] effective at the  
236 individual's death.

237 (b) "Will" includes a codicil or other amendment to a testamentary instrument.

238 Section 2. Section **22-3-104 (Effective 07/01/20)** is amended to read:

239 **22-3-104 (Effective 07/01/20). Governing law.**

240 (1) Except as otherwise provided in the terms of a trust or this chapter, this chapter  
241 applies when this state is:

242 (a) the principal place of administration of a trust or estate; or

243 (b) the situs of property that is not held in a trust or estate and is subject to a life estate  
244 or other term interest described in Subsection [22-3-103\(2\)](#).

245 (2) By accepting the trusteeship of a trust having [its] the trust's principal place of  
246 administration in this state or by moving the principal place of administration of a trust to this  
247 state, the trustee submits to the application of this chapter to any matter within the scope of this  
248 chapter involving the trust.

249 Section 3. Section **22-3-201 (Effective 07/01/20)** is amended to read:

250 **22-3-201 (Effective 07/01/20). Fiduciary duties -- General principles.**

251 (1) In making an allocation or determination or exercising discretion under this  
252 chapter, a fiduciary shall:

253 (a) act in good faith, based on what is fair and reasonable to all beneficiaries;

254 (b) administer a trust or estate impartially, except to the extent the terms of the trust  
255 manifest an intent that the fiduciary shall or may favor one or more beneficiaries;

256 (c) administer the trust or estate in accordance with the terms of the trust, even if there  
257 is a different provision in this chapter; and

258 (d) administer the trust or estate in accordance with this chapter, except to the extent  
259 the terms of the trust provide otherwise or authorize the fiduciary to determine otherwise.

260 (2) (a) A fiduciary's allocation, determination, or exercise of discretion under this  
261 chapter is presumed to be fair and reasonable to all beneficiaries.

262 (b) A fiduciary may exercise a discretionary power of administration given to the  
263 fiduciary by the terms of the trust, and an exercise of the power that produces a result different  
264 from a result required or permitted by this chapter does not create an inference that the  
265 fiduciary abused the fiduciary's discretion.

266 (3) A fiduciary shall:

267 (a) add a receipt to principal, to the extent neither the terms of the trust nor this chapter  
268 allocates the receipt between income and principal; and

269 (b) charge a disbursement to principal, to the extent neither the terms of the trust nor  
270 this chapter allocates the disbursement between income and principal.

271 (4) [~~A~~] If a fiduciary determines an exercise of discretionary power will assist the  
272 fiduciary to administer the trust or estate impartially, the fiduciary may:

273 (a) exercise the power to adjust under Section [22-3-203](#)[~~7~~];

274 (b) convert an income trust to a unitrust under Subsection [22-3-303\(1\)\(a\)](#)[~~7~~];

275 (c) change the percentage or method used to calculate a unitrust amount under

276 Subsection [22-3-303](#)(1)(b)~~[7]~~; or

277 ~~(d) convert a unitrust to an income trust under Subsection [22-3-303](#)(1)(c)~~[7]~~ if the~~  
 278 ~~fiduciary determines the exercise of the power will assist the fiduciary to administer the trust or~~  
 279 ~~estate impartially].~~

280 ~~[(5) Factors the fiduciary must consider in making the determination under Subsection~~  
 281 ~~(4) include:]~~

282 (5) In making the determination under Subsection (4), the fiduciary shall consider the  
 283 following factors:

284 (a) the terms of the trust;

285 (b) the nature, distribution standards, and expected duration of the trust;

286 (c) the effect of the allocation rules, including specific adjustments between income  
 287 and principal, under Part 4, Allocation of Receipts, Part 5, Allocation of Disbursements, Part 6,  
 288 Death of Individual or Termination of Income Interest, and Part 7, Apportionment at Beginning  
 289 and End of Income Interest;

290 (d) the desirability of liquidity and regularity of income;

291 (e) the desirability of the preservation and appreciation of principal;

292 (f) the extent to which an asset is used or may be used by a beneficiary;

293 (g) the increase or decrease in the value of principal assets, reasonably determined by  
 294 the fiduciary;

295 (h) whether and to what extent the terms of the trust;

296 (i) give the fiduciary power to accumulate income or invade principal; or

297 (ii) prohibit the fiduciary from accumulating income or invading principal;

298 (i) the extent to which the fiduciary has accumulated income or invaded principal in  
 299 preceding accounting periods;

300 (j) the effect of current and reasonably expected economic conditions; and

301 (k) the reasonably expected tax consequences of the exercise of the power.

302 Section 4. Section **22-3-202 (Effective 07/01/20)** is amended to read:

303 **22-3-202 (Effective 07/01/20). Judicial review of exercise of discretionary power --**

304 **Request for instruction.**

305 (1) In this section, "fiduciary decision" means:

306 (a) a fiduciary's allocation between income and principal or other determination

307 regarding income and principal required or authorized by the terms of the trust or this chapter;

308 (b) the fiduciary's exercise or nonexercise of a discretionary power regarding income  
309 and principal granted by the terms of the trust or this chapter, including the power to:

310 (i) adjust under Section [22-3-203](#);

311 (ii) convert an income trust to a unitrust under Subsection [22-3-303](#)(1)(a);

312 (iii) change the percentage or method used to calculate a unitrust amount under  
313 Subsection [22-3-303](#)(1)(b); or

314 (iv) convert a unitrust to an income trust under Subsection [22-3-303](#)(1)(c); or

315 (c) the fiduciary's implementation of a decision described in Subsection (1)(a) or (b).

316 (2) The court may not order a fiduciary to change a fiduciary decision, unless the court  
317 determines that the fiduciary decision was an abuse of the fiduciary's discretion.

318 (3) (a) If the court determines that a fiduciary decision was an abuse of the fiduciary's  
319 discretion, the court may order a remedy authorized by law, including a remedy authorized in  
320 Section [75-7-1001](#).

321 (b) To place the beneficiaries in the positions that the beneficiaries would have  
322 occupied if there had not been an abuse of the fiduciary's discretion, the court may order:

323 (i) the fiduciary to exercise or refrain from exercising the power to adjust under Section  
324 [22-3-203](#);

325 (ii) the fiduciary to exercise or refrain from exercising the power to:

326 (A) convert an income trust to a unitrust under Subsection [22-3-303](#)(1)(a);

327 (B) change the percentage or method used to calculate a unitrust amount under  
328 Subsection [22-3-303](#)(1)(b); or

329 (C) convert a unitrust to an income trust under Subsection [22-3-303](#)(1)(c);

330 (iii) the fiduciary to distribute an amount to a beneficiary;

331 (iv) a beneficiary to return some or all of a distribution; or

332 (v) the fiduciary to withhold an amount from one or more future distributions to a  
333 beneficiary.

334 (4) (a) On petition by a fiduciary for instruction, the court may determine whether a  
335 proposed fiduciary decision will result in an abuse of the fiduciary's discretion.

336 (b) A beneficiary that opposes the proposed decision has the burden to establish that  
337 the proposed decision will result in an abuse of the fiduciary's discretion if the petition:

- 338 (i) describes the proposed decision;
- 339 (ii) contains sufficient information to inform the beneficiary of the reasons for making
- 340 the proposed decision and the facts on which the fiduciary relies; and
- 341 (iii) explains how the beneficiary will be affected by the proposed decision.

342 Section 5. Section **22-3-203 (Effective 07/01/20)** is amended to read:

343 **22-3-203 (Effective 07/01/20). Fiduciary's power to adjust.**

344 (1) Except as otherwise provided in the terms of a trust or this section, a fiduciary, in a

345 record, without court approval, may adjust between income and principal if the fiduciary

346 determines the exercise of the power to adjust will assist the fiduciary to administer the trust or

347 estate impartially.

348 (2) This section does not create a duty to exercise or consider the power to adjust under

349 Subsection (1) or to inform a beneficiary about the applicability of this section.

350 (3) A fiduciary that in good faith exercises or fails to exercise the power to adjust under

351 Subsection (1) is not liable to a person affected by the exercise or failure to exercise.

352 (4) In deciding whether and to what extent to exercise the power to adjust under

353 Subsection (1), a fiduciary shall consider all factors the fiduciary considers relevant, including

354 the relevant factors in Subsection [22-3-201\(5\)](#) and the application of Subsection [22-3-401\(9\)](#),

355 Section [22-3-408](#), and Section [22-3-413](#).

356 (5) A fiduciary may not exercise the power to make an adjustment under Subsection

357 (1) [~~to make an adjustment~~] or the power to make a determination that an allocation is

358 insubstantial under Section [22-3-408](#) [~~to make a determination that an allocation is~~

359 ~~insubstantial~~] if:

360 (a) the adjustment or determination would reduce the amount payable to a current

361 income beneficiary from a trust that qualifies for a special tax benefit, except to the extent the

362 adjustment is made to provide for a reasonable apportionment of the total return of the trust

363 between the current income beneficiary and successor beneficiaries;

364 (b) the adjustment or determination would change the amount payable to a beneficiary,

365 as a fixed annuity or a fixed fraction of the value of the trust assets, under the terms of the trust;

366 (c) the adjustment or determination would reduce an amount that is permanently set

367 aside for a charitable purpose under the terms of the trust, unless both income and principal are

368 set aside for the charitable purpose;

369 (d) possessing or exercising the power would cause a person to be treated as the owner  
370 of all or part of the trust for federal income tax purposes;

371 (e) possessing or exercising the power would cause all or part of the value of the trust  
372 assets to be included in the gross estate of an individual for federal estate tax purposes;

373 (f) possessing or exercising the power would cause an individual to be treated as  
374 making a gift for federal gift tax purposes;

375 (g) the fiduciary is not an independent person;

376 (h) the trust is irrevocable and provides for income to be paid to the settlor and  
377 possessing or exercising the power would cause the adjusted principal or income to be  
378 considered an available resource or available income under a public-benefit program; or

379 (i) the trust is a unitrust under Part 3, Unitrust.

380 (6) If Subsection (5)(d), (e), (f), or (g) applies to a fiduciary:

381 (a) a co-fiduciary to which Subsections (5)(d) through (g) do not apply may exercise  
382 the power to adjust, unless the exercise of the power to adjust by the remaining co-fiduciary or  
383 co-fiduciaries is not permitted by the terms of the trust or law other than this chapter; or

384 (b) (i) if there is no co-fiduciary to which Subsections (5)(d) through (g) do not  
385 apply~~[-];~~:

386 (A) except as otherwise provided in Subsection (6)(b)(ii)(A), the fiduciary may appoint  
387 a co-fiduciary to which Subsections (5)(d) through (g) do not apply~~[-; which may be a special~~  
388 fiduciary with limited powers, and];

389 (B) except as otherwise provided in Subsection (6)(b)(ii)(B), the appointed co-fiduciary  
390 may exercise the power to adjust under Subsection (1)~~[-; unless the appointment of a~~  
391 co-fiduciary or the exercise of the power by a co-fiduciary is not permitted by the terms of the  
392 trust or law other than this chapter.]; and

393 (C) the appointed co-fiduciary may be a special fiduciary with limited powers.

394 (ii) (A) If the appointment of a co-fiduciary is not permitted by the terms of the trust or  
395 by a provision of law outside this chapter, a fiduciary may not appoint a co-fiduciary.

396 (B) If the exercise of the power to adjust by a co-fiduciary is not permitted by the terms  
397 of the trust or by a provision of law outside this chapter, the co-fiduciary may not exercise the  
398 power to adjust under Subsection (1).

399 (7) A fiduciary may release or delegate to a co-fiduciary the power to adjust under

400 Subsection (1) if the fiduciary determines that the fiduciary's possession or exercise of the  
401 power to adjust will or may:

402 (a) cause a result described in Subsections (5)(a) through (f) or (h); or

403 (b) deprive the trust of a tax benefit or impose a tax burden not described in

404 Subsections (5)(a) through (f).

405 (8) A fiduciary's release or delegation to a co-fiduciary under Subsection (7) of the  
406 power to adjust under Subsection (1):

407 (a) must be in a record;

408 (b) applies to the entire power to adjust, unless the release or delegation provides a  
409 limitation, which may be a limitation to the power to adjust:

410 (i) from income to principal;

411 (ii) from principal to income;

412 (iii) for specified property; or

413 (iv) in specified circumstances;

414 (c) for a delegation, may be modified by a redelegation under this subsection by the  
415 co-fiduciary to which the delegation is made; and

416 (d) subject to Subsection (8)(c), is permanent, unless the release or delegation provides  
417 a specified period, including a period measured by the life of an individual or the lives of more  
418 than one individual.

419 (9) Terms of a trust [~~which~~] that deny or limit the power to adjust between income and  
420 principal do not affect the application of this section, unless the terms of the trust expressly  
421 deny or limit the power to adjust under Subsection (1).

422 (10) The exercise of the power to adjust under Subsection (1) in any accounting period  
423 may apply to the current accounting period, the immediately preceding accounting period, and  
424 one or more subsequent accounting periods.

425 (11) A description of the exercise of the power to adjust under Subsection (1) [~~must~~]  
426 shall be:

427 (a) included in a report, if any, sent to beneficiaries under Subsection [75-7-811](#)(3); or

428 (b) communicated at least annually to the qualified beneficiaries determined under  
429 Subsection [75-7-103](#)(1)(h).

430 Section 6. Section **22-3-301 (Effective 07/01/20)** is amended to read:

431 **22-3-301 (Effective 07/01/20). Definitions.**

432 In this part:

433 (1) "Applicable value" means the amount of the net fair market value of a trust taken  
434 into account under Section [22-3-307](#).435 (2) "Express unitrust" means a trust for which, under the terms of the trust without  
436 regard to this part, income or net income [~~must or may~~] is permitted or required to be  
437 calculated as a unitrust amount.

438 (3) "Income trust" means a trust that is not a unitrust.

439 (4) "Net fair market value of a trust" means the fair market value of the assets of the  
440 trust[~~, less~~] minus the noncontingent liabilities of the trust.

441 (5) (a) "Unitrust" means a trust for which net income is a unitrust amount.

442 (b) "Unitrust" includes an express unitrust.

443 (6) "Unitrust amount" means:

444 (a) an amount computed by multiplying a determined value of a trust by a determined  
445 percentage; and446 (b) for a unitrust administered under a unitrust policy, the applicable value[~~;~~]  
447 multiplied by the unitrust rate.448 (7) "Unitrust policy" means a policy described in Sections [22-3-305](#) through [22-3-309](#)  
449 and adopted under Section [22-3-303](#).450 (8) "Unitrust rate" means the rate used to compute the unitrust amount under  
451 Subsection (6) for a unitrust administered under a unitrust policy.452 Section 7. Section **22-3-302 (Effective 07/01/20)** is amended to read:453 **22-3-302 (Effective 07/01/20). Application -- Duties and remedies.**

454 (1) Except as otherwise provided in Subsection (2), this part applies to:

455 (a) an income trust, unless the terms of the trust expressly prohibit use of this part by:

456 (i) a specific reference to this part; or457 (ii) an explicit expression of intent that net income not be calculated as a unitrust  
458 amount; and

459 (b) an express unitrust, except to the extent the terms of the trust explicitly:

460 (i) prohibit use of this part by a specific reference to this part;

461 (ii) prohibit conversion to an income trust; or

462 (iii) limit changes to the method of calculating the unitrust amount.

463 (2) This part does not apply to a trust described in Section 170(f)(2)(B), 642(c)(5),  
464 664(d), 2702(a)(3)(A)(ii) or (iii), or 2702(b) of the Internal Revenue Code.

465 (3) (a) An income trust to which this part applies under Subsection (1)(a) may be  
466 converted to a unitrust under this part regardless of the terms of the trust concerning  
467 distributions.

468 (b) Conversion to a unitrust under this part does not affect other terms of the trust  
469 concerning distributions of income or principal.

470 (4) (a) This part applies to an estate only to the extent a trust is a beneficiary of the  
471 estate.

472 (b) To the extent of the trust's interest in the estate, and in the same manner as for a  
473 trust under this part:

474 (i) the estate may be administered as a unitrust<sup>[;]</sup>;

475 (ii) the administration of the estate as a unitrust may be discontinued<sup>[;]</sup>; or

476 (iii) the percentage or method used to calculate the unitrust amount may be changed<sup>[;</sup>  
477 ~~in the same manner as for a trust under this part]~~.

478 (5) This part does not create a duty to take or consider action under this part or to  
479 inform a beneficiary about the applicability of this part.

480 (6) A fiduciary that in good faith takes or fails to take an action under this part is not  
481 liable to a person affected by the action or inaction of the fiduciary.

482 Section 8. Section **22-3-303 (Effective 07/01/20)** is amended to read:

483 **22-3-303 (Effective 07/01/20). Authority of fiduciary.**

484 (1) A fiduciary, without court approval, by complying with Subsections (2) and (6),  
485 may:

486 (a) convert an income trust to a unitrust if the fiduciary adopts<sub>2</sub> in a record<sub>2</sub> a unitrust  
487 policy for the trust providing:

488 (i) that<sub>2</sub> in administering the trust<sub>2</sub> the net income of the trust will be a unitrust amount  
489 rather than net income determined without regard to this part; and

490 (ii) the percentage and method used to calculate the unitrust amount;

491 (b) change the percentage or method used to calculate a unitrust amount for a unitrust  
492 if the fiduciary adopts in a record a unitrust policy or an amendment or replacement of a

493 unitrust policy providing changes in the percentage or method used to calculate the unitrust  
494 amount; or

495 (c) convert a unitrust to an income trust if the fiduciary adopts, in a record, a  
496 determination that, in administering the trust, the net income of the trust will be net income  
497 determined without regard to this part rather than a unitrust amount.

498 (2) A fiduciary may take an action under Subsection (1) if:

499 (a) the fiduciary determines that the action will assist the fiduciary to administer a trust  
500 impartially;

501 (b) the fiduciary sends a notice in a record, in the manner required by Section  
502 [22-3-304](#), describing and proposing to take the action;

503 (c) the fiduciary sends a copy of the notice under Subsection (2)(b) to each settlor of  
504 the trust which is:

505 (i) if an individual, living; or

506 (ii) if not an individual, in existence;

507 (d) at least one member of each class of the qualified beneficiaries determined under  
508 Subsection [75-7-103](#)(1)(h) receiving the notice under Subsection (2)(b) is:

509 (i) if an individual, legally competent;

510 (ii) if not an individual, in existence; or

511 (iii) represented in the manner provided in Subsection [22-3-304](#)(2); and

512 (e) the fiduciary does not receive, by the date specified in the notice under Subsection  
513 [22-3-304](#)(4)(e), an objection in a record to the action proposed under Subsection (2)(b) from a  
514 person to which the notice under Subsection (2)(b) is sent.

515 (3) (a) If a fiduciary receives, not later than the date stated in the notice under  
516 Subsection [22-3-304](#)(4)(e), an objection in a record described in Subsection [22-3-304](#)(4)(d) to a  
517 proposed action, the fiduciary or a beneficiary may request that the court [~~to have the proposed  
518 action taken as proposed, taken with modifications, or prevented.~~];

519 (i) require the fiduciary to take the proposed action;

520 (ii) require the fiduciary to take the proposed action with modifications; or

521 (iii) prevent the proposed action.

522 (b) A person described in Subsection [22-3-304](#)(1) may oppose the proposed action in  
523 the proceeding under [~~this subsection,~~] Subsection (3)(a), regardless of whether the person:

524 (i) consented under Subsection [22-3-304](#)(3); or

525 (ii) objected under Subsection [22-3-304](#)(4)(d).

526 (4) If, after sending a notice under Subsection (2)(b), a fiduciary decides not to take the  
527 action proposed in the notice, the fiduciary shall notify ~~[in a record]~~ each person described in  
528 Subsection [22-3-304](#)(1) in a record of the decision not to take the action and the reasons for the  
529 decision.

530 (5) If a beneficiary requests in a record that a fiduciary take an action described in  
531 Subsection (1) and the fiduciary declines to act or does not act within 90 days after receiving  
532 the request, the beneficiary may request the court to direct the fiduciary to take the action  
533 requested.

534 (6) In deciding whether and how to take an action authorized by Subsection (1), or  
535 whether and how to respond to a request by a beneficiary under Subsection (5), a fiduciary  
536 shall consider all factors relevant to the trust and the beneficiaries, including the relevant  
537 factors in Subsection [22-3-201](#)(5).

538 (7) ~~[A]~~ For a reason described in Subsection [22-3-203](#)(7), and in the manner described  
539 in Subsection [22-3-203](#)(8), a fiduciary may:

540 (a) release or delegate the power to convert an income trust to a unitrust under  
541 Subsection (1)(a)~~];~~

542 (b) change the percentage or method used to calculate a unitrust amount under  
543 Subsection (1)(b)~~];~~ or

544 (c) convert a unitrust to an income trust under Subsection (1)(c)~~], for a reason~~  
545 ~~described in Subsection [22-3-203](#)(7) and in the manner described in Subsection [22-3-203](#)(8)].~~

546 Section 9. Section **22-3-304 (Effective 07/01/20)** is amended to read:

547 **22-3-304 (Effective 07/01/20). Notice.**

548 (1) A fiduciary shall send a notice required by Subsection [22-3-303](#)(2)(b) ~~[must be~~  
549 ~~sent]~~ in a manner authorized under Section [75-7-109](#) to:

550 (a) the qualified beneficiaries determined under Subsection [75-7-103](#)(1)(h); ~~[and]~~  
551 ~~[(b) each person that is granted a power over the trust by the terms of the trust, to the~~  
552 ~~extent the power is exercisable when the person is not then serving as a trustee:]~~

553 ~~[(i) including a:]~~

554 ~~[(A) power over the investment, management, or distribution of trust property or other~~

555 matters of trust administration; and]

556 [~~(B) power to appoint or remove a trustee or person described in this subsection; and]~~

557 [~~(ii) excluding a:~~

558 [~~(A) power of appointment;~~

559 [~~(B) power of a beneficiary over the trust, to the extent the exercise or nonexercise of~~

560 the power affects the beneficial interest of the beneficiary or another beneficiary represented by

561 the beneficiary under Sections [75-7-301](#) through [75-7-305](#) with respect to the exercise or

562 nonexercise of the power; and]

563 [~~(C) power over the trust if the terms of the trust provide that the power is held in a~~

564 nonfiduciary capacity and the power must be held in a nonfiduciary capacity to achieve a tax

565 objective under the Internal Revenue Code.]

566 (b) each person acting, in accordance with Title 75, Chapter 12, Uniform Directed

567 Trust Act, as trust director of the trust; and

568 (c) each person that is granted a power by the terms of the trust to appoint or remove a

569 trustee or person described in Subsection (1)(b), to the extent the power is exercisable when the

570 person that exercises the power is not then serving as trustee or is a person described in

571 Subsection (1)(b).

572 (2) The representation provisions of Sections [75-7-301](#) through [75-7-305](#) apply to

573 notice under this section.

574 (3) (a) A person may consent in a record at any time to action proposed under

575 Subsection [22-3-303](#)(2)(b).

576 [~~(b) A notice required by Subsection [22-3-303](#)(2)(b) need not be sent to a person that~~

577 ~~consents under this subsection.]~~

578 (b) If a person required to receive a notice under Subsection (1) consents under

579 Subsection (3)(a) to not receive the notice, the fiduciary is not required to send the person the

580 notice.

581 (4) A notice required by Subsection [22-3-303](#)(2)(b) ~~[must]~~ shall include:

582 (a) the action proposed under Subsection [22-3-303](#)(2)(b);

583 (b) for a conversion of an income trust to a unitrust, a copy of the unitrust policy

584 adopted under Subsection [22-3-303](#)(1)(a);

585 (c) for a change in the percentage or method used to calculate the unitrust amount, a

586 copy of the unitrust policy or amendment or replacement of the unitrust policy adopted under  
587 Subsection [22-3-303](#)(1)(b);

588 (d) a statement that the person to which the notice is sent may object to the proposed  
589 action by stating in a record the basis for the objection and sending or delivering the record to  
590 the fiduciary;

591 (e) the date by which the fiduciary shall receive an objection under Subsection (4)(d)  
592 [~~must be received by the fiduciary, which must~~], which shall be at least 30 days after the date  
593 the notice is sent;

594 (f) the date on which the action is proposed to be taken and the date on which the  
595 action is proposed to take effect;

596 (g) the name and contact information of the fiduciary; and

597 (h) the name and contact information of a person that may be contacted for additional  
598 information.

599 Section 10. Section **22-3-305 (Effective 07/01/20)** is amended to read:

600 **22-3-305 (Effective 07/01/20). Unitrust policy.**

601 (1) In administering a unitrust under this part, a fiduciary shall follow a unitrust policy:

602 (a) adopted under Subsection [22-3-303](#)(1)(a) or (b); or

603 (b) amended or replaced under Subsection [22-3-303](#)(1)(b).

604 (2) A unitrust policy [~~must~~] shall provide:

605 (a) the unitrust rate or the method for determining the unitrust rate under Section  
606 [22-3-306](#);

607 (b) the method for determining the applicable value under Section [22-3-307](#); and

608 (c) the rules described in Sections [22-3-306](#) through [22-3-309](#) [~~which~~] that apply in the  
609 administration of the unitrust, [~~whether~~] regardless of whether the rules are:

610 (i) mandatory, as provided in Subsections [22-3-307](#)(1) and [22-3-308](#)(1); or

611 (ii) optional, as provided in Section [22-3-306](#) and Subsections [22-3-307](#)(2),

612 [22-3-308](#)(2), and [22-3-309](#)(1), to the extent the fiduciary elects to adopt those rules.

613 Section 11. Section **22-3-307 (Effective 07/01/20)** is amended to read:

614 **22-3-307 (Effective 07/01/20). Applicable value.**

615 (1) A unitrust policy [~~must~~] shall provide the method for determining the fair market  
616 value of an asset for the purpose of determining the unitrust amount, including:

617 (a) the frequency of valuing the asset, which need not require a valuation in every  
618 period; and

619 (b) the date for valuing the asset in each period [~~in which~~] that the asset is valued.

620 (2) Except as otherwise provided in Subsection [22-3-309](#)(2)(b), a unitrust policy may  
621 provide methods for determining the amount of the net fair market value of the trust to take  
622 into account in determining the applicable value, including:

623 (a) obtaining an appraisal of an asset for which fair market value is not readily  
624 available;

625 (b) exclusion of specific assets or groups or types of assets;

626 (c) other exceptions or modifications of the treatment of specific assets or groups or  
627 types of assets;

628 (d) identification and treatment of cash or property held for distribution;

629 (e) use of:

630 (i) an average of fair market values over a stated number of preceding periods; or

631 (ii) another mathematical blend of fair market values over a stated number of preceding  
632 periods;

633 (f) a limit on how much the applicable value of all assets, groups of assets, or  
634 individual assets may increase over:

635 (i) the corresponding applicable value for the preceding period; or

636 (ii) a mathematical blend of applicable values over a stated number of preceding time  
637 periods;

638 (g) a limit on how much the applicable value of all assets, groups of assets, or  
639 individual assets may decrease below:

640 (i) the corresponding applicable value for the preceding period; or

641 (ii) a mathematical blend of applicable values over a stated number of preceding  
642 periods;

643 (h) the treatment of accrued income and other features of an asset [~~which~~] that affect  
644 value; and

645 (i) determining the liabilities of the trust, including treatment of liabilities to conform  
646 with the treatment of assets under Subsections (2)(a) through (h).

647 Section 12. Section **22-3-308 (Effective 07/01/20)** is amended to read:

648 **22-3-308 (Effective 07/01/20). Period.**

649 (1) (a) A unitrust policy [~~must~~] shall provide the period used under Sections [22-3-306](#)  
650 and [22-3-307](#).

651 (b) Except as otherwise provided in Subsection [22-3-309\(2\)\(c\)](#), the period may be:

652 (i) a calendar year;

653 (ii) a 12-month period other than a calendar year;

654 (iii) a calendar quarter;

655 (iv) a three-month period other than a calendar quarter; or

656 (v) another period.

657 (2) Except as otherwise provided in Subsection [22-3-309\(2\)](#), a unitrust policy may  
658 provide standards for:

659 (a) using fewer preceding periods under Subsection [22-3-306\(1\)\(b\)\(ii\)](#), (2)(c), or (2)(d)  
660 if:

661 (i) the trust was not in existence in a preceding period; or

662 (ii) market indices or other published data are not available for a preceding period;

663 (b) using fewer preceding periods under Subsection [22-3-307\(2\)\(e\)\(i\)](#) or (ii), (f)(ii), or

664 (g)(ii) if:

665 (i) the trust was not in existence in a preceding period; or

666 (ii) fair market values are not available for a preceding period; and

667 (c) prorating the unitrust amount on a daily basis for a part of a period in which the

668 trust or the administration of the trust as a unitrust or the interest of any beneficiary commences  
669 or terminates.

670 Section 13. Section **22-3-309 (Effective 07/01/20)** is amended to read:

671 **22-3-309 (Effective 07/01/20). Special tax benefits -- Other rules.**

672 (1) A unitrust policy may:

673 (a) provide methods and standards for:

674 (i) determining the timing of distributions;

675 (ii) making distributions in cash or in kind or partly in cash and partly in kind; or

676 (iii) correcting an underpayment or overpayment to a beneficiary based on the unitrust  
677 amount if there is an error in calculating the unitrust amount;

678 (b) specify sources and the order of sources, including categories of income for federal

679 income tax purposes, from which distributions of a unitrust amount are paid; or

680 (c) provide other standards and rules the fiduciary determines serve the interests of the  
681 beneficiaries.

682 (2) If a trust qualifies for a special tax benefit or a fiduciary is not an independent  
683 person:

684 (a) the unitrust rate established under Section [22-3-306](#) may not be less than 3% or  
685 more than 5%;

686 (b) the only provisions of Section [22-3-307](#) [~~which~~] that apply are Subsections  
687 [22-3-307](#)(1) and (2)(a), (d), (e)(i), and (i);

688 (c) the only period that may be used under Section [22-3-308](#) is a calendar year under  
689 Subsection [22-3-308](#)(1); and

690 (d) the only other provisions of Section [22-3-308](#) that apply are Subsection  
691 [22-3-308](#)(2)(b)(i) and (c).

692 Section 14. Section **22-3-401 (Effective 07/01/20)** is amended to read:

693 **22-3-401 (Effective 07/01/20). Receipts from entity -- Character of receipts from**  
694 **entity.**

695 (1) In this section:

696 (a) "Capital distribution" means an entity distribution of money [~~which~~] that is a:

697 (i) return of capital; or

698 (ii) distribution in total or partial liquidation of the entity.

699 (b) (i) "Entity" means a corporation, partnership, limited liability company, regulated  
700 investment company, real estate investment trust, common trust fund, or any other organization  
701 or arrangement in which a fiduciary owns or holds an interest, [~~whether or not~~] regardless of  
702 whether the entity is a taxpayer for federal income tax purposes.

703 (ii) "Entity" does not include:

704 (A) a trust or estate to which Section [22-3-402](#) applies;

705 (B) a business or other activity to which Section [22-3-403](#) applies that is not conducted  
706 by an entity described in Subsection (1)(b)(i);

707 (C) an asset-backed security; or

708 (D) an instrument or arrangement to which Section [22-3-416](#) applies.

709 (c) "Entity distribution" means a payment or transfer by an entity made to a person in

710 the person's capacity as an owner or holder of an interest in the entity.

711 (2) In this section, an attribute or action of an entity includes an attribute or action of  
712 any other entity in which the entity owns or holds an interest, including an interest owned or  
713 held indirectly through another entity.

714 (3) Except as otherwise provided in Subsections (4)(b) through (d), a fiduciary shall  
715 allocate to income:

716 (a) money received in an entity distribution; and

717 (b) tangible personal property of nominal value received from the entity.

718 (4) A fiduciary shall allocate to principal:

719 (a) property received in an entity distribution [~~which~~] that is not:

720 (i) money; or

721 (ii) tangible personal property of nominal value;

722 (b) money received in an entity distribution in an exchange for part or all of the  
723 fiduciary's interest in the entity, to the extent the entity distribution reduces the fiduciary's  
724 interest in the entity relative to the interests of other persons that own or hold interests in the  
725 entity;

726 (c) money received in an entity distribution that the fiduciary determines or estimates is  
727 a capital distribution; and

728 (d) money received in an entity distribution from an entity that is:

729 (i) a regulated investment company or real estate investment trust if the money  
730 received is a capital gain dividend for federal income tax purposes; or

731 (ii) treated for federal income tax purposes [~~comparably~~] in a comparable manner to  
732 the treatment described in Subsection (4)(d)(i).

733 (5) A fiduciary may determine or estimate that money received in an entity distribution  
734 is a capital distribution:

735 (a) by relying without inquiry or investigation on a characterization of the entity  
736 distribution provided by or on behalf of the entity, unless the fiduciary:

737 (i) determines, on the basis of information known to the fiduciary, that the  
738 characterization is or may be incorrect; or

739 (ii) owns or holds more than 50% of the voting interest in the entity;

740 (b) by determining or estimating, on the basis of information known to the fiduciary or

741 provided to the fiduciary by or on behalf of the entity, that the total amount of money and  
742 property received by the fiduciary in the entity distribution or a series of related entity  
743 distributions is or will be greater than 20% of the fair market value of the fiduciary's interest in  
744 the entity; or

745 (c) if neither Subsection (5)(a) nor (b) applies, by considering the factors in Subsection  
746 (6) and the information known to the fiduciary or provided to the fiduciary by or on behalf of  
747 the entity.

748 (6) In making a determination or estimate under Subsection (5)(c), a fiduciary may  
749 consider:

750 (a) a characterization of an entity distribution provided by or on behalf of the entity;

751 (b) the amount of money or property received in:

752 (i) the entity distribution; or

753 (ii) what the fiduciary determines is or will be a series of related entity distributions;

754 (c) the amount described in Subsection (6)(b) compared to the amount that the  
755 fiduciary determines or estimates is, during the current or preceding accounting periods:

756 (i) the entity's operating income;

757 (ii) the proceeds of the entity's sale or other disposition of:

758 (A) all or part of the business or other activity conducted by the entity;

759 (B) one or more business assets that are not sold to customers in the ordinary course of  
760 the business or other activity conducted by the entity; or

761 (C) one or more assets other than business assets, unless the entity's primary activity is  
762 to invest in assets to realize gain on the disposition of all or some of the assets;

763 (iii) if the entity's primary activity is to invest in assets to realize gain on the disposition  
764 of all or some of the assets, the gain realized on the disposition;

765 (iv) the entity's regular, periodic entity distributions;

766 (v) the amount of money that the entity has accumulated;

767 (vi) the amount of money that the entity has borrowed;

768 (vii) the amount of money that the entity has received from the sources described in  
769 Sections [22-3-407](#), [22-3-410](#), [22-3-411](#), and [22-3-412](#); and

770 (viii) the amount of money that the entity has received from a source not otherwise  
771 described in this subsection; and

772 (d) any other factor the fiduciary determines is relevant.

773 (7) If, after applying Subsections (3) through (6), a fiduciary determines that a part of  
774 an entity distribution is a capital distribution but the fiduciary is in doubt about the amount of  
775 the entity distribution [~~which~~] that is a capital distribution, the fiduciary shall allocate to  
776 principal the amount of the entity distribution [~~which~~] that is in doubt.

777 (8) If a fiduciary receives additional information about the application of this section to  
778 an entity distribution before the fiduciary has paid part of the entity distribution to a  
779 beneficiary, the fiduciary may consider the additional information before making the payment  
780 to the beneficiary and may change a decision to make the payment to the beneficiary.

781 (9) If a fiduciary receives additional information about the application of this section to  
782 an entity distribution after the fiduciary has paid part of the entity distribution to a beneficiary,  
783 the fiduciary is not required to change or recover the payment to the beneficiary but may  
784 consider that information in determining whether to exercise the power to adjust under Section  
785 [22-3-203](#).

786 Section 15. Section **22-3-402 (Effective 07/01/20)** is amended to read:

787 **22-3-402 (Effective 07/01/20). Receipts from entity -- Distribution from trust or**  
788 **estate.**

789 (1) A fiduciary shall allocate:

790 (a) to income an amount received as a distribution of income, including a unitrust  
791 distribution under Part 3, Unitrust, from a trust or estate in which the fiduciary has an interest,  
792 other than an interest the fiduciary purchased in a trust that is an investment entity[~~, and shall~~  
793 ~~allocate~~]; and

794 (b) to principal an amount received as a distribution of principal from the trust or  
795 estate.

796 (2) If a fiduciary purchases, or receives from a settlor, an interest in a trust that is an  
797 investment entity, Section [22-3-401](#), [22-3-415](#), or [22-3-416](#) applies to a receipt from the trust.

798 Section 16. Section **22-3-403 (Effective 07/01/20)** is amended to read:

799 **22-3-403 (Effective 07/01/20). Receipts from entity -- Business or other activity**  
800 **conducted by fiduciary.**

801 (1) This section applies to a business or other activity conducted by a fiduciary if the  
802 fiduciary determines that it is in the interests of the beneficiaries to account separately for the

803 business or other activity instead of:

804 (a) accounting for the business or other activity as part of the fiduciary's general  
805 accounting records; or

806 (b) conducting the business or other activity through an entity described in Subsection  
807 [22-3-401\(1\)\(b\)\(i\)](#).

808 (2) A fiduciary may account separately under this section for the transactions of a  
809 business or other activity, whether or not assets of the business or other activity are segregated  
810 from other assets held by the fiduciary.

811 (3) A fiduciary that accounts separately under this section for a business or other  
812 activity:

813 (a) may determine:

814 (i) the extent to which the net cash receipts of the business or other activity [~~must~~] shall  
815 be retained for:

816 (A) working capital;

817 (B) the acquisition or replacement of fixed assets; and

818 (C) other reasonably foreseeable needs of the business or other activity; and

819 (ii) the extent [~~to which~~] that the remaining net cash receipts are accounted for as  
820 principal or income in the fiduciary's general accounting records for the trust;

821 (b) may make a determination under Subsection (3)(a) separately and differently from  
822 the fiduciary's decisions concerning distributions of income or principal; and

823 (c) shall account for the net amount received from the sale of an asset of the business  
824 or other activity, other than a sale in the ordinary course of the business or other activity, as  
825 principal in the fiduciary's general accounting records for the trust, to the extent the fiduciary  
826 determines that the net amount received is no longer required in the conduct of the business or  
827 other activity.

828 (4) [~~Activities for which a~~] A fiduciary may account separately under this section  
829 [~~include~~] for activities that include:

830 (a) retail, manufacturing, service, and other traditional business activities;

831 (b) farming;

832 (c) raising and selling livestock and other animals;

833 (d) managing rental properties;

- 834 (e) extracting minerals, water, and other natural resources;
- 835 (f) growing and cutting timber;
- 836 (g) an activity to which Section [22-3-414](#), [22-3-415](#), or [22-3-416](#) applies; and
- 837 (h) any other business conducted by the fiduciary.

838 Section 17. Section **22-3-404 (Effective 07/01/20)** is amended to read:

839 **22-3-404 (Effective 07/01/20). Receipts not normally apportioned -- Principal**  
840 **receipts.**

841 A fiduciary shall allocate to principal:

842 (1) to the extent not allocated to income under this chapter, an asset received from:

- 843 (a) an individual during the individual's lifetime;
- 844 (b) an estate;
- 845 (c) a trust on termination of an income interest; or
- 846 (d) a payor under a contract naming the fiduciary as beneficiary;

847 (2) except as otherwise provided in this part, money or other property received from  
848 the sale, exchange, liquidation, or change in form of a principal asset;

849 (3) an amount recovered from a third party to reimburse the fiduciary because of a  
850 disbursement described in Subsection [22-3-502](#)(1) or for another reason to the extent not based  
851 on loss of income;

852 (4) proceeds of property taken by eminent domain, except that proceeds awarded for  
853 loss of income in an accounting period are income if a current income beneficiary had a  
854 mandatory income interest during the accounting period;

855 (5) net income received in an accounting period during which there is no beneficiary to  
856 which a fiduciary [~~may or must~~] is permitted or required to distribute income; and

857 (6) other receipts as provided in Part 3, Unitrust.

858 Section 18. Section **22-3-405 (Effective 07/01/20)** is amended to read:

859 **22-3-405 (Effective 07/01/20). Receipts not normally apportioned -- Rental**  
860 **property.**

861 (1) To the extent a fiduciary does not account for the management of rental property as  
862 a business under Section [22-3-403](#), the fiduciary shall allocate to income an amount received as  
863 rent of real or personal property, including an amount received for cancellation or renewal of a  
864 lease.

865 (2) An amount received as a refundable deposit, including a security deposit or a  
866 deposit that is to be applied as rent for future periods:

867 (a) [~~must~~] shall be added to principal and held subject to the terms of the lease, except  
868 as otherwise provided by law other than this chapter; and

869 (b) is not allocated to income or available for distribution to a beneficiary until the  
870 fiduciary's contractual obligations have been satisfied with respect to that amount.

871 Section 19. Section **22-3-407 (Effective 07/01/20)** is amended to read:

872 **22-3-407 (Effective 07/01/20). Receipts not normally apportioned -- Insurance**  
873 **policy or contract.**

874 (1) This section does not apply to a contract to which Section [22-3-409](#) applies.

875 (2) (a) Except as otherwise provided in Subsection (3), a fiduciary shall allocate to  
876 principal the proceeds of a life insurance policy or other contract received by the fiduciary as  
877 beneficiary, including a contract that insures against damage to, destruction of, or loss of title to  
878 an asset.

879 (b) The fiduciary shall allocate dividends on an insurance policy:

880 (i) to income<sub>2</sub> to the extent premiums on the policy are paid from income; and

881 (ii) to principal<sub>2</sub> to the extent premiums on the policy are paid from principal.

882 (3) A fiduciary shall allocate to income proceeds of a contract that insures the fiduciary  
883 against loss of:

884 (a) occupancy or other use by a current income beneficiary;

885 (b) income; or

886 (c) subject to Section [22-3-403](#), profits from a business.

887 Section 20. Section **22-3-409 (Effective 07/01/20)** is amended to read:

888 **22-3-409 (Effective 07/01/20). Receipts normally apportioned -- Deferred**  
889 **compensation, annuity, or similar payment.**

890 (1) In this section:

891 (a) "Internal income of a separate fund" means the amount determined under  
892 Subsection (2).

893 (b) "Marital trust" means a trust:

894 (i) of which the settlor's surviving spouse is the only current income beneficiary and is  
895 entitled to a distribution of all the current net income of the trust; and

896 (ii) that qualifies for a marital deduction with respect to the settlor's estate under  
897 Section 2056 of the Internal Revenue Code because:

898 (A) an election to qualify for a marital deduction under Section 2056(b)(7) of the  
899 Internal Revenue Code has been made; or

900 (B) the trust qualifies for a marital deduction under Section 2056(b)(5) of the Internal  
901 Revenue Code.

902 (c) (i) "Payment" means an amount a fiduciary may receive over a fixed number of  
903 years or during the life of one or more individuals because of services rendered or property  
904 transferred to the payor in exchange for future amounts the fiduciary may receive.

905 (ii) "Payment" includes an amount received in money or property from the payor's  
906 general assets or from a separate fund created by the payor.

907 (d) "Separate fund" includes a private or commercial annuity, an individual retirement  
908 account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

909 (2) For each accounting period, [~~the following rules apply to a~~] and for each separate  
910 fund:

911 (a) the fiduciary shall determine the internal income of the separate fund as if the  
912 separate fund were a trust subject to this chapter;

913 (b) if the fiduciary cannot determine the internal income of the separate fund under  
914 Subsection (2)(a), the internal income of the separate fund is deemed to equal 3% of the value  
915 of the separate fund, according to the most recent statement of value preceding the beginning of  
916 the accounting period; and

917 (c) if the fiduciary cannot determine the value of the separate fund under Subsection  
918 (2)(b), the value of the separate fund is deemed to equal the present value of the expected  
919 future payments, as determined under Section 7520 of the Internal Revenue Code, for the  
920 month preceding the beginning of the accounting period for which the computation is made.

921 (3) A fiduciary shall allocate a payment received from a separate fund during an  
922 accounting period to income, to the extent of the internal income of the separate fund during  
923 the accounting period, and the balance to principal.

924 (4) The fiduciary of a marital trust shall:

925 (a) withdraw from a separate fund the amount the current income beneficiary of the  
926 trust requests the fiduciary to withdraw, not greater than the amount by which the internal

927 income of the separate fund during the accounting period exceeds the amount the fiduciary  
928 otherwise receives from the separate fund during the accounting period;

929 (b) transfer from principal to income the amount the current income beneficiary  
930 requests the fiduciary to transfer, not greater than the amount by which the internal income of  
931 the separate fund during the accounting period exceeds the amount the fiduciary receives from  
932 the separate fund during the accounting period after the application of Subsection (4)(a); and

933 (c) distribute to the current income beneficiary as income:

934 (i) the amount of the internal income of the separate fund received or withdrawn during  
935 the accounting period; and

936 (ii) the amount transferred from principal to income under Subsection (4)(b).

937 (5) For a trust, other than a marital trust, of which one or more current income  
938 beneficiaries are entitled to a distribution of all the current net income, the fiduciary shall  
939 transfer from principal to income the amount by which the internal income of a separate fund  
940 during the accounting period exceeds the amount the fiduciary receives from the separate fund  
941 during the accounting period.

942 Section 21. Section **22-3-411 (Effective 07/01/20)** is amended to read:

943 **22-3-411 (Effective 07/01/20). Receipts normally apportioned -- Minerals, water,**  
944 **and other natural resources.**

945 (1) To the extent that a fiduciary does not account for a receipt from an interest in  
946 minerals, water, or other natural resources as a business under Section [22-3-403](#), the fiduciary  
947 shall allocate the receipt:

948 (a) to income, to the extent received:

949 (i) as delay rental or annual rent on a lease;

950 (ii) as a factor for interest or the equivalent of interest under an agreement creating a  
951 production payment; or

952 (iii) on account of an interest in renewable water;

953 (b) to principal, if received from a production payment, to the extent that Subsection  
954 (1)(a)(ii) does not apply; or

955 (c) between income and principal equitably, to the extent received:

956 (i) on account of an interest in nonrenewable water;

957 (ii) as a royalty, shut-in-well payment, take-or-pay payment, or bonus; or

958 (iii) from a working interest or any other interest not provided for in Subsection (1)(a)  
959 or (b) or Subsection (1)(c)(i) or (ii).

960 (2) This section applies to an interest owned or held by a fiduciary [~~whether or not~~]  
961 regardless of whether a settlor was extracting minerals, water, or other natural resources before  
962 the fiduciary owned or held the interest.

963 (3) An allocation of a receipt under Subsection (1)(c) is presumed to be equitable if the  
964 amount allocated to principal is equal to the amount allowed by the Internal Revenue Code as a  
965 deduction for depletion of the interest.

966 (4) (a) If a fiduciary owns or holds an interest in minerals, water, or other natural  
967 resources before July 1, [~~2019~~] 2020, the fiduciary may allocate receipts from the interest as  
968 provided in this section or in the manner used by the fiduciary before July 1, [~~2019~~] 2020.

969 (b) If the fiduciary acquires an interest in minerals, water, or other natural resources on  
970 or after July 1, [~~2019~~] 2020, the fiduciary shall allocate receipts from the interest as provided in  
971 this section.

972 Section 22. Section **22-3-412 (Effective 07/01/20)** is amended to read:

973 **22-3-412 (Effective 07/01/20). Receipts normally apportioned -- Timber.**

974 (1) To the extent that a fiduciary does not account for receipts from the sale of timber  
975 and related products as a business under Section [22-3-403](#), the fiduciary shall allocate the net  
976 receipts:

977 (a) to income, to the extent that the amount of timber cut from the land does not exceed  
978 the rate of growth of the timber;

979 (b) to principal, to the extent that the amount of timber cut from the land exceeds the  
980 rate of growth of the timber or the net receipts are from the sale of standing timber;

981 (c) between income and principal if the net receipts are from the lease of land used for  
982 growing and cutting timber or from a contract to cut timber from land, by determining the  
983 amount of timber cut from the land under the lease or contract and applying the rules in  
984 Subsections (1)(a) and (b); or

985 (d) to principal, to the extent that advance payments, bonuses, and other payments are  
986 not allocated under Subsection (1)(a), (b), or (c).

987 (2) In determining net receipts to be allocated under Subsection (1), a fiduciary shall  
988 deduct and transfer to principal a reasonable amount for depletion.

989 (3) This section applies to land owned or held by a fiduciary [~~whether or not~~  
 990 regardless of whether a settlor was cutting timber from the land before the fiduciary owned or  
 991 held the property.

992 (4) (a) If a fiduciary owns or holds an interest in land used for growing and cutting  
 993 timber before July 1, [~~2019~~] 2020, the fiduciary may allocate net receipts from the sale of  
 994 timber and related products as provided in this section or in the manner used by the fiduciary  
 995 before July 1, [~~2019~~] 2020.

996 (b) If the fiduciary acquires an interest in land used for growing and cutting timber on  
 997 or after July 1, [~~2019~~] 2020, the fiduciary shall allocate net receipts from the sale of timber and  
 998 related products as provided in this section.

999 Section 23. Section **22-3-414 (Effective 07/01/20)** is amended to read:

1000 **22-3-414 (Effective 07/01/20). Receipts normally apportioned -- Derivative or**  
 1001 **option.**

1002 (1) In this section:

1003 (a) "Derivative" means a contract, instrument, other arrangement, or combination of  
 1004 contracts, instruments, or other arrangements, for which the value, rights, and obligations [~~of~~  
 1005 ~~which~~] are, in whole or in part, dependent on or derived from an underlying tangible or  
 1006 intangible asset, group of tangible or intangible assets, index, or occurrence of an event.

1007 (b) "Derivative" includes stocks, fixed income securities, and financial instruments and  
 1008 arrangements based on indices, commodities, interest rates, weather-related events, and  
 1009 credit-default events.

1010 (2) To the extent that a fiduciary does not account for a transaction in derivatives as a  
 1011 business under Section 22-3-403, the fiduciary shall allocate:

1012 (a) 10% of receipts from the transaction and 10% of disbursements made in connection  
 1013 with the transaction to income; and

1014 (b) the balance to principal.

1015 (3) Subsection (4) applies if:

1016 (a) a fiduciary:

1017 (i) grants an option to buy property from a trust, [~~whether or not~~] regardless of whether  
 1018 the trust owns the property when the option is granted;

1019 (ii) grants an option that permits another person to sell property to the trust; or

1020 (iii) acquires an option to buy property for the trust or an option to sell an asset owned  
1021 by the trust; and

1022 (b) the fiduciary or other owner of the asset is required to deliver the asset if the option  
1023 is exercised.

1024 (4) If this subsection applies, the fiduciary shall allocate 10% to income and the  
1025 balance to principal of the following amounts:

1026 (a) an amount received for granting the option;

1027 (b) an amount paid to acquire the option; and

1028 (c) gain or loss realized on the exercise, exchange, settlement, offset, closing, or  
1029 expiration of the option.

1030 Section 24. Section **22-3-415 (Effective 07/01/20)** is amended to read:

1031 **22-3-415 (Effective 07/01/20). Receipts normally apportioned -- Asset-backed**  
1032 **security.**

1033 (1) Except as otherwise provided in Subsection (2), a fiduciary shall allocate:

1034 (a) to income, a receipt from or related to an asset-backed security, to the extent that  
1035 the payor identifies the payment as being from interest or other current return[;]; and

1036 (b) to principal, the balance of the receipt.

1037 (2) If a fiduciary receives one or more payments in exchange for part or all of the  
1038 fiduciary's interest in an asset-backed security, including a liquidation or redemption of the  
1039 fiduciary's interest in the security, the fiduciary shall allocate:

1040 (a) to income, 10% of receipts from the transaction and 10% of disbursements made in  
1041 connection with the transaction[;]; and

1042 (b) to principal, the balance of the receipts and disbursements.

1043 Section 25. Section **22-3-505 (Effective 07/01/20)** is amended to read:

1044 **22-3-505 (Effective 07/01/20). Reimbursement of principal from income.**

1045 (1) If a fiduciary makes or expects to make a principal disbursement described in  
1046 Subsection (2), the fiduciary may transfer an appropriate amount from income to principal in  
1047 one or more accounting periods to reimburse principal or provide a reserve for future principal  
1048 disbursements.

1049 (2) To the extent that a fiduciary has not been and does not expect to be reimbursed by  
1050 a third party, principal disbursements to which Subsection (1) applies include:

1051 (a) an amount chargeable to income but paid from principal because income is not  
1052 sufficient;

1053 (b) the cost of an improvement to principal, regardless of whether the improvement is a  
1054 change to an existing asset or the construction of a new asset, including a special assessment;

1055 (c) a disbursement made to prepare property for rental, including tenant allowances,  
1056 leasehold improvements, and commissions;

1057 (d) a periodic payment on an obligation secured by a principal asset, to the extent that  
1058 the amount transferred from income to principal for depreciation is less than the periodic  
1059 payment; and

1060 (e) a disbursement described in Subsection [22-3-502](#)(1).

1061 (3) If an asset whose ownership gives rise to a principal disbursement becomes subject  
1062 to a successive interest after an income interest ends, the fiduciary may continue to make  
1063 transfers under Subsection (1).

1064 Section 26. Section **22-3-506 (Effective 07/01/20)** is amended to read:

1065 **22-3-506 (Effective 07/01/20). Income taxes.**

1066 (1) A tax required to be paid by a fiduciary that is based on receipts allocated to income  
1067 ~~[must]~~ shall be paid from income.

1068 (2) A tax required to be paid by a fiduciary that is based on receipts allocated to  
1069 principal ~~[must]~~ shall be paid from principal, even if the tax is called an income tax by the  
1070 taxing authority.

1071 (3) Subject to Subsection (4) and Sections [22-3-504](#), [22-3-505](#), and [22-3-507](#), a tax  
1072 required to be paid by a fiduciary on a share of an entity's taxable income in an accounting  
1073 period ~~[must]~~ shall be paid from:

1074 (a) income and principal proportionately to the allocation between income and  
1075 principal of receipts from the entity in the period; and

1076 (b) principal, to the extent that the tax exceeds the receipts from the entity in the  
1077 accounting period.

1078 (4) After applying Subsections (1) through (3), a fiduciary shall adjust income or  
1079 principal receipts, to the extent that the taxes the fiduciary pays are reduced because of a  
1080 deduction for a payment made to a beneficiary.

1081 Section 27. Section **22-3-507 (Effective 07/01/20)** is amended to read:

1082           **22-3-507 (Effective 07/01/20). Adjustment between income and principal because**  
1083 **of taxes.**

1084           (1) A fiduciary may make an adjustment between income and principal to offset the  
1085 shifting of economic interests or tax benefits between current income beneficiaries and  
1086 successor beneficiaries that arises from:

1087           (a) an election or decision the fiduciary makes regarding a tax matter, other than a  
1088 decision to claim an income tax deduction to which Subsection (2) applies;

1089           (b) an income tax or other tax imposed on the fiduciary or a beneficiary as a result of a  
1090 transaction involving the fiduciary or a distribution by the fiduciary; or

1091           (c) ownership by the fiduciary of an interest in an entity, a part of whose taxable  
1092 income, ~~[whether or not]~~ regardless of whether the taxable income is distributed, is includable  
1093 in the taxable income of the fiduciary or a beneficiary.

1094           (2) (a) If the amount of an estate tax marital or charitable deduction is reduced because  
1095 a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting  
1096 ~~[it]~~ the amount for estate tax purposes and, as a result, estate taxes paid from principal are  
1097 increased and income taxes paid by the fiduciary or a beneficiary are decreased, the fiduciary  
1098 shall charge each beneficiary that benefits from the decrease in income tax to reimburse the  
1099 principal from which the increase in estate tax is paid.

1100           (b) The total reimbursement must equal the increase in the estate tax, to the extent that  
1101 the principal used to pay the increase would have qualified for a marital or charitable deduction  
1102 but for the payment.

1103           (c) The share of the reimbursement for each fiduciary or beneficiary whose income  
1104 taxes are reduced ~~[must]~~ shall be the same as ~~[its]~~ the fiduciary's or beneficiary's share of the  
1105 total decrease in income tax.

1106           (3) A fiduciary that charges a beneficiary under Subsection (2) may offset the charge  
1107 by obtaining payment from the beneficiary, withholding an amount from future distributions to  
1108 the beneficiary, or adopting another method or combination of methods.

1109           Section 28. Section **22-3-601 (Effective 07/01/20)** is amended to read:

1110           **22-3-601 (Effective 07/01/20). Determination and distribution of net income.**

1111           (1) This section applies when:

1112           (a) the death of an individual results in the creation of an estate or trust; or

1113 (b) an income interest in a trust terminates, regardless of whether the trust continues or  
1114 is distributed.

1115 (2) A fiduciary of an estate or trust with an income interest that terminates shall:

1116 (a) determine, ~~[under]~~ in accordance with Subsection ~~[(7)]~~ (8) and Part 4, Allocation of  
1117 Receipts, Part 5, Allocation of Disbursements, and Part 7, Apportionment at Beginning and  
1118 End of Income Interest, the amount of net income and net principal receipts received from  
1119 property specifically given to a beneficiary; and

1120 (b) distribute the net income and net principal receipts to the beneficiary that is to  
1121 receive the specific property.

1122 (3) ~~[A]~~ Subject to Subsection (4), a fiduciary shall determine the income and net  
1123 income of an estate or income interest in a trust that terminates, other than the amount of net  
1124 income determined ~~[under]~~ in accordance with Subsection (2), ~~[under]~~ and in accordance with  
1125 Part 4, Allocation of Receipts, Part 5, Allocation of Disbursements, and Part 7, Apportionment  
1126 at Beginning and End of Income Interest, and by:

1127 (a) including in net income all income from property used or sold to discharge  
1128 liabilities;

1129 (b) paying from income or principal, in the fiduciary's discretion<sup>[5]</sup>;

1130 (i) fees of attorneys, accountants, and fiduciaries<sup>[5]</sup>;

1131 (ii) court costs and other expenses of administration<sup>[5]</sup>~~and~~;

1132 (iii) interest on estate ~~and~~ taxes, inheritance taxes, and other taxes imposed because  
1133 of the decedent's death<sup>[5]</sup>, ~~but the fiduciary may pay the expenses from income of property~~  
1134 ~~passing to a trust for which the fiduciary claims a federal estate tax marital or charitable~~  
1135 ~~deduction only to the extent.]; and~~

1136 ~~[(i) the payment of the expenses from income will not cause the reduction or loss of the~~  
1137 ~~deduction; or]~~

1138 ~~[(ii) the fiduciary makes an adjustment under Subsection [22-3-507\(2\)](#); and]~~

1139 (c) paying from principal other disbursements made or incurred in connection with the  
1140 settlement of the estate or the winding up of an income interest that terminates, including:

1141 (i) to the extent authorized by the decedent's will, the terms of the trust, or applicable  
1142 law, debts, funeral expenses, disposition of remains, family allowances, estate and inheritance  
1143 taxes, and other taxes imposed because of the decedent's death; and

1144 (ii) related penalties that are apportioned, by the decedent's will, the terms of the trust,  
1145 or applicable law, to the estate or income interest that terminates.

1146 (4) A fiduciary may pay the expenses from income of property passing to a trust for  
1147 which the fiduciary claims a federal estate tax marital or charitable deduction only to the  
1148 extent:

1149 (a) the payment of the expenses from income will not cause the reduction or loss of the  
1150 deduction; or

1151 (b) the fiduciary makes an adjustment under Subsection [22-3-507\(2\)](#).

1152 [~~4~~] (5) If a decedent's will, the terms of a trust, or applicable law provides for the  
1153 payment of interest or the equivalent of interest to a beneficiary that receives a pecuniary  
1154 amount outright, the fiduciary shall make the payment from net income determined under  
1155 Subsection (3) or from principal to the extent that net income is insufficient.

1156 [~~5~~] (6) If a beneficiary is to receive a pecuniary amount outright from a trust after an  
1157 income interest ends because of an income beneficiary's death, and no payment of interest or  
1158 the equivalent of interest is provided for by the terms of the trust or applicable law, the  
1159 fiduciary shall pay the interest or the equivalent of interest to which the beneficiary would be  
1160 entitled under applicable law if the pecuniary amount were required to be paid under a will.

1161 [~~6~~] (7) A fiduciary shall distribute net income remaining after payments required by  
1162 Subsections [~~4~~] (5) and [~~5~~] (6) in the manner described in Section [22-3-602](#) to all other  
1163 beneficiaries, including a beneficiary that receives a pecuniary amount in trust, even if the  
1164 beneficiary holds an unqualified power to withdraw assets from the trust or other presently  
1165 exercisable general power of appointment over the trust.

1166 [~~7~~] (8) (a) A fiduciary may not reduce principal or income receipts from property  
1167 described in Subsection (2) because of a payment described in Section [22-3-501](#) or [22-3-502](#),  
1168 to the extent the decedent's will, the terms of the trust, or applicable law requires the fiduciary  
1169 to make the payment from assets other than the property or to the extent the fiduciary recovers  
1170 or expects to recover the payment from a third party.

1171 (b) The net income and principal receipts from the property [~~must~~] shall be determined  
1172 by including the amount the fiduciary receives or pays regarding the property, whether the  
1173 amount accrued or became due before, on, or after the date of the decedent's death or an  
1174 income interest's terminating event, and making a reasonable provision for an amount the estate

1175 or income interest may become obligated to pay after the property is distributed.

1176 Section 29. Section **22-3-602 (Effective 07/01/20)** is amended to read:

1177 **22-3-602 (Effective 07/01/20). Distribution to successor beneficiary.**

1178 (1) (a) Except to the extent Part 3, Unitrust, applies for a beneficiary that is a trust, each  
1179 beneficiary described in Subsection [22-3-601](#)(6) is entitled to receive a share of the net income  
1180 equal to the beneficiary's fractional interest in undistributed principal assets, using values of the  
1181 undistributed principal assets as of the distribution date.

1182 (b) If a fiduciary makes more than one distribution of assets to beneficiaries to which  
1183 this section applies, each beneficiary, including a beneficiary that does not receive part of the  
1184 distribution, is entitled, as of each distribution date, to a share of the net income the fiduciary  
1185 received after the decedent's death, an income interest's other terminating event, or the  
1186 preceding distribution by the fiduciary.

1187 (2) In determining a beneficiary's share of net income under Subsection (1) ~~the~~  
1188 ~~following rules apply~~:

1189 (a) ~~The~~ the beneficiary is entitled to receive a share of the net income equal to the  
1190 beneficiary's fractional interest in the undistributed principal assets immediately before the  
1191 distribution date~~[-];~~;

1192 (b) ~~The~~ the beneficiary's fractional interest under Subsection (2)(a) ~~must~~ shall be  
1193 calculated:

1194 (i) on the aggregate value of the assets as of the distribution date without reducing the  
1195 value by any unpaid principal obligation; and

1196 (ii) without regard to:

1197 (A) property specifically given to a beneficiary under the decedent's will or the terms of  
1198 the trust; and

1199 (B) property required to pay pecuniary amounts not in trust~~[-];~~ and

1200 (c) ~~The~~ the distribution date under Subsection (2)(a) may be the date ~~as of~~ on which  
1201 the fiduciary calculates the value of the assets if that date is reasonably near the date on which  
1202 the assets are distributed.

1203 (3) To the extent that a fiduciary does not distribute under this section all the collected  
1204 but undistributed net income to each beneficiary ~~as of~~ on or before a distribution date, the  
1205 fiduciary shall maintain records showing the interest of each beneficiary in the net income.

1206 (4) If this section applies to income from an asset, a fiduciary may apply [~~the rules in~~  
1207 ~~this section~~] Subsection (2) to net gain or loss realized from the disposition of the asset after  
1208 the decedent's death, an income interest's terminating event, or the preceding distribution by the  
1209 fiduciary.

1210 Section 30. Section **22-3-701 (Effective 07/01/20)** is amended to read:

1211 **22-3-701 (Effective 07/01/20). When right to income begins and ends.**

1212 (1) (a) An income beneficiary is entitled to net income in accordance with the terms of  
1213 the trust from the date on which an income interest begins.

1214 (b) The income interest begins on the date that is specified in the terms of the trust or,  
1215 if no date is specified, on the date an asset becomes subject to:

1216 (i) the trust for the current income beneficiary; or

1217 (ii) a successive interest for a successor beneficiary.

1218 (2) An asset becomes subject to a trust under Subsection (1)(b)(i):

1219 (a) for an asset that is transferred to the trust during the settlor's life, on the date the  
1220 asset is transferred;

1221 (b) for an asset that becomes subject to the trust because of a decedent's death, on the  
1222 date of the decedent's death, even if there is an intervening period of administration of the  
1223 decedent's estate; or

1224 (c) for an asset that is transferred to a fiduciary by a third party because of a decedent's  
1225 death, on the date of the decedent's death.

1226 (3) An asset becomes subject to a successive interest under Subsection (1)(b)(ii) on the  
1227 day after the preceding income interest ends, as determined under Subsection (4), even if there  
1228 is an intervening period of administration to wind up the preceding income interest.

1229 (4) An income interest ends on the day before an income beneficiary dies or another  
1230 terminating event occurs or on the last day of a period during which there is no beneficiary to  
1231 which a fiduciary [~~may or must~~] is permitted or required to distribute income.

1232 Section 31. Section **22-3-702 (Effective 07/01/20)** is amended to read:

1233 **22-3-702 (Effective 07/01/20). Apportionment of receipts and disbursements**  
1234 **when decedent dies or income interest begins.**

1235 (1) A fiduciary shall allocate an income receipt or disbursement, other than a receipt to  
1236 which Subsection [22-3-601\(2\)](#) applies, to principal if [~~its~~] the due date of the income receipt or

1237 disbursement occurs before the date on which:

1238 (a) for an estate, the decedent died; or

1239 (b) for a trust or successive interest, an income interest begins.

1240 (2) If the due date of a periodic income receipt or disbursement occurs on or after the  
1241 date on which a decedent died or an income interest begins, a fiduciary shall allocate the  
1242 receipt or disbursement to income.

1243 (3) If an income receipt or disbursement is not periodic or has no due date, a fiduciary  
1244 shall:

1245 (a) treat the receipt or disbursement under this section as accruing from day to day; and

1246 (b) allocate:

1247 (i) to principal, the portion of the receipt or disbursement accruing before the date on  
1248 which a decedent died or an income interest begins; and

1249 (ii) to income, the balance.

1250 (4) A receipt or disbursement is periodic under Subsections (2) and (3) if:

1251 (a) the receipt or disbursement ~~[must]~~ shall be paid at regular intervals under an  
1252 obligation to make payments; or

1253 (b) the payor customarily makes payments at regular intervals.

1254 (5) (a) An item of income or obligation is due under this section on the date on which  
1255 the payor is required to make a payment.

1256 (b) If a payment date is not stated, there is no due date.

1257 (6) Distributions to shareholders or other owners from an entity to which Section  
1258 [22-3-401](#) applies are due:

1259 (a) on the date fixed by or on behalf of the entity for determining the persons entitled to  
1260 receive the distribution;

1261 (b) if no date is fixed, on the date of the decision by or on behalf of the entity to make  
1262 the distribution; or

1263 (c) if no date is fixed and the fiduciary does not know the date of the decision by or on  
1264 behalf of the entity to make the distribution, on the date the fiduciary learns of the decision.

1265 Section 32. Section **22-3-703 (Effective 07/01/20)** is amended to read:

1266 **22-3-703 (Effective 07/01/20). Apportionment when income interest ends.**

1267 (1) In this section:

1268 (a) "Undistributed income" means net income received on or before the date on which  
1269 an income interest ends.

1270 (b) "Undistributed income" does not include an item of income or expense [~~which~~] that  
1271 is due or accrued or net income that has been added or is required to be added, to principal  
1272 under the terms of the trust.

1273 (2) Except as otherwise provided in Subsection (3), when a mandatory income interest  
1274 of a beneficiary ends, the fiduciary shall pay the beneficiary's share of the undistributed income  
1275 that is not disposed of under the terms of the trust to the beneficiary or, if the beneficiary does  
1276 not survive the date that the interest ends, to the beneficiary's estate.

1277 (3) If a beneficiary has an unqualified power to withdraw more than 5% of the value of  
1278 a trust immediately before an income interest ends:

1279 (a) the fiduciary shall allocate to principal the undistributed income from the portion of  
1280 the trust [~~which~~] that may be withdrawn; and

1281 (b) Subsection (2) applies only to the balance of the undistributed income.

1282 (4) When a fiduciary's obligation to pay a fixed annuity or a fixed fraction of the value  
1283 of assets ends, the fiduciary shall prorate the final payment as required to preserve an income  
1284 tax, gift tax, estate tax, or other tax benefit.

1285 Section 33. Section **22-3-801 (Effective 07/01/20)** is amended to read:

1286 **22-3-801 (Effective 07/01/20). Uniformity of application and construction.**

1287 In applying and construing this uniform act, consideration must be given to the need to  
1288 promote uniformity of the law with respect to [~~its~~] the uniform act's subject matter among  
1289 states that enact it.

1290 Section 34. Section **22-3-803 (Effective 07/01/20)** is amended to read:

1291 **22-3-803 (Effective 07/01/20). Application to trust or estate.**

1292 This chapter applies to a trust or estate existing or created on or after July 1, [~~2019~~]  
1293 2020, except as otherwise expressly provided in the terms of the trust or this chapter.

1294 Section 35. Section **22-3-804 (Effective 07/01/20)** is amended to read:

1295 **22-3-804 (Effective 07/01/20). Severability.**

1296 If any provision of this chapter or [~~its~~] the application of this chapter to any person or  
1297 circumstance is held invalid, the invalidity does not affect other provisions or applications of  
1298 this chapter [~~which~~] that can be given effect without the invalid provision or application, and to

1299 this end the provisions of this chapter are severable.

1300 Section 36. Section **75-7-103 (Superseded 07/01/20)** is amended to read:

1301 **75-7-103 (Superseded 07/01/20). Definitions.**

1302 (1) In this chapter:

1303 (a) "Action," with respect to an act of a trustee, includes a failure to act.

1304 (b) "Beneficiary" means a person that:

1305 (i) has a present or future beneficial interest in a trust, vested or contingent; or

1306 (ii) in a capacity other than that of trustee, holds a power of appointment over trust

1307 property.

1308 (c) "Charitable trust" means a trust, or portion of a trust, created for a charitable

1309 purpose described in Subsection [75-7-405](#)(1).

1310 (d) "Environmental law" means a federal, state, or local law, rule, regulation, or

1311 ordinance relating to protection of the environment.

1312 (e) "Interests of the beneficiaries" means the beneficial interests provided in the terms

1313 of the trust.

1314 (f) "Jurisdiction," with respect to a geographic area, includes a state or country.

1315 (g) "Power of withdrawal" means a presently exercisable general power of appointment

1316 other than a power exercisable only upon consent of the trustee or a person holding an adverse

1317 interest.

1318 (h) "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's

1319 qualification is determined:

1320 (i) is a current distributee or permissible distributee of trust income or principal; or

1321 (ii) would be a distributee or permissible distributee of trust income or principal if the

1322 trust terminated on that date.

1323 (i) "Resident estate" or "resident trust" means:

1324 (i) an estate of a decedent who at death was domiciled in this state;

1325 (ii) a trust, or a portion of a trust, consisting of property transferred by will of a

1326 decedent who at his death was domiciled in this state; or

1327 (iii) a trust administered in this state.

1328 (j) "Revocable," as applied to a trust, means revocable by the settlor without the

1329 consent of the trustee or a person holding an adverse interest.

1330 (k) "Settlor" means a person, including a testator, who creates, or contributes property  
1331 to, a trust. If more than one person creates or contributes property to a trust, each person is a  
1332 settlor of the portion of the trust property attributable to that person's contribution except to the  
1333 extent another person has the power to revoke or withdraw that portion.

1334 (l) "Spendthrift provision" means a term of a trust which restrains both voluntary and  
1335 involuntary transfer or encumbrance of a beneficiary's interest.

1336 (m) "Terms of a trust" means:

1337 (i) ~~[subject to]~~ except as otherwise provided in Subsection (1)(m)(ii), the manifestation  
1338 of the settlor's intent regarding a trust's provisions as:

1339 (A) expressed in the trust instrument; or

1340 (B) established by other evidence that would be admissible in a judicial proceeding; or

1341 (ii) the trust's provisions, as established, determined, or amended by:

1342 (A) a trustee or other ~~[person]~~ trust director in accordance with applicable law;

1343 (B) a court order; or

1344 (C) a nonjudicial settlement agreement under Section [75-7-110](#)~~[-]~~;

1345 (iii) for an estate, a will; or

1346 (iv) for a life estate or term interest, the corresponding manifestation of the rights of  
1347 beneficiaries.

1348 (n) "Trust instrument" means an instrument executed by the settlor that contains terms  
1349 of the trust, including any amendments thereto.

1350 (2) Terms not specifically defined in this section have the meanings provided in  
1351 Section [75-1-201](#).

1352 Section 37. **Effective date.**

1353 (1) Except as provided in Subsection (2), the amendments to Section [75-7-103](#)

1354 (Superseded 07/01/20) in this bill take effect on May 12, 2020.

1355 (2) This bill takes effect on July 1, 2020.