

UNIFORM PRINCIPAL AND INCOME ACT (EXCERPT)
Act 159 of 2004
Article 4

555.801 “Entity” defined; allocation to income money received; allocation of receipts to principal; money received in partial liquidation; limitation; statement by entity on source or character of distribution.

Sec. 401.

(1) As used in this section, “entity” means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or other organization in which a trustee has an interest, other than a trust or estate to which section 402 applies, a business or other activity to which section 403 applies, or an asset-backed security to which section 415 applies.

(2) Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.

(3) A trustee shall allocate the following receipts from an entity to principal:

(a) Property other than money.

(b) Money received in 1 distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity.

(c) Money received in total liquidation of the entity, or in partial liquidation of the entity as prescribed by subsections (4) and (5).

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

(4) Money is received in partial liquidation under either of the following circumstances:

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

(b) If the total amount of money and property received in a distribution or series of related distributions is greater than 20% of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt.

(5) Money is not received in partial liquidation, nor may it be taken into account under subsection (4)(b), to the extent that it does not exceed the amount of income tax that a trustee or beneficiary must pay on taxable income of the entity that distributes the money.

(6) A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

History: 2004, Act 159, Eff. Sept. 1, 2004

555.802 Income; principal; allocation of amounts received as distributions from trust or purchased interest.

Sec. 402.

A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest, and shall allocate to principal an amount received as a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, section 401 or 415 applies to a receipt from the trust.

History: 2004, Act 159, Eff. Sept. 1, 2004

555.803 Separate accounting for business or other activity.

Sec. 403.

(1) If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

(2) A trustee who accounts separately for a business or other activity may determine the extent to which its net cash receipts shall be retained for working capital, the acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of business.

(3) A business or other activity for which a trustee may maintain separate accounting records include all of the following:

- (a) A retail, manufacturing, service, and other traditional business activity.
- (b) Farming.
- (c) Raising and selling livestock and other animals.
- (d) Management of rental property.
- (e) Extraction of minerals and other natural resources.
- (f) A timber operation.
- (g) An activity to which section 414 applies.

History: 2004, Act 159, Eff. Sept. 1, 2004

555.804 Principal; allocations.

Sec. 404.

A trustee shall allocate to principal all of the following:

(a) To the extent not allocated to income under this act, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest, or a payer under a contract naming the trust or its trustee as beneficiary.

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

(c) Amounts recovered from third parties to reimburse the trust because of disbursements described in section 502(1)(g) or for other reasons to the extent not based on the loss of income.

(d) Proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income.

(e) Net income received in an accounting period during which there is no beneficiary to whom a trustee may or must distribute income.

(f) Other receipts as provided in sections 408 to 415 of this article.

History: 2004, Act 159, Eff. Sept. 1, 2004

555.805 Receipts from rental property.

Sec. 405.

To the extent that a trustee accounts for receipts from rental property pursuant to this section, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, shall be added to principal and held subject to the terms of

the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

History: 2004, Act 159, Eff. Sept. 1, 2004

555.806 Interest received; allocation to income; proceeds of sale; allocation to principal.

Sec. 406.

(1) An amount received as interest, whether determined at a fixed, variable, or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, shall be allocated to income without any provision for amortization of premium.

(2) A trustee shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the trustee more than 1 year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity. If the obligation matures within 1 year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust must be allocated to income.

(3) This section does not apply to an obligation to which section 409, 410, 411, 412, 414, or 415 applies.

History: 2004, Act 159, Eff. Sept. 1, 2004

555.807 Life insurance proceeds; other contracts; allocations.

Sec. 407.

(1) Except as otherwise provided in subsection (2), a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of, or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income and to principal if the premiums are paid from principal.

(2) A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income, or, subject to section 403, loss of profits from a business.

(3) This section does not apply to a payment to which section 409 applies.

History: 2004, Act 159, Eff. Sept. 1, 2004

555.808 Insubstantial allocation.

Sec. 408.

If a trustee determines that an allocation between principal and income required by section 409, 410, 411, 412, or 415 is insubstantial, the trustee may allocate the entire amount to principal unless 1 or more of the circumstances described in section 104(4) apply to the allocation. This power may be exercised by a cofiduciary in the circumstances described in section 104(5) and may be released for the reasons and in the manner described in section 104(6). An allocation is presumed to be insubstantial if 1 or more of the following apply:

(a) The amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than 10%.

(b) The value of the asset producing the receipt for which the allocation would be made is less than 10% of the total value of the trust's assets at the beginning of the accounting period.

555.809 Definitions; payment allocation.

Sec. 409.

(1) As used in this section:

(a) "Payment" means a payment that a trustee may receive over a fixed number of years or during the life of 1 or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer. For purposes of subsections (4) to (7), payment also includes any payment from any separate fund, regardless of the reason for the payment.

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

(2) To the extent that a payment is characterized as interest, a dividend, or a payment made in lieu of interest or a dividend, a trustee shall allocate the payment to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

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

(4) Except as otherwise provided in subsection (5), subsections (6) and (7) apply, and subsections (2) and (3) do not apply, in determining the allocation of a payment made from a separate fund to either of the following:

(a) A trust to which an election to qualify for a marital deduction under section 2056(b)(7) of the internal revenue code of 1986, 26 USC 2056, has been made.

(b) A trust that qualifies for the marital deduction under section 2056(b)(5) of the internal revenue code of 1986, 26 USC 2056.

(5) Subsections (4), (6), and (7) do not apply if and to the extent that the series of payments would, without the application of subsection (4), qualify for the marital deduction under section 2056(b)(7)(C) of the internal revenue code of 1986, 26 USC 2056.

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

(7) If a trustee cannot determine the internal income of a separate fund but can determine the value of the separate fund, the internal income of the separate fund is deemed to equal 3.5% of the fund's value, according to the most recent statement of value preceding the beginning of the accounting period. If the trustee can determine neither the internal income of the separate fund nor the fund's value, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments, as determined under section 7520 of the internal revenue code of 1986, 26 USC 7520, for the month preceding the accounting period for which the computation is made.

(8) This section does not apply to payments to which section 410 applies.

555.810 Liquidating asset; allocation of receipts.

Sec. 410.

(1) As used in this section, "liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. Liquidating asset includes a leasehold, patent, copyright, royalty right, and right to receive payments during a period of more than 1 year under an arrangement that does not provide for the payment of interest on the unpaid balance. Liquidating asset does not include a payment subject to section 409, natural resources subject to section 411, timber subject to section 412, an activity subject to section 414, an asset subject to section 415, or an asset for which the trustee establishes a reserve for depreciation under section 503.

(2) A trustee shall allocate to income 10% of the receipts from a liquidating asset and the balance to principal.

History: 2004, Act 159, Eff. Sept. 1, 2004

555.811 Receipts from minerals, water, or other natural resources; allocations.

Sec. 411.

(1) Except as provided in subsection (4), to the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them as follows:

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

(b) If received from a production payment, a receipt must be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance must be allocated to principal.

(c) If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, 90% must be allocated to principal and the balance to income.

(d) If an amount is received from a working interest or any other interest not provided for in subdivision (a), (b), or (c), 90% of the net amount received must be allocated to principal and the balance to income.

(2) Except as provided in subsection (4), a trustee shall allocate to income an amount received on account of an interest in water that is renewable. If the interest in water is not renewable, the trustee shall allocate 90% of the amount to principal and the balance to income.

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

(4) If a trust owns an interest in minerals, water, or other natural resources on the effective date of this act, the trustee may allocate receipts from the interest as provided in this act or in the manner used by the trustee before the effective date of this act. If the trust acquires an interest in minerals, water, or other natural resources after the effective date of this act, the trustee shall allocate receipts from the interest as provided in this act.

History: 2004, Act 159, Eff. Sept. 1, 2004

555.812 Net receipts from sale of timber; allocations.

Sec. 412.

(1) Except as provided in subsection (4), to the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts as follows:

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

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

(c) To or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying the rules in subdivisions (a) and (b).

(d) To principal to the extent that advance payments, bonuses, and other payments are not allocated pursuant to subdivision (a), (b), or (c).

(2) In determining net receipts to be allocated pursuant to subsection (1), a trustee may deduct and transfer to principal a reasonable amount for depletion.

(3) This act applies whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.

(4) If a trust owns an interest in timberland on the effective date of this act, the trustee may allocate net receipts from the sale of timber and related products as provided in this act or in the manner used by the trustee before the effective date of this act. If the trust acquires an interest in timberland after the effective date of this act, the trustee shall allocate net receipts from the sale of timber and related products as provided in this act.

History: 2004, Act 159, Eff. Sept. 1, 2004

555.813 Marital deduction; insufficient income from or use of trust assets; actions to be taken by trustee.

Sec. 413.

(1) If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the spouse with sufficient income from or use of the trust assets, and if the amounts that the trustee transfers from principal to income under section 104 and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee to make property productive of income, convert property within a reasonable time, or exercise the power conferred by section 104(1). The trustee may decide which action or combination of actions to take.

(2) In cases not governed by subsection (1), proceeds from the sale or other disposition of an asset are principal without regard to the amount of income the asset produces during any accounting period.

History: 2004, Act 159, Eff. Sept. 1, 2004

555.814 Derivative transactions; gain or loss realized from exercise of option; allocations.

Sec. 414.

(1) As used in this section, “derivative” means a contract or financial instrument or a combination of contracts and financial instruments that gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.

(2) To the extent that a trustee accounts for transactions in derivatives under this section, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

(3) If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust, or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option must be allocated to principal. An amount paid to acquire the option must be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, must be allocated to principal.

History: 2004, Act 159, Eff. Sept. 1, 2004

555.815 Asset-backed security; allocation of payments.

Sec. 415.

(1) As used in this section, “asset-backed security” means an asset whose value is based upon the right it gives

the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. Asset-backed security includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. Asset-backed security does not include an asset to which section 401 or 409 applies.

(2) If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets of an asset-backed security, the trustee shall allocate to income the portion of the payment that the payer identifies as being from interest or other current return and shall allocate the balance of the payment to principal.

(3) If a trust receives 1 or more payments in exchange for the trust's entire interest in an asset-backed security in 1 accounting period, the trustee shall allocate the payments to principal. If a payment is 1 of a series of payments that will result in the liquidation of the trust's interest in the security over more than 1 accounting period, the trustee shall allocate 10% of the payment to income and the balance to principal.

History: 2004, Act 159, Eff. Sept. 1, 2004