

**First Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 21-0202.01 Conrad Imel x2313

SENATE BILL 21-171

SENATE SPONSORSHIP

Gardner, Cooke, Holbert, Smallwood, Woodward

HOUSE SPONSORSHIP

Snyder and Soper, Bird, Pico, Titone, Van Winkle

Senate Committees
Judiciary

House Committees
Judiciary

HOUSE
3rd Reading Unamended
May 7, 2021

A BILL FOR AN ACT

101 **CONCERNING THE "UNIFORM FIDUCIARY INCOME AND PRINCIPAL**
102 **ACT".**

HOUSE
2nd Reading Unamended
May 6, 2021

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

SENATE
3rd Reading Unamended
March 31, 2021

Colorado Commission on Uniform State Laws. The bill repeals the "Uniform Principal and Income Act" and replaces it with the "Uniform Fiduciary Income and Principal Act" (UFIPA), as drafted by the Uniform Law Commission, with Colorado-specific amendments.

The UFIPA includes provisions concerning:

- Duties of fiduciaries;

SENATE
2nd Reading Unamended
March 30, 2021

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

1 RIGHTS OR OTHER ASSETS THAT ENSURE THE SERVICING OR TIMELY
2 DISTRIBUTION OF PROCEEDS TO THE HOLDER OF THE ASSET-BACKED
3 SECURITY. THE TERM DOES NOT INCLUDE AN ASSET TO WHICH SECTION
4 15-1.2-401, 15-1.2-409, OR 15-1.2-414 APPLIES.

5 (3) "BENEFICIARY" INCLUDES:

6 (a) FOR A TRUST:

7 (I) A CURRENT BENEFICIARY, INCLUDING A CURRENT INCOME
8 BENEFICIARY AND A BENEFICIARY THAT MAY RECEIVE ONLY PRINCIPAL;

9 (II) A REMAINDER BENEFICIARY; AND

10 (III) ANY OTHER SUCCESSOR BENEFICIARY.

11 (b) FOR AN ESTATE, AN HEIR, LEGATEE, AND DEVISEE.

12 (c) RESERVED.

13 (4) "COURT" MEANS THE COURT IN THIS STATE HAVING
14 JURISDICTION RELATING TO A TRUST OR ESTATE.

15 (5) "CURRENT INCOME BENEFICIARY" MEANS A BENEFICIARY TO
16 WHICH A FIDUCIARY MAY DISTRIBUTE NET INCOME, WHETHER OR NOT THE
17 FIDUCIARY ALSO MAY DISTRIBUTE PRINCIPAL TO THE BENEFICIARY.

18 (6) "DISTRIBUTION" MEANS A PAYMENT OR TRANSFER BY A
19 FIDUCIARY TO A BENEFICIARY IN THE BENEFICIARY'S CAPACITY AS A
20 BENEFICIARY, MADE UNDER THE TERMS OF THE TRUST, WITHOUT
21 CONSIDERATION OTHER THAN THE BENEFICIARY'S RIGHT TO RECEIVE THE
22 PAYMENT OR TRANSFER UNDER THE TERMS OF THE TRUST. "DISTRIBUTE",
23 "DISTRIBUTED", AND "DISTRIBUTE" HAVE CORRESPONDING MEANINGS.

24 (7) "ESTATE" MEANS A DECEDENT'S ESTATE. THE TERM INCLUDES
25 THE PROPERTY OF THE DECEDENT AS THE ESTATE IS ORIGINALLY
26 CONSTITUTED AND THE PROPERTY OF THE ESTATE AS IT EXISTS AT ANY
27 TIME DURING ADMINISTRATION.

1 (8) "FIDUCIARY" INCLUDES A TRUSTEE, PERSONAL
2 REPRESENTATIVE, AND PERSON ACTING UNDER A DELEGATION FROM A
3 FIDUCIARY. THE TERM INCLUDES A PERSON THAT HOLDS PROPERTY FOR A
4 SUCCESSOR BENEFICIARY WHOSE INTEREST MAY BE AFFECTED BY AN
5 ALLOCATION OF RECEIPTS AND EXPENDITURES BETWEEN INCOME AND
6 PRINCIPAL. IF THERE ARE TWO OR MORE CO-FIDUCIARIES, THE TERM
7 INCLUDES ALL CO-FIDUCIARIES ACTING UNDER THE TERMS OF THE TRUST
8 AND APPLICABLE LAW.

9 (9) "INCOME" MEANS MONEY OR OTHER PROPERTY A FIDUCIARY
10 RECEIVES AS CURRENT RETURN FROM PRINCIPAL. THE TERM INCLUDES A
11 PART OF RECEIPTS FROM A SALE, EXCHANGE, OR LIQUIDATION OF A
12 PRINCIPAL ASSET, TO THE EXTENT PROVIDED IN PART 4 OF THIS ARTICLE
13 1.2.

14 (10) "INCOME INTEREST" MEANS THE RIGHT OF A CURRENT INCOME
15 BENEFICIARY TO RECEIVE ALL OR PART OF NET INCOME, WHETHER THE
16 TERMS OF THE TRUST REQUIRE THE NET INCOME TO BE DISTRIBUTED OR
17 AUTHORIZE THE NET INCOME TO BE DISTRIBUTED IN THE FIDUCIARY'S
18 DISCRETION. THE TERM INCLUDES THE RIGHT OF A CURRENT BENEFICIARY
19 TO USE PROPERTY HELD BY A FIDUCIARY.

20 (11) "INDEPENDENT PERSON" MEANS A PERSON THAT IS NOT:
21 (a) FOR A TRUST:
22 (I) A QUALIFIED BENEFICIARY DETERMINED UNDER SECTION
23 15-5-103 (16) OF THE "COLORADO UNIFORM TRUST CODE";
24 (II) A SETTLOR OF THE TRUST; OR
25 (III) AN INDIVIDUAL WHOSE LEGAL OBLIGATION TO SUPPORT A
26 BENEFICIARY MAY BE SATISFIED BY A DISTRIBUTION FROM THE TRUST;
27 (b) FOR AN ESTATE, A BENEFICIARY;

1 (c) A SPOUSE, PARENT, BROTHER, SISTER, OR ISSUE OF AN
2 INDIVIDUAL DESCRIBED IN SUBSECTION (11)(a) OR (11)(b) OF THIS
3 SECTION;

4 (d) A CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY,
5 OR OTHER ENTITY IN WHICH PERSONS DESCRIBED IN SUBSECTIONS (11)(a)
6 THROUGH (11)(c) OF THIS SECTION, IN THE AGGREGATE, HAVE VOTING
7 CONTROL; OR

8 (e) AN EMPLOYEE OF A PERSON DESCRIBED IN SUBSECTIONS (11)(a)
9 THROUGH (11)(d) OF THIS SECTION.

10 (12) "MANDATORY INCOME INTEREST" MEANS THE RIGHT OF A
11 CURRENT INCOME BENEFICIARY TO RECEIVE NET INCOME THAT THE TERMS
12 OF THE TRUST REQUIRE THE FIDUCIARY TO DISTRIBUTE.

13 (13) "NET INCOME" MEANS THE TOTAL ALLOCATIONS DURING AN
14 ACCOUNTING PERIOD TO INCOME UNDER THE TERMS OF A TRUST AND THIS
15 ARTICLE 1.2 MINUS THE DISBURSEMENTS DURING THE PERIOD, OTHER THAN
16 DISTRIBUTIONS, ALLOCATED TO INCOME UNDER THE TERMS OF THE TRUST
17 AND THIS ARTICLE 1.2. TO THE EXTENT THE TRUST IS A UNITRUST UNDER
18 PART 3 OF THIS ARTICLE 1.2, THE TERM MEANS THE UNITRUST AMOUNT
19 DETERMINED UNDER PART 3 OF THIS ARTICLE 1.2. THE TERM INCLUDES AN
20 ADJUSTMENT FROM PRINCIPAL TO INCOME UNDER SECTION 15-1.2-203.
21 THE TERM DOES NOT INCLUDE AN ADJUSTMENT FROM INCOME TO
22 PRINCIPAL UNDER SECTION 15-1.2-203.

23 (14) "PERSON" MEANS AN INDIVIDUAL, ESTATE, TRUST, BUSINESS
24 OR NONPROFIT ENTITY, PUBLIC CORPORATION, GOVERNMENT OR
25 GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY, OR OTHER
26 LEGAL ENTITY.

27 (15) "PERSONAL REPRESENTATIVE" MEANS AN EXECUTOR,

1 ADMINISTRATOR, SUCCESSOR PERSONAL REPRESENTATIVE, SPECIAL
2 ADMINISTRATOR, OR PERSON THAT PERFORMS SUBSTANTIALLY THE SAME
3 FUNCTION WITH RESPECT TO AN ESTATE UNDER THE LAW GOVERNING THE
4 PERSON'S STATUS.

5 (16) "PRINCIPAL" MEANS PROPERTY HELD IN TRUST FOR
6 DISTRIBUTION TO, PRODUCTION OF INCOME FOR, OR USE BY A CURRENT OR
7 SUCCESSOR BENEFICIARY.

8 (17) "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A
9 TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER
10 MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.

11 (18) "SETTLOR" MEANS A PERSON, INCLUDING A TESTATOR, THAT
12 CREATES OR CONTRIBUTES PROPERTY TO A TRUST. IF MORE THAN ONE
13 PERSON CREATES OR CONTRIBUTES PROPERTY TO A TRUST, THE TERM
14 INCLUDES EACH PERSON, TO THE EXTENT OF THE TRUST PROPERTY
15 ATTRIBUTABLE TO THAT PERSON'S CONTRIBUTION, EXCEPT TO THE EXTENT
16 ANOTHER PERSON HAS THE POWER TO REVOKE OR WITHDRAW THAT
17 PORTION.

18 (19) "SPECIAL TAX BENEFIT" MEANS:

19 (a) EXCLUSION OF A TRANSFER TO A TRUST FROM GIFTS DESCRIBED
20 IN SECTION 2503 (b) OF THE "INTERNAL REVENUE CODE OF 1986", 26
21 U.S.C. SEC. 2503 (b), AS AMENDED, BECAUSE OF THE QUALIFICATION OF
22 AN INCOME INTEREST IN THE TRUST AS A PRESENT INTEREST IN PROPERTY;

23 (b) STATUS AS A QUALIFIED SUBCHAPTER S TRUST, AS DESCRIBED
24 IN SECTION 1361 (d)(3) OF THE "INTERNAL REVENUE CODE OF 1986", 26
25 U.S.C. SEC. 1361 (d)(3), AS AMENDED, AT A TIME THE TRUST HOLDS
26 STOCK OF AN S CORPORATION, AS DESCRIBED IN SECTION 1361 (a)(1) OF
27 THE "INTERNAL REVENUE CODE OF 1986", 26 U.S.C. SEC. 1361 (a)(1), AS

1 AMENDED;

2 (c) AN ESTATE OR GIFT TAX MARITAL DEDUCTION FOR A TRANSFER
3 TO A TRUST UNDER SECTION 2056 OR 2523 OF THE "INTERNAL REVENUE
4 CODE OF 1986", 26 U.S.C. SEC. 2056 OR 26 U.S.C. SEC. 2523, AS
5 AMENDED, WHICH DEPENDS OR DEPENDED IN WHOLE OR IN PART ON THE
6 RIGHT OF THE SETTLOR'S SPOUSE TO RECEIVE THE NET INCOME OF THE
7 TRUST;

8 (d) EXEMPTION IN WHOLE OR IN PART OF A TRUST FROM THE
9 FEDERAL GENERATION-SKIPPING TRANSFER TAX IMPOSED BY SECTION 2601
10 OF THE "INTERNAL REVENUE CODE OF 1986", 26 U.S.C. SEC. 2601, AS
11 AMENDED, BECAUSE THE TRUST WAS IRREVOCABLE ON SEPTEMBER 25,
12 1985, IF THERE IS ANY POSSIBILITY THAT:

13 (I) A TAXABLE DISTRIBUTION, AS DEFINED IN SECTION 2612 (b) OF
14 THE "INTERNAL REVENUE CODE OF 1986", 26 U.S.C. SEC. 2612 (b), AS
15 AMENDED, COULD BE MADE FROM THE TRUST; OR

16 (II) A TAXABLE TERMINATION, AS DEFINED IN SECTION 2612 (a) OF
17 THE "INTERNAL REVENUE CODE OF 1986", 26 U.S.C. SEC. 2612 (a), AS
18 AMENDED, COULD OCCUR WITH RESPECT TO THE TRUST; OR

19 (e) AN INCLUSION RATIO, AS DEFINED IN SECTION 2642 (a) OF THE
20 "INTERNAL REVENUE CODE OF 1986", 26 U.S.C. SEC. 2642 (a), AS
21 AMENDED, OF THE TRUST WHICH IS LESS THAN ONE, IF THERE IS ANY
22 POSSIBILITY THAT:

23 (I) A TAXABLE DISTRIBUTION, AS DEFINED IN SECTION 2612 (b) OF
24 THE "INTERNAL REVENUE CODE OF 1986", 26 U.S.C. SEC. 2612 (b), AS
25 AMENDED, COULD BE MADE FROM THE TRUST; OR

26 (II) A TAXABLE TERMINATION, AS DEFINED IN SECTION 2612 (a) OF
27 THE "INTERNAL REVENUE CODE OF 1986", 26 U.S.C. SEC. 2612 (a), AS

1 AMENDED, COULD OCCUR WITH RESPECT TO THE TRUST.

2 (20) "SUCCESSIVE INTEREST" MEANS THE INTEREST OF A
3 SUCCESSOR BENEFICIARY.

4 (21) "SUCCESSOR BENEFICIARY" MEANS A PERSON ENTITLED TO
5 RECEIVE INCOME OR PRINCIPAL OR TO USE PROPERTY WHEN AN INCOME
6 INTEREST OR OTHER CURRENT INTEREST ENDS.

7 (22) "TERMS OF A TRUST" MEANS:

8 (a) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (22)(b) OF
9 THIS SECTION, THE MANIFESTATION OF THE SETTLOR'S INTENT REGARDING
10 A TRUST'S PROVISIONS AS:

11 (I) EXPRESSED IN THE TRUST INSTRUMENT; OR

12 (II) ESTABLISHED BY OTHER EVIDENCE THAT WOULD BE
13 ADMISSIBLE IN A JUDICIAL PROCEEDING;

14 (b) THE TRUST'S PROVISIONS AS ESTABLISHED, DETERMINED, OR
15 AMENDED BY:

16 (I) A TRUSTEE OR TRUST DIRECTOR IN ACCORDANCE WITH
17 APPLICABLE LAW;

18 (II) A COURT ORDER;

19 (III) A NONJUDICIAL SETTLEMENT AGREEMENT UNDER SECTION
20 15-5-111; OR

21 (IV) BY ALTERNATIVE DISPUTE RESOLUTION UNDER SECTION
22 15-5-113; OR

23 (c) FOR AN ESTATE, A WILL.

24 (d) RESERVED.

25 (23) "TRUST":

26 (a) INCLUDES:

27 (I) AN EXPRESS TRUST, PRIVATE OR CHARITABLE, WITH ADDITIONS

1 TO THE TRUST, WHEREVER AND HOWEVER CREATED; AND

2 (II) A TRUST CREATED OR DETERMINED BY JUDGMENT OR DECREE
3 UNDER WHICH THE TRUST IS TO BE ADMINISTERED IN THE MANNER OF AN
4 EXPRESS TRUST.

5 (b) DOES NOT INCLUDE:

6 (I) A CONSTRUCTIVE TRUST;

7 (II) A RESULTING TRUST, CONSERVATORSHIP, GUARDIANSHIP,
8 MULTI-PARTY ACCOUNT, CUSTODIAL ARRANGEMENT FOR A MINOR,
9 BUSINESS TRUST, VOTING TRUST, SECURITY ARRANGEMENT, LIQUIDATION
10 TRUST, OR TRUST FOR THE PRIMARY PURPOSE OF PAYING DEBTS,
11 DIVIDENDS, INTEREST, SALARIES, WAGES, PROFITS, PENSIONS, RETIREMENT
12 BENEFITS, OR EMPLOYEE BENEFITS OF ANY KIND; OR

13 (III) AN ARRANGEMENT UNDER WHICH A PERSON IS A NOMINEE,
14 ESCROWEE, OR AGENT FOR ANOTHER.

15 (24) "TRUSTEE" MEANS A PERSON, OTHER THAN A PERSONAL
16 REPRESENTATIVE, THAT OWNS OR HOLDS PROPERTY FOR THE BENEFIT OF
17 A BENEFICIARY. THE TERM INCLUDES AN ORIGINAL, ADDITIONAL, OR
18 SUCCESSOR TRUSTEE, WHETHER OR NOT APPOINTED OR CONFIRMED BY A
19 COURT.

20 (25) "WILL" MEANS ANY TESTAMENTARY INSTRUMENT
21 RECOGNIZED BY APPLICABLE LAW WHICH MAKES A LEGALLY EFFECTIVE
22 DISPOSITION OF AN INDIVIDUAL'S PROPERTY, EFFECTIVE AT THE
23 INDIVIDUAL'S DEATH. THE TERM INCLUDES A CODICIL OR OTHER
24 AMENDMENT TO A TESTAMENTARY INSTRUMENT.

25 **15-1.2-103. Scope.** (1) EXCEPT AS OTHERWISE PROVIDED IN THE
26 TERMS OF A TRUST, A WILL, OR THIS ARTICLE 1.2, THIS ARTICLE 1.2 APPLIES
27 TO:

1 (a) A TRUST OR ESTATE.

2 (b) RESERVED.

3 **15-1.2-104. Governing law.** EXCEPT AS OTHERWISE PROVIDED IN
4 THE TERMS OF A TRUST OR THIS ARTICLE 1.2, THIS ARTICLE 1.2 APPLIES
5 WHEN THIS STATE IS THE PRINCIPAL PLACE OF ADMINISTRATION OF A
6 TRUST OR ESTATE. BY ACCEPTING THE TRUSTEESHIP OF A TRUST HAVING
7 ITS PRINCIPAL PLACE OF ADMINISTRATION IN THIS STATE OR BY MOVING
8 THE PRINCIPAL PLACE OF ADMINISTRATION OF A TRUST TO THIS STATE, THE
9 TRUSTEE SUBMITS TO THE APPLICATION OF THIS ARTICLE 1.2 TO ANY
10 MATTER WITHIN THE SCOPE OF THIS ARTICLE 1.2 INVOLVING THE TRUST.

11 PART 2

12 FIDUCIARY DUTIES AND JUDICIAL REVIEW

13 **15-1.2-201. Fiduciary duties - general principles.** (1) IN
14 MAKING AN ALLOCATION OR DETERMINATION OR EXERCISING DISCRETION
15 UNDER THIS ARTICLE 1.2, A FIDUCIARY SHALL:

16 (a) ACT IN GOOD FAITH, BASED ON WHAT IS FAIR AND REASONABLE
17 TO ALL BENEFICIARIES;

18 (b) ADMINISTER A TRUST OR ESTATE IMPARTIALLY, EXCEPT TO THE
19 EXTENT THE TERMS OF THE TRUST MANIFEST AN INTENT THAT THE
20 FIDUCIARY SHALL OR MAY FAVOR ONE OR MORE BENEFICIARIES;

21 (c) ADMINISTER THE TRUST OR ESTATE IN ACCORDANCE WITH THE
22 TERMS OF THE TRUST, EVEN IF THERE IS A DIFFERENT PROVISION IN THIS
23 ARTICLE 1.2; AND

24 (d) ADMINISTER THE TRUST OR ESTATE IN ACCORDANCE WITH THIS
25 ARTICLE 1.2, EXCEPT TO THE EXTENT THE TERMS OF THE TRUST PROVIDE
26 OTHERWISE OR AUTHORIZE THE FIDUCIARY TO DETERMINE OTHERWISE.

27 (2) A FIDUCIARY'S ALLOCATION, DETERMINATION, OR EXERCISE OF

1 DISCRETION UNDER THIS ARTICLE 1.2 IS PRESUMED TO BE FAIR AND
2 REASONABLE TO ALL BENEFICIARIES. A FIDUCIARY MAY EXERCISE A
3 DISCRETIONARY POWER OF ADMINISTRATION GIVEN TO THE FIDUCIARY BY
4 THE TERMS OF THE TRUST, AND AN EXERCISE OF THE POWER WHICH
5 PRODUCES A RESULT DIFFERENT FROM A RESULT REQUIRED OR PERMITTED
6 BY THIS ARTICLE 1.2 DOES NOT CREATE AN INFERENCE THAT THE
7 FIDUCIARY ABUSED THE FIDUCIARY'S DISCRETION.

8 (3) A FIDUCIARY SHALL:

9 (a) ADD A RECEIPT TO PRINCIPAL, TO THE EXTENT NEITHER THE
10 TERMS OF THE TRUST NOR THIS ARTICLE 1.2 ALLOCATES THE RECEIPT
11 BETWEEN INCOME AND PRINCIPAL; AND

12 (b) CHARGE A DISBURSEMENT TO PRINCIPAL, TO THE EXTENT
13 NEITHER THE TERMS OF THE TRUST NOR THIS ARTICLE 1.2 ALLOCATES THE
14 DISBURSEMENT BETWEEN INCOME AND PRINCIPAL.

15 (4) A FIDUCIARY MAY EXERCISE THE POWER TO ADJUST UNDER
16 SECTION 15-1.2-203, CONVERT AN INCOME TRUST TO A UNITRUST UNDER
17 SECTION 15-1.2-303 (1)(a), CHANGE THE PERCENTAGE OR METHOD USED
18 TO CALCULATE A UNITRUST AMOUNT UNDER SECTION 15-1.2-303 (1)(b),
19 OR CONVERT A UNITRUST TO AN INCOME TRUST UNDER SECTION
20 15-1.2-303 (1)(c), IF THE FIDUCIARY DETERMINES THE EXERCISE OF THE
21 POWER WILL ASSIST THE FIDUCIARY TO ADMINISTER THE TRUST OR ESTATE
22 IMPARTIALLY.

23 (5) FACTORS THE FIDUCIARY MUST CONSIDER IN MAKING THE
24 DETERMINATION UNDER SUBSECTION (4) OF THIS SECTION INCLUDE:

25 (a) THE TERMS OF THE TRUST;

26 (b) THE NATURE, DISTRIBUTION STANDARDS, AND EXPECTED
27 DURATION OF THE TRUST;

1 (c) THE EFFECT OF THE ALLOCATION RULES, INCLUDING SPECIFIC
2 ADJUSTMENTS BETWEEN INCOME AND PRINCIPAL, UNDER PARTS 4
3 THROUGH 7 OF THIS ARTICLE 1.2;

4 (d) THE DESIRABILITY OF LIQUIDITY AND REGULARITY OF INCOME;

5 (e) THE DESIRABILITY OF THE PRESERVATION AND APPRECIATION
6 OF PRINCIPAL;

7 (f) THE EXTENT TO WHICH AN ASSET IS USED OR MAY BE USED BY
8 A BENEFICIARY;

9 (g) THE INCREASE OR DECREASE IN THE VALUE OF PRINCIPAL
10 ASSETS, REASONABLY DETERMINED BY THE FIDUCIARY;

11 (h) WHETHER AND TO WHAT EXTENT THE TERMS OF THE TRUST
12 GIVE THE FIDUCIARY POWER TO ACCUMULATE INCOME OR INVADE
13 PRINCIPAL OR PROHIBIT THE FIDUCIARY FROM ACCUMULATING INCOME OR
14 INVADING PRINCIPAL;

15 (i) THE EXTENT TO WHICH THE FIDUCIARY HAS ACCUMULATED
16 INCOME OR INVADED PRINCIPAL IN PRECEDING ACCOUNTING PERIODS;

17 (j) THE EFFECT OF CURRENT AND REASONABLY EXPECTED
18 ECONOMIC CONDITIONS; AND

19 (k) THE REASONABLY EXPECTED TAX CONSEQUENCES OF THE
20 EXERCISE OF THE POWER.

21 **15-1.2-202. Judicial review of exercise of discretionary power**

22 **- definition.** (1) IN THIS SECTION, "FIDUCIARY DECISION" MEANS:

23 (a) A FIDUCIARY'S ALLOCATION BETWEEN INCOME AND PRINCIPAL
24 OR OTHER DETERMINATION REGARDING INCOME AND PRINCIPAL REQUIRED
25 OR AUTHORIZED BY THE TERMS OF THE TRUST OR THIS ARTICLE 1.2;

26 (b) THE FIDUCIARY'S EXERCISE OR NONEXERCISE OF A
27 DISCRETIONARY POWER REGARDING INCOME AND PRINCIPAL GRANTED BY

1 THE TERMS OF THE TRUST OR THIS ARTICLE 1.2, INCLUDING THE POWER TO
2 ADJUST UNDER SECTION 15-1.2-203, CONVERT AN INCOME TRUST TO A
3 UNITRUST UNDER SECTION 15-1.2-303 (1)(a), CHANGE THE PERCENTAGE
4 OR METHOD USED TO CALCULATE A UNITRUST AMOUNT UNDER SECTION
5 15-1.2-303 (1)(b), OR CONVERT A UNITRUST TO AN INCOME TRUST UNDER
6 SECTION 15-1.2-303 (1)(c); OR

7 (c) THE FIDUCIARY'S IMPLEMENTATION OF A DECISION DESCRIBED
8 IN SUBSECTION (1)(a) OR (1)(b) OF THIS SECTION.

9 (2) THE COURT MAY NOT ORDER A FIDUCIARY TO CHANGE A
10 FIDUCIARY DECISION UNLESS THE COURT DETERMINES THAT THE
11 FIDUCIARY DECISION WAS AN ABUSE OF THE FIDUCIARY'S DISCRETION.

12 (3) IF THE COURT DETERMINES THAT A FIDUCIARY DECISION WAS
13 AN ABUSE OF THE FIDUCIARY'S DISCRETION, THE COURT MAY ORDER A
14 REMEDY AUTHORIZED BY LAW, INCLUDING SECTION 15-1-1001 OF THE
15 "COLORADO UNIFORM TRUST CODE" AND PART 5 OF ARTICLE 10 OF THIS
16 TITLE 15. TO PLACE THE BENEFICIARIES IN THE POSITIONS THE
17 BENEFICIARIES WOULD HAVE OCCUPIED IF THERE HAD NOT BEEN AN ABUSE
18 OF THE FIDUCIARY'S DISCRETION, THE COURT MAY ORDER:

19 (a) THE FIDUCIARY TO EXERCISE OR REFRAIN FROM EXERCISING
20 THE POWER TO ADJUST UNDER SECTION 15-1.2-203;

21 (b) THE FIDUCIARY TO EXERCISE OR REFRAIN FROM EXERCISING
22 THE POWER TO CONVERT AN INCOME TRUST TO A UNITRUST UNDER
23 SECTION 15-1.2-303 (1)(a), CHANGE THE PERCENTAGE OR METHOD USED
24 TO CALCULATE A UNITRUST AMOUNT UNDER SECTION 15-1.2-303 (1)(b),
25 OR CONVERT A UNITRUST TO AN INCOME TRUST UNDER SECTION
26 15-1.2-303 (1)(c);

27 (c) THE FIDUCIARY TO DISTRIBUTE AN AMOUNT TO A BENEFICIARY;

1 (d) A BENEFICIARY TO RETURN SOME OR ALL OF A DISTRIBUTION;

2 OR

3 (e) THE FIDUCIARY TO WITHHOLD AN AMOUNT FROM ONE OR MORE
4 FUTURE DISTRIBUTIONS TO A BENEFICIARY.

5 (4) RESERVED.

6 **15-1.2-203. Fiduciary's power to adjust.** (1) EXCEPT AS
7 OTHERWISE PROVIDED IN THE TERMS OF A TRUST OR THIS SECTION, A
8 FIDUCIARY, IN A RECORD, WITHOUT COURT APPROVAL, MAY ADJUST
9 BETWEEN INCOME AND PRINCIPAL IF THE FIDUCIARY DETERMINES THE
10 EXERCISE OF THE POWER TO ADJUST WILL ASSIST THE FIDUCIARY TO
11 ADMINISTER THE TRUST OR ESTATE IMPARTIALLY.

12 (2) THIS SECTION DOES NOT CREATE A DUTY TO EXERCISE OR
13 CONSIDER THE POWER TO ADJUST UNDER SUBSECTION (1) OF THIS SECTION
14 OR TO INFORM A BENEFICIARY ABOUT THE APPLICABILITY OF THIS SECTION.

15 (3) A FIDUCIARY THAT IN GOOD FAITH EXERCISES OR FAILS TO
16 EXERCISE THE POWER TO ADJUST UNDER SUBSECTION (1) OF THIS SECTION
17 IS NOT LIABLE TO A PERSON AFFECTED BY THE EXERCISE OR FAILURE TO
18 EXERCISE.

19 (4) IN DECIDING WHETHER AND TO WHAT EXTENT TO EXERCISE THE
20 POWER TO ADJUST UNDER SUBSECTION (1) OF THIS SECTION, A FIDUCIARY
21 SHALL CONSIDER ALL FACTORS THE FIDUCIARY CONSIDERS RELEVANT,
22 INCLUDING RELEVANT FACTORS IN SECTION 15-1.2-201 (5) AND THE
23 APPLICATION OF SECTIONS 15-1.2-401 (9), 15-1.2-408, AND 15-1.2-413.

24 (5) A FIDUCIARY MAY NOT EXERCISE THE POWER UNDER
25 SUBSECTION (1) OF THIS SECTION TO MAKE AN ADJUSTMENT OR, UNDER
26 SECTION 15-1.2-408, TO MAKE A DETERMINATION THAT AN ALLOCATION
27 IS INSUBSTANTIAL IF:

1 (a) THE ADJUSTMENT OR DETERMINATION WOULD REDUCE THE
2 AMOUNT PAYABLE TO A CURRENT INCOME BENEFICIARY FROM A TRUST
3 THAT QUALIFIES FOR A SPECIAL TAX BENEFIT, EXCEPT TO THE EXTENT THE
4 ADJUSTMENT IS MADE TO PROVIDE FOR A REASONABLE APPORTIONMENT
5 OF THE TOTAL RETURN OF THE TRUST BETWEEN THE CURRENT INCOME
6 BENEFICIARY AND SUCCESSOR BENEFICIARIES;

7 (b) THE ADJUSTMENT OR DETERMINATION WOULD CHANGE THE
8 AMOUNT PAYABLE TO A BENEFICIARY, AS A FIXED ANNUITY OR A FIXED
9 FRACTION OF THE VALUE OF THE TRUST ASSETS, UNDER THE TERMS OF THE
10 TRUST;

11 (c) THE ADJUSTMENT OR DETERMINATION WOULD REDUCE AN
12 AMOUNT THAT IS PERMANENTLY SET ASIDE FOR A CHARITABLE PURPOSE
13 UNDER THE TERMS OF THE TRUST, UNLESS BOTH INCOME AND PRINCIPAL
14 ARE SET ASIDE FOR THE CHARITABLE PURPOSE;

15 (d) POSSESSING OR EXERCISING THE POWER WOULD CAUSE A
16 PERSON TO BE TREATED AS THE OWNER OF ALL OR PART OF THE TRUST FOR
17 FEDERAL INCOME TAX PURPOSES;

18 (e) POSSESSING OR EXERCISING THE POWER WOULD CAUSE ALL OR
19 PART OF THE VALUE OF THE TRUST ASSETS TO BE INCLUDED IN THE GROSS
20 ESTATE OF AN INDIVIDUAL FOR FEDERAL ESTATE TAX PURPOSES;

21 (f) POSSESSING OR EXERCISING THE POWER WOULD CAUSE AN
22 INDIVIDUAL TO BE TREATED AS MAKING A GIFT FOR FEDERAL GIFT TAX
23 PURPOSES;

24 (g) THE FIDUCIARY IS NOT AN INDEPENDENT PERSON;

25 (h) THE TRUST IS IRREVOCABLE AND PROVIDES FOR INCOME TO BE
26 PAID TO THE SETTLOR AND POSSESSING OR EXERCISING THE POWER WOULD
27 CAUSE THE ADJUSTED PRINCIPAL OR INCOME TO BE CONSIDERED AN

1 AVAILABLE RESOURCE OR AVAILABLE INCOME UNDER A PUBLIC-BENEFIT
2 PROGRAM; OR

3 (i) THE TRUST IS A UNITRUST UNDER PART 3 OF THIS ARTICLE 1.2.

4 (6) IF SUBSECTION (5)(d), (5)(e), (5)(f), OR (5)(g) OF THIS SECTION
5 APPLIES TO A FIDUCIARY:

6 (a) A CO-FIDUCIARY TO WHICH SUBSECTIONS (5)(d) THROUGH
7 (5)(g) OF THIS SECTION DO NOT APPLY MAY EXERCISE THE POWER TO
8 ADJUST, UNLESS THE EXERCISE OF THE POWER BY THE REMAINING
9 CO-FIDUCIARY OR CO-FIDUCIARIES IS NOT PERMITTED BY THE TERMS OF
10 THE TRUST OR LAW OTHER THAN THIS ARTICLE 1.2; OR

11 (b) IF THERE IS NO CO-FIDUCIARY TO WHICH SUBSECTIONS (5)(d)
12 THROUGH (5)(g) OF THIS SECTION DO NOT APPLY, THE FIDUCIARY MAY
13 APPOINT A CO-FIDUCIARY TO WHICH SUBSECTIONS (5)(d) THROUGH (5)(g)
14 OF THIS SECTION DO NOT APPLY, WHICH MAY BE A SPECIAL FIDUCIARY
15 WITH LIMITED POWERS, AND THE APPOINTED CO-FIDUCIARY MAY EXERCISE
16 THE POWER TO ADJUST UNDER SUBSECTION (1) OF THIS SECTION, UNLESS
17 THE APPOINTMENT OF A CO-FIDUCIARY OR THE EXERCISE OF THE POWER BY
18 A CO-FIDUCIARY IS NOT PERMITTED BY THE TERMS OF THE TRUST OR LAW
19 OTHER THAN THIS ARTICLE 1.2.

20 (7) A FIDUCIARY MAY RELEASE OR DELEGATE TO A CO-FIDUCIARY
21 THE POWER TO ADJUST UNDER SUBSECTION (1) OF THIS SECTION IF THE
22 FIDUCIARY DETERMINES THAT THE FIDUCIARY'S POSSESSION OR EXERCISE
23 OF THE POWER WILL OR MAY:

24 (a) CAUSE A RESULT DESCRIBED IN SUBSECTIONS (5)(a) THROUGH
25 (5)(f) OF THIS SECTION OR SUBSECTION (5)(h) OF THIS SECTION; OR

26 (b) DEPRIVE THE TRUST OF A TAX BENEFIT OR IMPOSE A TAX
27 BURDEN NOT DESCRIBED IN SUBSECTIONS (5)(a) THROUGH (5)(f) OF THIS

1 SECTION.

2 (8) A FIDUCIARY'S RELEASE OR DELEGATION TO A CO-FIDUCIARY
3 UNDER SUBSECTION (7) OF THIS SECTION OF THE POWER TO ADJUST UNDER
4 SUBSECTION (1) OF THIS SECTION:

5 (a) MUST BE IN A RECORD;

6 (b) APPLIES TO THE ENTIRE POWER, UNLESS THE RELEASE OR
7 DELEGATION PROVIDES A LIMITATION, WHICH MAY BE A LIMITATION TO
8 THE POWER TO ADJUST:

9 (I) FROM INCOME TO PRINCIPAL;

10 (II) FROM PRINCIPAL TO INCOME;

11 (III) FOR SPECIFIED PROPERTY; OR

12 (IV) IN SPECIFIED CIRCUMSTANCES;

13 (c) FOR A DELEGATION, MAY BE MODIFIED BY A RE-DELEGATION
14 UNDER THIS SUBSECTION BY THE CO-FIDUCIARY TO WHICH THE
15 DELEGATION IS MADE; AND

16 (d) SUBJECT TO SUBSECTION (8)(c) OF THIS SECTION, IS
17 PERMANENT, UNLESS THE RELEASE OR DELEGATION PROVIDES A SPECIFIED
18 PERIOD, INCLUDING A PERIOD MEASURED BY THE LIFE OF AN INDIVIDUAL
19 OR THE LIVES OF MORE THAN ONE INDIVIDUAL.

20 (9) TERMS OF A TRUST WHICH DENY OR LIMIT THE POWER TO
21 ADJUST BETWEEN INCOME AND PRINCIPAL DO NOT AFFECT THE
22 APPLICATION OF THIS SECTION, UNLESS THE TERMS OF THE TRUST
23 EXPRESSLY DENY OR LIMIT THE POWER TO ADJUST UNDER SUBSECTION (1)
24 OF THIS SECTION.

25 (10) THE EXERCISE OF THE POWER TO ADJUST UNDER SUBSECTION
26 (1) OF THIS SECTION IN ANY ACCOUNTING PERIOD MAY APPLY TO THE
27 CURRENT PERIOD, THE IMMEDIATELY PRECEDING PERIOD, AND ONE OR

1 MORE SUBSEQUENT PERIODS.

2 (11) A DESCRIPTION OF THE EXERCISE OF THE POWER TO ADJUST
3 UNDER SUBSECTION (1) OF THIS SECTION MUST BE:

4 (a) INCLUDED IN A REPORT, IF ANY, SENT TO BENEFICIARIES UNDER
5 SECTION 15-5-813 (3) OF THE "COLORADO UNIFORM TRUST CODE"; OR

6 (b) COMMUNICATED AT LEAST ANNUALLY TO THE QUALIFIED
7 BENEFICIARIES DETERMINED UNDER SECTION 15-5-103 (16) OF THE
8 "COLORADO UNIFORM TRUST CODE", INCLUDING THE ATTORNEY GENERAL
9 WHEN APPLICABLE.

10 **15-1.2-204. Notice of action - definitions.** (1) IN THIS SECTION,
11 THE FOLLOWING DEFINITIONS APPLY:

12 (a) "OBJECTION PERIOD" MEANS THE PERIOD OF TIME PRIOR TO THE
13 DATE BY WHICH AN OBJECTION MUST BE RECEIVED AS DESCRIBED IN
14 SECTION 15-1.2-304 (4)(e).

15 (b) "QUALIFIED BENEFICIARY" HAS THE SAME MEANING AS SET
16 FORTH IN SECTION 15-5-103 (16).

17 (2) A FIDUCIARY MAY GIVE A NOTICE OF PROPOSED ACTION
18 REGARDING A MATTER GOVERNED BY THIS ARTICLE 1.2 AS PROVIDED IN
19 THIS SECTION. FOR THE PURPOSE OF THIS SECTION, A PROPOSED ACTION
20 INCLUDES A COURSE OF ACTION AND A DECISION NOT TO TAKE ACTION.

21 (3) THE FIDUCIARY SHALL MAIL NOTICE OF THE PROPOSED ACTION
22 TO ALL QUALIFIED BENEFICIARIES AND THE FIDUCIARY MAY GIVE NOTICE
23 TO OTHER BENEFICIARIES. A BENEFICIARY SHALL BE BOUND UNDER THIS
24 SECTION WITH RESPECT TO SUCH PROPOSED ACTION IF THE BENEFICIARY
25 RECEIVES ACTUAL NOTICE OR IF THE BENEFICIARY WOULD BE BOUND
26 UNDER THE PROVISIONS OF PART 3 OF ARTICLE 5 OF THIS TITLE 15.

27 (4) NOTICE OF PROPOSED ACTION NEED NOT BE GIVEN TO ANY

1 BENEFICIARY WHO CONSENTS IN WRITING TO THE PROPOSED ACTION. THE
2 CONSENT MAY BE EXECUTED AT ANY TIME BEFORE OR AFTER THE
3 PROPOSED ACTION IS TAKEN.

4 (5) THE NOTICE OF PROPOSED ACTION SHALL STATE THAT IT IS
5 GIVEN PURSUANT TO THIS SECTION AND SHALL FOLLOW THE PROCEDURES
6 SET OUT IN SECTION 15-1.2-304 REGARDING NOTICE.

7 (6) A BENEFICIARY MAY OBJECT TO THE PROPOSED ACTION BY
8 MAILING A WRITTEN OBJECTION TO THE FIDUCIARY AT THE ADDRESS
9 STATED IN THE NOTICE OF PROPOSED ACTION WITHIN THE OBJECTION
10 PERIOD.

11 (7) A FIDUCIARY IS NOT LIABLE TO A BENEFICIARY TO WHOM
12 NOTICE IS GIVEN FOR AN ACTION REGARDING A MATTER GOVERNED BY
13 THIS PART 2 IF THE FIDUCIARY DOES NOT RECEIVE A WRITTEN OBJECTION
14 TO THE PROPOSED ACTION FROM THE BENEFICIARY WITHIN THE OBJECTION
15 PERIOD AND THE OTHER REQUIREMENTS OF THIS SECTION ARE SATISFIED.
16 IF NO BENEFICIARY WHO RECEIVES NOTICE OBJECTS UNDER THIS SECTION,
17 THE FIDUCIARY IS NOT LIABLE TO THE BENEFICIARIES RECEIVING NOTICE
18 WITH RESPECT TO THE PROPOSED ACTION.

19 (8) IF THE FIDUCIARY RECEIVES A WRITTEN OBJECTION WITHIN THE
20 OBJECTION PERIOD, EITHER THE FIDUCIARY OR A BENEFICIARY MAY
21 PETITION THE COURT TO HAVE THE PROPOSED ACTION PERFORMED AS
22 PROPOSED, PERFORMED WITH MODIFICATIONS, OR DENIED. IN THE
23 PROCEEDING, A BENEFICIARY OBJECTING TO THE PROPOSED ACTION HAS
24 THE BURDEN OF PROVING THAT THE FIDUCIARY'S PROPOSED ACTION
25 SHOULD NOT BE PERFORMED. A BENEFICIARY WHO HAS NOT OBJECTED IS
26 NOT ESTOPPED FROM OPPOSING THE PROPOSED ACTION IN THE
27 PROCEEDING. IF THE FIDUCIARY DECIDES NOT TO IMPLEMENT THE

1 PROPOSED ACTION, THE FIDUCIARY SHALL NOTIFY THE BENEFICIARIES OF
2 THE DECISION NOT TO TAKE THE ACTION AND THE REASONS FOR THE
3 DECISION, AND THE FIDUCIARY'S DECISION NOT TO IMPLEMENT THE
4 PROPOSED ACTION DOES NOT ITSELF GIVE RISE TO LIABILITY TO ANY
5 BENEFICIARY. A BENEFICIARY MAY PETITION THE COURT TO HAVE THE
6 ACTION PERFORMED, AND HAS THE BURDEN OF PROVISION THAT IT SHOULD
7 BE PERFORMED.

8 PART 3

9 UNITRUST

10 **15-1.2-301. Definitions.** IN THIS PART 3:

11 (1) "APPLICABLE VALUE" MEANS THE AMOUNT OF THE NET FAIR
12 MARKET VALUE OF A TRUST TAKEN INTO ACCOUNT UNDER SECTION
13 15-1.2-307.

14 (2) "EXPRESS UNITRUST" MEANS A TRUST FOR WHICH, UNDER THE
15 TERMS OF THE TRUST WITHOUT REGARD TO THIS PART 3, INCOME OR NET
16 INCOME MUST OR MAY BE CALCULATED AS A UNITRUST AMOUNT.

17 (3) "INCOME TRUST" MEANS A TRUST THAT IS NOT A UNITRUST.

18 (4) "NET FAIR MARKET VALUE OF A TRUST" MEANS THE FAIR
19 MARKET VALUE OF THE ASSETS OF THE TRUST, LESS THE NONCONTINGENT
20 LIABILITIES OF THE TRUST.

21 (5) "UNITRUST" MEANS A TRUST FOR WHICH NET INCOME IS A
22 UNITRUST AMOUNT. THE TERM INCLUDES AN EXPRESS UNITRUST.

23 (6) "UNITRUST AMOUNT" MEANS AN AMOUNT COMPUTED BY
24 MULTIPLYING A DETERMINED VALUE OF A TRUST BY A DETERMINED
25 PERCENTAGE. FOR A UNITRUST ADMINISTERED UNDER A UNITRUST POLICY,
26 THE TERM MEANS THE APPLICABLE VALUE, MULTIPLIED BY THE UNITRUST
27 RATE.

1 (7) "UNITRUST POLICY" MEANS A POLICY DESCRIBED IN SECTIONS
2 15-1.2-305 THROUGH 15-1.2-309 AND ADOPTED UNDER SECTION
3 15-1.2-303.

4 (8) "UNITRUST RATE" MEANS THE RATE USED TO COMPUTE THE
5 UNITRUST AMOUNT UNDER SUBSECTION (6) OF THIS SECTION FOR A
6 UNITRUST ADMINISTERED UNDER A UNITRUST POLICY.

7 **15-1.2-302. Application - duties and remedies.** (1) EXCEPT AS
8 OTHERWISE PROVIDED IN SUBSECTION (2) OF THIS SECTION, THIS PART 3
9 APPLIES TO:

10 (a) AN INCOME TRUST, UNLESS THE TERMS OF THE TRUST
11 EXPRESSLY PROHIBIT USE OF THIS PART 3 BY A SPECIFIC REFERENCE TO
12 THIS PART 3 OR AN EXPLICIT EXPRESSION OF INTENT THAT NET INCOME NOT
13 BE CALCULATED AS A UNITRUST AMOUNT; AND

14 (b) AN EXPRESS UNITRUST, EXCEPT TO THE EXTENT THE TERMS OF
15 THE TRUST EXPLICITLY:

16 (I) PROHIBIT USE OF THIS PART 3 BY A SPECIFIC REFERENCE TO THIS
17 PART 3;

18 (II) PROHIBIT CONVERSION TO AN INCOME TRUST; OR

19 (III) LIMIT CHANGES TO THE METHOD OF CALCULATING THE
20 UNITRUST AMOUNT.

21 (2) THIS PART 3 DOES NOT APPLY TO A TRUST DESCRIBED IN
22 SECTION 170 (f)(2)(B), 642 (c)(5), 664 (d), OR 2702 OF THE "INTERNAL
23 REVENUE CODE OF 1986", 26 U.S.C. SEC. 170 (f)(2)(B), 642 (c)(5), 664
24 (d), OR 2702, AS AMENDED.

25 (3) AN INCOME TRUST TO WHICH THIS PART 3 APPLIES UNDER
26 SUBSECTION (1)(a) OF THIS SECTION MAY BE CONVERTED TO A UNITRUST
27 UNDER THIS PART 3 REGARDLESS OF THE TERMS OF THE TRUST

1 CONCERNING DISTRIBUTIONS. CONVERSION TO A UNITRUST UNDER THIS
2 PART 3 DOES NOT AFFECT OTHER TERMS OF THE TRUST CONCERNING
3 DISTRIBUTIONS OF INCOME OR PRINCIPAL.

4 (4) THIS PART 3 APPLIES TO AN ESTATE ONLY TO THE EXTENT A
5 TRUST IS A BENEFICIARY OF THE ESTATE. TO THE EXTENT OF THE TRUST'S
6 INTEREST IN THE ESTATE, THE ESTATE MAY BE ADMINISTERED AS A
7 UNITRUST, THE ADMINISTRATION OF THE ESTATE AS A UNITRUST MAY BE
8 DISCONTINUED, OR THE PERCENTAGE OR METHOD USED TO CALCULATE
9 THE UNITRUST AMOUNT MAY BE CHANGED, IN THE SAME MANNER AS FOR
10 A TRUST UNDER THIS PART 3.

11 (5) THIS PART 3 DOES NOT CREATE A DUTY TO TAKE OR CONSIDER
12 ACTION UNDER THIS PART 3 OR TO INFORM A BENEFICIARY ABOUT THE
13 APPLICABILITY OF THIS PART 3.

14 (6) A FIDUCIARY THAT IN GOOD FAITH TAKES OR FAILS TO TAKE AN
15 ACTION UNDER THIS PART 3 IS NOT LIABLE TO A PERSON AFFECTED BY THE
16 ACTION OR INACTION.

17 **15-1.2-303. Authority of fiduciary.** (1) A FIDUCIARY, WITHOUT
18 COURT APPROVAL, BY COMPLYING WITH SUBSECTIONS (2) AND (6) OF THIS
19 SECTION, MAY:

20 (a) CONVERT AN INCOME TRUST TO A UNITRUST IF THE FIDUCIARY
21 ADOPTS IN A RECORD A UNITRUST POLICY FOR THE TRUST PROVIDING:

22 (I) THAT IN ADMINISTERING THE TRUST THE NET INCOME OF THE
23 TRUST WILL BE A UNITRUST AMOUNT RATHER THAN NET INCOME
24 DETERMINED WITHOUT REGARD TO THIS PART 3; AND

25 (II) THE PERCENTAGE AND METHOD USED TO CALCULATE THE
26 UNITRUST AMOUNT;

27 (b) CHANGE THE PERCENTAGE OR METHOD USED TO CALCULATE

1 A UNITRUST AMOUNT FOR A UNITRUST IF THE FIDUCIARY ADOPTS IN A
2 RECORD A UNITRUST POLICY OR AN AMENDMENT OR REPLACEMENT OF A
3 UNITRUST POLICY PROVIDING CHANGES IN THE PERCENTAGE OR METHOD
4 USED TO CALCULATE THE UNITRUST AMOUNT; OR

5 (c) CONVERT A UNITRUST TO AN INCOME TRUST IF THE FIDUCIARY
6 ADOPTS IN A RECORD A DETERMINATION THAT, IN ADMINISTERING THE
7 TRUST, THE NET INCOME OF THE TRUST WILL BE NET INCOME DETERMINED
8 WITHOUT REGARD TO THIS PART 3 RATHER THAN A UNITRUST AMOUNT.

9 (2) A FIDUCIARY MAY TAKE AN ACTION UNDER SUBSECTION (1) OF
10 THIS SECTION IF:

11 (a) THE FIDUCIARY DETERMINES THAT THE ACTION WILL ASSIST
12 THE FIDUCIARY TO ADMINISTER A TRUST IMPARTIALLY;

13 (b) THE FIDUCIARY SENDS A NOTICE IN A RECORD, IN THE MANNER
14 REQUIRED BY SECTION 15-1.2-304, DESCRIBING AND PROPOSING TO TAKE
15 THE ACTION;

16 (c) THE FIDUCIARY SENDS A COPY OF THE NOTICE UNDER
17 SUBSECTION (2)(b) OF THIS SECTION TO EACH SETTLOR OF THE TRUST
18 WHICH IS:

19 (I) IF AN INDIVIDUAL, LIVING; OR

20 (II) IF NOT AN INDIVIDUAL, IN EXISTENCE;

21 (d) AT LEAST ONE MEMBER OF EACH CLASS OF THE QUALIFIED
22 BENEFICIARIES DETERMINED UNDER SECTION 15-5-103 (16) OF THE
23 "COLORADO UNIFORM TRUST CODE", OTHER THAN THE ATTORNEY
24 GENERAL, RECEIVING THE NOTICE UNDER SUBSECTION (2)(b) OF THIS
25 SECTION IS:

26 (I) IF AN INDIVIDUAL, LEGALLY COMPETENT;

27 (II) IF NOT AN INDIVIDUAL, IN EXISTENCE; OR

1 (III) REPRESENTED IN THE MANNER PROVIDED IN SECTION
2 15-1.2-304 (2); AND

3 (e) THE FIDUCIARY DOES NOT RECEIVE, BY THE DATE SPECIFIED IN
4 THE NOTICE UNDER SECTION 15-1.2-304 (4)(e), AN OBJECTION IN A
5 RECORD TO THE ACTION PROPOSED UNDER SUBSECTION (2)(b) OF THIS
6 SECTION FROM A PERSON TO WHICH THE NOTICE UNDER SUBSECTION (2)(b)
7 OF THIS SECTION IS SENT.

8 (3) IF A FIDUCIARY RECEIVES, NOT LATER THAN THE DATE STATED
9 IN THE NOTICE UNDER SECTION 15-1.2-304, AN OBJECTION IN A RECORD
10 DESCRIBED IN SECTION 15-1.2-304 TO A PROPOSED ACTION, THE FIDUCIARY
11 OR A BENEFICIARY MAY REQUEST THE COURT TO HAVE THE PROPOSED
12 ACTION TAKEN AS PROPOSED, TAKEN WITH MODIFICATIONS, OR
13 PREVENTED. A PERSON DESCRIBED IN SECTION 15-1.2-304 (1) MAY OPPOSE
14 THE PROPOSED ACTION IN THE PROCEEDING UNDER THIS SUBSECTION (3),
15 WHETHER OR NOT THE PERSON:

16 (a) CONSENTED UNDER SECTION 15-1.2-304; OR

17 (b) OBJECTED UNDER SECTION 15-1.2-304.

18 (4) IF, AFTER SENDING A NOTICE UNDER SUBSECTION (2)(b) OF THIS
19 SECTION, A FIDUCIARY DECIDES NOT TO TAKE THE ACTION PROPOSED IN
20 THE NOTICE, THE FIDUCIARY SHALL NOTIFY IN A RECORD EACH PERSON
21 DESCRIBED IN SECTION 15-1.2-304 (1) OF THE DECISION NOT TO TAKE THE
22 ACTION AND THE REASONS FOR THE DECISION.

23 (5) IF A BENEFICIARY REQUESTS IN A RECORD THAT A FIDUCIARY
24 TAKE AN ACTION DESCRIBED IN SUBSECTION (1) OF THIS SECTION AND THE
25 FIDUCIARY DECLINES TO ACT OR DOES NOT ACT WITHIN NINETY DAYS
26 AFTER RECEIVING THE REQUEST, THE BENEFICIARY MAY REQUEST THE
27 COURT TO DIRECT THE FIDUCIARY TO TAKE THE ACTION REQUESTED.

1 (6) IN DECIDING WHETHER AND HOW TO TAKE AN ACTION
2 AUTHORIZED BY SUBSECTION (1) OF THIS SECTION, OR WHETHER AND HOW
3 TO RESPOND TO A REQUEST BY A BENEFICIARY UNDER SUBSECTION (5) OF
4 THIS SECTION, A FIDUCIARY SHALL CONSIDER ALL FACTORS RELEVANT TO
5 THE TRUST AND THE BENEFICIARIES, INCLUDING RELEVANT FACTORS IN
6 SECTION 15-1.2-201 (5).

7 (7) A FIDUCIARY MAY RELEASE OR DELEGATE THE POWER TO
8 CONVERT AN INCOME TRUST TO A UNITRUST UNDER SUBSECTION (1)(a) OF
9 THIS SECTION, CHANGE THE PERCENTAGE OR METHOD USED TO CALCULATE
10 A UNITRUST AMOUNT UNDER SUBSECTION (1)(b) OF THIS SECTION, OR
11 CONVERT A UNITRUST TO AN INCOME TRUST UNDER SUBSECTION (1)(c) OF
12 THIS SECTION, FOR A REASON DESCRIBED IN SECTION 15-1.2-203 (7) AND
13 IN THE MANNER DESCRIBED IN SECTION 15-1.2-203 (8).

14 **15-1.2-304. Notice.** (1) A NOTICE REQUIRED BY SECTION
15 15-1.2-303 (2)(b) MUST BE SENT IN A MANNER AUTHORIZED UNDER
16 SECTION 15-5-109 TO:

17 (a) THE QUALIFIED BENEFICIARIES DETERMINED UNDER SECTION
18 15-5-103 (16), OTHER THAN THE ATTORNEY GENERAL; AND

19 (b) EACH PERSON ACTING AS TRUST DIRECTOR OF THE TRUST
20 UNDER THE "COLORADO UNIFORM DIRECTED TRUST ACT", PART 8 OF
21 ARTICLE 16 OF THIS TITLE 15; AND

22 (c) EACH PERSON THAT IS GRANTED A POWER BY THE TERMS OF
23 THE TRUST TO APPOINT OR REMOVE A TRUSTEE OR PERSON DESCRIBED IN
24 SUBSECTION (1)(b) OF THIS SECTION, TO THE EXTENT THAT POWER IS
25 EXERCISABLE WHEN THE PERSON IS NOT THEN SERVING AS A TRUSTEE OR
26 PERSON DESCRIBED IN SUBSECTION (1)(b) OF THIS SECTION.

27 (2) THE REPRESENTATION PROVISIONS OF SECTIONS 15-5-301

1 THROUGH 15-5-305 APPLY TO NOTICE UNDER THIS SECTION.

2 (3) A PERSON MAY CONSENT IN A RECORD AT ANY TIME TO ACTION
3 PROPOSED UNDER SECTION 15-1.2-303 (2)(b). A NOTICE REQUIRED BY
4 SECTION 15-1.2-303 (2)(b) NEED NOT BE SENT TO A PERSON THAT
5 CONSENTS UNDER THIS SUBSECTION (3).

6 (4) A NOTICE REQUIRED BY SECTION 15-1.2-303 (2)(b) MUST
7 INCLUDE:

8 (a) THE ACTION PROPOSED UNDER SECTION 15-1.2-303 (2)(b);

9 (b) FOR A CONVERSION OF AN INCOME TRUST TO A UNITRUST, A
10 COPY OF THE UNITRUST POLICY ADOPTED UNDER SECTION 15-1.2-303
11 (1)(a);

12 (c) FOR A CHANGE IN THE PERCENTAGE OR METHOD USED TO
13 CALCULATE THE UNITRUST AMOUNT, A COPY OF THE UNITRUST POLICY OR
14 AMENDMENT OR REPLACEMENT OF THE UNITRUST POLICY ADOPTED UNDER
15 SECTION 15-1.2-303 (1)(b);

16 (d) A STATEMENT THAT THE PERSON TO WHICH THE NOTICE IS SENT
17 MAY OBJECT TO THE PROPOSED ACTION BY STATING IN A RECORD THE
18 BASIS FOR THE OBJECTION AND SENDING OR DELIVERING THE RECORD TO
19 THE FIDUCIARY;

20 (e) THE DATE BY WHICH AN OBJECTION UNDER SUBSECTION (4)(d)
21 OF THIS SECTION MUST BE RECEIVED BY THE FIDUCIARY, WHICH MUST BE
22 AT LEAST THIRTY DAYS AFTER THE DATE THE NOTICE IS SENT;

23 (f) THE DATE ON WHICH THE ACTION IS PROPOSED TO BE TAKEN
24 AND THE DATE ON WHICH THE ACTION IS PROPOSED TO TAKE EFFECT;

25 (g) THE NAME AND CONTACT INFORMATION OF THE FIDUCIARY;

26 AND

27 (h) THE NAME AND CONTACT INFORMATION OF A PERSON THAT

1 MAY BE CONTACTED FOR ADDITIONAL INFORMATION.

2 **15-1.2-305. Unitrust policy.** (1) IN ADMINISTERING A UNITRUST
3 UNDER THIS PART 3, A FIDUCIARY SHALL FOLLOW A UNITRUST POLICY
4 ADOPTED UNDER SECTION 15-1.2-303 (1)(a) OR (1)(b) OR AMENDED OR
5 REPLACED UNDER SECTION 15-1.2-303 (1)(b).

6 (2) A UNITRUST POLICY MUST PROVIDE:

7 (a) THE UNITRUST RATE OR THE METHOD FOR DETERMINING THE
8 UNITRUST RATE UNDER SECTION 15-1.2-306;

9 (b) THE METHOD FOR DETERMINING THE APPLICABLE VALUE
10 UNDER SECTION 15-1.2-306; AND

11 (c) THE RULES DESCRIBED IN SECTIONS 15-1.2-306 THROUGH
12 15-1.2-309 WHICH APPLY IN THE ADMINISTRATION OF THE UNITRUST,
13 WHETHER THE RULES ARE:

14 (I) MANDATORY, AS PROVIDED IN SECTIONS 15-1.2-307 (1) AND
15 15-1.2-416; OR

16 (II) OPTIONAL, AS PROVIDED IN SECTIONS 15-1.2-306, 15-1.2-307
17 (2), 15-1.2-308 (2), AND 15-1.2-309 (1), TO THE EXTENT THE FIDUCIARY
18 ELECTS TO ADOPT THOSE RULES.

19 **15-1.2-306. Unitrust rate.** (1) EXCEPT AS OTHERWISE PROVIDED
20 IN SECTION 15-1.2-309 (2)(a), A UNITRUST RATE MAY BE:

21 (a) A FIXED UNITRUST RATE; OR

22 (b) A UNITRUST RATE THAT IS DETERMINED FOR EACH PERIOD
23 USING:

24 (I) A MARKET INDEX OR OTHER PUBLISHED DATA; OR

25 (II) A MATHEMATICAL BLEND OF MARKET INDICES OR OTHER
26 PUBLISHED DATA OVER A STATED NUMBER OF PRECEDING PERIODS.

27 (2) EXCEPT AS OTHERWISE PROVIDED IN SECTION 15-1.2-309

1 (2)(a), A UNITRUST POLICY MAY PROVIDE:

2 (a) A LIMIT ON HOW HIGH THE UNITRUST RATE DETERMINED UNDER
3 SUBSECTION (1)(b) OF THIS SECTION MAY RISE;

4 (b) A LIMIT ON HOW LOW THE UNITRUST RATE DETERMINED UNDER
5 SUBSECTION (1)(b) OF THIS SECTION MAY FALL;

6 (c) A LIMIT ON HOW MUCH THE UNITRUST RATE DETERMINED
7 UNDER SUBSECTION (1)(b) OF THIS SECTION MAY INCREASE OVER THE
8 UNITRUST RATE FOR THE PRECEDING PERIOD OR A MATHEMATICAL BLEND
9 OF UNITRUST RATES OVER A STATED NUMBER OF PRECEDING PERIODS;

10 (d) A LIMIT ON HOW MUCH THE UNITRUST RATE DETERMINED
11 UNDER SUBSECTION (1)(b) OF THIS SECTION MAY DECREASE BELOW THE
12 UNITRUST RATE FOR THE PRECEDING PERIOD OR A MATHEMATICAL BLEND
13 OF UNITRUST RATES OVER A STATED NUMBER OF PRECEDING PERIODS; OR

14 (e) A MATHEMATICAL BLEND OF ANY OF THE UNITRUST RATES
15 DETERMINED UNDER SUBSECTION (1)(b) OF THIS SECTION AND
16 SUBSECTIONS (2)(a) THROUGH (2)(d) OF THIS SECTION.

17 **15-1.2-307. Applicable value.** (1) A UNITRUST POLICY MUST
18 PROVIDE THE METHOD FOR DETERMINING THE FAIR MARKET VALUE OF AN
19 ASSET FOR THE PURPOSE OF DETERMINING THE UNITRUST AMOUNT,
20 INCLUDING:

21 (a) THE FREQUENCY OF VALUING THE ASSET, WHICH NEED NOT
22 REQUIRE A VALUATION IN EVERY PERIOD; AND

23 (b) THE DATE FOR VALUING THE ASSET IN EACH PERIOD IN WHICH
24 THE ASSET IS VALUED.

25 (2) EXCEPT AS OTHERWISE PROVIDED IN SECTION 15-1.2-309
26 (2)(b), A UNITRUST POLICY MAY PROVIDE METHODS FOR DETERMINING THE
27 AMOUNT OF THE NET FAIR MARKET VALUE OF THE TRUST TO TAKE INTO

- 1 ACCOUNT IN DETERMINING THE APPLICABLE VALUE, INCLUDING:
- 2 (a) OBTAINING AN APPRAISAL OF AN ASSET FOR WHICH FAIR
3 MARKET VALUE IS NOT READILY AVAILABLE;
- 4 (b) EXCLUSION OF SPECIFIC ASSETS OR GROUPS OR TYPES OF
5 ASSETS;
- 6 (c) OTHER EXCEPTIONS OR MODIFICATIONS OF THE TREATMENT OF
7 SPECIFIC ASSETS OR GROUPS OR TYPES OF ASSETS;
- 8 (d) IDENTIFICATION AND TREATMENT OF CASH OR PROPERTY HELD
9 FOR DISTRIBUTION;
- 10 (e) USE OF:
- 11 (I) AN AVERAGE OF FAIR MARKET VALUES OVER A STATED NUMBER
12 OF PRECEDING PERIODS; OR
- 13 (II) ANOTHER MATHEMATICAL BLEND OF FAIR MARKET VALUES
14 OVER A STATED NUMBER OF PRECEDING PERIODS;
- 15 (f) A LIMIT ON HOW MUCH THE APPLICABLE VALUE OF ALL ASSETS,
16 GROUPS OF ASSETS, OR INDIVIDUAL ASSETS MAY INCREASE OVER:
- 17 (I) THE CORRESPONDING APPLICABLE VALUE FOR THE PRECEDING
18 PERIOD; OR
- 19 (II) A MATHEMATICAL BLEND OF APPLICABLE VALUES OVER A
20 STATED NUMBER OF PRECEDING PERIODS;
- 21 (g) A LIMIT ON HOW MUCH THE APPLICABLE VALUE OF ALL ASSETS,
22 GROUPS OF ASSETS, OR INDIVIDUAL ASSETS MAY DECREASE BELOW:
- 23 (I) THE CORRESPONDING APPLICABLE VALUE FOR THE PRECEDING
24 PERIOD; OR
- 25 (II) A MATHEMATICAL BLEND OF APPLICABLE VALUES OVER A
26 STATED NUMBER OF PRECEDING PERIODS;
- 27 (h) THE TREATMENT OF ACCRUED INCOME AND OTHER FEATURES

1 OF AN ASSET WHICH AFFECT VALUE; AND

2 (i) DETERMINING THE LIABILITIES OF THE TRUST, INCLUDING
3 TREATMENT OF LIABILITIES TO CONFORM WITH THE TREATMENT OF ASSETS
4 UNDER SUBSECTIONS (2)(a) THROUGH (2)(h) OF THIS SECTION.

5 **15-1.2-308. Period.** (1) A UNITRUST POLICY MUST PROVIDE THE
6 PERIOD USED UNDER SECTIONS 15-1.2-306 AND 15-1.2-307. EXCEPT AS
7 OTHERWISE PROVIDED IN SECTION 15-1.2-309 (2)(c), THE PERIOD MAY BE:

- 8 (a) A CALENDAR YEAR;
- 9 (b) A TWELVE-MONTH PERIOD OTHER THAN A CALENDAR YEAR;
- 10 (c) A CALENDAR QUARTER;
- 11 (d) A THREE-MONTH PERIOD OTHER THAN A CALENDAR QUARTER;

12 OR

13 (e) ANOTHER PERIOD.

14 (2) EXCEPT AS OTHERWISE PROVIDED IN SECTION 15-1.2-309 (2),
15 A UNITRUST POLICY MAY PROVIDE STANDARDS FOR:

16 (a) USING FEWER PRECEDING PERIODS UNDER SECTION 15-1.2-306
17 (1)(b)(II), (2)(c), OR (2)(d) IF:

- 18 (I) THE TRUST WAS NOT IN EXISTENCE IN A PRECEDING PERIOD; OR
- 19 (II) MARKET INDICES OR OTHER PUBLISHED DATA ARE NOT
20 AVAILABLE FOR A PRECEDING PERIOD;

21 (b) USING FEWER PRECEDING PERIODS UNDER SECTION 15-1.2-307
22 (2)(e)(I), (2)(e)(II), (2)(f)(II), OR (2)(g)(II) IF:

- 23 (I) THE TRUST WAS NOT IN EXISTENCE IN A PRECEDING PERIOD; OR
- 24 (II) FAIR MARKET VALUES ARE NOT AVAILABLE FOR A PRECEDING
25 PERIOD; AND

26 (c) PRORATING THE UNITRUST AMOUNT ON A DAILY BASIS FOR A
27 PART OF A PERIOD IN WHICH THE TRUST OR THE ADMINISTRATION OF THE

1 TRUST AS A UNITRUST OR THE INTEREST OF ANY BENEFICIARY COMMENCES
2 OR TERMINATES.

3 **15-1.2-309. Special tax benefits - rules.** (1) A UNITRUST POLICY
4 MAY:

5 (a) PROVIDE METHODS AND STANDARDS FOR:

6 (I) DETERMINING THE TIMING OF DISTRIBUTIONS;

7 (II) MAKING DISTRIBUTIONS IN CASH OR IN KIND OR PARTLY IN
8 CASH AND PARTLY IN KIND; OR

9 (III) CORRECTING AN UNDERPAYMENT OR OVERPAYMENT TO A
10 BENEFICIARY BASED ON THE UNITRUST AMOUNT IF THERE IS AN ERROR IN
11 CALCULATING THE UNITRUST AMOUNT;

12 (b) SPECIFY SOURCES AND THE ORDER OF SOURCES, INCLUDING
13 CATEGORIES OF INCOME FOR FEDERAL INCOME TAX PURPOSES, FROM
14 WHICH DISTRIBUTIONS OF A UNITRUST AMOUNT ARE PAID; OR

15 (c) PROVIDE OTHER STANDARDS AND RULES THE FIDUCIARY
16 DETERMINES SERVE THE INTERESTS OF THE BENEFICIARIES.

17 (2) IF A TRUST QUALIFIES FOR A SPECIAL TAX BENEFIT OR A
18 FIDUCIARY IS NOT AN INDEPENDENT PERSON:

19 (a) THE UNITRUST RATE ESTABLISHED UNDER SECTION 15-1.2-306
20 MAY NOT BE LESS THAN THREE PERCENT OR MORE THAN FIVE PERCENT;

21 (b) THE ONLY PROVISIONS OF SECTION 15-1.2-307 WHICH APPLY
22 ARE SECTION 15-1.2-307 (1), (2)(a), (2)(d), (2)(e)(I), AND (2)(i);

23 (c) THE ONLY PERIOD THAT MAY BE USED UNDER SECTION
24 15-1.2-308 IS A CALENDAR YEAR UNDER SECTION 15-1.2-308 (1)(a); AND

25 (d) THE ONLY OTHER PROVISIONS OF SECTION 15-1.2-308 WHICH
26 APPLY ARE SECTION 15-1.2-308 (2)(b)(I) AND (2)(c).

27 (3) UNLESS OTHERWISE PROVIDED BY THE TERMS OF UNITRUST

1 POLICY OR THE TERMS OF THE TRUST, THE DISTRIBUTION AMOUNT EACH
2 YEAR SHALL BE DEEMED TO BE PAID FROM THE FOLLOWING SOURCES FOR
3 THAT YEAR IN THE FOLLOWING ORDER:

4 (a) NET INCOME DETERMINED AS IF THE TRUST WAS NOT A
5 UNITRUST;

6 (b) OTHER ORDINARY INCOME AS DETERMINED FOR FEDERAL
7 INCOME TAX PURPOSES;

8 (c) NET REALIZED SHORT-TERM CAPITAL GAINS AS DETERMINED
9 FOR FEDERAL INCOME TAX PURPOSES;

10 (d) NET REALIZED LONG-TERM CAPITAL GAINS AS DETERMINED FOR
11 FEDERAL INCOME TAX PURPOSES;

12 (e) TRUST PRINCIPAL COMPRISING ASSETS FOR WHICH THERE IS A
13 READILY AVAILABLE MARKET VALUE; AND

14 (f) OTHER TRUST PRINCIPAL.

15 PART 4

16 ALLOCATION OF RECEIPTS

17 **15-1.2-401. Character of receipts from entity - definitions.**

18 (1) IN THIS SECTION:

19 (a) "CAPITAL DISTRIBUTION" MEANS AN ENTITY DISTRIBUTION OF
20 MONEY WHICH IS A:

21 (I) RETURN OF CAPITAL; OR

22 (II) DISTRIBUTION IN TOTAL OR PARTIAL LIQUIDATION OF THE
23 ENTITY.

24 (b) "ENTITY":

25 (I) MEANS A CORPORATION, PARTNERSHIP, LIMITED LIABILITY
26 COMPANY, REGULATED INVESTMENT COMPANY, REAL ESTATE INVESTMENT
27 TRUST, COMMON TRUST FUND, OR ANY OTHER ORGANIZATION OR

1 ARRANGEMENT IN WHICH A FIDUCIARY OWNS OR HOLDS AN INTEREST,
2 WHETHER OR NOT THE ENTITY IS A TAXPAYER FOR FEDERAL INCOME TAX
3 PURPOSES; AND

4 (II) DOES NOT INCLUDE:

5 (A) A TRUST OR ESTATE TO WHICH SECTION 15-1.2-402 APPLIES;

6 (B) A BUSINESS OR OTHER ACTIVITY TO WHICH SECTION
7 15-1.2-403 APPLIES WHICH IS NOT CONDUCTED BY AN ENTITY DESCRIBED
8 IN SUBSECTION (1)(b)(I) OF THIS SECTION;

9 (C) AN ASSET-BACKED SECURITY; OR

10 (D) AN INSTRUMENT OR ARRANGEMENT TO WHICH SECTION
11 15-1.2-416 APPLIES.

12 (c) "ENTITY DISTRIBUTION" MEANS A PAYMENT OR TRANSFER BY
13 AN ENTITY MADE TO A PERSON IN THE PERSON'S CAPACITY AS AN OWNER
14 OR HOLDER OF AN INTEREST IN THE ENTITY.

15 (2) IN THIS SECTION, AN ATTRIBUTE OR ACTION OF AN ENTITY
16 INCLUDES AN ATTRIBUTE OR ACTION OF ANY OTHER ENTITY IN WHICH THE
17 ENTITY OWNS OR HOLDS AN INTEREST, INCLUDING AN INTEREST OWNED OR
18 HELD INDIRECTLY THROUGH ANOTHER ENTITY.

19 (3) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTIONS (4)(b)
20 THROUGH (4)(d) OF THIS SECTION, A FIDUCIARY SHALL ALLOCATE TO
21 INCOME:

22 (a) MONEY RECEIVED IN AN ENTITY DISTRIBUTION; AND

23 (b) TANGIBLE PERSONAL PROPERTY OF NOMINAL VALUE RECEIVED
24 FROM THE ENTITY.

25 (4) A FIDUCIARY SHALL ALLOCATE TO PRINCIPAL:

26 (a) PROPERTY RECEIVED IN AN ENTITY DISTRIBUTION WHICH IS
27 NOT:

1 (I) MONEY; OR
2 (II) TANGIBLE PERSONAL PROPERTY OF NOMINAL VALUE;
3 (b) MONEY RECEIVED IN AN ENTITY DISTRIBUTION IN AN
4 EXCHANGE FOR PART OR ALL OF THE FIDUCIARY'S INTEREST IN THE ENTITY,
5 TO THE EXTENT THE ENTITY DISTRIBUTION REDUCES THE FIDUCIARY'S
6 INTEREST IN THE ENTITY RELATIVE TO THE INTERESTS OF OTHER PERSONS
7 THAT OWN OR HOLD INTERESTS IN THE ENTITY;
8 (c) MONEY RECEIVED IN AN ENTITY DISTRIBUTION THAT THE
9 FIDUCIARY DETERMINES OR ESTIMATES IS A CAPITAL DISTRIBUTION; AND
10 (d) MONEY RECEIVED IN AN ENTITY DISTRIBUTION FROM AN
11 ENTITY THAT IS:
12 (I) A REGULATED INVESTMENT COMPANY OR REAL ESTATE
13 INVESTMENT TRUST IF THE MONEY RECEIVED IS A CAPITAL GAIN DIVIDEND
14 FOR FEDERAL INCOME TAX PURPOSES; OR
15 (II) TREATED FOR FEDERAL INCOME TAX PURPOSES COMPARABLY
16 TO THE TREATMENT DESCRIBED IN SUBSECTION (4)(d)(I) OF THIS SECTION.
17 (5) A FIDUCIARY MAY DETERMINE OR ESTIMATE THAT MONEY
18 RECEIVED IN AN ENTITY DISTRIBUTION IS A CAPITAL DISTRIBUTION:
19 (a) BY RELYING WITHOUT INQUIRY OR INVESTIGATION ON A
20 CHARACTERIZATION OF THE ENTITY DISTRIBUTION PROVIDED BY OR ON
21 BEHALF OF THE ENTITY, UNLESS THE FIDUCIARY:
22 (I) DETERMINES, ON THE BASIS OF INFORMATION KNOWN TO THE
23 FIDUCIARY, THAT THE CHARACTERIZATION IS OR MAY BE INCORRECT; OR
24 (II) OWNS OR HOLDS MORE THAN FIFTY PERCENT OF THE VOTING
25 INTEREST IN THE ENTITY;
26 (b) BY DETERMINING OR ESTIMATING, ON THE BASIS OF
27 INFORMATION KNOWN TO THE FIDUCIARY OR PROVIDED TO THE FIDUCIARY

1 BY OR ON BEHALF OF THE ENTITY, THAT THE TOTAL AMOUNT OF MONEY
2 AND PROPERTY RECEIVED BY THE FIDUCIARY IN THE ENTITY DISTRIBUTION
3 OR A SERIES OF RELATED ENTITY DISTRIBUTIONS IS OR WILL BE GREATER
4 THAN TWENTY PERCENT OF THE FAIR MARKET VALUE OF THE FIDUCIARY'S
5 INTEREST IN THE ENTITY; OR

6 (c) IF NEITHER SUBSECTION (5)(a) NOR (5)(b) OF THIS SECTION
7 APPLIES, BY CONSIDERING THE FACTORS IN SUBSECTION (6) OF THIS
8 SECTION AND THE INFORMATION KNOWN TO THE FIDUCIARY OR PROVIDED
9 TO THE FIDUCIARY BY OR ON BEHALF OF THE ENTITY.

10 (6) IN MAKING A DETERMINATION OR ESTIMATE UNDER
11 SUBSECTION (5)(c) OF THIS SECTION, A FIDUCIARY MAY CONSIDER:

12 (a) A CHARACTERIZATION OF AN ENTITY DISTRIBUTION PROVIDED
13 BY OR ON BEHALF OF THE ENTITY;

14 (b) THE AMOUNT OF MONEY OR PROPERTY RECEIVED IN:

15 (I) THE ENTITY DISTRIBUTION; OR

16 (II) WHAT THE FIDUCIARY DETERMINES IS OR WILL BE A SERIES OF
17 RELATED ENTITY DISTRIBUTIONS;

18 (c) THE AMOUNT DESCRIBED IN SUBSECTION (6)(b) OF THIS
19 SECTION COMPARED TO THE AMOUNT THE FIDUCIARY DETERMINES OR
20 ESTIMATES IS, DURING THE CURRENT OR PRECEDING ACCOUNTING
21 PERIODS:

22 (I) THE ENTITY'S OPERATING INCOME;

23 (II) THE PROCEEDS OF THE ENTITY'S SALE OR OTHER DISPOSITION
24 OF:

25 (A) ALL OR PART OF THE BUSINESS OR OTHER ACTIVITY
26 CONDUCTED BY THE ENTITY;

27 (B) ONE OR MORE BUSINESS ASSETS THAT ARE NOT SOLD TO

1 CUSTOMERS IN THE ORDINARY COURSE OF THE BUSINESS OR OTHER
2 ACTIVITY CONDUCTED BY THE ENTITY; OR

3 (C) ONE OR MORE ASSETS OTHER THAN BUSINESS ASSETS, UNLESS
4 THE ENTITY'S PRIMARY ACTIVITY IS TO INVEST IN ASSETS TO REALIZE GAIN
5 ON THE DISPOSITION OF ALL OR SOME OF THE ASSETS;

6 (III) IF THE ENTITY'S PRIMARY ACTIVITY IS TO INVEST IN ASSETS TO
7 REALIZE GAIN ON THE DISPOSITION OF ALL OR SOME OF THE ASSETS, THE
8 GAIN REALIZED ON THE DISPOSITION;

9 (IV) THE ENTITY'S REGULAR, PERIODIC ENTITY DISTRIBUTIONS;

10 (V) THE AMOUNT OF MONEY THE ENTITY HAS ACCUMULATED;

11 (VI) THE AMOUNT OF MONEY THE ENTITY HAS BORROWED;

12 (VII) THE AMOUNT OF MONEY THE ENTITY HAS RECEIVED FROM
13 THE SOURCES DESCRIBED IN SECTIONS 15-1.2-407, 15-1.2-410, 15-1.2-411,
14 AND 15-1.2-412; AND

15 (VIII) THE AMOUNT OF MONEY THE ENTITY HAS RECEIVED FROM
16 A SOURCE NOT OTHERWISE DESCRIBED IN THIS SUBSECTION (6)(c); AND

17 (d) ANY OTHER FACTOR THE FIDUCIARY DETERMINES IS RELEVANT.

18 (7) IF, AFTER APPLYING SUBSECTIONS (3) THROUGH (6) OF THIS
19 SECTION, A FIDUCIARY DETERMINES THAT A PART OF AN ENTITY
20 DISTRIBUTION IS A CAPITAL DISTRIBUTION BUT IS IN DOUBT ABOUT THE
21 AMOUNT OF THE ENTITY DISTRIBUTION WHICH IS A CAPITAL DISTRIBUTION,
22 THE FIDUCIARY SHALL ALLOCATE TO PRINCIPAL THE AMOUNT OF THE
23 ENTITY DISTRIBUTION WHICH IS IN DOUBT.

24 (8) IF A FIDUCIARY RECEIVES ADDITIONAL INFORMATION ABOUT
25 THE APPLICATION OF THIS SECTION TO AN ENTITY DISTRIBUTION BEFORE
26 THE FIDUCIARY HAS PAID PART OF THE ENTITY DISTRIBUTION TO A
27 BENEFICIARY, THE FIDUCIARY MAY CONSIDER THE ADDITIONAL

1 INFORMATION BEFORE MAKING THE PAYMENT TO THE BENEFICIARY AND
2 MAY CHANGE A DECISION TO MAKE THE PAYMENT TO THE BENEFICIARY.

3 (9) IF A FIDUCIARY RECEIVES ADDITIONAL INFORMATION ABOUT
4 THE APPLICATION OF THIS SECTION TO AN ENTITY DISTRIBUTION AFTER THE
5 FIDUCIARY HAS PAID PART OF THE ENTITY DISTRIBUTION TO A
6 BENEFICIARY, THE FIDUCIARY IS NOT REQUIRED TO CHANGE OR RECOVER
7 THE PAYMENT TO THE BENEFICIARY BUT MAY CONSIDER THAT
8 INFORMATION IN DETERMINING WHETHER TO EXERCISE THE POWER TO
9 ADJUST UNDER SECTION 15-1.2-203.

10 **15-1.2-402. Distribution from trust or estate.** A FIDUCIARY
11 SHALL ALLOCATE TO INCOME AN AMOUNT RECEIVED AS A DISTRIBUTION
12 OF INCOME, INCLUDING A UNITRUST DISTRIBUTION UNDER PART 3 OF THIS
13 ARTICLE 1.2, FROM A TRUST OR ESTATE IN WHICH THE FIDUCIARY HAS AN
14 INTEREST, OTHER THAN AN INTEREST THE FIDUCIARY PURCHASED IN A
15 TRUST THAT IS AN INVESTMENT ENTITY, AND SHALL ALLOCATE TO
16 PRINCIPAL AN AMOUNT RECEIVED AS A DISTRIBUTION OF PRINCIPAL FROM
17 THE TRUST OR ESTATE. IF A FIDUCIARY PURCHASES, OR RECEIVES FROM A
18 SETTLOR, AN INTEREST IN A TRUST THAT IS AN INVESTMENT ENTITY,
19 SECTION 15-1.2-401, 15-1.2-415, OR 15-1.2-416 APPLY TO A RECEIPT FROM
20 THE TRUST.

21 **15-1.2-403. Business of other activity conducted by fiduciary.**

22 (1) THIS SECTION APPLIES TO A BUSINESS OR OTHER ACTIVITY CONDUCTED
23 BY A FIDUCIARY IF THE FIDUCIARY DETERMINES THAT IT IS IN THE
24 INTERESTS OF THE BENEFICIARIES TO ACCOUNT SEPARATELY FOR THE
25 BUSINESS OR OTHER ACTIVITY INSTEAD OF:

26 (a) ACCOUNTING FOR THE BUSINESS OR OTHER ACTIVITY AS PART
27 OF THE FIDUCIARY'S GENERAL ACCOUNTING RECORDS; OR

1 (b) CONDUCTING THE BUSINESS OR OTHER ACTIVITY THROUGH AN
2 ENTITY DESCRIBED IN SECTION 15-1.2-401 (1)(b)(I).

3 (2) A FIDUCIARY MAY ACCOUNT SEPARATELY UNDER THIS SECTION
4 FOR THE TRANSACTIONS OF A BUSINESS OR OTHER ACTIVITY, WHETHER OR
5 NOT ASSETS OF THE BUSINESS OR OTHER ACTIVITY ARE SEGREGATED FROM
6 OTHER ASSETS HELD BY THE FIDUCIARY.

7 (3) A FIDUCIARY THAT ACCOUNTS SEPARATELY UNDER THIS
8 SECTION FOR A BUSINESS OR OTHER ACTIVITY:

9 (a) MAY DETERMINE:

10 (I) THE EXTENT TO WHICH THE NET CASH RECEIPTS OF THE
11 BUSINESS OR OTHER ACTIVITY MUST BE RETAINED FOR:

12 (A) WORKING CAPITAL;

13 (B) THE ACQUISITION OR REPLACEMENT OF FIXED ASSETS; AND

14 (C) OTHER REASONABLY FORESEEABLE NEEDS OF THE BUSINESS OR
15 OTHER ACTIVITY; AND

16 (II) THE EXTENT TO WHICH THE REMAINING NET CASH RECEIPTS
17 ARE ACCOUNTED FOR AS PRINCIPAL OR INCOME IN THE FIDUCIARY'S
18 GENERAL ACCOUNTING RECORDS FOR THE TRUST;

19 (b) MAY MAKE A DETERMINATION UNDER SUBSECTION (3)(a) OF
20 THIS SECTION SEPARATELY AND DIFFERENTLY FROM THE FIDUCIARY'S
21 DECISIONS CONCERNING DISTRIBUTIONS OF INCOME OR PRINCIPAL; AND

22 (c) SHALL ACCOUNT FOR THE NET AMOUNT RECEIVED FROM THE
23 SALE OF AN ASSET OF THE BUSINESS OR OTHER ACTIVITY, OTHER THAN A
24 SALE IN THE ORDINARY COURSE OF THE BUSINESS OR OTHER ACTIVITY, AS
25 PRINCIPAL IN THE FIDUCIARY'S GENERAL ACCOUNTING RECORDS FOR THE
26 TRUST, TO THE EXTENT THE FIDUCIARY DETERMINES THAT THE NET
27 AMOUNT RECEIVED IS NO LONGER REQUIRED IN THE CONDUCT OF THE

1 BUSINESS OR OTHER ACTIVITY.

2 (4) ACTIVITIES FOR WHICH A FIDUCIARY MAY ACCOUNT
3 SEPARATELY UNDER THIS SECTION INCLUDE:

4 (a) RETAIL, MANUFACTURING, SERVICE, AND OTHER TRADITIONAL
5 BUSINESS ACTIVITIES;

6 (b) FARMING;

7 (c) RAISING AND SELLING LIVESTOCK AND OTHER ANIMALS;

8 (d) MANAGING RENTAL PROPERTIES;

9 (e) EXTRACTING MINERALS, WATER, AND OTHER NATURAL
10 RESOURCES;

11 (f) GROWING AND CUTTING TIMBER;

12 (g) AN ACTIVITY TO WHICH SECTION 15-1.2-414, 15-1.2-415, OR
13 15-1.2-416 APPLIES; AND

14 (h) ANY OTHER BUSINESS CONDUCTED BY THE FIDUCIARY.

15 **15-1.2-404. Principal receipts.** (1) A FIDUCIARY SHALL
16 ALLOCATE TO PRINCIPAL:

17 (a) TO THE EXTENT NOT ALLOCATED TO INCOME UNDER THIS
18 ARTICLE 1.2, AN ASSET RECEIVED FROM:

19 (I) AN INDIVIDUAL DURING THE INDIVIDUAL'S LIFETIME;

20 (II) AN ESTATE;

21 (III) A TRUST ON TERMINATION OF AN INCOME INTEREST; OR

22 (IV) A PAYOR UNDER A CONTRACT NAMING THE FIDUCIARY AS
23 BENEFICIARY;

24 (b) EXCEPT AS OTHERWISE PROVIDED IN THIS PART 4, MONEY OR
25 OTHER PROPERTY RECEIVED FROM THE SALE, EXCHANGE, LIQUIDATION, OR
26 CHANGE IN FORM OF A PRINCIPAL ASSET;

27 (c) AN AMOUNT RECOVERED FROM A THIRD PARTY TO REIMBURSE

1 THE FIDUCIARY BECAUSE OF A DISBURSEMENT DESCRIBED IN SECTION
2 15-1.2-502 (1) OR FOR ANOTHER REASON TO THE EXTENT NOT BASED ON
3 LOSS OF INCOME;

4 (d) PROCEEDS OF PROPERTY TAKEN BY EMINENT DOMAIN; EXCEPT
5 THAT PROCEEDS AWARDED FOR LOSS OF INCOME IN AN ACCOUNTING
6 PERIOD ARE INCOME IF A CURRENT INCOME BENEFICIARY HAD A
7 MANDATORY INCOME INTEREST DURING THE PERIOD;

8 (e) NET INCOME RECEIVED IN AN ACCOUNTING PERIOD DURING
9 WHICH THERE IS NO BENEFICIARY TO WHICH A FIDUCIARY MAY OR MUST
10 DISTRIBUTE INCOME; AND

11 (f) OTHER RECEIPTS AS PROVIDED IN SECTIONS 15-1.2-408
12 THROUGH 15-1.2-416.

13 **15-1.2-405. Rental property.** (1) TO THE EXTENT A FIDUCIARY
14 DOES NOT ACCOUNT FOR THE MANAGEMENT OF RENTAL PROPERTY AS A
15 BUSINESS UNDER SECTION 15-1.2-403, THE FIDUCIARY SHALL ALLOCATE
16 TO INCOME AN AMOUNT RECEIVED AS RENT OF REAL OR PERSONAL
17 PROPERTY, INCLUDING AN AMOUNT RECEIVED FOR CANCELLATION OR
18 RENEWAL OF A LEASE. AN AMOUNT RECEIVED AS A REFUNDABLE DEPOSIT,
19 INCLUDING A SECURITY DEPOSIT OR A DEPOSIT THAT IS TO BE APPLIED AS
20 RENT FOR FUTURE PERIODS:

21 (a) MUST BE ADDED TO PRINCIPAL AND HELD SUBJECT TO THE
22 TERMS OF THE LEASE, EXCEPT AS OTHERWISE PROVIDED BY LAW OTHER
23 THAN THIS ARTICLE 1.2; AND

24 (b) IS NOT ALLOCATED TO INCOME OR AVAILABLE FOR
25 DISTRIBUTION TO A BENEFICIARY UNTIL THE FIDUCIARY'S CONTRACTUAL
26 OBLIGATIONS HAVE BEEN SATISFIED WITH RESPECT TO THAT AMOUNT.

27 **15-1.2-406. Receipt on obligation to be paid in money.** (1) THIS

1 SECTION DOES NOT APPLY TO AN OBLIGATION TO WHICH SECTION
2 15-1.2-409, 15-1.2-410, 15-1.2-411, 15-1.2-412, 15-1.2-414, 15-1.2-415,
3 OR 15-1.2-416 APPLIES.

4 (2) A FIDUCIARY SHALL ALLOCATE TO INCOME, WITHOUT
5 PROVISION FOR AMORTIZATION OF PREMIUM, AN AMOUNT RECEIVED AS
6 INTEREST ON AN OBLIGATION TO PAY MONEY TO THE FIDUCIARY,
7 INCLUDING AN AMOUNT RECEIVED AS CONSIDERATION FOR PREPAYING
8 PRINCIPAL.

9 (3) A FIDUCIARY SHALL ALLOCATE TO PRINCIPAL AN AMOUNT
10 RECEIVED FROM THE SALE, REDEMPTION, OR OTHER DISPOSITION OF AN
11 OBLIGATION TO PAY MONEY TO THE FIDUCIARY. A FIDUCIARY SHALL
12 ALLOCATE TO INCOME THE INCREMENT IN VALUE OF A BOND OR OTHER
13 OBLIGATION FOR THE PAYMENT OF MONEY BEARING NO STATED INTEREST
14 BUT PAYABLE OR REDEEMABLE, AT MATURITY OR ANOTHER FUTURE TIME,
15 IN AN AMOUNT THAT EXCEEDS THE AMOUNT IN CONSIDERATION OF WHICH
16 IT WAS ISSUED.

17 **15-1.2-407. Insurance policy or contract.** (1) THIS SECTION
18 DOES NOT APPLY TO A CONTRACT TO WHICH SECTION 15-1.2-409 APPLIES.

19 (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3) OF THIS
20 SECTION, A FIDUCIARY SHALL ALLOCATE TO PRINCIPAL THE PROCEEDS OF
21 A LIFE INSURANCE POLICY OR OTHER CONTRACT RECEIVED BY THE
22 FIDUCIARY AS BENEFICIARY, INCLUDING A CONTRACT THAT INSURES
23 AGAINST DAMAGE TO, DESTRUCTION OF, OR LOSS OF TITLE TO AN ASSET.
24 THE FIDUCIARY SHALL ALLOCATE DIVIDENDS ON AN INSURANCE POLICY TO
25 INCOME TO THE EXTENT PREMIUMS ON THE POLICY ARE PAID FROM INCOME
26 AND TO PRINCIPAL TO THE EXTENT PREMIUMS ON THE POLICY ARE PAID
27 FROM PRINCIPAL.

1 (3) A FIDUCIARY SHALL ALLOCATE TO INCOME PROCEEDS OF A
2 CONTRACT THAT INSURES THE FIDUCIARY AGAINST LOSS OF:

3 (a) OCCUPANCY OR OTHER USE BY A CURRENT INCOME
4 BENEFICIARY;

5 (b) INCOME; OR

6 (c) SUBJECT TO SECTION 15-1.2-403, PROFITS FROM A BUSINESS.

7 **15-1.2-408. Insubstantial allocation not required.** (1) IF A
8 FIDUCIARY DETERMINES THAT AN ALLOCATION BETWEEN INCOME AND
9 PRINCIPAL REQUIRED BY SECTION 15-1.2-409, 15-1.2-410, 15-1.2-411,
10 15-1.2-412, OR 15-1.2-415 IS INSUBSTANTIAL, THE FIDUCIARY MAY
11 ALLOCATE THE ENTIRE AMOUNT TO PRINCIPAL, UNLESS SECTION
12 15-1.2-203 (5) APPLIES TO THE ALLOCATION.

13 (2) A FIDUCIARY MAY PRESUME AN ALLOCATION IS INSUBSTANTIAL
14 UNDER SUBSECTION (1) OF THIS SECTION IF:

15 (a) THE AMOUNT OF THE ALLOCATION WOULD INCREASE OR
16 DECREASE NET INCOME IN AN ACCOUNTING PERIOD, AS DETERMINED
17 BEFORE THE ALLOCATION, BY LESS THAN TEN PERCENT; AND

18 (b) THE ASSET PRODUCING THE RECEIPT TO BE ALLOCATED HAS A
19 FAIR MARKET VALUE LESS THAN TEN PERCENT OF THE TOTAL FAIR MARKET
20 VALUE OF THE ASSETS OWNED OR HELD BY THE FIDUCIARY AT THE
21 BEGINNING OF THE ACCOUNTING PERIOD.

22 (3) THE POWER TO MAKE A DETERMINATION UNDER SUBSECTION
23 (1) OF THIS SECTION MAY BE:

24 (a) EXERCISED BY A CO-FIDUCIARY IN THE MANNER DESCRIBED IN
25 SECTION 15-1.2-203 (6); OR

26 (b) RELEASED OR DELEGATED FOR A REASON DESCRIBED IN
27 SECTION 15-1.2-203 (7) AND IN THE MANNER DESCRIBED IN SECTION

1 15-1.2-203 (8).

2 **15-1.2-409. Deferred compensation, annuity, or similar**
3 **payment - definitions.** (1) IN THIS SECTION:

4 (a) "INTERNAL INCOME OF A SEPARATE FUND" MEANS THE AMOUNT
5 DETERMINED UNDER SUBSECTION (2) OF THIS SECTION.

6 (b) "MARITAL TRUST" MEANS A TRUST:

7 (I) OF WHICH THE SETTLOR'S SURVIVING SPOUSE IS THE ONLY
8 CURRENT INCOME BENEFICIARY AND IS ENTITLED TO A DISTRIBUTION OF
9 ALL THE CURRENT NET INCOME OF THE TRUST; AND

10 (II) THAT QUALIFIES FOR A MARITAL DEDUCTION WITH RESPECT TO
11 THE SETTLOR'S ESTATE UNDER SECTION 2056 OF THE "INTERNAL REVENUE
12 CODE OF 1986", 26 U.S.C. SEC. 2056, AS AMENDED, BECAUSE:

13 (A) AN ELECTION TO QUALIFY FOR A MARITAL DEDUCTION UNDER
14 SECTION 2056 (b)(7) OF THE "INTERNAL REVENUE CODE OF 1986", 26
15 U.S.C. SEC. 2056 (b)(7), AS AMENDED, HAS BEEN MADE; OR

16 (B) THE TRUST QUALIFIES FOR A MARITAL DEDUCTION UNDER
17 SECTION 2056 (b)(5) OF THE "INTERNAL REVENUE CODE OF 1986", 26
18 U.S.C. SEC. 2056 (b)(5), AS AMENDED.

19 (c) "PAYMENT" MEANS AN AMOUNT A FIDUCIARY MAY RECEIVE
20 OVER A FIXED NUMBER OF YEARS OR DURING THE LIFE OF ONE OR MORE
21 INDIVIDUALS BECAUSE OF SERVICES RENDERED OR PROPERTY
22 TRANSFERRED TO THE PAYOR IN EXCHANGE FOR FUTURE AMOUNTS THE
23 FIDUCIARY MAY RECEIVE. THE TERM INCLUDES AN AMOUNT RECEIVED IN
24 MONEY OR PROPERTY FROM THE PAYOR'S GENERAL ASSETS OR FROM A
25 SEPARATE FUND CREATED BY THE PAYOR.

26 (d) "SEPARATE FUND" INCLUDES A PRIVATE OR COMMERCIAL
27 ANNUITY, AN INDIVIDUAL RETIREMENT ACCOUNT, AND A PENSION,

1 PROFIT-SHARING, STOCK-BONUS, OR STOCK-OWNERSHIP PLAN.

2 (2) FOR EACH ACCOUNTING PERIOD, THE FOLLOWING RULES APPLY
3 TO A SEPARATE FUND:

4 (a) THE FIDUCIARY SHALL DETERMINE THE INTERNAL INCOME OF
5 THE SEPARATE FUND AS IF THE SEPARATE FUND WERE A TRUST SUBJECT TO
6 THIS ARTICLE 1.2;

7 (b) IF THE FIDUCIARY CANNOT DETERMINE THE INTERNAL INCOME
8 OF THE SEPARATE FUND UNDER SUBSECTION (2)(a) OF THIS SECTION, THE
9 INTERNAL INCOME OF THE SEPARATE FUND IS DEEMED TO EQUAL FOUR
10 PERCENT OF THE VALUE OF THE SEPARATE FUND, ACCORDING TO THE MOST
11 RECENT STATEMENT OF VALUE PRECEDING THE BEGINNING OF THE
12 ACCOUNTING PERIOD; AND

13 (c) IF THE FIDUCIARY CANNOT DETERMINE THE VALUE OF THE
14 SEPARATE FUND UNDER SUBSECTION (2)(b) OF THIS SECTION, THE VALUE
15 OF THE SEPARATE FUND IS DEEMED TO EQUAL THE PRESENT VALUE OF THE
16 EXPECTED FUTURE PAYMENTS, AS DETERMINED UNDER SECTION 7520 OF
17 THE "INTERNAL REVENUE CODE OF 1986", 26 U.S.C. SEC. 7520, AS
18 AMENDED, FOR THE MONTH PRECEDING THE BEGINNING OF THE
19 ACCOUNTING PERIOD FOR WHICH THE COMPUTATION IS MADE.

20 (3) A FIDUCIARY SHALL ALLOCATE A PAYMENT RECEIVED FROM A
21 SEPARATE FUND DURING AN ACCOUNTING PERIOD TO INCOME, TO THE
22 EXTENT OF THE INTERNAL INCOME OF THE SEPARATE FUND DURING THE
23 PERIOD, AND THE BALANCE TO PRINCIPAL.

24 (4) THE FIDUCIARY OF A MARITAL TRUST SHALL:

25 (a) WITHDRAW FROM A SEPARATE FUND THE AMOUNT THE
26 CURRENT INCOME BENEFICIARY OF THE TRUST REQUESTS THE FIDUCIARY
27 TO WITHDRAW, NOT GREATER THAN THE AMOUNT BY WHICH THE INTERNAL

1 INCOME OF THE SEPARATE FUND DURING THE ACCOUNTING PERIOD
2 EXCEEDS THE AMOUNT THE FIDUCIARY OTHERWISE RECEIVES FROM THE
3 SEPARATE FUND DURING THE PERIOD;

4 (b) TRANSFER FROM PRINCIPAL TO INCOME THE AMOUNT THE
5 CURRENT INCOME BENEFICIARY REQUESTS THE FIDUCIARY TO TRANSFER,
6 NOT GREATER THAN THE AMOUNT BY WHICH THE INTERNAL INCOME OF
7 THE SEPARATE FUND DURING THE PERIOD EXCEEDS THE AMOUNT THE
8 FIDUCIARY RECEIVES FROM THE SEPARATE FUND DURING THE PERIOD
9 AFTER THE APPLICATION OF SUBSECTION (4)(a) OF THIS SECTION; AND

10 (c) DISTRIBUTE TO THE CURRENT INCOME BENEFICIARY AS
11 INCOME:

12 (I) THE AMOUNT OF THE INTERNAL INCOME OF THE SEPARATE FUND
13 RECEIVED OR WITHDRAWN DURING THE PERIOD; AND

14 (II) THE AMOUNT TRANSFERRED FROM PRINCIPAL TO INCOME
15 UNDER SUBSECTION (4)(b) OF THIS SECTION.

16 (5) FOR A TRUST, OTHER THAN A MARITAL TRUST, OF WHICH ONE
17 OR MORE CURRENT INCOME BENEFICIARIES ARE ENTITLED TO A
18 DISTRIBUTION OF ALL THE CURRENT NET INCOME, THE FIDUCIARY SHALL
19 TRANSFER FROM PRINCIPAL TO INCOME THE AMOUNT BY WHICH THE
20 INTERNAL INCOME OF A SEPARATE FUND DURING THE ACCOUNTING PERIOD
21 EXCEEDS THE AMOUNT THE FIDUCIARY RECEIVES FROM THE SEPARATE
22 FUND DURING THE PERIOD.

23 **15-1.2-410. Liquidating asset - definition.** (1) IN THIS SECTION,
24 "LIQUIDATING ASSET" MEANS AN ASSET WHOSE VALUE WILL DIMINISH OR
25 TERMINATE BECAUSE THE ASSET IS EXPECTED TO PRODUCE RECEIPTS FOR
26 A LIMITED TIME. THE TERM INCLUDES A LEASEHOLD, PATENT, COPYRIGHT,
27 ROYALTY RIGHT, AND RIGHT TO RECEIVE PAYMENTS DURING A PERIOD OF

1 MORE THAN ONE YEAR UNDER AN ARRANGEMENT THAT DOES NOT PROVIDE
2 FOR THE PAYMENT OF INTEREST ON THE UNPAID BALANCE.

3 (2) THIS SECTION DOES NOT APPLY TO A RECEIPT SUBJECT TO
4 SECTION 15-1.2-401, 15-1.2-409, 15-1.2-411, 15-1.2-412, 15-1.2-414,
5 15-1.2-415, 15-1.2-416, OR 15-1.2-503.

6 (3) A FIDUCIARY SHALL ALLOCATE:

7 (a) TO INCOME:

8 (I) A RECEIPT PRODUCED BY A LIQUIDATING ASSET, TO THE EXTENT
9 THE RECEIPT DOES NOT EXCEED FOUR PERCENT OF THE VALUE OF THE
10 ASSET; OR

11 (II) IF THE FIDUCIARY CANNOT DETERMINE THE VALUE OF THE
12 ASSET, TEN PERCENT OF THE RECEIPT; AND

13 (b) TO PRINCIPAL, THE BALANCE OF THE RECEIPT.

14 **15-1.2-411. Minerals, water, and other natural resources.**

15 (1) TO THE EXTENT A FIDUCIARY DOES NOT ACCOUNT FOR A RECEIPT
16 FROM AN INTEREST IN MINERALS, WATER, OR OTHER NATURAL RESOURCES
17 AS A BUSINESS UNDER SECTION 15-1.2-403, THE FIDUCIARY SHALL
18 ALLOCATE THE RECEIPT:

19 (a) TO INCOME, TO THE EXTENT RECEIVED:

20 (I) AS DELAY RENTAL OR ANNUAL RENT ON A LEASE;

21 (II) AS A FACTOR FOR INTEREST OR THE EQUIVALENT OF INTEREST
22 UNDER AN AGREEMENT CREATING A PRODUCTION PAYMENT; OR

23 (III) ON ACCOUNT OF AN INTEREST IN RENEWABLE WATER;

24 (b) TO PRINCIPAL, IF RECEIVED FROM A PRODUCTION PAYMENT, TO
25 THE EXTENT SUBSECTION (1)(a)(II) OF THIS SECTION DOES NOT APPLY; OR

26 (c) BETWEEN INCOME AND PRINCIPAL EQUITABLY, TO THE EXTENT
27 RECEIVED:

1 (I) ON ACCOUNT OF AN INTEREST IN NON-RENEWABLE WATER;
2 (II) AS A ROYALTY, SHUT-IN-WELL PAYMENT, TAKE-OR-PAY
3 PAYMENT, OR BONUS; OR
4 (III) FROM A WORKING INTEREST OR ANY OTHER INTEREST NOT
5 PROVIDED FOR IN SUBSECTION (1)(a), (1)(b), (1)(c)(I), OR (1)(c)(II) OF
6 THIS SECTION.

7 (2) THIS SECTION APPLIES TO AN INTEREST OWNED OR HELD BY A
8 FIDUCIARY WHETHER OR NOT A SETTLOR WAS EXTRACTING MINERALS,
9 WATER, OR OTHER NATURAL RESOURCES BEFORE THE FIDUCIARY OWNED
10 OR HELD THE INTEREST.

11 (3) AN ALLOCATION OF A RECEIPT UNDER SUBSECTION (1)(c) OF
12 THIS SECTION IS PRESUMED TO BE EQUITABLE IF THE AMOUNT ALLOCATED
13 TO PRINCIPAL IS EQUAL TO THE AMOUNT ALLOWED BY SECTIONS 611
14 THROUGH 614 OF THE "INTERNAL REVENUE CODE OF 1986", 26 U.S.C.
15 SECS. 611 THROUGH 614, AS AMENDED, AS A DEDUCTION FOR DEPLETION
16 OF THE INTEREST.

17 (4) IF A FIDUCIARY OWNS OR HOLDS AN INTEREST IN MINERALS,
18 WATER, OR OTHER NATURAL RESOURCES BEFORE THE EFFECTIVE DATE OF
19 THIS ARTICLE 1.2, THE FIDUCIARY MAY ALLOCATE RECEIPTS FROM THE
20 INTEREST AS PROVIDED IN THIS SECTION OR IN THE MANNER USED BY THE
21 FIDUCIARY BEFORE THE EFFECTIVE DATE OF THIS ARTICLE 1.2. IF THE
22 FIDUCIARY ACQUIRES AN INTEREST IN MINERALS, WATER, OR OTHER
23 NATURAL RESOURCES ON OR AFTER THE EFFECTIVE DATE OF THIS ARTICLE
24 1.2, THE FIDUCIARY SHALL ALLOCATE RECEIPTS FROM THE INTEREST AS
25 PROVIDED IN THIS SECTION.

26 **15-1.2-412. Timber.** (1) TO THE EXTENT A FIDUCIARY DOES NOT
27 ACCOUNT FOR RECEIPTS FROM THE SALE OF TIMBER AND RELATED

1 PRODUCTS AS A BUSINESS UNDER SECTION 15-1.2-403, THE FIDUCIARY
2 SHALL ALLOCATE THE NET RECEIPTS:

3 (a) TO INCOME, TO THE EXTENT THE AMOUNT OF TIMBER CUT FROM
4 THE LAND DOES NOT EXCEED THE RATE OF GROWTH OF THE TIMBER;

5 (b) TO PRINCIPAL, TO THE EXTENT THE AMOUNT OF TIMBER CUT
6 FROM THE LAND EXCEEDS THE RATE OF GROWTH OF THE TIMBER OR THE
7 NET RECEIPTS ARE FROM THE SALE OF STANDING TIMBER;

8 (c) BETWEEN INCOME AND PRINCIPAL IF THE NET RECEIPTS ARE
9 FROM THE LEASE OF LAND USED FOR GROWING AND CUTTING TIMBER OR
10 FROM A CONTRACT TO CUT TIMBER FROM LAND, BY DETERMINING THE
11 AMOUNT OF TIMBER CUT FROM THE LAND UNDER THE LEASE OR CONTRACT
12 AND APPLYING THE RULES IN SUBSECTIONS (1)(a) AND (1)(b) OF THIS
13 SECTION; OR

14 (d) TO PRINCIPAL, TO THE EXTENT ADVANCE PAYMENTS, BONUSES,
15 AND OTHER PAYMENTS ARE NOT ALLOCATED UNDER SUBSECTION (1)(a),
16 (1)(b), OR (1)(c) OF THIS SECTION.

17 (2) IN DETERMINING NET RECEIPTS TO BE ALLOCATED UNDER
18 SUBSECTION (1) OF THIS SECTION, A FIDUCIARY SHALL DEDUCT AND
19 TRANSFER TO PRINCIPAL A REASONABLE AMOUNT FOR DEPLETION.

20 (3) THIS SECTION APPLIES TO LAND OWNED OR HELD BY A
21 FIDUCIARY WHETHER OR NOT A SETTLOR WAS CUTTING TIMBER FROM THE
22 LAND BEFORE THE FIDUCIARY OWNED OR HELD THE PROPERTY.

23 (4) IF A FIDUCIARY OWNS OR HOLDS AN INTEREST IN LAND USED
24 FOR GROWING AND CUTTING TIMBER BEFORE THE EFFECTIVE DATE OF THIS
25 ARTICLE 1.2, THE FIDUCIARY MAY ALLOCATE NET RECEIPTS FROM THE
26 SALE OF TIMBER AND RELATED PRODUCTS AS PROVIDED IN THIS SECTION
27 OR IN THE MANNER USED BY THE FIDUCIARY BEFORE THE EFFECTIVE DATE

1 OF THIS ARTICLE 1.2. IF THE FIDUCIARY ACQUIRES AN INTEREST IN LAND
2 USED FOR GROWING AND CUTTING TIMBER ON OR AFTER THE EFFECTIVE
3 DATE OF THIS ARTICLE 1.2, THE FIDUCIARY SHALL ALLOCATE NET RECEIPTS
4 FROM THE SALE OF TIMBER AND RELATED PRODUCTS AS PROVIDED IN THIS
5 SECTION.

6 **15-1.2-413. Marital deduction property not productive of**
7 **income.** (1) IF A TRUST RECEIVED PROPERTY FOR WHICH A GIFT OR
8 ESTATE TAX MARITAL DEDUCTION WAS ALLOWED AND THE SETTLOR'S
9 SPOUSE HOLDS A MANDATORY INCOME INTEREST IN THE TRUST, THE
10 SPOUSE MAY REQUIRE THE TRUSTEE, TO THE EXTENT THE TRUST ASSETS
11 OTHERWISE DO NOT PROVIDE THE SPOUSE WITH SUFFICIENT INCOME FROM
12 OR USE OF THE TRUST ASSETS TO QUALIFY FOR THE DEDUCTION, TO:

13 (a) MAKE PROPERTY PRODUCTIVE OF INCOME;

14 (b) CONVERT PROPERTY TO PROPERTY PRODUCTIVE OF INCOME
15 WITHIN A REASONABLE TIME; OR

16 (c) EXERCISE THE POWER TO ADJUST UNDER SECTION 15-1.2-203.

17 (2) THE TRUSTEE MAY DECIDE WHICH ACTION OR COMBINATION OF
18 ACTIONS IN SUBSECTION (1) OF THIS SECTION TO TAKE.

19 **15-1.2-414. Derivative or option - definition.** (1) IN THIS
20 SECTION, "DERIVATIVE" MEANS A CONTRACT, INSTRUMENT, OTHER
21 ARRANGEMENT, OR COMBINATION OF CONTRACTS, INSTRUMENTS, OR
22 OTHER ARRANGEMENTS, THE VALUE, RIGHTS, AND OBLIGATIONS OF WHICH
23 ARE, IN WHOLE OR IN PART, DEPENDENT ON OR DERIVED FROM AN
24 UNDERLYING TANGIBLE OR INTANGIBLE ASSET, GROUP OF TANGIBLE OR
25 INTANGIBLE ASSETS, INDEX, OR OCCURRENCE OF AN EVENT. THE TERM
26 INCLUDES STOCKS, FIXED INCOME SECURITIES, AND FINANCIAL
27 INSTRUMENTS AND ARRANGEMENTS BASED ON INDICES, COMMODITIES,

1 INTEREST RATES, WEATHER-RELATED EVENTS, AND CREDIT-DEFAULT
2 EVENTS.

3 (2) TO THE EXTENT A FIDUCIARY DOES NOT ACCOUNT FOR A
4 TRANSACTION IN DERIVATIVES AS A BUSINESS UNDER SECTION 15-1.2-403,
5 THE FIDUCIARY SHALL ALLOCATE TEN PERCENT OF RECEIPTS FROM THE
6 TRANSACTION AND TEN PERCENT OF DISBURSEMENTS MADE IN
7 CONNECTION WITH THE TRANSACTION TO INCOME AND THE BALANCE TO
8 PRINCIPAL.

9 (3) SUBSECTION (4) OF THIS SECTION APPLIES IF:

10 (a) A FIDUCIARY:

11 (I) GRANTS AN OPTION TO BUY PROPERTY FROM A TRUST,
12 WHETHER OR NOT THE TRUST OWNS THE PROPERTY WHEN THE OPTION IS
13 GRANTED;

14 (II) GRANTS AN OPTION THAT PERMITS ANOTHER PERSON TO SELL
15 PROPERTY TO THE TRUST; OR

16 (III) ACQUIRES AN OPTION TO BUY PROPERTY FOR THE TRUST OR
17 AN OPTION TO SELL AN ASSET OWNED BY THE TRUST; AND

18 (b) THE FIDUCIARY OR OTHER OWNER OF THE ASSET IS REQUIRED
19 TO DELIVER THE ASSET IF THE OPTION IS EXERCISED.

20 (4) IF THIS SUBSECTION (4) APPLIES, THE FIDUCIARY SHALL
21 ALLOCATE TEN PERCENT TO INCOME AND THE BALANCE TO PRINCIPAL OF
22 THE FOLLOWING AMOUNTS:

23 (a) AN AMOUNT RECEIVED FOR GRANTING THE OPTION;

24 (b) AN AMOUNT PAID TO ACQUIRE THE OPTION; AND

25 (c) GAIN OR LOSS REALIZED ON THE EXERCISE, EXCHANGE,
26 SETTLEMENT, OFFSET, CLOSING, OR EXPIRATION OF THE OPTION.

27 **15-1.2-415. Asset-backed security.** (1) EXCEPT AS OTHERWISE

1 PROVIDED IN SUBSECTION (2) OF THIS SECTION, A FIDUCIARY SHALL
2 ALLOCATE TO INCOME A RECEIPT FROM OR RELATED TO AN ASSET-BACKED
3 SECURITY, TO THE EXTENT THE PAYOR IDENTIFIES THE PAYMENT AS BEING
4 FROM INTEREST OR OTHER CURRENT RETURN, AND TO PRINCIPAL THE
5 BALANCE OF THE RECEIPT.

6 (2) IF A FIDUCIARY RECEIVES ONE OR MORE PAYMENTS IN
7 EXCHANGE FOR PART OR ALL OF THE FIDUCIARY'S INTEREST IN AN
8 ASSET-BACKED SECURITY, INCLUDING A LIQUIDATION OR REDEMPTION OF
9 THE FIDUCIARY'S INTEREST IN THE SECURITY, THE FIDUCIARY SHALL
10 ALLOCATE TO INCOME TEN PERCENT OF RECEIPTS FROM THE TRANSACTION
11 AND TEN PERCENT OF DISBURSEMENTS MADE IN CONNECTION WITH THE
12 TRANSACTION, AND TO PRINCIPAL THE BALANCE OF THE RECEIPTS AND
13 DISBURSEMENTS.

14 **15-1.2-416. Other financial instrument or arrangement.** A
15 FIDUCIARY SHALL ALLOCATE RECEIPTS FROM OR RELATED TO A FINANCIAL
16 INSTRUMENT OR ARRANGEMENT NOT OTHERWISE ADDRESSED BY THIS
17 ARTICLE 1.2. THE ALLOCATION MUST BE CONSISTENT WITH SECTIONS
18 15-1.2-414 AND 15-1.2-415.

19 PART 5

20 ALLOCATION OF DISBURSEMENTS

21 **15-1.2-501. Disbursement from income.** (1) SUBJECT TO
22 SECTION 15-1.2-504, AND EXCEPT AS OTHERWISE PROVIDED IN SECTION
23 15-1.2-601 (3)(b) OR (3)(c), A FIDUCIARY SHALL DISBURSE FROM INCOME:

24 (a) ONE-HALF OF:

25 (I) THE REGULAR COMPENSATION OF THE FIDUCIARY AND ANY
26 PERSON PROVIDING INVESTMENT ADVISORY, CUSTODIAL, OR OTHER
27 SERVICES TO THE FIDUCIARY, TO THE EXTENT INCOME IS SUFFICIENT; AND

1 (II) AN EXPENSE FOR AN ACCOUNTING, JUDICIAL OR NONJUDICIAL
2 PROCEEDING, OR OTHER MATTER THAT INVOLVES BOTH INCOME AND
3 SUCCESSIVE INTERESTS, TO THE EXTENT INCOME IS SUFFICIENT;

4 (b) THE BALANCE OF THE DISBURSEMENTS DESCRIBED IN
5 SUBSECTION (1)(a) OF THIS SECTION, TO THE EXTENT A FIDUCIARY THAT
6 IS AN INDEPENDENT PERSON DETERMINES THAT MAKING THOSE
7 DISBURSEMENTS FROM INCOME WOULD BE IN THE INTERESTS OF THE
8 BENEFICIARIES;

9 (c) ANOTHER ORDINARY EXPENSE INCURRED IN CONNECTION WITH
10 ADMINISTRATION, MANAGEMENT, OR PRESERVATION OF PROPERTY AND
11 DISTRIBUTION OF INCOME, INCLUDING INTEREST, AN ORDINARY REPAIR,
12 REGULARLY RECURRING TAX ASSESSED AGAINST PRINCIPAL, AND AN
13 EXPENSE OF AN ACCOUNTING, JUDICIAL OR NONJUDICIAL PROCEEDING, OR
14 OTHER MATTER THAT INVOLVES PRIMARILY AN INCOME INTEREST, TO THE
15 EXTENT INCOME IS SUFFICIENT; AND

16 (d) A PREMIUM ON INSURANCE COVERING LOSS OF A PRINCIPAL
17 ASSET OR INCOME FROM OR USE OF THE ASSET.

18 **15-1.2-502. Disbursement from principal.** (1) SUBJECT TO
19 SECTION 15-1.2-505, AND EXCEPT AS OTHERWISE PROVIDED IN SECTION
20 15-1.2-601 (3)(b), A FIDUCIARY SHALL DISBURSE FROM PRINCIPAL:

21 (a) THE BALANCE OF THE DISBURSEMENTS DESCRIBED IN SECTION
22 15-1.2-501 (1)(a) AND (1)(c), AFTER APPLICATION OF SECTION 15-1.2-501
23 (1)(b);

24 (b) THE FIDUCIARY'S COMPENSATION CALCULATED ON PRINCIPAL
25 AS A FEE FOR ACCEPTANCE, DISTRIBUTION, OR TERMINATION;

26 (c) A PAYMENT OF AN EXPENSE TO PREPARE FOR OR EXECUTE A
27 SALE OR OTHER DISPOSITION OF PROPERTY;

- 1 (d) A PAYMENT ON THE PRINCIPAL OF A TRUST DEBT;
- 2 (e) A PAYMENT OF AN EXPENSE OF AN ACCOUNTING, JUDICIAL OR
3 NONJUDICIAL PROCEEDING, OR OTHER MATTER THAT INVOLVES PRIMARILY
4 PRINCIPAL, INCLUDING A PROCEEDING TO CONSTRUE THE TERMS OF THE
5 TRUST OR PROTECT PROPERTY;
- 6 (f) A PAYMENT OF A PREMIUM FOR INSURANCE, INCLUDING TITLE
7 INSURANCE, NOT DESCRIBED IN SECTION 15-1.2-501 (1)(d), OF WHICH THE
8 FIDUCIARY IS THE OWNER AND BENEFICIARY;
- 9 (g) A PAYMENT OF AN ESTATE OR INHERITANCE TAX OR OTHER TAX
10 IMPOSED BECAUSE OF THE DEATH OF A DECEDENT, INCLUDING PENALTIES,
11 APPORTIONED TO THE TRUST; AND
- 12 (h) A PAYMENT:
- 13 (I) RELATED TO ENVIRONMENTAL MATTERS, INCLUDING:
- 14 (A) RECLAMATION;
- 15 (B) ASSESSING ENVIRONMENTAL CONDITIONS;
- 16 (C) REMEDYING AND REMOVING ENVIRONMENTAL
17 CONTAMINATION;
- 18 (D) MONITORING REMEDIAL ACTIVITIES AND THE RELEASE OF
19 SUBSTANCES;
- 20 (E) PREVENTING FUTURE RELEASES OF SUBSTANCES;
- 21 (F) COLLECTING AMOUNTS FROM PERSONS LIABLE OR
22 POTENTIALLY LIABLE FOR THE COSTS OF ACTIVITIES DESCRIBED IN
23 SUBSECTIONS (1)(h)(I)(A) THROUGH (1)(h)(I)(E) OF THIS SECTION;
- 24 (G) PENALTIES IMPOSED UNDER ENVIRONMENTAL LAWS OR
25 REGULATIONS;
- 26 (H) OTHER ACTIONS TO COMPLY WITH ENVIRONMENTAL LAWS OR
27 REGULATIONS;

1 (I) STATUTORY OR COMMON LAW CLAIMS BY THIRD PARTIES; AND
2 (J) DEFENDING CLAIMS BASED ON ENVIRONMENTAL MATTERS; AND
3 (II) FOR A PREMIUM FOR INSURANCE FOR MATTERS DESCRIBED IN
4 SUBSECTION (1)(h)(I) OF THIS SECTION.

5 (2) IF A PRINCIPAL ASSET IS ENCUMBERED WITH AN OBLIGATION
6 THAT REQUIRES INCOME FROM THE ASSET TO BE PAID DIRECTLY TO A
7 CREDITOR, THE FIDUCIARY SHALL TRANSFER FROM PRINCIPAL TO INCOME
8 AN AMOUNT EQUAL TO THE INCOME PAID TO THE CREDITOR IN REDUCTION
9 OF THE PRINCIPAL BALANCE OF THE OBLIGATION.

10 **15-1.2-503. Transfer from income to principal for depreciation**

11 **- definition.** (1) IN THIS SECTION, "DEPRECIATION" MEANS A REDUCTION
12 IN VALUE DUE TO WEAR, TEAR, DECAY, CORROSION, OR GRADUAL
13 OBSOLESCENCE OF A TANGIBLE ASSET HAVING A USEFUL LIFE OF MORE
14 THAN ONE YEAR.

15 (2) A FIDUCIARY MAY TRANSFER TO PRINCIPAL A REASONABLE
16 AMOUNT OF THE NET CASH RECEIPTS FROM A PRINCIPAL ASSET THAT IS
17 SUBJECT TO DEPRECIATION, BUT MAY NOT TRANSFER ANY AMOUNT FOR
18 DEPRECIATION:

19 (a) OF THE PART OF REAL PROPERTY USED OR AVAILABLE FOR USE
20 BY A BENEFICIARY AS A RESIDENCE;

21 (b) OF TANGIBLE PERSONAL PROPERTY HELD OR MADE AVAILABLE
22 FOR THE PERSONAL USE OR ENJOYMENT OF A BENEFICIARY; OR

23 (c) UNDER THIS SECTION, TO THE EXTENT THE FIDUCIARY
24 ACCOUNTS:

25 (I) UNDER SECTION 15-1.2-410 FOR THE ASSET; OR

26 (II) UNDER SECTION 15-1.2-403 FOR THE BUSINESS OR OTHER
27 ACTIVITY IN WHICH THE ASSET IS USED.

1 (3) AN AMOUNT TRANSFERRED TO PRINCIPAL UNDER THIS SECTION
2 NEED NOT BE SEPARATELY HELD.

3 **15-1.2-504. Reimbursement of income from principal.** (1) IF
4 A FIDUCIARY MAKES OR EXPECTS TO MAKE AN INCOME DISBURSEMENT
5 DESCRIBED IN SUBSECTION (2) OF THIS SECTION, THE FIDUCIARY MAY
6 TRANSFER AN APPROPRIATE AMOUNT FROM PRINCIPAL TO INCOME IN ONE
7 OR MORE ACCOUNTING PERIODS TO REIMBURSE INCOME.

8 (2) TO THE EXTENT THE FIDUCIARY HAS NOT BEEN AND DOES NOT
9 EXPECT TO BE REIMBURSED BY A THIRD PARTY, INCOME DISBURSEMENTS
10 TO WHICH SUBSECTION (1) OF THIS SECTION APPLIES INCLUDE:

11 (a) AN AMOUNT CHARGEABLE TO PRINCIPAL BUT PAID FROM
12 INCOME BECAUSE PRINCIPAL IS ILLIQUID;

13 (b) A DISBURSEMENT MADE TO PREPARE PROPERTY FOR SALE,
14 INCLUDING IMPROVEMENTS AND COMMISSIONS; AND

15 (c) A DISBURSEMENT DESCRIBED IN SECTION 15-1.2-502 (1).

16 (3) IF AN ASSET WHOSE OWNERSHIP GIVES RISE TO AN INCOME
17 DISBURSEMENT BECOMES SUBJECT TO A SUCCESSIVE INTEREST AFTER AN
18 INCOME INTEREST ENDS, THE FIDUCIARY MAY CONTINUE TO MAKE
19 TRANSFERS UNDER SUBSECTION (1) OF THIS SECTION.

20 **15-1.2-505. Reimbursement of principal from income.** (1) IF
21 A FIDUCIARY MAKES OR EXPECTS TO MAKE A PRINCIPAL DISBURSEMENT
22 DESCRIBED IN SUBSECTION (2) OF THIS SECTION, THE FIDUCIARY MAY
23 TRANSFER AN APPROPRIATE AMOUNT FROM INCOME TO PRINCIPAL IN ONE
24 OR MORE ACCOUNTING PERIODS TO REIMBURSE PRINCIPAL OR PROVIDE A
25 RESERVE FOR FUTURE PRINCIPAL DISBURSEMENTS.

26 (2) TO THE EXTENT A FIDUCIARY HAS NOT BEEN AND DOES NOT
27 EXPECT TO BE REIMBURSED BY A THIRD PARTY, PRINCIPAL DISBURSEMENTS

1 TO WHICH SUBSECTION (1) OF THIS SECTION APPLIES INCLUDE:

2 (a) AN AMOUNT CHARGEABLE TO INCOME BUT PAID FROM
3 PRINCIPAL BECAUSE INCOME IS NOT SUFFICIENT;

4 (b) THE COST OF AN IMPROVEMENT TO PRINCIPAL, WHETHER A
5 CHANGE TO AN EXISTING ASSET OR THE CONSTRUCTION OF A NEW ASSET,
6 INCLUDING A SPECIAL ASSESSMENT;

7 (c) A DISBURSEMENT MADE TO PREPARE PROPERTY FOR RENTAL,
8 INCLUDING TENANT ALLOWANCES, LEASEHOLD IMPROVEMENTS, AND
9 COMMISSIONS;

10 (d) A PERIODIC PAYMENT ON AN OBLIGATION SECURED BY A
11 PRINCIPAL ASSET, TO THE EXTENT THE AMOUNT TRANSFERRED FROM
12 INCOME TO PRINCIPAL FOR DEPRECIATION IS LESS THAN THE PERIODIC
13 PAYMENT; AND

14 (e) A DISBURSEMENT DESCRIBED IN SECTION 15-1.2-502 (1).

15 (3) IF AN ASSET WHOSE OWNERSHIP GIVES RISE TO A PRINCIPAL
16 DISBURSEMENT BECOMES SUBJECT TO A SUCCESSIVE INTEREST AFTER AN
17 INCOME INTEREST ENDS, THE FIDUCIARY MAY CONTINUE TO MAKE
18 TRANSFERS UNDER SUBSECTION (1) OF THIS SECTION.

19 **15-1.2-506. Income taxes.** (1) A TAX REQUIRED TO BE PAID BY A
20 FIDUCIARY WHICH IS BASED ON RECEIPTS ALLOCATED TO INCOME MUST BE
21 PAID FROM INCOME.

22 (2) A TAX REQUIRED TO BE PAID BY A FIDUCIARY WHICH IS BASED
23 ON RECEIPTS ALLOCATED TO PRINCIPAL MUST BE PAID FROM PRINCIPAL,
24 EVEN IF THE TAX IS CALLED AN INCOME TAX BY THE TAXING AUTHORITY.

25 (3) SUBJECT TO SUBSECTION (4) OF THIS SECTION AND SECTIONS
26 15-1.2-504, 15-1.2-505, AND 15-1.2-507, A TAX REQUIRED TO BE PAID BY
27 A FIDUCIARY ON A SHARE OF AN ENTITY'S TAXABLE INCOME IN AN

1 ACCOUNTING PERIOD MUST BE PAID FROM:

2 (a) INCOME AND PRINCIPAL PROPORTIONATELY TO THE
3 ALLOCATION BETWEEN INCOME AND PRINCIPAL OF RECEIPTS FROM THE
4 ENTITY IN THE PERIOD; AND

5 (b) PRINCIPAL TO THE EXTENT THE TAX EXCEEDS THE RECEIPTS
6 FROM THE ENTITY IN THE PERIOD.

7 (4) AFTER APPLYING SUBSECTIONS (1) THROUGH (3) OF THIS
8 SECTION, A FIDUCIARY SHALL ADJUST INCOME OR PRINCIPAL RECEIPTS, TO
9 THE EXTENT THE TAXES THE FIDUCIARY PAYS ARE REDUCED BECAUSE OF
10 A DEDUCTION FOR A PAYMENT MADE TO A BENEFICIARY.

11 **15-1.2-507. Adjustment between income and principal because**
12 **of taxes.** (1) A FIDUCIARY MAY MAKE AN ADJUSTMENT BETWEEN INCOME
13 AND PRINCIPAL TO OFFSET THE SHIFTING OF ECONOMIC INTERESTS OR TAX
14 BENEFITS BETWEEN CURRENT INCOME BENEFICIARIES AND SUCCESSOR
15 BENEFICIARIES WHICH ARISES FROM:

16 (a) AN ELECTION OR DECISION THE FIDUCIARY MAKES REGARDING
17 A TAX MATTER, OTHER THAN A DECISION TO CLAIM AN INCOME TAX
18 DEDUCTION TO WHICH SUBSECTION (2) OF THIS SECTION APPLIES;

19 (b) AN INCOME TAX OR OTHER TAX IMPOSED ON THE FIDUCIARY OR
20 A BENEFICIARY AS A RESULT OF A TRANSACTION INVOLVING THE
21 FIDUCIARY OR A DISTRIBUTION BY THE FIDUCIARY; OR

22 (c) OWNERSHIP BY THE FIDUCIARY OF AN INTEREST IN AN ENTITY
23 A PART OF WHOSE TAXABLE INCOME, WHETHER OR NOT DISTRIBUTED, IS
24 INCLUDABLE IN THE TAXABLE INCOME OF THE FIDUCIARY OR A
25 BENEFICIARY.

26 (2) IF THE AMOUNT OF AN ESTATE TAX MARITAL OR CHARITABLE
27 DEDUCTION IS REDUCED BECAUSE A FIDUCIARY DEDUCTS AN AMOUNT PAID

1 FROM PRINCIPAL FOR INCOME TAX PURPOSES INSTEAD OF DEDUCTING IT
2 FOR ESTATE TAX PURPOSES AND, AS A RESULT, ESTATE TAXES PAID FROM
3 PRINCIPAL ARE INCREASED AND INCOME TAXES PAID BY THE FIDUCIARY OR
4 A BENEFICIARY ARE DECREASED, THE FIDUCIARY SHALL CHARGE EACH
5 BENEFICIARY THAT BENEFITS FROM THE DECREASE IN INCOME TAX TO
6 REIMBURSE THE PRINCIPAL FROM WHICH THE INCREASE IN ESTATE TAX IS
7 PAID. THE TOTAL REIMBURSEMENT MUST EQUAL THE INCREASE IN THE
8 ESTATE TAX, TO THE EXTENT THE PRINCIPAL USED TO PAY THE INCREASE
9 WOULD HAVE QUALIFIED FOR A MARITAL OR CHARITABLE DEDUCTION BUT
10 FOR THE PAYMENT. THE SHARE OF THE REIMBURSEMENT FOR EACH
11 FIDUCIARY OR BENEFICIARY WHOSE INCOME TAXES ARE REDUCED MUST BE
12 THE SAME AS ITS SHARE OF THE TOTAL DECREASE IN INCOME TAX.

13 (3) A FIDUCIARY THAT CHARGES A BENEFICIARY UNDER
14 SUBSECTION (2) OF THIS SECTION MAY OFFSET THE CHARGE BY OBTAINING
15 PAYMENT FROM THE BENEFICIARY, WITHHOLDING AN AMOUNT FROM
16 FUTURE DISTRIBUTIONS TO THE BENEFICIARY, OR ADOPTING ANOTHER
17 METHOD OR COMBINATION OF METHODS.

18 PART 6

19 DEATH OF INDIVIDUAL OR

20 TERMINATION OF INCOME INTEREST

21 **15-1.2-601. Determination and distribution of net income.**

22 (1) THIS SECTION APPLIES WHEN:

23 (a) THE DEATH OF AN INDIVIDUAL RESULTS IN THE CREATION OF AN
24 ESTATE OR TRUST; OR

25 (b) AN INCOME INTEREST IN A TRUST TERMINATES, WHETHER THE
26 TRUST CONTINUES OR IS DISTRIBUTED.

27 (2) A FIDUCIARY OF AN ESTATE OR TRUST WITH AN INCOME

1 INTEREST THAT TERMINATES SHALL DETERMINE, UNDER SUBSECTION (7)
2 OF THIS SECTION AND PARTS 4, 5, AND 7 OF THIS ARTICLE 1.2, THE AMOUNT
3 OF NET INCOME AND NET PRINCIPAL RECEIPTS RECEIVED FROM PROPERTY
4 SPECIFICALLY GIVEN TO A BENEFICIARY. THE FIDUCIARY SHALL
5 DISTRIBUTE THE NET INCOME AND NET PRINCIPAL RECEIPTS TO THE
6 BENEFICIARY THAT IS TO RECEIVE THE SPECIFIC PROPERTY.

7 (3) A FIDUCIARY SHALL DETERMINE THE INCOME AND NET INCOME
8 OF AN ESTATE OR INCOME INTEREST IN A TRUST WHICH TERMINATES,
9 OTHER THAN THE AMOUNT OF NET INCOME DETERMINED UNDER
10 SUBSECTION (2) OF THIS SECTION, UNDER PARTS 4, 5, AND 7 OF THIS
11 ARTICLE 1.2 AND BY:

12 (a) INCLUDING IN NET INCOME ALL INCOME FROM PROPERTY USED
13 OR SOLD TO DISCHARGE LIABILITIES;

14 (b) PAYING FROM INCOME OR PRINCIPAL, IN THE FIDUCIARY'S
15 DISCRETION, FEES OF ATTORNEYS, ACCOUNTANTS, AND FIDUCIARIES,
16 COURT COSTS AND OTHER EXPENSES OF ADMINISTRATION, AND INTEREST
17 ON ESTATE AND INHERITANCE TAXES AND OTHER TAXES IMPOSED BECAUSE
18 OF THE DECEDENT'S DEATH, BUT THE FIDUCIARY MAY PAY THE EXPENSES
19 FROM INCOME OF PROPERTY PASSING TO A TRUST FOR WHICH THE
20 FIDUCIARY CLAIMS A FEDERAL ESTATE TAX MARITAL OR CHARITABLE
21 DEDUCTION ONLY TO THE EXTENT:

22 (I) THE PAYMENT OF THE EXPENSES FROM INCOME WILL NOT CAUSE
23 THE REDUCTION OR LOSS OF THE DEDUCTION; OR

24 (II) THE FIDUCIARY MAKES AN ADJUSTMENT UNDER SECTION
25 15-1.2-507 (2); AND

26 (c) PAYING FROM PRINCIPAL OTHER DISBURSEMENTS MADE OR
27 INCURRED IN CONNECTION WITH THE SETTLEMENT OF THE ESTATE OR THE

1 WINDING UP OF AN INCOME INTEREST THAT TERMINATES, INCLUDING:
2 (I) TO THE EXTENT AUTHORIZED BY THE DECEDENT'S WILL, THE
3 TERMS OF THE TRUST, OR APPLICABLE LAW, DEBTS, FUNERAL EXPENSES,
4 DISPOSITION OF REMAINS, FAMILY ALLOWANCES, ESTATE AND
5 INHERITANCE TAXES, AND OTHER TAXES IMPOSED BECAUSE OF THE
6 DECEDENT'S DEATH; AND
7 (II) RELATED PENALTIES THAT ARE APPORTIONED, BY THE
8 DECEDENT'S WILL, THE TERMS OF THE TRUST, OR APPLICABLE LAW, TO THE
9 ESTATE OR INCOME INTEREST THAT TERMINATES.
10 (4) IF A DECEDENT'S WILL, THE TERMS OF A TRUST, OR APPLICABLE
11 LAW PROVIDES FOR THE PAYMENT OF INTEREST OR THE EQUIVALENT OF
12 INTEREST TO A BENEFICIARY THAT RECEIVES A PECUNIARY AMOUNT
13 OUTRIGHT, THE FIDUCIARY SHALL MAKE THE PAYMENT FROM NET INCOME
14 DETERMINED UNDER SUBSECTION (3) OF THIS SECTION OR FROM PRINCIPAL
15 TO THE EXTENT NET INCOME IS INSUFFICIENT.
16 (5) RESERVED.
17 (6) A FIDUCIARY SHALL DISTRIBUTE NET INCOME REMAINING
18 AFTER PAYMENTS REQUIRED BY SUBSECTION (4) OF THIS SECTION IN THE
19 MANNER DESCRIBED IN SECTION 15-1.2-602 TO ALL OTHER BENEFICIARIES,
20 INCLUDING A BENEFICIARY THAT RECEIVES A PECUNIARY AMOUNT IN
21 TRUST, EVEN IF THE BENEFICIARY HOLDS AN UNQUALIFIED POWER TO
22 WITHDRAW ASSETS FROM THE TRUST OR OTHER PRESENTLY EXERCISABLE
23 GENERAL POWER OF APPOINTMENT OVER THE TRUST.
24 (7) A FIDUCIARY MAY NOT REDUCE PRINCIPAL OR INCOME
25 RECEIPTS FROM PROPERTY DESCRIBED IN SUBSECTION (2) OF THIS SECTION
26 BECAUSE OF A PAYMENT DESCRIBED IN SECTION 15-1.2-501 OR 15-1.2-502,
27 TO THE EXTENT THE DECEDENT'S WILL, THE TERMS OF THE TRUST, OR

1 APPLICABLE LAW REQUIRES THE FIDUCIARY TO MAKE THE PAYMENT FROM
2 ASSETS OTHER THAN THE PROPERTY OR TO THE EXTENT THE FIDUCIARY
3 RECOVERS OR EXPECTS TO RECOVER THE PAYMENT FROM A THIRD PARTY.
4 THE NET INCOME AND PRINCIPAL RECEIPTS FROM THE PROPERTY MUST BE
5 DETERMINED BY INCLUDING THE AMOUNT THE FIDUCIARY RECEIVES OR
6 PAYS REGARDING THE PROPERTY, WHETHER THE AMOUNT ACCRUED OR
7 BECAME DUE BEFORE, ON, OR AFTER THE DATE OF THE DECEDENT'S DEATH
8 OR AN INCOME INTEREST'S TERMINATING EVENT, AND MAKING A
9 REASONABLE PROVISION FOR AN AMOUNT THE ESTATE OR INCOME
10 INTEREST MAY BECOME OBLIGATED TO PAY AFTER THE PROPERTY IS
11 DISTRIBUTED.

12 **15-1.2-602. Distribution to successor beneficiary.** (1) EXCEPT
13 TO THE EXTENT PART 3 OF THIS ARTICLE 1.2 APPLIES FOR A BENEFICIARY
14 THAT IS A TRUST, EACH BENEFICIARY DESCRIBED IN SECTION 15-1.2-601
15 (6) IS ENTITLED TO RECEIVE A SHARE OF THE NET INCOME EQUAL TO THE
16 BENEFICIARY'S FRACTIONAL INTEREST IN UNDISTRIBUTED PRINCIPAL
17 ASSETS, USING VALUES AS OF THE DISTRIBUTION DATE. IF A FIDUCIARY
18 MAKES MORE THAN ONE DISTRIBUTION OF ASSETS TO BENEFICIARIES TO
19 WHICH THIS SECTION APPLIES, EACH BENEFICIARY, INCLUDING A
20 BENEFICIARY THAT DOES NOT RECEIVE PART OF THE DISTRIBUTION, IS
21 ENTITLED, AS OF EACH DISTRIBUTION DATE, TO A SHARE OF THE NET
22 INCOME THE FIDUCIARY RECEIVED AFTER THE DECEDENT'S DEATH, AN
23 INCOME INTEREST'S OTHER TERMINATING EVENT, OR THE PRECEDING
24 DISTRIBUTION BY THE FIDUCIARY.

25 (2) IN DETERMINING A BENEFICIARY'S SHARE OF NET INCOME
26 UNDER SUBSECTION (1) OF THIS SECTION, THE FOLLOWING RULES APPLY:

27 (a) THE BENEFICIARY IS ENTITLED TO RECEIVE A SHARE OF THE NET

1 INCOME EQUAL TO THE BENEFICIARY'S FRACTIONAL INTEREST IN THE
2 UNDISTRIBUTED PRINCIPAL ASSETS IMMEDIATELY BEFORE THE
3 DISTRIBUTION DATE;

4 (b) THE BENEFICIARY'S FRACTIONAL INTEREST UNDER SUBSECTION
5 (2)(a) OF THIS SECTION MUST BE CALCULATED:

6 (I) ON THE AGGREGATE VALUE OF THE ASSETS AS OF THE
7 DISTRIBUTION DATE WITHOUT REDUCING THE VALUE BY ANY UNPAID
8 PRINCIPAL OBLIGATION; AND

9 (II) WITHOUT REGARD TO:

10 (A) PROPERTY SPECIFICALLY GIVEN TO A BENEFICIARY UNDER THE
11 DECEDENT'S WILL OR THE TERMS OF THE TRUST; AND

12 (B) PROPERTY REQUIRED TO PAY PECUNIARY AMOUNTS NOT IN
13 TRUST; AND

14 (c) THE DISTRIBUTION DATE UNDER SUBSECTION (2)(a) OF THIS
15 SECTION MAY BE THE DATE AS OF WHICH THE FIDUCIARY CALCULATES THE
16 VALUE OF THE ASSETS IF THAT DATE IS REASONABLY NEAR THE DATE ON
17 WHICH THE ASSETS ARE DISTRIBUTED.

18 (3) TO THE EXTENT A FIDUCIARY DOES NOT DISTRIBUTE UNDER
19 THIS SECTION ALL THE COLLECTED BUT UNDISTRIBUTED NET INCOME TO
20 EACH BENEFICIARY AS OF A DISTRIBUTION DATE, THE FIDUCIARY SHALL
21 MAINTAIN RECORDS SHOWING THE INTEREST OF EACH BENEFICIARY IN THE
22 NET INCOME.

23 (4) IF THIS SECTION APPLIES TO INCOME FROM AN ASSET, A
24 FIDUCIARY MAY APPLY THE RULES IN THIS SECTION TO NET GAIN OR LOSS
25 REALIZED FROM THE DISPOSITION OF THE ASSET AFTER THE DECEDENT'S
26 DEATH, AN INCOME INTEREST'S TERMINATING EVENT, OR THE PRECEDING
27 DISTRIBUTION BY THE FIDUCIARY.

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PART 7
APPORTIONMENT AT BEGINNING AND
END OF INCOME INTEREST

15-1.2-701. When right to income begins and ends. (1) AN INCOME BENEFICIARY IS ENTITLED TO NET INCOME IN ACCORDANCE WITH THE TERMS OF THE TRUST FROM THE DATE AN INCOME INTEREST BEGINS. THE INCOME INTEREST BEGINS ON THE DATE SPECIFIED IN THE TERMS OF THE TRUST OR, IF NO DATE IS SPECIFIED, ON THE DATE AN ASSET BECOMES SUBJECT TO:

- (a) THE TRUST FOR THE CURRENT INCOME BENEFICIARY; OR
- (b) A SUCCESSIVE INTEREST FOR A SUCCESSOR BENEFICIARY.

(2) AN ASSET BECOMES SUBJECT TO A TRUST UNDER SUBSECTION (1)(a) OF THIS SECTION:

- (a) FOR AN ASSET THAT IS TRANSFERRED TO THE TRUST DURING THE SETTLOR'S LIFE, ON THE DATE THE ASSET IS TRANSFERRED;
- (b) FOR AN ASSET THAT BECOMES SUBJECT TO THE TRUST BECAUSE OF A DECEDENT'S DEATH, ON THE DATE OF THE DECEDENT'S DEATH, EVEN IF THERE IS AN INTERVENING PERIOD OF ADMINISTRATION OF THE DECEDENT'S ESTATE; OR

(c) FOR AN ASSET THAT IS TRANSFERRED TO A FIDUCIARY BY A THIRD PARTY BECAUSE OF A DECEDENT'S DEATH, ON THE DATE OF THE DECEDENT'S DEATH.

(3) AN ASSET BECOMES SUBJECT TO A SUCCESSIVE INTEREST UNDER SUBSECTION (1)(b) OF THIS SECTION ON THE DAY AFTER THE PRECEDING INCOME INTEREST ENDS, AS DETERMINED UNDER SUBSECTION (4) OF THIS SECTION, EVEN IF THERE IS AN INTERVENING PERIOD OF ADMINISTRATION TO WIND UP THE PRECEDING INCOME INTEREST.

1 (4) AN INCOME INTEREST ENDS ON THE DAY BEFORE AN INCOME
2 BENEFICIARY DIES OR ANOTHER TERMINATING EVENT OCCURS OR ON THE
3 LAST DAY OF A PERIOD DURING WHICH THERE IS NO BENEFICIARY TO
4 WHICH A FIDUCIARY MAY OR MUST DISTRIBUTE INCOME.

5 **15-1.2-702. Apportionment of receipts and disbursements**
6 **when decedent dies or income interest begins.** (1) A FIDUCIARY SHALL

7 ALLOCATE AN INCOME RECEIPT OR DISBURSEMENT, OTHER THAN A RECEIPT
8 TO WHICH SECTION 15-1.2-601 (2) APPLIES, TO PRINCIPAL IF ITS DUE DATE
9 OCCURS BEFORE THE DATE ON WHICH:

10 (a) FOR AN ESTATE, THE DECEDENT DIED; OR

11 (b) FOR A TRUST OR SUCCESSIVE INTEREST, AN INCOME INTEREST
12 BEGINS.

13 (2) IF THE DUE DATE OF A PERIODIC INCOME RECEIPT OR
14 DISBURSEMENT OCCURS ON OR AFTER THE DATE ON WHICH A DECEDENT
15 DIED OR AN INCOME INTEREST BEGINS, A FIDUCIARY SHALL ALLOCATE THE
16 RECEIPT OR DISBURSEMENT TO INCOME.

17 (3) IF AN INCOME RECEIPT OR DISBURSEMENT IS NOT PERIODIC OR
18 HAS NO DUE DATE, A FIDUCIARY SHALL TREAT THE RECEIPT OR
19 DISBURSEMENT UNDER THIS SECTION AS ACCRUING FROM DAY TO DAY.
20 THE FIDUCIARY SHALL ALLOCATE TO PRINCIPAL THE PORTION OF THE
21 RECEIPT OR DISBURSEMENT ACCRUING BEFORE THE DATE ON WHICH A
22 DECEDENT DIED OR AN INCOME INTEREST BEGINS, AND TO INCOME THE
23 BALANCE.

24 (4) A RECEIPT OR DISBURSEMENT IS PERIODIC UNDER SUBSECTIONS
25 (2) AND (3) OF THIS SECTION IF:

26 (a) THE RECEIPT OR DISBURSEMENT MUST BE PAID AT REGULAR
27 INTERVALS UNDER AN OBLIGATION TO MAKE PAYMENTS; OR

1 (b) THE PAYOR CUSTOMARILY MAKES PAYMENTS AT REGULAR
2 INTERVALS.

3 (5) AN ITEM OF INCOME OR OBLIGATION IS DUE UNDER THIS
4 SECTION ON THE DATE THE PAYOR IS REQUIRED TO MAKE A PAYMENT. IF
5 A PAYMENT DATE IS NOT STATED, THERE IS NO DUE DATE.

6 (6) DISTRIBUTIONS TO SHAREHOLDERS OR OTHER OWNERS FROM
7 AN ENTITY TO WHICH SECTION 15-1.2-401 APPLIES ARE DUE:

8 (a) ON THE DATE FIXED BY OR ON BEHALF OF THE ENTITY FOR
9 DETERMINING THE PERSONS ENTITLED TO RECEIVE THE DISTRIBUTION;

10 (b) IF NO DATE IS FIXED, ON THE DATE OF THE DECISION BY OR ON
11 BEHALF OF THE ENTITY TO MAKE THE DISTRIBUTION; OR

12 (c) IF NO DATE IS FIXED AND THE FIDUCIARY DOES NOT KNOW THE
13 DATE OF THE DECISION BY OR ON BEHALF OF THE ENTITY TO MAKE THE
14 DISTRIBUTION, ON THE DATE THE FIDUCIARY LEARNS OF THE DECISION.

15 **15-1.2-703. Apportionment when income interest ends -**
16 **definition.** (1) IN THIS SECTION, "UNDISTRIBUTED INCOME" MEANS NET
17 INCOME RECEIVED ON OR BEFORE THE DATE ON WHICH AN INCOME
18 INTEREST ENDS. THE TERM DOES NOT INCLUDE AN ITEM OF INCOME OR
19 EXPENSE WHICH IS DUE OR ACCRUED OR NET INCOME THAT HAS BEEN
20 ADDED OR IS REQUIRED TO BE ADDED TO PRINCIPAL UNDER THE TERMS OF
21 THE TRUST.

22 (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3) OF THIS
23 SECTION, WHEN A MANDATORY INCOME INTEREST OF A BENEFICIARY ENDS,
24 THE FIDUCIARY SHALL PAY THE BENEFICIARY'S SHARE OF THE
25 UNDISTRIBUTED INCOME THAT IS NOT DISPOSED OF UNDER THE TERMS OF
26 THE TRUST TO THE BENEFICIARY OR, IF THE BENEFICIARY DOES NOT
27 SURVIVE THE DATE THE INTEREST ENDS, TO THE BENEFICIARY'S ESTATE.

1 (3) IF A BENEFICIARY HAS AN UNQUALIFIED POWER TO WITHDRAW
2 MORE THAN FIVE PERCENT OF THE VALUE OF A TRUST IMMEDIATELY
3 BEFORE AN INCOME INTEREST ENDS:

4 (a) THE FIDUCIARY SHALL ALLOCATE TO PRINCIPAL THE
5 UNDISTRIBUTED INCOME FROM THE PORTION OF THE TRUST WHICH MAY BE
6 WITHDRAWN; AND

7 (b) SUBSECTION (2) OF THIS SECTION APPLIES ONLY TO THE
8 BALANCE OF THE UNDISTRIBUTED INCOME.

9 (4) WHEN A FIDUCIARY'S OBLIGATION TO PAY A FIXED ANNUITY OR
10 A FIXED FRACTION OF THE VALUE OF ASSETS ENDS, THE FIDUCIARY SHALL
11 PRORATE THE FINAL PAYMENT AS REQUIRED TO PRESERVE AN INCOME TAX,
12 GIFT TAX, ESTATE TAX, OR OTHER TAX BENEFIT.

13 PART 8

14 MISCELLANEOUS PROVISIONS

15 **15-1.2-801. Uniformity of application and construction.** IN
16 APPLYING AND CONSTRUING THIS UNIFORM ACT, CONSIDERATION MUST BE
17 GIVEN TO THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH RESPECT
18 TO ITS SUBJECT MATTER AMONG STATES THAT ENACT IT.

19 **15-1.2-802. Relation to electronic signatures in global and**
20 **national commerce act.** THIS ARTICLE 1.2 MODIFIES, LIMITS, OR
21 SUPERSEDES THE FEDERAL "ELECTRONIC SIGNATURES IN GLOBAL AND
22 NATIONAL COMMERCE ACT", 15 U.S.C. SEC. 7001 ET SEQ., BUT DOES NOT
23 MODIFY, LIMIT, OR SUPERSEDE SECTION 101 (c) OF THAT ACT, 15 U.S.C.
24 SEC. 7001 (c), OR AUTHORIZE ELECTRONIC DELIVERY OF ANY OF THE
25 NOTICES DESCRIBED IN SECTION 103 (b) OF THAT ACT, 15 U.S.C. SEC. 7003
26 (b).

27 **15-1.2-803. Application to trust or estate.** (1) EXCEPT AS

1 PROVIDED IN THE TERMS OF THE TRUST AND SUBSECTION (2) OF THIS
2 SECTION, THIS ARTICLE 1.2 SHALL TAKE EFFECT ON JANUARY 1, 2022.

3 (2) (a) THIS ARTICLE 1.2 SHALL NOT APPLY TO A TRUST
4 ESTABLISHED UNDER A WILL OR TRUST AGREEMENT EXISTING AND
5 IRREVOCABLE ON JULY 1, 2001, IF A TRUSTEE OF THE TRUST HAS ELECTED
6 TO APPLY THE "UNIFORM PRINCIPAL AND INCOME ACT" OF THIS STATE
7 THAT WAS IN EFFECT ON JUNE 30, 2001.

8 (b) THIS ARTICLE 1.2 SHALL NOT APPLY TO A TRUST EXISTING ON
9 JULY 1, 2001, IN WHICH NO TRUSTEE HAD THE AUTHORITY TO ACT UNDER
10 SECTION 15-1-404 OF THE "UNIFORM PRINCIPAL AND INCOME ACT",
11 SUBPARTS 1 TO 6 OF PART 4 OF ARTICLE 1 OF THIS TITLE 15, AS IT EXISTED
12 ON OR AFTER JULY 1, 2001, UNLESS A TRUSTEE OF THE TRUST ELECTED TO
13 APPLY THE "UNIFORM PRINCIPAL AND INCOME ACT" AS IT EXISTED ON OR
14 AFTER JULY 1, 2001.

15 **15-1.2-804. Severability.** IF ANY PROVISION OF THIS ARTICLE 1.2
16 OR ITS APPLICATION TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID,
17 THE INVALIDITY DOES NOT AFFECT OTHER PROVISIONS OR APPLICATIONS
18 OF THIS ARTICLE 1.2 WHICH CAN BE GIVEN EFFECT WITHOUT THE INVALID
19 PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS
20 ARTICLE 1.2 ARE SEVERABLE.

21 **SECTION 2.** In Colorado Revised Statutes, **repeal** part 4 of
22 article 1 of title 15.

23 **SECTION 3.** In Colorado Revised Statutes, 6-24-106, **amend**
24 (8)(a)(II) and (8)(b)(III) as follows:

25 **6-24-106. Endowment care fund.** (8) (a) The cemetery authority
26 of an endowment care cemetery may choose the distribution as income of
27 either of the following from the endowment care fund:

1 (II) An amount set and administered in accordance with ~~section~~
2 ~~15-1-404.5~~ PART 3 OF ARTICLE 1.2 OF TITLE 15 for unitrust elections.

3 (b) (III) The fiduciary is subject to ~~section 15-1-404.5~~ PART 3 OF
4 ARTICLE 1.2 OF TITLE 15 when administering an endowment care fund for
5 which the unitrust election has been made; except that, in the event of a
6 conflict between this section and ~~section 15-1-404.5~~ PART 3 OF ARTICLE
7 1.2 OF TITLE 15, this section controls.

8 **SECTION 4.** In Colorado Revised Statutes, 15-5-1301, **amend**
9 (2)(a)(I) as follows:

10 **15-5-1301. Life insurance policy owned by a trustee -**
11 **definition.** (2) (a) This section does not relieve a trustee of liability with
12 respect to any life insurance policy purchased from an affiliated company,
13 or with respect to which the trustee or any affiliated company of the
14 trustee receives any commission, unless either:

15 (I) The trustee has given written notice of such intended purchase
16 to all qualified beneficiaries of the trust as defined in ~~section 15-1-402~~
17 ~~(10.5)~~ SECTION 15-5-103 (16), or to their legal representatives, and either
18 receives written consent to such purchase from qualified beneficiaries or
19 does not receive from a qualified beneficiary a response to written notice
20 by the trustee within thirty days after the mailing of such notice to the
21 qualified beneficiary or legal representative at his or her last known
22 address; or

23 **SECTION 5. Act subject to petition - effective date.** This act
24 takes effect January 1, 2022; except that, if a referendum petition is filed
25 pursuant to section 1 (3) of article V of the state constitution against this
26 act or an item, section, or part of this act within the ninety-day period
27 after final adjournment of the general assembly, then the act, item,

1 section, or part will not take effect unless approved by the people at the
2 general election to be held in November 2022 and, in such case, will take
3 effect on the date of the official declaration of the vote thereon by the
4 governor.