

## Editor's and Revisor's Notes (2,184)

### GENERAL NOTES

< See, also, the Uniform Principal and Income Act (1962) and the Uniform Principal and Income Act (1931). >

### GENERAL STATUTORY NOTES

#### ALABAMA

Repealed the Uniform Principal and Income Act (1931) ( [Code 1975, §§ 19-3-270 to 19-3-281](#) ), and enacted in lieu thereof the Uniform Principal and Income Act (1997) ( [Code 1975, §§ 19-3A-101 to 19-3A-605](#) ) by L.2000, Act 675, effective January 1, 2001.

Adds a section, which provides:

“ **[§ 19-3A-605](#)** . **Consent of beneficiaries.**

“A fiduciary may at any time obtain the written consent of all of the current income beneficiaries and presumptive remainder beneficiaries of a trust or decedent's estate as to the fiduciary's exercise of any discretion granted under this chapter, including the application of the chapter to pre-existing trusts or decedent's estates, and such written consent shall conclusively bind all persons who may have any interest in the affected trust or decedent's estate, including all contingent remainder beneficiaries and potential appointees of the affected trust or decedent's estate.”

#### ALABAMA

Adds sections, effective August 1, 2013, which provide:

“ **§ 19-3A-105. Express unitrusts.**

“Except to the extent otherwise provided in the governing instrument, the following provisions shall apply to a trust which by its governing instrument requires distribution of a unitrust amount (whether payable in a single sum or in installments), such trust to be referred to as an “express unitrust”:

“(1) The income and net income of an express unitrust is the unitrust amount, but only if the unitrust amount is not less than three percent and not more than five percent of the net fair market value of the trust assets. If the unitrust amount is more than five percent of the net fair market value of the trust assets, the income and net income shall be five percent of the net fair market value of the trust assets, and the excess over five percent shall be considered to be principal of the trust.

“(2) Expenses which would be deducted from income if the trust were not an express unitrust shall not be deducted from the unitrust amount.

“(3) The trustee, from time to time, may determine the following:

“a. The frequency of payment of the unitrust amount during the year;

“b. Any adjustments to be made to the unitrust amount due to other payments from or contributions to the trust;

“c. The valuation dates to use;

“d. How nonliquid or hard to value assets shall be valued, how frequently to value them and whether to estimate their value;

"e. Whether to omit from the calculations the value of trust property occupied, used, or possessed by a beneficiary; and

"f. Any other matters necessary for the proper functioning of the unitrust that are not inconsistent with the governing instrument."

**"§ 19-3A-106. Conversion to unitrust.**

"(a) Unless expressly prohibited by the governing instrument, a trustee may convert a trust into a unitrust as described in this section if all of the following apply:

"(1) The trustee has concluded that the conversion will enable the trustee to better carry out the intent of the settlor or testator and the purposes of the trust.

"(2) The trustee gives written notice of the trustee's intention to convert the trust into a unitrust, including the trustee's initial decisions as set forth below, to all the qualified beneficiaries. The written notice shall include the following:

"a. An explanation of how the unitrust will operate;

"b. The effective date of the conversion to a unitrust;

"c. The unitrust percentage to be used;

"d. The provisions for prorating a unitrust distribution for a short year in which a beneficiary's right to payments commences or ceases;

"e. Whether the net fair market value of the trust assets will be determined annually or averaged over a designated multiple year smoothing period; and

"f. Such other matters as the trustee deems appropriate for the proper functioning of the unitrust, which may include such matters as:

"1. Whether to omit from the calculations trust property occupied, used, or possessed by a beneficiary;

"2. How nonliquid or hard to value assets shall be valued, how frequently to value them, and whether to estimate their value; or

"3. Whether the trust assets will be valued annually or more frequently.

"(3) There is at least one sui juris income beneficiary and at least one sui juris presumptive remainder beneficiary.

"(4) No beneficiary, or a person who may represent and bind a beneficiary who is not sui juris, objects to the conversion to a unitrust in a writing delivered to the trustee within 60 days of the mailing of the notice under subdivision (2).

"(5) If the trustee requests, the trustee receives consents from such beneficiaries as determined by the trustee.

"(b)(1) Unless expressly prohibited by the governing instrument, the qualified beneficiaries of a trust may convert the trust into a unitrust as described in this section by a written instrument delivered to the trustee that sets forth all of the following:

"a. A representation by the qualified beneficiaries that they have concluded that the conversion will enable the trustee to better carry out the intent of the settlor or testator and the purposes of the trust;

"b. The effective date of the conversion to a unitrust, which shall not be earlier than 60 days after the date the written instrument is delivered to the trustee, unless the trustee consents to an earlier date, provided that such earlier date is not earlier than the date the written instrument is delivered to the trustee;

"c. The unitrust percentage to be used;

"d. The provisions for prorating a unitrust distribution for a short year in which a beneficiary's right to payments commences or ceases;

"e. Whether the net fair market value of the trust assets will be determined annually or averaged over a designated multiple year smoothing period; and

"f. Such other matters as the beneficiaries deem appropriate for the proper functioning of the unitrust, which may include such matters as:

"1. Whether to omit from the calculations trust property occupied, used, or possessed by a beneficiary,

"2. How nonliquid or hard to value assets shall be valued, how frequently to value them, and whether to estimate their value, or

"3. Whether the trust's assets will be valued annually or more frequently.

"(2) A trust may not convert into a unitrust unless the written instrument is executed by all qualified beneficiaries and the trustee(s), whether directly or by representation.

"(3) Notwithstanding the foregoing, a trustee, prior to the effective date of the conversion, may seek court confirmation that the foregoing representations and requirements have been satisfied, in which case the conversion will not be effective before the conversion is confirmed by the court.

"(c)(1) The trustee or a qualified beneficiary may petition the court to review the conversion to a unitrust, even if any of the following apply:

"a. A beneficiary timely objects to the conversion to a unitrust;

"b. There are no sui juris income beneficiaries or sui juris presumptive remainder beneficiaries; or

"c. The trustee does not consent.

"(2) Unless expressly prohibited by the governing instrument, the court shall order the conversion if the court concludes:

"a. that the conversion will enable the trustee to better carry out the intent of the settlor or testator and the purposes of the trust; or

"b. all qualified beneficiaries have consented to the conversion.

"(3) The court shall make the following decisions which shall be set forth in the order of the court approving the conversion:

"a. The effective date of the conversion to a unitrust;

"b. The unitrust percentage to be used;

"c. The provisions for prorating a unitrust distribution for a short year in which a beneficiary's right to payments commences or ceases;

"d. Whether the net fair market value of the trust assets will be determined annually or averaged over a designated multiple year smoothing period; and

"e. Such other matters as the court deems appropriate for the proper functioning of the unitrust, which may include such matters as:

"1. Whether to omit from the calculations trust property occupied, used, or possessed by a beneficiary;

"2. How nonliquid or hard to value assets shall be valued, how frequently to value them, and whether to estimate their value; or

"3. Whether the trust assets will be valued annually or more frequently.

"(4) Court costs shall be charged to the trust or as otherwise determined by the court.

"(d) The unitrust percentage with respect to a converted unitrust to be used in determining the unitrust amount shall be not less than three percent nor more than five percent, unless otherwise ordered by the court.

"(e) During the period of time that the trust is a converted unitrust, all of the following apply:

"(1) Notwithstanding any provision of this chapter to the contrary, the term "income" or "net income" in the governing instrument shall mean the unitrust amount.

"(2) The frequency of distributions shall be determined in accordance with the governing instrument.

"(3) If the written notice referenced in subsection (a), the written instrument referenced in subsection (b), or the order of the court referenced in subsection (c) provides that the net fair market value of the trust assets will be averaged over a designated smoothing period, the net fair market value of the trust assets for purposes of determining the unitrust amount shall be the average of the net fair market value of the trust assets over the designated smoothing period.

"(4) Any distribution in excess of the unitrust amount shall be deemed to have been paid out of the principal of the trust.

"(5) Expenses which would be deducted from income if the trust were not a unitrust may not be deducted from the unitrust amount.

"(f) A conversion to a unitrust does not affect a provision in the governing instrument directing or authorizing the trustee to distribute principal or authorizing a beneficiary to withdraw a portion or all of the principal.

"(g) Except to the extent otherwise provided in the governing instrument, the written notice referenced in subsection (a), the written agreement referenced in subsection (b), or the order of the court referenced in subsection (c), the trustee, from time to time, may determine the following:

"(1) The frequency of payment of the unitrust amount during the year;

"(2) Any adjustments to be made to the unitrust amount due to other payments from or contributions to the trust;

"(3) The valuation dates to use;

"(4) How nonliquid or hard to value assets shall be valued, how frequently to value them, and whether to estimate their value;

"(5) Whether to omit from the calculations the value of trust property occupied, used, or possessed by a beneficiary; and

"(6) Any other matters necessary for the proper functioning of the unitrust that are not inconsistent with the written notice referenced in subsection (a), the written agreement referenced in subsection (b), or the order of the court referenced in subsection (c).

"(h) Modification of the unitrust provisions of a converted unitrust may be implemented by the trustee following the same procedures as in subsection (a) for converting a trust into a unitrust with the exception that the written notice shall state the modifications, by the qualified beneficiaries following the same procedures as in subsection (b) for converting a trust into a unitrust with the exception that the written instrument shall state the modifications,

or by the court pursuant to the petition of a beneficiary or the trustee. Modifications shall be set forth in the notice, written instrument, or court order, as the case may be, that makes the modification. Modification may include any of the following:

“(1) Changes or additions to any of the matters set forth in, or that could have been set forth in, the original notice, written instrument or court order, as the case may be, or any subsequent modifications thereto;

“(2) Provisions for a distribution of net income, as would be determined if the trust were not a unitrust, in excess of the unitrust distribution if such distribution is necessary to preserve a tax benefit; or

“(3) Reversions from a unitrust, in which case the trust shall be administered in accordance with its provisions prior to its conversion to a unitrust. Upon reconversion, the power to adjust under Section 19-3A-104, if any, shall be revived.

“(i) A trust may not be converted into a unitrust in any of the following circumstances:

“(1) If payment of the unitrust amount would change the aggregate annual amount payable to a beneficiary as a fixed annuity;

“(2) If the trust is an “Institutional Fund” governed by the provisions of Section 19-3C-1, et seq.;

“(3) If the conversion would reduce any amount permanently set aside for charitable purposes under the governing instrument which is not expressed under the governing instrument as “income” or “net income” or determined pursuant to the terms of the governing instrument by reference to “income” or “net income”;

“(4) If the conversion would reduce the value of any interest for which a federal estate or gift tax charitable deduction has been taken, or would cause the reduction of an amount being disbursed or to be disbursed to a charity for which an income, estate, or gift tax deduction has been taken;

“(5) If possessing or exercising the power to convert would cause an individual to be treated as the owner of all or part of the trust for federal income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to convert;

“(6) If possessing or exercising the power to convert would cause all or part of the trust assets to be subject to federal estate or gift tax with respect to an individual, and the assets would not be subject to federal estate or gift tax with respect to the individual if the trustee did not possess the power to convert; or

“(7) If the conversion would result in the disallowance of a federal estate or gift tax marital or charitable deduction which would be allowed if the trustee did not have the power to convert.

“(j)(1) If subsection (i)(5) or subsection (i)(6) applies because a trustee is a beneficiary and there is more than one trustee, a co-trustee to whom the provision does not apply may convert the trust unless the exercise of the power by the remaining trustee or trustees is prohibited by the governing instrument.

“(2) If subsection (i)(5) or subsection (i)(6) applies to all the trustees, the trustees may petition the court to direct a conversion or the beneficiaries may convert under subsection (b).

“(k)(1) A trustee may release the power conferred by subsection (a) to convert to a unitrust if any of the following apply:

“a. The trustee is uncertain about whether possessing or exercising the power will cause a result described in subsection (i)(5), subsection (i)(6), or subsection (i)(7).

“b. The trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (i).

“(2) The release may be permanent or for a specified period, including a period measured by the life of an individual.”

Adds section, effective January 1, 2007, which provides:

**“ § 19-3A-606. Applicability to tenant and remainder interests.**

“This chapter shall govern the ascertainment of income and principal, and the apportionment of receipts and disbursements between tenant and remainderman, in all cases where a principal has been established with or, unless otherwise stated in this chapter, without the interposition of a trust; except that in the establishment of the principal, provision may be made touching all matters covered by this chapter, and the person establishing the principal may direct the manner of ascertainment of income and principal and the apportionment of receipts and disbursements or grant discretion to the trustee or other person to do so, and such provision and direction, where not otherwise contrary to law, shall control notwithstanding this chapter. This section is intended to be declarative of the law of Alabama from the time of enactment of the Alabama Principal and Income Act pursuant to this chapter.”

Adds section effective August 1, 2013 which provides:

**“ § 19-3A-608. Application of Alabama Uniform Trust Code.**

“The provisions of the Alabama Uniform Trust Code apply to the Alabama Principal and Income Act, except to the extent the provisions are inconsistent with the provisions of this chapter.”

## **ALASKA**

Repealed the Uniform Principal and Income Act (1962) (AS §§ 13.38.010 to 13.38.140), and enacted in lieu thereof the Uniform Principal and Income Act (1997) (AS §§ 13.38.200 to 13.38.990) by L.2003, c. 145, effective September 1, 2003.

While the Alaska act is a substantial adoption of the major provisions of the uniform act, it departs from the official text in such manner that the various instances of substitution, omission, and additional matter cannot be clearly indicated by statutory notes.

## **ARIZONA**

Repealed the Uniform Principal and Income Act (1962) ( [A.R.S. §§ 14-7401 to 14-7413](#) ), and enacted in lieu thereof the Uniform Principal and Income Act (1997) ( [A.R.S. §§ 14-7401 to 14-7431](#) ) by L.2001, c. 176, effective January 1, 2002.

Adds a section, which provides:

**“ [§ 14-7431](#) . Proposed actions; notification; definition**

**“ A.** A trustee may, but is not required to, give notice of a proposed action regarding a matter governed by this article as provided in this section.

**“ B.** The trustee shall mail notice of a proposed action, by certified, registered or ordinary first class mail, to all beneficiaries who are receiving, or are entitled to receive, income from the trust or to receive a distribution of principal if the trust were terminated at the time the notice is given. The trustee must give notice to any beneficiary under any incapacity pursuant to § 14-1403.

**“ C.** The trustee is not required to give notice of a proposed action to any person who consents in writing to the proposed action. A person may give consent at any time before or after the proposed action is taken.

**“ D.** The notice of the proposed action shall state that it is given pursuant to this article and shall contain all of the following:

"1. The name and mailing address of the trustee.

"2. The name and telephone number of a person who may be contacted for additional information.

"3. A description of the action proposed to be taken and an explanation of the reasons for the action.

"4. The time within which objections to the proposed action can be made, which shall be at least thirty days after the mailing of the notice.

"5. The date on or after which the proposed action may be taken or is effective.

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

" F. A trustee is not liable to a beneficiary for an action regarding a matter governed by this article if the trustee does not receive a written objection to the proposed action from the beneficiary within the applicable time period and the other requirements of this article are satisfied. If a beneficiary entitled to notice does not object under this section, the trustee is not liable to any current or future beneficiary with respect to the proposed action.

" G. If the trustee receives a written objection within the applicable time period, either the trustee or a beneficiary may petition the court to have the proposed action taken as proposed, taken with modifications or not taken at all. An objecting beneficiary has the burden of proving that the trustee's proposed action should not be taken. A beneficiary who has not objected may oppose the proposed action in such a proceeding. If the trustee decides not to implement the proposed action, the trustee shall notify the beneficiaries of the decision not to take the action and the reasons for the decision. The trustee's decision not to implement the proposed action does not give rise to liability to any current or future beneficiary. In such circumstances, a beneficiary may petition the court to have the action taken and has the burden of proving that it should be taken.

" H. For the purposes of this section, 'proposed action' includes a course of action or a decision not to take a course of action."

## ARKANSAS

Repealed the Uniform Principal and Income Act (1962) ( [A.C.A. §§ 28-70-101](#) to [28-70-118](#) ), and enacted in lieu thereof the Uniform Principal and Income Act (1997) ( [A.C.A. §§ 28-70-101](#) to [28-70-605](#) ) by L.1999, Act 647, effective January 1, 2000.

## ARKANSAS

Enacted 2008 amendments in 2011, Act 132, effective July 27, 2011.

## CALIFORNIA

Repealed the Uniform Principal and Income Act (1962) ( [West's Ann.Cal.Probate Code §§ 16300](#) to [16315](#) ), and enacted in lieu thereof the Uniform Principal and Income Act (1997) ( [West's Ann.Cal.Probate Code §§ 16320](#) to [16375](#) ) by L.1999, c. 145, effective January 1, 2000.

While the California act is a substantial adoption of the major provisions of the uniform act, it departs from the official text in such manner that the various instances of substitution, omission, and additional matter cannot be clearly indicated by statutory notes.

## COLORADO

Repealed the Uniform Principal and Income Act (1931) ( [West's C.R.S.A. §§ 15-1-401](#) to [15-1-417](#) ), and enacted in lieu thereof the Uniform Principal and Income Act (1997) ( [West's C.R.S.A. §§ 15-1-401](#) to [15-1-434](#) ) by L.2000, c. 257, effective July 1, 2001.

Add sections, which provide:

**“ 15-1-404.5. Conversion--unitrusts--administration.**

**“(1) Conversion by trustee.** Unless expressly prohibited by the governing instrument, a trustee may release the power to adjust described in section 15-1-404 and convert a trust to a unitrust as described in this section if all of the following apply:

“(a) The trust describes the amount that may or must be distributed to a beneficiary by referring to the trust's income and the trustee determines that conversion to a unitrust will enable the trustee to better carry out the purposes of the trust;

“(b) The trustee sends a written notice of the trustee's decision to convert the trust to a unitrust specifying a prospective effective date for the conversion, which may not be sooner than sixty days after the notice is sent, and including a copy of this section to the qualified beneficiaries, determined as of the date the notice is sent and assuming nonexercise of all powers of appointment;

“(c) There are one or more legally competent beneficiaries described in section 15-1-402(10.5)(a), and one or more legally competent remainder beneficiaries described in either section 15-1-402(10.5)(b) or 15-1-402(10.5)(c), determined as of the date the notice is sent; and

“(d) No beneficiary has objected in writing to the conversion to a unitrust and delivered such objection to the trustee within sixty days after the notice was sent.

**“(2) Conversion, reconversion, and adjustment of the distribution percentage by agreement.** Conversion to a unitrust or reconversion to an income trust may be made by agreement between the trustee and all qualified beneficiaries of the trust. The trustee and all qualified beneficiaries may also agree to modify the distribution percentage; except that the trustee and the qualified beneficiaries may not agree to a distribution percentage less than three percent or greater than five percent. The agreement may include any other actions a court could properly order pursuant to subsection (7) of this section.

**“(3) Conversion or reconversion by court.** (a) The trustee may, for any reason, elect to petition the court to order conversion to a unitrust, including without limitation the reason that conversion under subsection (1) of this section is unavailable because:

“(I) A beneficiary timely objects to the conversion to a unitrust;

“(II) There are no legally competent beneficiaries described in section 15-1-402 (10.5) (a); or

“(III) There are no legally competent beneficiaries described in section 15-1-402 (10.5) (b) or (10.5) (c).

“(b) A beneficiary may request the trustee to convert to a unitrust or adjust the distribution percentage pursuant to this subsection (3). If the trustee declines or fails to act within six months after receiving a written request from a beneficiary to do so, the beneficiary may petition the court to order the conversion or adjustment.

“(c) The trustee may petition the court prospectively to convert from a unitrust to an income trust or to adjust the distribution percentage if the trustee determines that the reconversion or adjustment will enable the trustee to better carry out the purposes of the trust. A beneficiary may request the trustee to petition the court prospectively to reconvert from a unitrust to an income trust or adjust the distribution percentage. If the trustee declines or fails to act within six months after receiving a written request from a beneficiary to do so, the beneficiary may petition the court to order the reconversion or adjustment.

“(d)(I) In a judicial proceeding instituted under this subsection (3), the trustee may present opinions and reasons concerning:

“(A) The trustee's support for, or opposition to, a conversion to a unitrust, a reconversion from a unitrust to an income trust, or an adjustment of the distribution percentage of a unitrust, including whether the trustee believes



conversion, reconversion, or adjustment of the distribution percentage would enable the trustee to better carry out the purposes of the trust; and

“(B) Any other matter relevant to the proposed conversion, reconversion, or adjustment of the distribution percentage.

“(II) A trustee's actions undertaken in accordance with this subsection (3) shall not be deemed improper or inconsistent with the trustee's duty of impartiality unless the court finds from all the evidence that the trustee acted in bad faith.

“(e) The court shall order conversion to a unitrust, reconversion prospectively from a unitrust to an income trust, or adjustment of the distribution percentage of a unitrust if the court determines that the conversion, reconversion, or adjustment of the distribution percentage will enable the trustee to better carry out the purposes of the trust.

“(f) If a conversion to a unitrust is made pursuant to a court order, the trustee may reconvert the unitrust to an income trust only:

“(I) Pursuant to a subsequent court order; or

“(II) By filing with the court an agreement made pursuant to subsection (2) of this section to reconvert to an income trust.

“(g) Upon a reconversion, the power to adjust, as described in section 15-1-404 and as it existed before the conversion, shall be revived.

“(h) An action may be taken under this subsection (3) no more frequently than every two years, unless the court for good cause orders otherwise.

“(4) **Administration of a unitrust.** During the time that a trust is a unitrust, the trustee shall administer the trust in accordance with the provisions of this subsection (4) as follows, unless otherwise expressly provided by the terms of the trust:

“(a) The trustee shall invest the trust assets seeking a total return without regard to whether the return is from income or appreciation of principal;

“(b) The trustee shall make income distributions in accordance with the governing instrument subject to the provisions of this section;

“(c) The distribution percentage for any trust converted to a unitrust by a trustee in accordance with subsection (1) of this section shall be four percent, unless a different percentage has been determined in an agreement made pursuant to subsection (2) of this section or ordered by the court pursuant to subsection (3) of this section;

“(d)(I) The trustee shall pay to a beneficiary in the case of an underpayment within a reasonable time, and shall recover from a beneficiary in the case of an overpayment, either by repayment by the beneficiary or by withholding from future distributions to the beneficiary:

“(A) An amount equal to the difference between the amount properly payable and the amount actually paid; and

“(B) Interest compounded annually at a rate per annum equal to the distribution percentage in the year or years during which the underpayment or overpayment occurs.

“(II) For purposes of this paragraph (d), accrual of interest may not commence until the beginning of the trust year following the year in which the underpayment or overpayment occurs.

“(e) A change in the method of determining a reasonable current return by converting to a unitrust in accordance with this section and substituting the distribution amount for net trust accounting income is a proper change in the definition of trust income and shall be given effect notwithstanding any contrary provision of this part 4. The

distribution amount shall in all cases be deemed a reasonable current return that fairly apportions the total return of a unitrust.

“(4.5) For purposes of subsection (4) of this section:

“(a) ‘Income’, as that term appears in the governing instrument, shall be deemed to mean the distribution amount.

“(b)(I) The ‘distribution amount’ shall be an annual amount equal to the distribution percentage multiplied by the average net fair market value of the trust’s assets.

“(II) For purposes of this paragraph (b), the average net fair market value of the trust’s assets shall be the net fair market value of the trust’s assets averaged over the lesser of:

“(A) The three preceding years; or

“(B) The period during which the trust has been in existence.

“(5) **Determination of matters in administration of unitrust.** The trustee may determine any of the following matters in administering a unitrust as the trustee deems necessary or helpful for the proper functioning of the trust:

“(a) The effective date of a conversion to a unitrust pursuant to subsection (1) of this section;

“(b) The manner of prorating the distribution amount for a short year in which a beneficiary’s interest commences or ceases, or if the trust is a unitrust for only part of the year, or the trustee may elect to treat the trust year as two separate years, the first of which ends at the close of the day on which the conversion or reconversion occurs and the second of which ends at the close of the trust year;

“(c) Whether distributions are made in cash or in kind;

“(d) The manner of adjusting valuations and calculations of the distribution amount to account for other payments from, or contributions to, the trust;

“(e) Whether to value the trust’s assets annually or more frequently;

“(f) Which valuation dates to use and how many valuation dates to use;

“(g) Valuation decisions concerning any asset for which there is no readily available market value, including:

“(I) How frequently to value such an asset;

“(II) Whether and how often to engage a professional appraiser to value such an asset; and

“(III) Whether to exclude the value of such an asset from the net fair market value of the trust’s assets for purposes of determining the distribution amount. For purposes of this section, any such asset so excluded shall be referred to as an ‘excluded asset’, and the trustee shall distribute any net income received from the excluded asset as provided for in the governing instrument, subject to the following principles:

“(A) The trustee shall treat each asset for which there is no readily available market value as an excluded asset unless the trustee determines that there are compelling reasons not to do so and the trustee considers all relevant factors including the best interests of the beneficiaries;

“(B) If tangible personal property or real property is possessed or occupied by a beneficiary, the trustee may not limit or restrict any right of the beneficiary to use the property in accordance with the governing instrument regardless of whether the trustee treats the property as an excluded asset; and

“(C) By way of example and not by way of limitation, assets for which there is a readily available market value include cash and cash equivalents; stocks, bonds, and other securities and instruments for which there is an

established market on a stock exchange, in an over-the-counter market, or otherwise; and any other property that can reasonably be expected to be sold within one week of the decision to sell without extraordinary efforts by the seller. By way of example and not by way of limitation, assets for which there is no readily available market value include stocks, bonds, and other securities and instruments for which there is no established market on a stock exchange, in an over-the-counter market, or otherwise; real property; tangible personal property; and artwork and other collectibles.

“(h) Any other administrative matter that the trustee determines is necessary or helpful for the proper functioning of the unitrust.

“(6) **Allocations.** (a) Expenses, taxes, and other charges that would otherwise be deducted from income if the trust was not a unitrust may not be deducted from the distribution amount.

“(b) Unless otherwise provided by the governing instrument, the distribution amount each year shall be deemed to be paid from the following sources for that year in the following order:

“(I) Net income determined as if the trust was not a unitrust;

“(II) Other ordinary income as determined for federal income tax purposes;

“(III) Net realized short-term capital gains as determined for federal income tax purposes;

“(IV) Net realized long-term capital gains as determined for federal income tax purposes;

“(V) Trust principal comprising assets for which there is a readily available market value; and

“(VI) Other trust principal.

“(7) **Court orders.** (a) The court may order any of the following actions in a proceeding brought by a trustee or a beneficiary pursuant to paragraph (a), (b), or (c) of subsection (3) of this section:

“(I) Select a distribution percentage other than four percent, except that the court may not order a distribution percentage less than three percent or greater than five percent;

“(II) Average the valuation of the trust's net assets over a period other than three years;

“(III) Reconvert prospectively from a unitrust, or adjust the distribution percentage of a unitrust;

“(IV) Direct the distribution of net income, determined as if the trust were not a unitrust, in excess of the distribution amount as to any or all trust assets if the distribution is necessary to preserve a tax benefit; or

“(V) Change or direct any administrative procedure as the court determines is necessary or helpful for the proper functioning of the unitrust.

“(b) Nothing in this subsection (7) shall be construed to limit the equitable jurisdiction of the court to grant other relief as the court deems proper.

“(8) **Restrictions.** Conversion to a unitrust shall not affect any provision in the governing instrument that:

“(a) Directs or authorizes the trustee to distribute the principal;

“(b) Directs or authorizes the trustee to distribute a fixed annuity or a fixed fraction of the value of trust assets;

“(c) Authorizes a beneficiary to withdraw a portion or all of the principal; or

“(d) Diminishes in any manner an amount permanently set aside for charitable purposes under the governing instrument unless both income and principal are set aside.

“(9) **Tax limitations.** If a particular trustee is also a beneficiary of the trust and conversion or failure to convert would enhance or diminish the beneficial interest of that trustee, or if possession or exercise of the conversion power by a particular trustee alone would cause any individual to be treated as owner of a part of the trust for federal income tax purposes or cause a part of the trust to be included in the gross estate of any individual for federal estate tax purposes, then that particular trustee may not participate as a trustee in the exercise of the conversion power; except that:

“(a) The trustee may petition the court under paragraph (a) of subsection (3) of this section to order conversion in accordance with this section; and

“(b) A co-trustee or co-trustees to whom this subsection (9) does not apply may convert the trust to a unitrust in accordance with subsection (1) or (2) of this section.

“(10) **Releases.** A trustee may irrevocably release the power granted by this section if the trustee reasonably believes the release is in the best interests of the trust and its beneficiaries. The release may be personal to the releasing trustee or it may apply generally to some or all subsequent trustees. The release may be for any specified period, including a period measured by the life of an individual.

“(11) **Remedies.** (a) A trustee who reasonably and in good faith takes any action or omits to take any action under this section is not liable to any person interested in the trust. An act or omission by a trustee under this section shall be presumed to be reasonable and undertaken in good faith unless the act or omission is determined by the court to have been an abuse of discretion.

“(b) If a trustee reasonably and in good faith takes or omits to take any action under this section and a person interested in the trust opposes the act or omission, the person's exclusive remedy shall be to seek an order of the court directing the trustee to:

“(I) Convert the trust to a unitrust;

“(II) Reconvert from a unitrust;

“(III) Change the distribution percentage; or

“(IV) Order any administrative procedures the court determines are necessary or helpful for the proper functioning of the trust.

“(c) A claim for relief under this subsection (11) that is not barred by adjudication, consent, or limitation, is nevertheless barred as to any beneficiary who has received a statement fully disclosing the matter unless a proceeding to assert the claim is commenced within six months after receipt of the statement. A beneficiary is deemed to have received a statement if it is received by the beneficiary or the beneficiary's representative in a manner described in section 15-10-403 or 15-1-405.

“(12) **No duty.** A trustee has no duty to inform a beneficiary about the availability and provisions of this section. A trustee has no duty to review the trust to determine whether any action should be taken under this section unless the trustee is requested in writing by a qualified beneficiary to do so.

“(13) **Application.** (a) This section shall apply to trusts in existence on May 22, 2003, and to trusts created on or after that date.

“(b) This section shall be construed to apply to the administration of a trust that is administered in Colorado under Colorado law or that is governed by Colorado law with respect to the meaning and effect of its terms unless:

“(I) The trust is a trust described in the federal ‘ [Internal Revenue Code of 1986](#), section [642\(c\)\(5\)](#) , [664\(d\)](#) , or [2702\(a\)\(3\)](#) ;

“(II) The governing instrument expressly prohibits the use of this section by specific reference to one or more provisions of this part 4;

“(III) The terms of a trust in existence on May 22, 2003, incorporate provisions that operate as a unitrust. The trustee or a beneficiary of such a trust may proceed under section 15-1-405 to adopt provisions in this section that do not contradict provisions in the governing instrument.

“(14) **Application to express trusts.** (a) This subsection (14) does not apply to a charitable remainder unitrust as defined by [section 664\(d\)](#), federal ‘Internal Revenue Code of 1986’, [26 U.S.C. sec. 664](#), as amended.”

“(b) As used in this section:

“(I) ‘Unitrust’ means a trust, the terms of which require or permit distribution of a unitrust amount, without regard to whether the trust has been converted to a unitrust in accordance with this section or whether the trust is established by express terms of the governing instrument.

“(II) ‘Unitrust amount’ means an amount equal to a percentage of a unitrust’s assets that may or are required to be distributed to one or more beneficiaries annually in accordance with the terms of the unitrust. The unitrust amount may be determined by reference to the net fair market value of the unitrust’s assets as of a particular date each year or as an average determined on a multiple-year basis.”

“**15-1-405. Notice of action.**

“(1) A trustee may give a notice of proposed action regarding a matter governed by this part 4 as provided in this section. For the purpose of this section, a proposed action includes a course of action and a decision not to take action.

“(2) The trustee shall mail notice of the proposed action to all adult beneficiaries who are receiving, or are entitled to receive, income under the trust or to receive a distribution of principal if the trust were terminated at the time the notice is given. If there are no adult beneficiaries who may receive such notice, then notice shall be given to all beneficiaries who are receiving, or are entitled to receive, income under the trust or to receive a distribution of principal if the trust were terminated at the time notice is given, in accordance with the provisions of section 15-10-403. Notice may be given to any other beneficiary. A person shall be bound under this section with respect to such proposed action if the person receives actual notice, if another person having a substantially identical interest receives notice, or if the person would be bound under the provisions of section 15-10-403.

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

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

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

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

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

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

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

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

“(6) A trustee is not liable to a beneficiary for an action regarding a matter governed by this chapter if the trustee does not receive a written objection to the proposed action from the beneficiary within the applicable period and

the other requirements of this section are satisfied. If no beneficiary entitled to notice objects under this section, the trustee is not liable to any current or future beneficiary with respect to the proposed action.

“(7) If the trustee receives a written objection within the applicable time period, either the trustee or a beneficiary may petition the court to have the proposed action performed as proposed, performed with modifications, or denied. In the proceeding, a beneficiary objecting to the proposed action has the burden of proving that the trustee's proposed action should not be performed. A beneficiary who has not objected is not estopped from opposing the proposed action in the proceeding. If the trustee decides not to implement the proposed action, the trustee shall notify the beneficiaries of the decision not to take the action and the reasons for the decision, and the trustee's decision not to implement the proposed action does not itself give rise to liability to any current or future beneficiary. A beneficiary may petition the court to have the action performed, and has the burden of proving that it should be performed.”

## COLORADO

Added section 15-1-404.5 now provides:

### “ § 15-1-404.5. Conversion--unitrusts--administration

“(1) **Conversion by trustee** . Unless expressly prohibited by the governing instrument, a trustee may release the power to adjust described in section 15-1-404 and convert a trust to a unitrust as described in this section if all of the following apply:

“(a) The trust describes the amount that may or must be distributed to a beneficiary by referring to the trust's income and the trustee determines that conversion to a unitrust will enable the trustee to better carry out the purposes of the trust;

“(b) The trustee sends a written notice of the trustee's decision to convert the trust to a unitrust specifying a prospective effective date for the conversion, which may not be sooner than sixty days after the notice is sent, and including a copy of this section to the qualified beneficiaries, determined as of the date the notice is sent and assuming nonexercise of all powers of appointment;

“(c) There are one or more legally competent beneficiaries described in section 15-1-402(10.5)(a), and one or more legally competent remainder beneficiaries described in either section 15-1-402(10.5)(b) or 15-1-402(10.5)(c), determined as of the date the notice is sent; and

“(d) No beneficiary has objected in writing to the conversion to a unitrust and delivered such objection to the trustee within sixty days after the notice was sent.

“(2) **Conversion, reconversion, and adjustment of the distribution percentage by agreement.** Conversion to a unitrust or reconversion to an income trust may be made by agreement between the trustee and all qualified beneficiaries of the trust. The trustee and all qualified beneficiaries may also agree to modify the distribution percentage; except that the trustee and the qualified beneficiaries may not agree to a distribution percentage less than three percent or greater than five percent. The agreement may include any other actions a court could properly order pursuant to subsection (7) of this section.

“(3) **Conversion or reconversion by court.** (a) The trustee may, for any reason, elect to petition the court to order conversion to a unitrust, including without limitation the reason that conversion under subsection (1) of this section is unavailable because:

“(I) A beneficiary timely objects to the conversion to a unitrust;

“(II) There are no legally competent beneficiaries described in section 15-1-402(10.5) (a); or

“(III) There are no legally competent beneficiaries described in section 15-1-402(10.5)(b) or (10.5)(c).

“(b) A beneficiary may request the trustee to convert to a unitrust or adjust the distribution percentage pursuant to this subsection (3). If the trustee declines or fails to act within six months after receiving a written request from a beneficiary to do so, the beneficiary may petition the court to order the conversion or adjustment.

“(c) The trustee may petition the court prospectively to convert from a unitrust to an income trust or to adjust the distribution percentage if the trustee determines that the reconversion or adjustment will enable the trustee to better carry out the purposes of the trust. A beneficiary may request the trustee to petition the court prospectively to reconvert from a unitrust to an income trust or adjust the distribution percentage. If the trustee declines or fails to act within six months after receiving a written request from a beneficiary to do so, the beneficiary may petition the court to order the reconversion or adjustment.

“(d)(I) In a judicial proceeding instituted under this subsection (3), the trustee may present opinions and reasons concerning:

“(A) The trustee's support for, or opposition to, a conversion to a unitrust, a reconversion from a unitrust to an income trust, or an adjustment of the distribution percentage of a unitrust, including whether the trustee believes conversion, reconversion, or adjustment of the distribution percentage would enable the trustee to better carry out the purposes of the trust; and

“(B) Any other matter relevant to the proposed conversion, reconversion, or adjustment of the distribution percentage.

“(II) A trustee's actions undertaken in accordance with this subsection (3) shall not be deemed improper or inconsistent with the trustee's duty of impartiality unless the court finds from all the evidence that the trustee acted in bad faith.

“(e) The court shall order conversion to a unitrust, reconversion prospectively from a unitrust to an income trust, or adjustment of the distribution percentage of a unitrust if the court determines that the conversion, reconversion, or adjustment of the distribution percentage will enable the trustee to better carry out the purposes of the trust.

“(f) If a conversion to a unitrust is made pursuant to a court order, the trustee may reconvert the unitrust to an income trust only:

“(I) Pursuant to a subsequent court order; or

“(II) By filing with the court an agreement made pursuant to subsection (2) of this section to reconvert to an income trust.

“(g) Upon a reconversion, the power to adjust, as described in section 15-1-404 and as it existed before the conversion, shall be revived.

“(h) An action may be taken under this subsection (3) no more frequently than every two years, unless the court for good cause orders otherwise.

“(4) **Administration of a unitrust.** During the time that a trust is a unitrust, the trustee shall administer the trust in accordance with the provisions of this subsection (4) as follows, unless otherwise expressly provided by the terms of the trust:

“(a) The trustee shall invest the trust assets seeking a total return without regard to whether the return is from income or appreciation of principal;

“(b) The trustee shall make income distributions in accordance with the governing instrument subject to the provisions of this section;

“(c) The distribution percentage for any trust converted to a unitrust by a trustee in accordance with subsection (1) of this section shall be four percent, unless a different percentage has been determined in an agreement made pursuant to subsection (2) of this section or ordered by the court pursuant to subsection (3) of this section;

“(d)(I) The trustee shall pay to a beneficiary in the case of an underpayment within a reasonable time, and shall recover from a beneficiary in the case of an overpayment, either by repayment by the beneficiary or by withholding from future distributions to the beneficiary:

“(A) An amount equal to the difference between the amount properly payable and the amount actually paid; and

“(B) Interest compounded annually at a rate per annum equal to the distribution percentage in the year or years during which the underpayment or overpayment occurs.

“(II) For purposes of this paragraph (d), accrual of interest may not commence until the beginning of the trust year following the year in which the underpayment or overpayment occurs.

“(e) A change in the method of determining a reasonable current return by converting to a unitrust in accordance with this section and substituting the distribution amount for net trust accounting income is a proper change in the definition of trust income and shall be given effect notwithstanding any contrary provision of subparts 1 through 6 of this part 4. The distribution amount shall in all cases be deemed a reasonable current return that fairly apportions the total return of a unitrust.

“(4.5) For purposes of subsection (4) of this section:

“(a) ‘Income’, as that term appears in the governing instrument, shall be deemed to mean the distribution amount.

“(b)(I) The ‘distribution amount’ shall be an annual amount equal to the distribution percentage multiplied by the average net fair market value of the trust’s assets.

“(II) For purposes of this paragraph (b), the average net fair market value of the trust’s assets shall be the net fair market value of the trust’s assets averaged over the lesser of:

“(A) The three preceding years; or

“(B) The period during which the trust has been in existence.

“(5) **Determination of matters in administration of unitrust.** The trustee may determine any of the following matters in administering a unitrust as the trustee deems necessary or helpful for the proper functioning of the trust:

“(a) The effective date of a conversion to a unitrust pursuant to subsection (1) of this section;

“(b) The manner of prorating the distribution amount for a short year in which a beneficiary’s interest commences or ceases, or if the trust is a unitrust for only part of the year, or the trustee may elect to treat the trust year as two separate years, the first of which ends at the close of the day on which the conversion or reconversion occurs and the second of which ends at the close of the trust year;

“(c) Whether distributions are made in cash or in kind;

“(d) The manner of adjusting valuations and calculations of the distribution amount to account for other payments from, or contributions to, the trust;

“(e) Whether to value the trust’s assets annually or more frequently;

“(f) Which valuation dates to use and how many valuation dates to use;

“(g) Valuation decisions concerning any asset for which there is no readily available market value, including:

“(I) How frequently to value such an asset;

“(II) Whether and how often to engage a professional appraiser to value such an asset; and



“(III) Whether to exclude the value of such an asset from the net fair market value of the trust's assets for purposes of determining the distribution amount. For purposes of this section, any such asset so excluded shall be referred to as an ‘excluded asset’, and the trustee shall distribute any net income received from the excluded asset as provided for in the governing instrument, subject to the following principles:

“(A) The trustee shall treat each asset for which there is no readily available market value as an excluded asset unless the trustee determines that there are compelling reasons not to do so and the trustee considers all relevant factors including the best interests of the beneficiaries;

“(B) If tangible personal property or real property is possessed or occupied by a beneficiary, the trustee may not limit or restrict any right of the beneficiary to use the property in accordance with the governing instrument regardless of whether the trustee treats the property as an excluded asset; and

“(C) By way of example and not by way of limitation, assets for which there is a readily available market value include cash and cash equivalents; stocks, bonds, and other securities and instruments for which there is an established market on a stock exchange, in an over-the-counter market, or otherwise; and any other property that can reasonably be expected to be sold within one week of the decision to sell without extraordinary efforts by the seller. By way of example and not by way of limitation, assets for which there is no readily available market value include stocks, bonds, and other securities and instruments for which there is no established market on a stock exchange, in an over-the-counter market, or otherwise; real property; tangible personal property; and artwork and other collectibles.

“(h) Any other administrative matter that the trustee determines is necessary or helpful for the proper functioning of the unitrust.

“(6) **Allocations.** (a) Expenses, taxes, and other charges that would otherwise be deducted from income if the trust was not a unitrust may not be deducted from the distribution amount.

“(b) Unless otherwise provided by the governing instrument, the distribution amount each year shall be deemed to be paid from the following sources for that year in the following order:

“(I) Net income determined as if the trust was not a unitrust;

“(II) Other ordinary income as determined for federal income tax purposes;

“(III) Net realized short-term capital gains as determined for federal income tax purposes;

“(IV) Net realized long-term capital gains as determined for federal income tax purposes;

“(V) Trust principal comprising assets for which there is a readily available market value; and

“(VI) Other trust principal.

“(7) **Court orders.** (a) The court may order any of the following actions in a proceeding brought by a trustee or a beneficiary pursuant to paragraph (a), (b), or (c) of subsection (3) of this section:

“(I) Select a distribution percentage other than four percent, except that the court may not order a distribution percentage less than three percent or greater than five percent;

“(II) Average the valuation of the trust's net assets over a period other than three years;

“(III) Reconvert prospectively from a unitrust, or adjust the distribution percentage of a unitrust;

“(IV) Direct the distribution of net income, determined as if the trust were not a unitrust, in excess of the distribution amount as to any or all trust assets if the distribution is necessary to preserve a tax benefit; or

“(V) Change or direct any administrative procedure as the court determines is necessary or helpful for the proper functioning of the unitrust.

“(b) Nothing in this subsection (7) shall be construed to limit the equitable jurisdiction of the court to grant other relief as the court deems proper.

“(8) **Restrictions.** Conversion to a unitrust shall not affect any provision in the governing instrument that:

“(a) Directs or authorizes the trustee to distribute the principal;

“(b) Directs or authorizes the trustee to distribute a fixed annuity or a fixed fraction of the value of trust assets;

“(c) Authorizes a beneficiary to withdraw a portion or all of the principal; or

“(d) Diminishes in any manner an amount permanently set aside for charitable purposes under the governing instrument unless both income and principal are set aside.

“(9) **Tax limitations.** If a particular trustee is also a beneficiary of the trust and conversion or failure to convert would enhance or diminish the beneficial interest of that trustee, or if possession or exercise of the conversion power by a particular trustee alone would cause any individual to be treated as owner of a part of the trust for federal income tax purposes or cause a part of the trust to be included in the gross estate of any individual for federal estate tax purposes, then that particular trustee may not participate as a trustee in the exercise of the conversion power; except that:

“(a) The trustee may petition the court under paragraph (a) of subsection (3) of this section to order conversion in accordance with this section; and

“(b) A co-trustee or co-trustees to whom this subsection (9) does not apply may convert the trust to a unitrust in accordance with subsection (1) or (2) of this section.

“(10) **Releases.** A trustee may irrevocably release the power granted by this section if the trustee reasonably believes the release is in the best interests of the trust and its beneficiaries. The release may be personal to the releasing trustee or it may apply generally to some or all subsequent trustees. The release may be for any specified period, including a period measured by the life of an individual.

“(11) **Remedies.** (a) A trustee who reasonably and in good faith takes any action or omits to take any action under this section is not liable to any person interested in the trust. An act or omission by a trustee under this section shall be presumed to be reasonable and undertaken in good faith unless the act or omission is determined by the court to have been an abuse of discretion.

“(b) If a trustee reasonably and in good faith takes or omits to take any action under this section and a person interested in the trust opposes the act or omission, the person's exclusive remedy shall be to seek an order of the court directing the trustee to:

“(I) Convert the trust to a unitrust;

“(II) Reconvert from a unitrust;

“(III) Change the distribution percentage; or

“(IV) Order any administrative procedures the court determines are necessary or helpful for the proper functioning of the trust.

“(c) A claim for relief under this subsection (11) that is not barred by adjudication, consent, or limitation, is nevertheless barred as to any beneficiary who has received a statement fully disclosing the matter unless a proceeding to assert the claim is commenced within six months after receipt of the statement. A beneficiary is

deemed to have received a statement if it is received by the beneficiary or the beneficiary's representative in a manner described in section 15-10-403 or 15-1-405.

“(12) **No duty.** A trustee has no duty to inform a beneficiary about the availability and provisions of this section. A trustee has no duty to review the trust to determine whether any action should be taken under this section unless the trustee is requested in writing by a qualified beneficiary to do so.

“(13) **Application.** (a) This section shall apply to trusts in existence on May 22, 2003, and to trusts created on or after that date.

“(b) This section shall be construed to apply to the administration of a trust that is administered in Colorado under Colorado law or that is governed by Colorado law with respect to the meaning and effect of its terms unless:

“(I) The trust is a trust described in the federal ‘ [Internal Revenue Code of 1986](#)’, [section 642\(c\)\(5\)](#) , [664\(d\)](#) , or [2702\(a\)\(3\)](#) ;

“(II) The governing instrument expressly prohibits the use of this section by specific reference to one or more provisions of subparts 1 through 6 of this part 4;

“(III) The terms of a trust in existence on May 22, 2003, incorporate provisions that operate as a unitrust. The trustee or a beneficiary of such a trust may proceed under section 15-1-405 to adopt provisions in this section that do not contradict provisions in the governing instrument.

“(14) **Application to express trusts.** (a) This subsection (14) does not apply to a charitable remainder unitrust as defined by [section 664\(d\)](#) , federal ‘Internal Revenue Code of 1986’, [26 U.S.C. sec. 664](#) , as amended.

“(b) As used in this section:

“(I) ‘Unitrust’ means a trust, the terms of which require or permit distribution of a unitrust amount, without regard to whether the trust has been converted to a unitrust in accordance with this section or whether the trust is established by express terms of the governing instrument.

“(II) ‘Unitrust amount’ means an amount equal to a percentage of a unitrust's assets that may or are required to be distributed to one or more beneficiaries annually in accordance with the terms of the unitrust. The unitrust amount may be determined by reference to the net fair market value of the unitrust's assets as of a particular date each year or as an average determined on a multiple-year basis.”

Added section 15-1-405 now provides:

“ **§ 15-1-405. Notice of action**

“(1) A trustee may give a notice of proposed action regarding a matter governed by subparts 1 through 6 of this part 4 as provided in this section. For the purpose of this section, a proposed action includes a course of action and a decision not to take action.

“(2) The trustee shall mail notice of the proposed action to all adult beneficiaries who are receiving, or are entitled to receive, income under the trust or to receive a distribution of principal if the trust were terminated at the time the notice is given. If there are no adult beneficiaries who may receive such notice, then notice shall be given to all beneficiaries who are receiving, or are entitled to receive, income under the trust or to receive a distribution of principal if the trust were terminated at the time notice is given, in accordance with the provisions of section 15-10-403. Notice may be given to any other beneficiary. A person shall be bound under this section with respect to such proposed action if the person receives actual notice, if another person having a substantially identical interest receives notice, or if the person would be bound under the provisions of section 15-10-403.

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

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

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

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

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

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

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

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

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

“(7) If the trustee receives a written objection within the applicable time period, either the trustee or a beneficiary may petition the court to have the proposed action performed as proposed, performed with modifications, or denied. In the proceeding, a beneficiary objecting to the proposed action has the burden of proving that the trustee's proposed action should not be performed. A beneficiary who has not objected is not estopped from opposing the proposed action in the proceeding. If the trustee decides not to implement the proposed action, the trustee shall notify the beneficiaries of the decision not to take the action and the reasons for the decision, and the trustee's decision not to implement the proposed action does not itself give rise to liability to any current or future beneficiary. A beneficiary may petition the court to have the action performed, and has the burden of proving that it should be performed.”

Adds additional sections, which provide:

**“ § 15-1-421.5. Disposition of natural resources**

“(1) If any part of the principal consists of a right to receive royalties, overriding or limited royalties, working interests, production payments, net profit interests, or other interests in minerals or other natural resources in, on, or under land, the receipts from taking the natural resources from the land shall be allocated as follows:

“(a) If received as rent on a lease or extension payments on a lease, the receipts are income;

“(b) If received from a production payment, the receipts are income to the extent of any factor for interest or its equivalent provided in the governing instrument. There shall be allocated to principal the fraction of the balance of the receipts that the unrecovered cost of the production payment bears to the balance owed on the production payment, exclusive of any factor for interest or its equivalent. The receipts not allocated to principal are income.

“(c) If received as a royalty, overriding or limited royalty, or bonus, or from a working, net profit, or any other interest in minerals or other natural resources, receipts not provided for in paragraph (a) or (b) of this subsection (1) shall be apportioned on a yearly basis in accordance with this paragraph (c) regardless of whether any natural resource was being taken from the land at the time the trust was established. Fifteen percent of the gross receipts, but not to exceed fifty percent of the net receipts remaining after payment of all expenses, direct and indirect, computed without allowance for depletion, shall be added to principal as an allowance for depletion.

The balance of the gross receipts after payment therefrom of all expenses, direct and indirect, is income.

“(2) If a trustee, on the effective date of this section, held an item of depletable property of a type specified in this section, he or she shall allocate receipts from the property in the manner used before the effective date of

this section, but as to all depletable property acquired after the effective date of this section by an existing or new trust, the method of allocation provided herein shall be used.

“(3) This section does not apply to timber, water, soil, sod, dirt, turf, or mosses.”

**“ § 15-1-435. Application of certain provisions--notice of election**

“(1) Section 15-1-421.5 shall apply to all trusts and estates executed on or after July 1, 2009, unless the qualified beneficiaries elect not to apply said section.

“(2) The provisions of section 15-1-421.5 shall not apply to the determination of income from the disposition of natural resources in a trust or estate created before July 1, 2009, unless the qualified beneficiaries elect to apply section 15-1-421.5 as provided in this section.

“(3) If the qualified beneficiaries elect under subsection (1) or (2) of this section, notice of the election to apply or not to apply section 15-1-421.5 shall be given by the trustee in accordance with section 15-1-405, and the provisions of such section shall apply to the election.

“(4) An election to apply section 15-1-421.5 is irrevocable.”

**“ § 15-1-436. Transitional matters**

“(1) Section 15-1-419, as amended by Senate Bill 09-139, enacted in 2009, applies to a trust described in section 15-1-419(4) on and after the following dates:

“(a) If the trust is not funded as of the effective date of this section, the date of the decedent's death;

“(b) If the trust is initially funded in the calendar year beginning January 1, 2009, the date of the decedent's death;  
or

“(c) If the trust is not described in either paragraph (a) or (b) of this subsection (1), January 1, 2009.”

**CONNECTICUT**

Repealed the Uniform Principal and Income Act (1962) ( [C.G.S.A. §§ 45a-214](#) to [45a-227](#) ), and enacted the Uniform Principal and Income Act (1997) ( [C.G.S.A. §§ 45a-542](#) to [45a-542ff](#) ), by L.1999, P.A. 99-164 , effective January 1, 2000.

Section 45a-543 provides:

**“ § 45a-543. Determination by court re abuse of discretion by fiduciary**

“(a) A court shall not change a fiduciary's decision to exercise a discretionary power conferred by [sections 45a-542](#) to [45a-542ff](#) , inclusive, unless it determines that the decision was an abuse of the fiduciary's discretion. A court shall not determine that a fiduciary abused its discretion merely because the court would have exercised the discretion in a different manner or would not have exercised the discretion.

“(b) The decisions to which subsection (a) of this section applies include: (1) A determination under subsection (a) of section 45a-542c of whether and to what extent an amount should be transferred from principal to income or from income to principal; and (2) a determination of the factors that are relevant to the trust and its beneficiaries, the extent to which they are relevant, and the weight, if any, to be given to the relevant factors, in deciding whether and to what extent to exercise the power conferred by subsection (a) of section 45a-542c.

“(c) If a court determines that a fiduciary has abused its discretion, the remedy is to restore the income and remainder beneficiaries to the positions they would have occupied if the fiduciary had not abused its discretion, according to the following rules: (1) To the extent that the abuse of discretion has resulted in no distribution to a beneficiary or a distribution that is too small, the court may require the fiduciary to distribute from the trust to

the beneficiary an amount that the court determines will restore the beneficiary, in whole or in part, to his or her appropriate position; (2) to the extent that the abuse of discretion has resulted in a distribution to a beneficiary that is too large, the court may restore the beneficiaries, the trust, or both, in whole or in part, to their appropriate positions by requiring the fiduciary to withhold an amount from one or more future distributions to the beneficiary who received the distribution that was too large or requiring the beneficiary to return some or all of the distribution to the trust; and (3) to the extent that the court is unable, after applying subdivisions (1) and (2) of this subsection, to restore the beneficiaries, the trust, or both, to the positions they would have occupied if the fiduciary had not abused its discretion, the court may require the fiduciary to pay an appropriate amount from its own funds to one or more of the beneficiaries or to the trust, or both.

“(d) Upon a petition by the fiduciary, the court having jurisdiction over the trust or estate may determine whether a proposed exercise or nonexercise by a fiduciary of a discretionary power conferred by [sections 45a-542 to 45a-542ff](#), inclusive, will result in the abuse of the fiduciary’s discretion. If the petition describes the proposed exercise or nonexercise of the power and contains sufficient information to inform the beneficiaries of the reasons for the proposal, the facts upon which the fiduciary relies, and an explanation of how the income and remainder beneficiaries will be affected by the exercise or nonexercise of the power, a beneficiary who challenges the proposed exercise or nonexercise has the burden of establishing that it will result in an abuse of discretion.”

## FLORIDA

Repealed the Uniform Principal and Income Act (1962) ( [F.S.A. §§ 738.01 to 738.15](#) ), and enacted in lieu thereof the Uniform Principal and Income Act (1997) ( [F.S.A. §§ 738.101 to 738.804](#) ) by L.2002, c. 42, effective January 1, 2003.

Adds sections, which provide:

### “ 738.1041. Total return unitrust

“(1) For purposes of this section, the term:

“(a) ‘Disinterested person’ means a person who is not a ‘related or subordinate party’ as defined in [s. 672\(c\) of the United States Internal Revenue Code](#), [26 U.S.C. ss. 1 et seq.](#), or any successor provision thereof, with respect to the person then acting as trustee of the trust and excludes the grantor and any interested trustee.

“(b) ‘Fair market value’ means the fair market value of assets held by the trust as otherwise determined under this chapter, reduced by all known noncontingent liabilities.

“(c) ‘Income trust’ means a trust, created by either an inter vivos or a testamentary instrument, which directs or permits the trustee to distribute the net income of the trust to one or more persons, either in fixed proportions or in amounts or proportions determined by the trustee and regardless of whether the trust directs or permits the trustee to distribute the principal of the trust to one or more such persons.

“(d) ‘Interested distributee’ means a person to whom distributions of income or principal can currently be made who has the power to remove the existing trustee and designate as successor a person who may be a ‘related or subordinate party,’ as defined in the Internal Revenue Code, [26 U.S.C. s. 672\(c\)](#), with respect to such distributee.

“(e) ‘Interested trustee’ means an individual trustee to whom the net income or principal of the trust can currently be distributed or would be distributed if the trust were then to terminate and be distributed, any trustee whom an interested distributee has the power to remove and replace with a related or subordinate party as defined in paragraph (d), or an individual trustee whose legal obligation to support a beneficiary may be satisfied by distributions of income and principal of the trust.

“(f) ‘Unitrust amount’ means the amount determined by multiplying the fair market value of the assets as defined in paragraph (b) by the percentage calculated under paragraph (2)(b).

“(2) A trustee may, without court approval, convert an income trust to a total return unitrust, reconvert a total return unitrust to an income trust, or change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust if:

“(a) The trustee adopts a written statement regarding trust distributions that provides:

“1. In the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income, and indicates the manner in which the unitrust amount will be calculated and the method in which the fair market value of the trust will be determined.

“2. In the case of a trust being administered as a total return unitrust, that:

“a. Future distributions from the trust will be net income rather than unitrust amounts; or

“b. The percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed, and indicates the manner in which the new unitrust amount will be calculated and the method in which the new fair market value of the trust will be determined;

“(b) The trustee determines the terms of the unitrust under one of the following methods:

“1. A disinterested trustee determines, or if there is no trustee other than an interested trustee, the interested trustee appoints a disinterested person who, in its sole discretion but acting in a fiduciary capacity, determines for the interested trustee:

“a. The percentage to be used to calculate the unitrust amount, provided the percentage used is not greater than 5 percent nor less than 3 percent;

“b. The method to be used in determining the fair market value of the trust; and

“c. Which assets, if any, are to be excluded in determining the unitrust amount; or

“2. The interested trustee or disinterested trustee administers the trust such that:

“a. The percentage used to calculate the unitrust amount is 50 percent of the applicable federal rate as defined in the Internal Revenue Code, [26 U.S.C. s. 7520](#) , in effect for the month the conversion under this section becomes effective and for each January thereafter; however, if the percentage calculated exceeds 5 percent, the unitrust percentage shall be 5 percent and if the percentage calculated is less than 3 percent, the unitrust percentage shall be 3 percent; and

“b. The fair market value of the trust shall be determined at least annually on an asset-by-asset basis, reasonably and in good faith, in accordance with the provisions of s. 738.202(5), except the following property shall not be included in determining the value of the trust:

“(I) Any residential property or any tangible personal property that, as of the first business day of the current valuation year, one or more current beneficiaries of the trust have or have had the right to occupy, or have or have had the right to possess or control (other than in his or her capacity as trustee of the trust), and instead the right of occupancy or the right to possession and control shall be deemed to be the unitrust amount with respect to such property; however, the unitrust amount shall be adjusted to take into account partial distributions from or receipt into the trust of such property during the valuation year.

“(II) Any asset specifically given to a beneficiary and the return on investment on such property, which return on investment shall be distributable to such beneficiary.

“(III) Any asset while held in a testator's estate;

“(c) The trustee sends written notice of its intention to take such action, along with copies of such written statement and this section, and, if applicable, the determinations of either the trustee or the disinterested person to:

“1. The grantor of the trust, if living.

“2. All living persons who are currently receiving or eligible to receive distributions of income of the trust.

“3. All living persons who would receive distributions of principal of the trust if the trust were to terminate at the time of the giving of such notice (without regard to the exercise of any power of appointment) or, if the trust does not provide for its termination, all living persons who would receive or be eligible to receive distributions of income or principal of the trust if the persons identified in subparagraph 2. were deceased.

“4. All persons acting as advisers or protectors of the trust.

“Notice under this paragraph shall be served informally, in the manner provided in the Florida Rules of Civil Procedure relating to service of pleadings subsequent to the initial pleading. Notice may be served on a legal representative or natural guardian of a person without the filing of any proceeding or approval of any court;

“(d) At least one person receiving notice under each of subparagraphs (c)2. and 3. is legally competent; and

“(e) No person receiving such notice objects, by written instrument delivered to the trustee, to the proposed action of the trustee or the determinations of the disinterested person within 60 days after service of such notice.

An objection under this section may be executed by a legal representative or natural guardian of a person without the filing of any proceeding or approval of any court.

“(3) If a trustee desires to convert an income trust to a total return unitrust, reconvert a total return unitrust to an income trust, or change the percentage used to calculate the unitrust amount or the method used to determine a fair market value of the trust but does not have the ability to or elects not to do it under subsection (2), the trustee may petition the circuit court for such order as the trustee deems appropriate. In that event, the court, in its own discretion or on the petition of such trustee or any person having an income or remainder interest in the trust, may appoint a disinterested person who, acting in a fiduciary capacity, shall present such information to the court as shall be necessary for the court to make a determination hereunder.

“(4) All determinations made pursuant to sub-subparagraph (2)(b)2.b. shall be conclusive if reasonable and made in good faith. Such determination shall be conclusively presumed to have been made reasonably and in good faith unless proven otherwise in a proceeding commenced by or on behalf of a person interested in the trust within the time provided in s. 737.307. The burden will be on the objecting interested party to prove that the determinations were not made reasonably and in good faith.

“(5) Following the conversion of an income trust to a total return unitrust, the trustee:

“(a) Shall treat the unitrust amount as if it were net income of the trust for purposes of determining the amount available, from time to time, for distribution from the trust.

“(b) May allocate to trust income for each taxable year of the trust, or portion thereof:

“1. Net short-term capital gain described in the Internal Revenue Code, [26 U.S.C. s. 1222\(5\)](#) , for such year, or portion thereof, but only to the extent that the amount so allocated together with all other amounts allocated to trust income, as determined under the provisions of this chapter without regard to this section and s. 738.104, for such year, or portion thereof, does not exceed the unitrust amount for such year, or portion thereof.

“2. Net long-term capital gain described in the Internal Revenue Code, [26 U.S.C. s. 1222\(7\)](#) , for such year, or portion thereof, but only to the extent that the amount so allocated together with all other amounts, including amounts described in subparagraph 1., allocated to trust income for such year, or portion thereof, does not exceed the unitrust amount for such year, or portion thereof.



“(6) In administering a total return unitrust, the trustee may, in its sole discretion but subject to the provisions of the governing instrument, determine:

“(a) The effective date of the conversion.

“(b) The timing of distributions, including provisions for prorating a distribution for a short year in which a beneficiary's right to payments commences or ceases.

“(c) Whether distributions are to be made in cash or in kind or partly in cash and partly in kind.

“(d) If the trust is reconverted to an income trust, the effective date of such reconversion.

“(e) Such other administrative issues as may be necessary or appropriate to carry out the purposes of this section.

“(7) Conversion to a total return unitrust under the provisions of this section shall not affect any other provision of the governing instrument, if any, regarding distributions of principal.

“(8) Any trustee or disinterested person who in good faith takes or fails to take any action under this section shall not be liable to any person affected by such action or inaction, regardless of whether such person received written notice as provided in this section and regardless of whether such person was under a legal disability at the time of the delivery of such notice. Such person's exclusive remedy shall be to obtain, under subsection (9), an order of the court directing the trustee to convert an income trust to a total return unitrust, to reconvert from a total return unitrust to an income trust, or to change the percentage used to calculate the unitrust amount. If a court determines that the trustee or disinterested person has not acted in good faith in taking or failing to take any action under this section, the provisions of s. 738.105(3) apply.

“(9) If a majority in interest of either the income or remainder beneficiaries of an income trust has delivered to the trustee a written objection to the amount of the income distributions of the trust, and, if the trustee has failed to resolve the objection to the satisfaction of the objecting beneficiaries within 6 months from the receipt of such written objection, then the objecting beneficiaries may petition the court in accordance with subsection (3).

“(10) This section shall be construed as pertaining to the administration of a trust and is applicable to any trust that is administered either in this state or under Florida law unless:

“(a) The governing instrument reflects an intention that the current beneficiary or beneficiaries are to receive an amount other than a reasonable current return from the trust;

“(b) The trust is a trust described in the Internal Revenue Code, [26 U.S.C. s. 170\(f\)\(2\)\(B\)](#) , [s. 642\(c\)\(5\)](#) , [s. 664\(d\)](#) , [s. 2702\(a\)\(3\)](#), or [s. 2702\(b\)](#) ;

“(c) One or more persons to whom the trustee could distribute income have a power of withdrawal over the trust:

“1. That is not subject to an ascertainable standard under the Internal Revenue Code, [26 U.S.C. s. 2041](#) or [s. 2514](#) , and exceeds in any calendar year the amount set forth in the Internal Revenue Code, [26 U.S.C. s. 2041\(b\)\(2\)](#) or [s. 2514\(e\)](#) ; or

“2. A power of withdrawal over the trust that can be exercised to discharge a duty of support he or she possesses;

“(d) The governing instrument expressly prohibits use of this section by specific reference to the section. A provision in the governing instrument that, ‘The provisions of [section 738.1041, Florida Statutes](#) , as amended, or any corresponding provision of future law, shall not be used in the administration of this trust,’ or similar words reflecting such intent shall be sufficient to preclude the use of this section; or

“(e) The trust is a trust with respect to which a trustee currently possesses the power to adjust under s. 738.104.

“(11) The grantor of a trust may create an express total return unitrust which will become effective as provided in the trust document without requiring a conversion under this section. An express total return unitrust created by the grantor of the trust shall be treated as a unitrust under this section only if the terms of the trust document contain all of the following provisions:

“(a) That distributions from the trust will be unitrust amounts and the manner in which the unitrust amount will be calculated and the method in which the fair market value of the trust will be determined.

“(b) The percentage to be used to calculate the unitrust amount, provided the percentage used is not greater than 5 percent nor less than 3 percent.

“(c) The method to be used in determining the fair market value of the trust.

“(d) Which assets, if any, are to be excluded in determining the unitrust amount.”

**“ 738.801. Application with respect to apportionment of expenses; improvements**

“(1) The provisions of ss. 738.701-738.705, so far as applicable and excepting those dealing with costs of, or assessments for, improvements to property, shall govern the apportionment of expenses between tenants and remaindermen when no trust has been created, subject to any agreement of the parties or specific direction of the taxing or other statutes, but when either tenant or remainderman has incurred an expense for the benefit of his or her own estate without consent or agreement of the other, he or she shall pay such expense in full.

“(2) Subject to the exceptions stated in subsection (1), the cost of, or special taxes or assessments for, an improvement representing an addition of value to property forming part of the principal shall be paid by the tenant when the improvement is not reasonably expected to outlast the estate of the tenant. In all other cases a part only shall be paid by the tenant, while the remainder shall be paid by the remainderman. The part payable by the tenant shall be ascertainable by taking that percentage of the total that is found by dividing the present value of the tenant's estate by the present value of an estate of the same form as that of the tenant except that it is limited for a period corresponding to the reasonably expected duration of the improvement. The computation of present values of the estates shall be made on the expectancy basis set forth in the official mortality tables, and no other evidence of duration or expectancy shall be considered.”

## FLORIDA

Added [section 738.1041](#) now provides:

**“ 738.1041. Total return unitrust**

“(1) For purposes of this section, the term:

“(a) ‘Disinterested person’ means a person who is not a ‘related or subordinate party’ as defined in [s. 672\(c\) of the United States Internal Revenue Code](#) , [26 U.S.C. ss. 1 et seq.](#), or any successor provision thereof, with respect to the person then acting as trustee of the trust and excludes the grantor and any interested trustee.

“(b) ‘Fair market value’ means the fair market value of assets held by the trust as otherwise determined under this chapter, reduced by all known noncontingent liabilities.

“(c) ‘Income trust’ means a trust, created by either an inter vivos or a testamentary instrument, which directs or permits the trustee to distribute the net income of the trust to one or more persons, either in fixed proportions or in amounts or proportions determined by the trustee and regardless of whether the trust directs or permits the trustee to distribute the principal of the trust to one or more such persons.

“(d) ‘Interested distributee’ means a person to whom distributions of income or principal can currently be made who has the power to remove the existing trustee and designate as successor a person who may be a ‘related

or subordinate party,' as defined in the Internal Revenue Code, [26 U.S.C. s. 672\(c\)](#) , with respect to such distributee.

“(e) ‘Interested trustee’ means an individual trustee to whom the net income or principal of the trust can currently be distributed or would be distributed if the trust were then to terminate and be distributed, any trustee whom an interested distributee has the power to remove and replace with a related or subordinate party as defined in paragraph (d), or an individual trustee whose legal obligation to support a beneficiary may be satisfied by distributions of income and principal of the trust.

“(f) ‘Unitrust amount’ means the amount determined by multiplying the fair market value of the assets as defined in paragraph (b) by the percentage calculated under paragraph (2)(b).

“(2) A trustee may, without court approval, convert an income trust to a total return unitrust, reconvert a total return unitrust to an income trust, or change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust if:

“(a) The trustee adopts a written statement regarding trust distributions that provides:

“1. In the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income, and indicates the manner in which the unitrust amount will be calculated and the method in which the fair market value of the trust will be determined.

“2. In the case of a trust being administered as a total return unitrust, that:

“a. Future distributions from the trust will be net income rather than unitrust amounts; or

“b. The percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed, and indicates the manner in which the new unitrust amount will be calculated and the method in which the new fair market value of the trust will be determined;

“(b) The trustee determines the terms of the unitrust under one of the following methods:

“1. A disinterested trustee determines, or if there is no trustee other than an interested trustee, the interested trustee appoints a disinterested person who, in its sole discretion but acting in a fiduciary capacity, determines for the interested trustee:

“a. The percentage to be used to calculate the unitrust amount, provided the percentage used is not greater than 5 percent nor less than 3 percent;

“b. The method to be used in determining the fair market value of the trust; and

“c. Which assets, if any, are to be excluded in determining the unitrust amount; or

“2. The interested trustee or disinterested trustee administers the trust such that:

“a. The percentage used to calculate the unitrust amount is 50 percent of the applicable federal rate as defined in the Internal Revenue Code, [26 U.S.C. s. 7520](#) , in effect for the month the conversion under this section becomes effective and for each January thereafter; however, if the percentage calculated exceeds 5 percent, the unitrust percentage shall be 5 percent and if the percentage calculated is less than 3 percent, the unitrust percentage shall be 3 percent; and

“b. The fair market value of the trust shall be determined at least annually on an asset-by-asset basis, reasonably and in good faith, in accordance with the provisions of s. 738.202(5), except the following property shall not be included in determining the value of the trust:

“(l) Any residential property or any tangible personal property that, as of the first business day of the current valuation year, one or more current beneficiaries of the trust have or have had the right to occupy, or have or

have had the right to possess or control (other than in his or her capacity as trustee of the trust), and instead the right of occupancy or the right to possession and control shall be deemed to be the unitrust amount with respect to such property; however, the unitrust amount shall be adjusted to take into account partial distributions from or receipt into the trust of such property during the valuation year.

“(II) Any asset specifically given to a beneficiary and the return on investment on such property, which return on investment shall be distributable to such beneficiary.

“(III) Any asset while held in a testator's estate;

“(c) The trustee sends written notice of its intention to take such action, along with copies of such written statement and this section, and, if applicable, the determinations of either the trustee or the disinterested person to:

“1. The grantor of the trust, if living.

“2. All living persons who are currently receiving or eligible to receive distributions of income of the trust.

“3. All living persons who would receive distributions of principal of the trust if the trust were to terminate at the time of the giving of such notice (without regard to the exercise of any power of appointment) or, if the trust does not provide for its termination, all living persons who would receive or be eligible to receive distributions of income or principal of the trust if the persons identified in subparagraph 2. were deceased.

“4. All persons acting as advisers or protectors of the trust.

“Notice under this paragraph shall be served informally, in the manner provided in the Florida Rules of Civil Procedure relating to service of pleadings subsequent to the initial pleading. Notice may be served on a legal representative or natural guardian of a person without the filing of any proceeding or approval of any court;

“(d) At least one person receiving notice under each of subparagraphs (c)2. and 3. is legally competent; and

“(e) No person receiving such notice objects, by written instrument delivered to the trustee, to the proposed action of the trustee or the determinations of the disinterested person within 60 days after service of such notice.

An objection under this section may be executed by a legal representative or natural guardian of a person without the filing of any proceeding or approval of any court.

“(3) If a trustee desires to convert an income trust to a total return unitrust, reconvert a total return unitrust to an income trust, or change the percentage used to calculate the unitrust amount or the method used to determine a fair market value of the trust but does not have the ability to or elects not to do it under subsection (2), the trustee may petition the circuit court for such order as the trustee deems appropriate. In that event, the court, in its own discretion or on the petition of such trustee or any person having an income or remainder interest in the trust, may appoint a disinterested person who, acting in a fiduciary capacity, shall present such information to the court as shall be necessary for the court to make a determination hereunder.

“(4) All determinations made pursuant to sub-subparagraph (2)(b)2.b. shall be conclusive if reasonable and made in good faith. Such determination shall be conclusively presumed to have been made reasonably and in good faith unless proven otherwise in a proceeding commenced by or on behalf of a person interested in the trust within the time provided in s. 736.1008. The burden will be on the objecting interested party to prove that the determinations were not made reasonably and in good faith.

“(5) Following the conversion of an income trust to a total return unitrust, the trustee:

“(a) Shall treat the unitrust amount as if it were net income of the trust for purposes of determining the amount available, from time to time, for distribution from the trust.

“(b) May allocate to trust income for each taxable year of the trust, or portion thereof:

"1. Net short-term capital gain described in the Internal Revenue Code, [26 U.S.C. s. 1222\(5\)](#) , for such year, or portion thereof, but only to the extent that the amount so allocated together with all other amounts allocated to trust income, as determined under the provisions of this chapter without regard to this section and s. 738.104, for such year, or portion thereof, does not exceed the unitrust amount for such year, or portion thereof.

"2. Net long-term capital gain described in the Internal Revenue Code, [26 U.S.C. s. 1222\(7\)](#) , for such year, or portion thereof, but only to the extent that the amount so allocated together with all other amounts, including amounts described in subparagraph 1., allocated to trust income for such year, or portion thereof, does not exceed the unitrust amount for such year, or portion thereof.

"(6) In administering a total return unitrust, the trustee may, in its sole discretion but subject to the provisions of the governing instrument, determine:

"(a) The effective date of the conversion.

"(b) The timing of distributions, including provisions for prorating a distribution for a short year in which a beneficiary's right to payments commences or ceases.

"(c) Whether distributions are to be made in cash or in kind or partly in cash and partly in kind.

"(d) If the trust is reconverted to an income trust, the effective date of such reconversion.

"(e) Such other administrative issues as may be necessary or appropriate to carry out the purposes of this section.

"(7) Conversion to a total return unitrust under the provisions of this section shall not affect any other provision of the governing instrument, if any, regarding distributions of principal.

"(8) Any trustee or disinterested person who in good faith takes or fails to take any action under this section shall not be liable to any person affected by such action or inaction, regardless of whether such person received written notice as provided in this section and regardless of whether such person was under a legal disability at the time of the delivery of such notice. Such person's exclusive remedy shall be to obtain, under subsection (9), an order of the court directing the trustee to convert an income trust to a total return unitrust, to reconvert from a total return unitrust to an income trust, or to change the percentage used to calculate the unitrust amount. If a court determines that the trustee or disinterested person has not acted in good faith in taking or failing to take any action under this section, the provisions of s. 738.105(3) apply.

"(9) If a majority in interest of either the income or remainder beneficiaries of an income trust has delivered to the trustee a written objection to the amount of the income distributions of the trust, and, if the trustee has failed to resolve the objection to the satisfaction of the objecting beneficiaries within 6 months from the receipt of such written objection, then the objecting beneficiaries may petition the court in accordance with subsection (3).

"(10) This section shall be construed as pertaining to the administration of a trust and is applicable to any trust that is administered either in this state or under Florida law unless:

"(a) The governing instrument reflects an intention that the current beneficiary or beneficiaries are to receive an amount other than a reasonable current return from the trust;

"(b) The trust is a trust described in the Internal Revenue Code, [26 U.S.C. s. 170\(f\)\(2\)\(B\)](#) , [s. 642\(c\)\(5\)](#) , [s. 664\(d\)](#) , [s. 2702\(a\)\(3\)](#), or [s. 2702\(b\)](#) ;

"(c) One or more persons to whom the trustee could distribute income have a power of withdrawal over the trust:

"1. That is not subject to an ascertainable standard under the Internal Revenue Code, [26 U.S.C. s. 2041](#) or [s. 2514](#) , and exceeds in any calendar year the amount set forth in the Internal Revenue Code, [26 U.S.C. s. 2041\(b\)\(2\)](#) or [s. 2514\(e\)](#) ; or

"2. A power of withdrawal over the trust that can be exercised to discharge a duty of support he or she possesses;

"(d) The governing instrument expressly prohibits use of this section by specific reference to the section. A provision in the governing instrument that, 'The provisions of [section 738.1041, Florida Statutes](#) , as amended, or any corresponding provision of future law, shall not be used in the administration of this trust,' or similar words reflecting such intent shall be sufficient to preclude the use of this section; or

"(e) The trust is a trust with respect to which a trustee currently possesses the power to adjust under s. 738.104.

"(11) The grantor of a trust may create an express total return unitrust which will become effective as provided in the trust document without requiring a conversion under this section. An express total return unitrust created by the grantor of the trust shall be treated as a unitrust under this section only if the terms of the trust document contain all of the following provisions:

"(a) That distributions from the trust will be unitrust amounts and the manner in which the unitrust amount will be calculated and the method in which the fair market value of the trust will be determined.

"(b) The percentage to be used to calculate the unitrust amount, provided the percentage used is not greater than 5 percent nor less than 3 percent.

"(c) The method to be used in determining the fair market value of the trust.

"(d) Which assets, if any, are to be excluded in determining the unitrust amount."

## GEORGIA

Repealed the Uniform Principal and Income Act (1962) ( [O.C.G.A. §§ 53-12-210](#) to [53-12-222](#) ), and enacted in lieu thereof the Uniform Principal and Income Act (1997) ( [O.C.G.A. §§ 53-12-380](#) to [53-12-431](#) ) by L.2010, c. 506, eff. July 1, 2010.

While the Georgia act is a substantial adoption of the major provisions of the uniform act, it departs from the official text in such manner that the various instances of substitution, omission, and additional matter cannot be clearly indicated by statutory notes.

## HAWAII

Repealed the Uniform Principal and Income Act (1962) ( [HRS §§ 557-1](#) to [557-16](#) ), and enacted in lieu thereof the Uniform Principal and Income Act (1997) ( [HRS §§ 557A-101](#) to [557A-506](#) ) by L.2000, c. 191, effective July 1, 2000.

Adds sections, which provide:

### " § 557A-105. Notice of proposed action

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

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

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

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

“(1) The name and mailing address of the trustee;

“(2) The name and telephone number of a person who may be contacted for additional information;

“(3) A description of the action proposed to be taken and an explanation of the reasons for the action;

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

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

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

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

“(g) If the trustee receives a written objection within the applicable period, either the trustee or a beneficiary may petition the court to have the proposed action taken as proposed, taken with modifications, or denied.

In the proceeding, a beneficiary objecting to the proposed action has the burden of proving that the trustee's proposed action constitutes an abuse of discretion. A beneficiary who has not objected is not estopped from opposing the proposed action in the proceeding. If the trustee decides not to implement the proposed action, the trustee shall notify the beneficiaries of the decision not to take the action and the reasons for the decision, and the trustee's decision not to implement the proposed action does not itself give rise to liability to any current or future beneficiary. A beneficiary may petition the court to have the action taken, and has the burden of proving that not taking the action is an abuse of discretion.”

**“§ 557A-106. Proceedings regarding trustee's power to adjust**

“In a proceeding with respect to a trustee's exercise or nonexercise of the power to make an adjustment under section 557A-104, the sole remedy shall be to direct, deny, or revise an adjustment between principal and income.”

**IDAHO**

Repealed the Uniform Principal and Income Act (1962) ( I.C. §§ 68-1001 to 68-1016 ), and enacted in lieu thereof the Uniform Principal and Income Act (1997) ( I.C. §§ 68-10 - 101 to 68-10 - 605 ) by L.2001, c. 261, effective July 1, 2001.

Adds a section, which provides:

**“ 68-10-105. Notice of proposed action.**

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

“(b) The trustee shall mail notice of the proposed action to all adult beneficiaries who are receiving, or are entitled to receive, income under the trust or to receive a distribution of principal if the trust were terminated at the time the notice is given. If all beneficiaries of the trust are incapacitated persons, then notice shall be mailed to each of the incapacitated person's guardians or conservators who are appointed in accordance with chapter 5, title 15, Idaho Code .

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

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

“(1) The name and mailing address of the trustee;

“(2) A copy of the trust instrument, if any;

“(3) A description of the action proposed to be taken and an explanation of the reasons for the action;

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

“(5) The date on or after which the proposed action may be taken or is effective;

“(6) A statement that the recipient may petition for a judicial determination of the proposed action;

“(7) A form on which consent or objection to the proposed action may be indicated.

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

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

“(g) If the trustee receives a written objection within the applicable period, either the trustee or a beneficiary may petition the court to have the proposed action taken as proposed, taken with modifications, or denied. In the proceeding, a beneficiary objecting to the proposed action has the burden of proving that the trustee's proposed action should not be taken. A beneficiary who has not objected is not estopped from opposing the proposed action in the proceeding. If the trustee decides not to implement the proposed action, the trustee shall notify the beneficiaries of the decision not to take the action and the reasons for the decision, and the trustee's decision not to implement the proposed action does not itself give rise to liability to any current or future beneficiary. A beneficiary may petition the court to have the action taken, and has the burden of proving that it should be taken.”

## INDIANA

The Indiana Act ( [I.C.1971, 30-2-3-1](#) to [30-2-3-14](#) ) was repealed by Acts 1971, P.L. 416, § 8, and the substance of the act was included as part of the Trust Code, Chapter 5, as §§ 30-4-5-1 to 30-4-5-11, the provisions of which were repealed by L.2002, c. 84, effective January 1, 2003. L.2002, c. 84, enacted in lieu thereof the Uniform Principal and Income Act (1997), [West's A.I.C. §§ 30-2-14-1](#) to [30-2-14-44](#) .

Adds a section, which provides:

### “30-2-14-16 Notice of proposed action by trustee

“(a) A trustee may give a notice of proposed action regarding a matter governed by this chapter as set forth in this section. For purposes of this section, a proposed action includes a course of action and a decision not to take action.

“(b) The trustee shall mail notice of the proposed action to all living beneficiaries who:

“(1) are receiving; or



“(2) are entitled to receive:

“(A) income under the trust; or

“(B) a distribution of principal;

“if the trust were terminated at the time the notice is given.

“If a beneficiary described in this subsection is a minor, the trustee may comply with this subsection by mailing the notice to any court appointed or natural guardian of the minor.

“(c) A trustee is not required to give notice of proposed action to any person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.

“(d) The notice of proposed action shall state that the notice is given as set forth in this section and shall state all of the following:

“(1) The name and mailing address of the trustee.

“(2) The name and telephone number of a person who may be contacted for additional information.

“(3) A description of the action proposed to be taken and an explanation of the reasons for the action.

“(4) The time within which objections to the proposed action may be made, which shall be at least thirty (30) days after the mailing of the notice of proposed action.

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

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

“(e) A trustee is not liable to a beneficiary for an action regarding a matter governed by this chapter if:

“(1) the trustee does not receive a written objection to the proposed action from the beneficiary within the applicable period; and

“(2) the other requirements of this section are satisfied.

“If a beneficiary not entitled to notice objects under this section, the trustee is not liable to any current or future beneficiary with respect to the proposed action.

“(f) If the trustee receives a written objection within the applicable period, either the trustee or a beneficiary may petition the court to have the proposed action taken as proposed, taken with modifications, or denied.

In the proceeding, a beneficiary objecting to the proposed action has the burden of proving that the trustee's proposed action should not be taken. A beneficiary who has not objected is not estopped from opposing the proposed action in the proceeding. If the trustee decides not to implement the proposed action, the trustee shall mail notice to the beneficiaries described in subsection (b) of the decision not to take the action. The trustee's decision not to implement the proposed action does not itself give rise to liability to any current or future beneficiary. Within thirty (30) days after the mailing of the notice not to implement the proposed action, a beneficiary may petition the court to have the action taken and has the burden of proving that it should be taken.”

## INDIANA

Adds a section which provides:

“ **30-2-14-13.5 Personal representative as a fiduciary**

“Sec. 13.5. A personal representative, including an executor, an administrator, a successor personal representative, a special administrator, or a person performing substantially the same function with respect to a decedent's estate, is a fiduciary for purposes of this chapter if:

“(1) under the terms of a decedent's will this chapter applies to the administration of the estate; or

“(2) under other applicable law, the personal representative is required or allowed to account for and distribute income received during administration of the estate separately from the corpus of the estate.”

## IOWA

Adds sections, which provide:

### “ 637.601. Definitions

“For purposes of this subchapter:

“1. ‘Disinterested person’ means a person who is not a related or subordinate party as defined in [section 672\(c\) of the Internal Revenue Code](#) with respect to the person acting as trustee of the trust and excludes the trustor of the trust and any interested trustee.

“2. ‘Income trust’ means a trust, created by either an inter vivos or a testamentary instrument, which directs or permits the trustee to distribute the net income of the trust to one or more persons, either in fixed proportions or in amounts or proportions determined by the trustee. However, a trust that does not meet this definition is nonetheless an income trust if the trust is subject to taxation under [section 2001](#) or [2501 of the Internal Revenue Code](#) , until the expiration of the period for filing the return, including extensions.

“3. ‘Interested distributee’ means a person, to whom distributions of income or principal can currently be made, who has the power to remove the existing trustee and designate as successor a person who may be a related or subordinate party, as defined in [section 672\(c\) of the Internal Revenue Code](#) , with respect to such distributee.

“4. ‘Interested trustee’ means any of the following:

“a. An individual trustee to whom the net income or principal of the trust can currently be distributed or would be distributed if the trust were to terminate and be distributed.

“b. Any trustee who may be removed and replaced by an interested distributee.

“c. An individual trustee whose legal obligation to support a beneficiary may be satisfied by distributions of income and principal of the trust.

“5. ‘Total return unitrust’ means an income trust which has been converted under and meets the provisions of this subchapter.

“6. ‘Trustee’ means a person acting as trustee of the trust, except where expressly noted otherwise, whether acting in the trustee's discretion or on the direction of one or more persons acting in a fiduciary capacity.

“7. ‘Trustor’ means an individual who creates an inter vivos or a testamentary trust.

“8. ‘Unitrust amount’ means an amount computed as a percentage of the fair market value of the trust.”

### “ 637.602. Trustee's authority to convert

“A trustee, other than an interested trustee, or, where two or more persons are acting as trustee, a majority of the trustees who are not interested trustees, may, in the trustee's sole discretion and without the approval of the court, do any of the following subject to the requirements of section 637.603:

“1. Convert an income trust to a total return unitrust.

"2. Reconvert a total return unitrust to an income trust.

"3. Change the method used to determine the fair market value of the trust."

**" 637.603. Trustee requirements to convert or change computation method**

"A trustee may proceed to take action under section 637.602 if all of the following apply:

"1. The trustee adopts a written policy for the trust as follows:

"a. In the case of a trust being administered as an income trust, requiring that future distributions from the trust will be unitrust amounts rather than net income.

"b. In the case of a trust being administered as a total return unitrust, requiring that future distributions from the trust will be net income rather than unitrust amounts.

"c. Requiring that the method used to determine the fair market value of the trust will be changed as stated in the policy.

"2. The trustee sends written notice of the trustee's intention to take any action described in section 637.602, along with copies of such written policy and this subchapter, to all of the following persons:

"a. The trustor of the trust, if living.

"b. All living persons who are currently receiving or eligible to receive distributions of income of the trust.

"c. All living persons who would receive principal of the trust if the trust were to terminate at the time of the giving of such notice, without regard to the exercise of any power of appointment or, if the trust does not provide for its termination, all living persons who would receive or be eligible to receive distributions of income or principal of the trust if the persons identified in paragraph 'b' were deceased.

"d. All persons named in the governing instrument as adviser to or protector of the trust.

"3. At least one person receiving notice under subsection 2, paragraphs 'b' and 'c', is legally competent.

"4. No person receiving such notice under subsection 2, objects, by written instrument delivered to the trustee, to the proposed action of the trustee within sixty days of receipt of such notice."

**" 637.604. Interested trustee's authority to convert**

"If there is no trustee of the trust other than an interested trustee, the interested trustee or, where two or more persons are acting as trustee and are interested trustees, a majority of such interested trustees may, in the trustee's sole discretion and without the approval of the court, do any of the following subject to the requirements of section 637.605:

"1. Convert an income trust to a total return unitrust.

"2. Reconvert a total return unitrust to an income trust.

"3. Change the method used to determine the fair market value of the trust."

**" 637.605. Interested trustee requirements to convert or change computation method**

"An interested trustee may proceed to take action under section 637.604 if all of the following apply:

"1. The trustee adopts a written policy for the trust as follows:

"a. In the case of a trust being administered as an income trust, requiring that future distributions from the trust will be unitrust amounts rather than net income.

"b. In the case of a trust being administered as a total return unitrust, requiring that future distributions from the trust will be net income rather than unitrust amounts.

"c. Requiring that the method used to determine the fair market value of the trust will be changed as stated in the policy.

"2. The trustee appoints a disinterested person who, in the person's sole discretion, but acting in a fiduciary capacity, determines for the trustee the method to be used in determining the fair market value of the trust, and which assets, if any, are to be excluded in determining the unitrust amount.

"3. The trustee sends written notice of the trustee's intention to take any action described in section 637.604, along with copies of such written policy, this subchapter, and the determination of the disinterested person to all of the following persons:

"a. The trustor of the trust, if living.

"b. All living persons who are currently receiving or eligible to receive distributions of income of the trust.

"c. All living persons who would receive principal of the trust if the trust were to terminate at the time of the giving of such notice, without regard to the exercise of any power of appointment or, if the trust does not provide for its termination, all living persons who would receive or be eligible to receive distributions of income or principal of the trust if the persons identified in paragraph 'b' were deceased.

"d. All persons named in the governing instrument as adviser to or protector of the trust.

"4. At least one person receiving notice under subsection 3, paragraphs 'b' and 'c', is legally competent.

"5. No person receiving the notice described in subsection 3 objects, by written instrument delivered to the trustee, to the proposed action of the trustee within sixty days of receipt of such notice."

**" 637.606. Petition to court to convert trust**

"If any trustee desires to do any of the following but does not have the ability to or elects not to do so under the provisions of section 637.602 or 637.604, the trustee may petition the court for such order as the trustee deems appropriate:

"1. Convert an income trust to a total return unitrust.

"2. Reconvert a total return unitrust to an income trust.

"3. Change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust.

"If, however, there is only one trustee of such trust and such trustee is an interested trustee or in the event there are two or more trustees of such trust and a majority of them are interested trustees, the court, in its own discretion or upon the petition of such trustee or trustees or any person interested in the trust, may appoint a disinterested person who, acting in a fiduciary capacity, shall present such information to the court as necessary to enable the court to make its determinations."

**" 637.607. Valuation of trust**

"The fair market value of the trust shall be determined at least annually, using such valuation date or dates or averages of valuation dates as are deemed appropriate. Assets for which a fair market value cannot be readily ascertained shall be valued using such valuation methods as are deemed reasonable and appropriate. Such

assets may be excluded from valuation, provided all income received with respect to such assets is distributed to the extent distributable in accordance with the terms of the governing instrument.”

**“ 637.608. Payout percentage**

“The annual unitrust payout percentage shall be four percent unless the governing instrument specifically provides a different percentage or the court approves a percentage of not less than three percent or more than five percent after notice of intent to seek a payout percentage other than four percent has been given to all of the following persons:

“1. The trustor of the trust, if living.

“2. All living persons who are currently receiving or eligible to receive distributions of income of the trust.

“3. All living persons who would receive principal of the trust if the trust were to terminate at the time of the giving of such notice without regard to the exercise of any power of appointment or, if the trust does not provide for its termination, all living persons who would receive or be eligible to receive distributions of income or principal of the trust if the persons identified in subsection 2 were deceased.

“4. All persons named in the governing instrument as adviser to or protector of the trust.”

**“ 637.609. Unitrust amount**

“The unitrust amount shall not be less than the net income of the trust, determined without regard to the provisions of section 637.610 for any of the following:

“1. A trust for which a marital deduction has been taken for federal tax purposes under [section 2056](#) or [2523 of the Internal Revenue Code](#) , during the lifetime of the spouse for whom the trust was created.

“2. A trust to which the generation-skipping transfer tax due under [section 2601 of the Internal Revenue Code](#) does not apply by reason of any effective date or transition rule.”

**“ 637.610. Procedure upon conversion of income trust to total return unitrust**

“Following the conversion of an income trust to a total return unitrust, the trustee:

“1. Shall treat the unitrust amount as if it were net income of the trust for purposes of determining the amount available, from time to time, for distribution from the trust.

“2. Shall allocate an amount to trust income, not in excess of the annual unitrust payout amount, in the following order:

“a. The amount derived from net income, as determined if the trust were other than a total return unitrust.

“b. The amount derived from other ordinary income as determined for federal income tax purposes.

“c. The amount derived from net realized short-term capital gains as determined for federal income tax purposes.

“d. The amount derived from net realized long-term capital gains as determined for federal income tax purposes.

“e. The amount derived from trust principal.”

**“ 637.611. Total return unitrust administration**

“In administering a total return unitrust, the trustee may, in the trustee's sole discretion but subject to the provisions of the governing instrument, determine all of the following:

“1. The effective date of the conversion.

"2. The timing of distributions, including provisions for prorating a distribution for a short year in which a beneficiary's right to payments commences or ceases.

"3. Whether distributions are to be made in cash or in kind or partly in cash and partly in kind.

"4. If the trust is reconverted to an income trust, the effective date of such reconversion.

"5. Such other administrative issues as may be necessary or appropriate to carry out the purposes of this subchapter."

**" 637.612. Principal distributions subject to governing instrument**

"Conversion to a total return unitrust under the provisions of this subchapter shall not affect any other provision of the governing instrument, if any, regarding distributions of principal."

**" 637.613. Construction and applicability**

"This subchapter shall be construed as pertaining to the administration of a trust and shall be available to any trust that is administered in Iowa under Iowa law unless any of the following apply:

"1. The governing instrument reflects an intention that the current beneficiary or beneficiaries are to receive an amount other than a reasonable current return from the trust.

"2. The trust is a trust described in [section 170\(f\)\(2\)\(B\)](#) , [664\(d\)](#) , [1361\(d\)](#) , [2702\(a\)\(3\)](#), or [2702\(b\) of the Internal Revenue Code](#) .

"3. One or more persons to whom the trustee could distribute income have a power of withdrawal over the trust that is not subject to an ascertainable standard under [section 2041](#) or [2514 of the Internal Revenue Code](#) or that can be exercised to discharge a duty of support the person possesses.

"4. The governing instrument expressly prohibits use of this subchapter by specific reference to the subchapter. A provision in the governing instrument that the provisions of sections 637.601 through 637.615 or any corresponding provision of future law shall not be used in the administration of this trust or similar words reflecting such intent shall be sufficient to preclude the use of this subchapter."

**" 637.614. Good faith actions**

"Any trustee or disinterested person who in good faith takes or fails to take any action under this subchapter shall not be liable to any person affected by such action or inaction, regardless of whether such person received written notice as provided in this subchapter and regardless of whether such person was under a legal disability at the time of the delivery of such notice. Such person's exclusive remedy shall be to obtain an order of the court directing the trustee to convert an income trust to a total return unitrust, or to reconvert a total return unitrust to an income trust."

**" 637.615. Effective date**

"This subchapter takes effect April 5, 2002, and applies to trusts in existence on that date or created after that date."

**IOWA**

Added section 637.606 now provides:

**" 637.606. Petition to court to convert trust**

"1. If any trustee desires to do any of the following but does not have the ability to or elects not to do so under the provisions of section 637.602 or 637.604, the trustee may petition the court for such order as the trustee deems appropriate:

"a. Convert an income trust to a total return unitrust.

"b. Reconvert a total return unitrust to an income trust.

"c. Change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust.

"2. If, however, there is only one trustee of such trust and such trustee is an interested trustee or in the event there are two or more trustees of such trust and a majority of them are interested trustees, the court, in its own discretion or upon the petition of such trustee or trustees or any person interested in the trust, may appoint a disinterested person who, acting in a fiduciary capacity, shall present such information to the court as necessary to enable the court to make its determinations."

Has now repealed added section 637.609, relating to unitrust amount.

## **KANSAS**

Repealed the Uniform Principal and Income Act (1962) ( [K.S.A. §§ 58-901](#) to [58-917](#) ), and enacted in lieu thereof the Uniform Principal and Income Act (1997) ( [K.S.A. §§ 58-9-101](#) to [58-9-603](#) ) by L.2000, c. 61, effective July 1, 2000.

## **KANSAS**

Added sections which provide:

### **" 58-9-105. Conversion of trust into unitrust**

"(a) Unless expressly prohibited by the governing instrument, a trustee may release the power under [K.S.A. 58-9-104](#) , and amendments thereto, and convert a trust into a unitrust as described in this section if all of the following apply:

"(1) The trustee determines that the conversion will enable the trustee to better carry out the intent of the settlor or testator and the purposes of the trust;

"(2) the trustee gives to each qualified beneficiary of the trust, as defined by [K.S.A. 58a-103](#) , and amendments thereto, written notice of (A) the trustee's intention to release the power to adjust and to convert the trust into a unitrust and (B) how the unitrust will operate, including what initial decisions the trustee will make under this section and the initial payout percentage to be utilized in determining a unitrust distribution; and

"(3) no qualified beneficiary objects to the conversion to a unitrust in a writing delivered to the trustee within 60 days of the mailing of the notice under subsection (a)(2).

"(b)(1) If a qualified beneficiary timely objects to the conversion to a unitrust, the trustee may petition the appropriate district court to approve the conversion to a unitrust.

"(2) A qualified beneficiary may request a trustee to convert to a unitrust. If the trustee does not convert, the qualified beneficiary may petition the appropriate district court to order the conversion.

"(3) The district court shall approve the conversion or direct the requested conversion if the court concludes that the conversion will enable the trustee to better carry out the intent of the settlor or testator and the purposes of the trust, after considering the factors enumerated under subsection (c) deemed by the court to be relevant.

“(c) In deciding whether to exercise the power conferred by subsection (a), the trustee shall consider all factors relevant to the trust and its beneficiaries, including the following to the extent they are relevant:

“(1) The nature, purpose, and expected duration of the trust;

“(2) the intent of the settlor;

“(3) the identity and circumstances of the beneficiaries;

“(4) the needs for liquidity, regularity of income and preservation and appreciation of capital;

“(5) the assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property; the extent to which an asset is used by a qualified beneficiary; and whether an asset was purchased by the trustee or received from the settlor;

“(6) the net amount allocated to income under the other sections of this act and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;

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

“(8) the anticipated tax consequences of conversion.

“(d) After a trust is converted to a unitrust, all of the following apply:

“(1) The trustee shall follow an investment policy seeking a total return for the investments held by the trust, whether the return is to be derived:

“(A) From appreciation of capital;

“(B) from earnings and distributions from capital; or

“(C) from both.

“(2) The trustee shall make regular distributions in accordance with the governing instrument construed in accordance with the provisions of this section.

“(3) The term “income” in the governing instrument shall mean an annual distribution--the unitrust distribution--equal to between 3% and 5%--the payout percentage--of the net fair market value of the trust's assets, whether such assets would be considered income or principal under other provisions of this act, averaged over a period of up to the three preceding years.

“(e) The trustee may, in the trustee's discretion from time to time, determine all of the following:

“(1) The effective date of a conversion to a unitrust;

“(2) the provisions for prorating a unitrust distribution for a short year in which a qualified beneficiary's right to payments commences or ceases;

“(3) the frequency of unitrust distributions during the year;

“(4) the effect of other payments from or contributions to the trust on the trust's valuation;

“(5) whether to value the trust's assets annually or more frequently;

“(6) what valuation dates to use;



“(7) how frequently to value nonliquid assets and whether to estimate their value;

“(8) whether to omit from the calculations trust property occupied or possessed by a qualified beneficiary;

“(9) whether the payout percentage utilized in determining the unitrust distribution should be modified to a percentage the trustee could have initially chosen. The trustee may modify the payout percentage if:

“(A) The trustee gives each qualified beneficiary of the trust three months written notice prior to modifying the payout percentage. Such notice shall include the proposed modified payout percentage, the reasons for such modification and the effective date of such modification; and

“(B)(i) no qualified beneficiary objects to the modification of the payout percentage in writing to the trustee within 60 days of the mailing of such notice; or

“(ii) the modification of the payout percentage is approved by the appropriate district court; and

“(10) any other matters necessary for the proper functioning of the unitrust.

“(f)(1) Expenses which would be deducted from income if the trust were not a unitrust may not be deducted from the unitrust distribution.

“(2) Unless otherwise provided by the governing instrument, the unitrust distribution shall be paid from the following sources in the following order: Net income, net realized short-term capital gains, net realized long-term capital gains and the principal of the trust.

“(g) A trustee may reconvert from a unitrust to restore the power to adjust the trust without judicial procedure if:

“(1) The trustee determines that the intent of the settlor or testator and the purposes of the trust are no longer served by such conversion;

“(2) the trustee gives each qualified beneficiary of the trust written notice of the trustee's intent to reconvert from a unitrust to the power to adjust the trust and the reasons for such reconversion; and

“(3) no qualified beneficiary objects to such reconversion in writing to the trustee within 60 days of the mailing of such notice.

“(h) The trustee or, if the trustee declines to do so, a qualified beneficiary may petition the appropriate district court to:

“(1) Authorize a payout percentage of less than 3% or more than 5%;

“(2) provide for a distribution of net income, as would be determined if the trust were not a unitrust, in excess of the unitrust distribution if such distribution is necessary to preserve a tax benefit;

“(3) average the valuation of the trust's net assets over a period other than three years; and

“(4) reconvert from a unitrust. Upon a reconversion, the power to adjust under [K.S.A. 58-9-104](#) , and amendments thereto, shall be revived.

“(i) A conversion to a unitrust does not affect a provision in the governing instrument directing or authorizing the trustee to distribute principal or authorizing a qualified beneficiary to withdraw a portion or all of the principal.

“(j) Except as provided in subsection (k), a trust may not be converted into a unitrust in any of the following circumstances:

“(1) If payment of the unitrust distribution would change the amount payable to a qualified beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets.

“(2) If the unitrust distribution would be made from any amount which is permanently set aside for charitable purposes under the governing instrument and for which a federal estate or gift tax deduction has been taken, unless both income and principal are so set aside.

“(3) If:

“(A) Possessing or exercising the power to convert would cause an individual to be treated as the owner of all or part of the trust for federal income tax purposes; and

“(B) the individual would not be treated as the owner if the trustee did not possess the power to convert.

“(4) If:

“(A) Possessing or exercising the power to convert would cause all or part of the trust assets to be subject to federal estate or gift tax with respect to an individual; and

“(B) the assets would not be subject to federal estate or gift tax with respect to the individual if the trustee did not possess the power to convert.

“(5) If the conversion would result in the disallowance of a federal estate tax or gift tax marital deduction which would be allowed if the trustee did not have the power to convert.

“(6) If the trustee is a qualified beneficiary of the trust.

“(k)(1) If subsection (j)(3), (4) or (6) applies to a trustee and there is more than one trustee, a co-trustee to whom the provision does not apply may convert the trust, unless the exercise of the power by the remaining trustee or trustees is prohibited by the governing instrument.

“(2) If subsection (j)(3), (4) or (6) applies to all the trustees, the trustees may petition the appropriate district court to direct a conversion.

“(l)(1) A trustee may release the power conferred by subsection (a) to convert to a unitrust if any of the following apply:

“(A) The trustee is uncertain about whether possessing or exercising the power will cause a result described in subsection (j)(3), (4) or (5).

“(B) The trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (j).

“(2) The release may be permanent or for a specified period, including a period measured by the life of an individual.

“(l) [FN1] This section shall be part of and supplemental to the uniform principal and income act (1997). ”

“ **58-9-106. Income standard, no presumption concerning fiduciary duty**

“(a) The income standard established in [K.S.A. 58-9-105](#) , and amendments thereto, does not create a presumption or implication that a trustee who distributes less than 3% or more than 5% is breaching a trustee's fiduciary duty to a beneficiary.

“(b) This section shall be part of and supplemental to the uniform principal and income act (1997). ”

**KENTUCKY**

Repealed the Uniform Principal and Income Act (1931) ( [KRS 386.190](#) to [386.340](#) ), and enacted in lieu thereof the Uniform Principal and Income Act (1962) ( [KRS 386.191](#) to [386.349](#) ) by L.1992, c. 217, effective January 1, 1993.

Repealed the Uniform Principal and Income Act (1962) ( [KRS 386.191](#) to [386.349](#) ), and enacted in lieu thereof the Uniform Principal and Income Act (1997) ( [KRS 386.450](#) to [386.504](#) ) by L.2004, c. 158, effective January 1, 2005.

## MAINE

Adds a section, which provides:

### “ § 7-705. Power to convert to unitrust

“(a) Unless expressly prohibited by the terms of the trust, a trustee may release the power to adjust under section 7-704 and convert a trust into a unitrust as described in this section if all of the following apply.

“(1) The trustee determines that the conversion will improve the ability of the trustee to carry out the intent of the settlor and the purposes of the trust.

“(2) The trustee gives written notice of the trustee's intention to release the power to adjust and to convert the trust into a unitrust and of how the unitrust will operate, including what initial decisions the trustee will make under this section, to the following beneficiaries:

“(i) All beneficiaries who are currently eligible to receive income from the trust; and

“(ii) All beneficiaries who would receive, if no power of appointment were exercised, a distribution of principal if the trust were to terminate immediately prior to the giving of notice.

“(3) There is at least one beneficiary eligible to receive income and at least one beneficiary who would receive principal as described in paragraph (2).

“(4) No beneficiary objects to the conversion to a unitrust in a writing delivered to the trustee within 60 days of the mailing of the notice required under paragraph (2).

“(b) If a beneficiary timely objects to the conversion to a unitrust or if the requirements of subsection (a), paragraph (3) are not met, the trustee may petition the court to approve the conversion to a unitrust. A beneficiary may request a trustee to convert to a unitrust and, if the trustee does not convert, the beneficiary may petition the court to order the conversion. Upon receipt of a petition by the trustee or a beneficiary, the court shall approve the conversion or direct the requested conversion if the court concludes that the conversion will better enable the trustee to carry out the intent of the settlor and the purposes of the trust.

“(c) In deciding whether to exercise the power conferred by subsection (a), a trustee shall consider the following factors to the extent they are relevant:

“(1) The nature, purpose and expected duration of the trust;

“(2) The identity and circumstances of the beneficiaries and, to the extent reasonably known to the trustee, the needs of the beneficiaries for present and future distributions authorized or required by the terms of the trust;

“(3) The needs for liquidity, regularity of income and preservation and appreciation of capital;

“(4) The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property or real property; and the extent to which an asset is used by a beneficiary;

“(5) Whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

“(6) The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and

“(7) The anticipated tax consequences of the conversion.

“(d) After a trust is converted to a unitrust, all of the following apply.

“(1) The trustee shall follow an investment policy seeking a total return for the investments held by the trust, whether the return is to be derived from appreciation of capital, from earnings and distributions from capital or from both.

“(2) The trustee shall make regular distributions in accordance with the terms of the trust construed in accordance with the provisions of this section.

“(3) The term ‘income’ in the terms of the trust means an annual distribution, known as the ‘unitrust distribution,’ equal to 4%, known as the ‘payout percentage,’ of the net fair market value of the trust’s assets, whether such assets would be considered income or principal under other provisions of this Part, averaged over the lesser of the 3 preceding years or the period during which the trust has been in existence.

“(e) The trustee may in the trustee’s discretion from time to time determine all of the following:

“(1) The effective date of a conversion to a unitrust;

“(2) The provisions for prorating a unitrust distribution for a short year in which a beneficiary’s right to payment commences or ceases;

“(3) The frequency of unitrust distributions during the year;

“(4) The effect of other payments from or contributions to the trust on the trust’s valuation;

“(5) Whether to value the trust’s assets annually or more frequently;

“(6) What valuation dates to use;

“(7) How frequently to value nonliquid assets and whether to estimate their value;

“(8) Whether to omit from the calculation of the unitrust distribution trust property occupied or possessed by a beneficiary; and

“(9) Any other matters necessary for the proper functioning of the unitrust.

“(f) After a trust is converted to a unitrust, the following allocation rules apply to the trust.

“(1) Expenses that would be deducted from income if the trust were not a unitrust may not be deducted from the unitrust distribution.

“(2) Unless otherwise provided by the terms of the trust, the unitrust distribution must be paid from net income, as net income would be determined if the trust were not a unitrust. To the extent net income is insufficient, the unitrust distribution must be paid from net realized short-term capital gains. To the extent net income and net realized short-term capital gains are insufficient, the unitrust distribution must be paid from net realized long-term capital gains. To the extent net income and net realized short-term and long-term capital gains are insufficient, the unitrust distribution must be paid from the principal of the trust.

“(g) The trustee or, if the trustee declines to do so, a beneficiary may petition the court to do any of the following:

“(1) Select a payout percentage other than 4%;

“(2) Provide for a distribution of net income, as would be determined if the trust were not a unitrust, in excess of the unitrust distribution if such distribution is necessary to preserve a tax benefit;

“(3) Average the valuation of the trust's net assets over a period other than 3 years; or

“(4) Reconvert from a unitrust. Upon a reconversion, the power to adjust under section 7-704 is revived.

“(h) A conversion to a unitrust does not affect a provision in the terms of the trust directing or authorizing the trustee to distribute principal or authorizing a beneficiary to withdraw a portion or all of the principal.

“(i) A trustee may not convert a trust into a unitrust if any of the following applies:

“(1) Payment of the unitrust distribution would change the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

“(2) The unitrust distribution would be made from any amount that is permanently set aside for charitable purposes under a will or the terms of the trust unless both income and principal are so set aside;

“(3) The trustee's possession or exercise of the power to convert would cause an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to convert;

“(4) The trustee's possession or exercise of the power to convert would cause all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to convert;

“(5) The conversion would result in the disallowance of an estate tax or gift tax marital deduction that would be allowed if the trustee did not have the power to convert; or

“(6) The trustee is a beneficiary of the trust.

“(j) If subsection (i), paragraph (3), (4) or (6) applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may convert the trust unless the exercise of the power by the remaining trustee or trustees is prohibited by the terms of the trust. Terms of the trust requiring that if there are 2 or more trustees serving they must act by agreement or by any majority or percentage consensus may not be construed to prohibit the remaining trustee or trustees from exercising the power to convert. If subsection (i), paragraph (3), (4) or (6) applies to all the trustees, the trustees may petition the court to direct a conversion.

“(k) A trustee may release the power conferred by subsection (a) to convert to a unitrust if the trustee is uncertain about whether possessing or exercising the power will cause a result described in subsection (i), paragraph (3), (4) or (5) or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (i). The release of the power to convert to a unitrust may be permanent or for a specified period, including a period measured by the life of an individual.”

## **MAINE**

Enacted 2008 amendments in 2011, c. 256, effective January 1, 2012.

Added section which provides:

### **“ 7-705. Power to convert to unitrust**

“(a) Unless expressly prohibited by the terms of the trust, a trustee may release the power to adjust under section 7-704 and convert a trust into a unitrust as described in this section if all of the following apply.

“(1) The trustee determines that the conversion will improve the ability of the trustee to carry out the intent of the settlor and the purposes of the trust.

“(2) The trustee gives written notice of the trustee's intention to release the power to adjust and to convert the trust into a unitrust and of how the unitrust will operate, including what initial decisions the trustee will make under this section, to the following beneficiaries:

“(i) All beneficiaries who are currently eligible to receive income from the trust; and

“(ii) All beneficiaries who would receive, if no power of appointment were exercised, a distribution of principal if the trust were to terminate immediately prior to the giving of notice.

“(3) There is at least one beneficiary eligible to receive income and at least one beneficiary who would receive principal as described in paragraph (2).

“(4) No beneficiary objects to the conversion to a unitrust in a writing delivered to the trustee within 60 days of the mailing of the notice required under paragraph (2).

“(b) If a beneficiary timely objects to the conversion to a unitrust or if the requirements of subsection (a), paragraph (3) are not met, the trustee may petition the court to approve the conversion to a unitrust. A beneficiary may request a trustee to convert to a unitrust and, if the trustee does not convert, the beneficiary may petition the court to order the conversion. Upon receipt of a petition by the trustee or a beneficiary, the court shall approve the conversion or direct the requested conversion if the court concludes that the conversion will better enable the trustee to carry out the intent of the settlor and the purposes of the trust.

“(c) In deciding whether to exercise the power conferred by subsection (a), a trustee shall consider the following factors to the extent they are relevant:

“(1) The nature, purpose and expected duration of the trust;

“(2) The identity and circumstances of the beneficiaries and, to the extent reasonably known to the trustee, the needs of the beneficiaries for present and future distributions authorized or required by the terms of the trust;

“(3) The needs for liquidity, regularity of income and preservation and appreciation of capital;

“(4) The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property or real property; and the extent to which an asset is used by a beneficiary;

“(5) Whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

“(6) The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and

“(7) The anticipated tax consequences of the conversion.

“(d) After a trust is converted to a unitrust, all of the following apply.

“(1) The trustee shall follow an investment policy seeking a total return for the investments held by the trust, whether the return is to be derived from appreciation of capital, from earnings and distributions from capital or from both.

“(2) The trustee shall make regular distributions in accordance with the terms of the trust construed in accordance with the provisions of this section.

“(3) The term “income” in the terms of the trust means an annual distribution, known as the “unitrust distribution,” equal to 4%, known as the “payout percentage,” of the net fair market value of the trust's assets, whether such assets would be considered income or principal under other provisions of this Part, averaged over the lesser of the 3 preceding years or the period during which the trust has been in existence.

“(e) The trustee may in the trustee's discretion from time to time determine all of the following:

“(1) The effective date of a conversion to a unitrust;

“(2) The provisions for prorating a unitrust distribution for a short year in which a beneficiary's right to payment commences or ceases;

“(3) The frequency of unitrust distributions during the year;

“(4) The effect of other payments from or contributions to the trust on the trust's valuation;

“(5) Whether to value the trust's assets annually or more frequently;

“(6) What valuation dates to use;

“(7) How frequently to value nonliquid assets and whether to estimate their value;

“(8) Whether to omit from the calculation of the unitrust distribution trust property occupied or possessed by a beneficiary; and

“(9) Any other matters necessary for the proper functioning of the unitrust.

“(f) After a trust is converted to a unitrust, the following allocation rules apply to the trust.

“(1) Expenses that would be deducted from income if the trust were not a unitrust may not be deducted from the unitrust distribution.

“(2) Unless otherwise provided by the terms of the trust, the unitrust distribution must be paid from net income, as net income would be determined if the trust were not a unitrust. To the extent net income is insufficient, the unitrust distribution must be paid from net realized short-term capital gains. To the extent net income and net realized short-term capital gains are insufficient, the unitrust distribution must be paid from net realized long-term capital gains. To the extent net income and net realized short-term and long-term capital gains are insufficient, the unitrust distribution must be paid from the principal of the trust.

“(g) The trustee or, if the trustee declines to do so, a beneficiary may petition the court to do any of the following:

“(1) Select a payout percentage other than 4%;

“(2) Provide for a distribution of net income, as would be determined if the trust were not a unitrust, in excess of the unitrust distribution if such distribution is necessary to preserve a tax benefit;

“(3) Average the valuation of the trust's net assets over a period other than 3 years; or

“(4) Reconvert from a unitrust. Upon a reconversion, the power to adjust under section 7-704 is revived.

“(h) A conversion to a unitrust does not affect a provision in the terms of the trust directing or authorizing the trustee to distribute principal or authorizing a beneficiary to withdraw a portion or all of the principal.

“(i) A trustee may not convert a trust into a unitrust if any of the following applies:

“(1) Payment of the unitrust distribution would change the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

“(2) The unitrust distribution would be made from any amount that is permanently set aside for charitable purposes under a will or the terms of the trust unless both income and principal are so set aside;

“(3) The trustee's possession or exercise of the power to convert would cause an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to convert;

“(4) The trustee's possession or exercise of the power to convert would cause all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to convert;

“(5) The conversion would result in the disallowance of an estate tax or gift tax marital deduction that would be allowed if the trustee did not have the power to convert; or

“(6) The trustee is a beneficiary of the trust.

“(j) If subsection (i), paragraph (3), (4) or (6) applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may convert the trust unless the exercise of the power by the remaining trustee or trustees is prohibited by the terms of the trust. Terms of the trust requiring that if there are 2 or more trustees serving they must act by agreement or by any majority or percentage consensus may not be construed to prohibit the remaining trustee or trustees from exercising the power to convert. If subsection (i), paragraph (3), (4) or (6) applies to all the trustees, the trustees may petition the court to direct a conversion.

“(k) A trustee may release the power conferred by subsection (a) to convert to a unitrust if the trustee is uncertain about whether possessing or exercising the power will cause a result described in subsection (i), paragraph (3), (4) or (5) or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (i). The release of the power to convert to a unitrust may be permanent or for a specified period, including a period measured by the life of an individual.”

## MARYLAND

Repealed the Uniform Principal and Income Act (1962) ( [Code, Estates and Trusts, §§ 14-201 to 14-214](#) ), and enacted in lieu thereof the Uniform Principal and Income Act (1997) ( [Code, Estates and Trusts, §§ 15-501 to 15-530](#) ) by L.2000, c. 292, effective October 1, 2000.

Adds sections, which provide:

### “ 15-502.1. Unitrusts

“(a) A trustee may convert a trust into a unitrust as described in this section if:

“(1) The trustee receives a written request from a beneficiary to exercise the power conferred by this subsection to convert to a unitrust;

“(2) The trustee invests and manages the trust assets in the manner set forth in § 15-114 (b) and (c) of this title;

“(3) The trustee determines that the conversion will enable the trustee to better carry out the intent of the person who created the trust and the purposes of the trust; and

“(4)(i) The trustee complies with the notice requirements of § 15-502.3 of this subtitle and all qualified beneficiaries consent; or

“(ii) A court reviews a petition filed under § 15-502.3 of this subtitle and approves the proposed decision to convert to a unitrust.



“(b) In deciding whether to exercise the power conferred by subsection (a) of this section, a trustee shall consider all factors relevant to the trust and its beneficiaries, including the following factors to the extent they are relevant:

“(1) The nature, purpose, and expected duration of the trust;

“(2) The intent of the creator of the trust;

“(3) The identity and circumstances of the beneficiaries;

“(4) The needs for liquidity, regularity of income, and preservation and appreciation of capital;

“(5) The assets held in the trust and:

“(i) The extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property;

“(ii) The extent to which an asset is used by a beneficiary; and

“(iii) Whether an asset was acquired by the trustee or received from the creator of the trust;

“(6) Whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

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

“(8) The anticipated tax consequences of a unitrust conversion.

“(c) After a trust is converted to a unitrust, all of the following apply:

“(1) The income of the trust that the income beneficiary is entitled to receive under the governing instrument shall be an annual unitrust distribution equal to a payout percentage of 4% of the net fair market value of the trust's assets, whether those assets would be considered income or principal under any other provision of this subtitle, averaged over the lesser of:

“(i) The 3 preceding years; or

“(ii) The period during which the trust has been in existence;

“(2) Expenses that would be deducted from income if the trust were not a unitrust may not be deducted from the unitrust distribution;

“(3) Any provision in the governing instrument directing or authorizing the trustee to distribute principal or authorizing a beneficiary to withdraw a portion or all of the principal may not be affected by the conversion to a unitrust;

“(4) Unless otherwise provided by the governing instrument, the unitrust distribution shall be paid first from net income of the trust, as net income would be determined if the trust were not a unitrust, and then from principal; and

“(5) The trustee may determine to account for the unitrust distribution in accordance with the following rules:

“(i) To the extent net income is insufficient, the unitrust distribution shall be paid from net realized short-term capital gains;

“(ii) To the extent income and net realized short-term capital gains are insufficient, the unitrust distribution shall be paid from net realized long-term capital gains; and

“(iii) To the extent income and net realized short-term and long-term capital gains are insufficient, the unitrust distribution shall be paid from the principal of the trust.

“(d) The trustee shall determine:

“(1) The effect of other payments from or contributions to the trust on the trust's valuation;

“(2) How frequently to value nonliquid assets and whether to estimate their value; and

“(3) Whether to omit from the calculations trust property occupied or possessed by a beneficiary.

“(e) If authorized by a court order, in accordance with a petition filed under § 15-502.3 of this subtitle, the converted unitrust may provide that:

“(1) The payout percentage is different than 4%;

“(2) A distribution of net income, as would be determined if the trust were not a unitrust, shall be made if in excess of the unitrust distribution and if that distribution is necessary to preserve a tax benefit; or

“(3) Valuation of the trust's net assets shall be averaged over a period other than 3 years.

“(f) A trustee may not convert a trust into a unitrust under subsection (a) of this section if:

“(1) The conversion would result in the disallowance of an estate tax or gift tax marital deduction that would be allowed, in whole or in part, if the trustee did not have the power to convert;

“(2) Payment of the unitrust distribution would change the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

“(3) The unitrust distribution would be made from any amount that is permanently set aside for charitable purposes under the governing instrument and for which a federal estate or gift tax deduction has been taken, unless both income and principal are so set aside;

“(4) Possessing or exercising the power to convert would cause an individual to be treated as the owner of all or part of the trust for federal income tax purposes and the individual would not be treated as the owner if the trustee did not possess the power to convert;

“(5) Possessing or exercising the power to convert would cause all or part of the trust assets to be subject to estate or gift tax with respect to an individual and the assets would not be subject to estate or gift tax with respect to the individual if the trustee did not possess the power to convert; or

“(6) The trustee is a beneficiary of the trust.

“(g)(1) If subsection (f)(4), (5), or (6) of this section applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may convert the trust to a unitrust under subsection (a) of this section, unless exercise of the power by the remaining trustee or trustees is prohibited by the governing instrument.

“(2) If subsection (f)(4), (5), or (6) of this section applies to all the trustees, the trustees may petition a court under § 15-502.3 of this subtitle to direct a conversion under subsection (a) of this section.

“(h)(1) A trustee may release the power conferred by subsection (a) of this section to convert to a unitrust if:

“(i) The trustee is uncertain about whether possessing or exercising the power will cause a result described in subsection (f) (4), (5), or (6) of this section; or

“(ii) The trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (f) of this section.

“(2) A release described in paragraph (1) of this subsection may be permanent or for a specified period, including a period measured by the life of an individual.

“(i) If the trustee receives a written request from a beneficiary to reconvert a trust from a unitrust, the trustee may reconvert a trust from a unitrust if:

“(1) The trustee complies with the notice requirements of § 15-502.3 of this subtitle and all qualified beneficiaries consent to reconvert from a unitrust; or

“(2) A court reviews a petition filed under § 15-502.3 of this subtitle and approves the proposed decision to reconvert from a unitrust.

“(j) Unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power conferred by subsection (a) of this section, the terms of a trust that limit the power of a trustee to convert to a unitrust do not affect the application of this section.”

“ **15-502.3. Notice of proposed decisions; review**

“(a) In this section, ‘qualified beneficiary’ means:

“(1) A person who, on the date that notice is given by the trustee in accordance with subsection (b) of this section:

“(i) Is a distributee or permissible distributee of the income or principal of the trust estate;

“(ii) Would be a distributee or permissible distributee of the income or principal of the trust estate if the interests of the distributees described in item (i) of this paragraph terminated on the date that notice is given by the trustee; or

“(iii) Would be a distributee or permissible distributee of the income or principal of the trust estate if the trust were to terminate on the date that notice is given by the trustee and no powers of appointment were exercised;

“(2) If an individual described in paragraph (1) of this subsection is a minor, the individual's natural or legal guardian; or

“(3) If an individual described in paragraph (1) of this subsection is a disabled person, as defined in § 13-101 of this article, any person acting on behalf of the individual under a guardianship, conservatorship, or committee.

“(b) A trustee shall give notice of a proposed decision regarding the exercise or nonexercise of the discretionary power conferred under:

“(1) Section 15-502.1(a) of this subtitle to convert a trust to a unitrust;

“(2) Section 15-502.1(i) of this subtitle to reconvert from a unitrust; or

“(3) Section 15-502.2(a) of this subtitle to adjust between principal and income.

“(c) The trustee shall mail the notice required under subsection (b) of this section to:

“(1) All qualified beneficiaries, except that notice of the proposed decision need not be given to any qualified beneficiary who consents in writing to the proposed decision at any time before the notice is mailed; and

“(2) The creator of the trust, if living.

“(d) The notice of proposed decision shall state that it is given in accordance with this section and shall state the following:

“(1) The name and mailing address of the trustee, together with the name and telephone number of a person who may be contacted for additional information;

“(2) A description of the decision proposed to be taken and, if the proposed decision also includes an action that requires an order of a court in accordance with § 15-502.1 or § 15-502.2 of this subtitle, a description of that action;

“(3) The time within which written consents to the proposed decision may be given to the trustee, which shall be at least 30 days after the mailing of the notice of proposed decision; and

“(4) The date on or after which the proposed decision may be taken or is effective, which shall be after the end of the time within which consents to the proposed decision may be given to the trustee.

“(e) If the trustee receives the written consent of all qualified beneficiaries, then the trustee shall undertake the proposed decision unless the proposed decision also includes an action that requires an order of a court in accordance with § 15-502.1 or § 15-502.2 of this subtitle.

“(f) If any qualified beneficiary does not consent to the proposed decision, or if the proposed decision includes an action that requires an order of a court under § 15-502.1 or § 15-502.2 of this subtitle, then the trustee or any qualified beneficiary may file a petition to review the proposed decision in the circuit court for the county in which the trustee resides in this State, if the trustee is an individual, or in which the principal place of business of the trustee is located in this State.

“(g)(1) In a proceeding under subsection (f) of this section:

“(i) With respect to the power to convert to a unitrust under § 15-502.1(a) of this subtitle or to reconvert from a unitrust under § 15-502.1(i) of this subtitle, the sole remedy in the proceeding is to direct, deny, or revise the conversion to a unitrust or reconversion from a unitrust; and

“(ii) With respect to the power to adjust between principal and income under § 15-502.2(a) of this subtitle, the sole remedy in the proceeding is to direct, deny, or revise the adjustment between principal and income.

“(2) Notice of the proceeding shall be given by the petitioner to the trustee and to all qualified beneficiaries.

“(h) Any action taken or not taken in accordance with the provisions of this section shall be binding on the trustee, all qualified beneficiaries, and any other person who has a present or future interest in the trust, vested or contingent, including any unborn or unascertained beneficiary, and the trustee is not liable to any person for that action taken or not taken.”

## **MICHIGAN**

Repealed the Uniform Principal and Income Act (1962) ( [M.C.L.A. §§ 555.51](#) to [555.68](#) ), and enacted in lieu thereof the Uniform Principal and Income Act (1997) ( [M.C.L.A. §§ 555.501](#) to [555.1005](#) ) by L.2004, c. 159, effective September 1, 2004.

## **MINNESOTA**

While Minnesota's act remains a substantial adoption of the provisions of the Uniform Principal and Income Act (1962), various amendments and newly enacted sections have adopted several provisions of the Uniform Principal and Income Act (1997). Therefore, Minnesota will be carried in the Table of Adopting Jurisdictions for both acts.

While the Minnesota act contains adoptions of several provisions of the Uniform Principal and Interest Act (1997), it departs from the official text in such manner that the various instances of substitution, omission, and additional matter cannot be clearly indicated by statutory notes.

## **MISSISSIPPI**

Repealed the Uniform Principal and Income Act (1962) ( [Code 1972, §§ 91-17-1 to 91-17-31](#) ), and enacted in lieu thereof the Uniform Principal and Income Act (1997) ( [Miss. Code Ann. §§ 91-17-101 to 91-17-604](#) ) by L.2012, c. 351, effective January 1, 2013.

## MISSOURI

Repealed the Uniform Principal and Income Act (1962) ( [V.A.M.S. §§ 456.700 to 456.820](#) ), and enacted in lieu thereof the Uniform Principal and Income Act (1997) ( [V.A.M.S. §§ 469.401 to 469.467](#) ) by L.2001, H.B. No. 241, approved July 10, 2001.

Adds sections, which provide:

### “ 469.402. Application of provisions

“The provisions of [sections 456.3-301 to 456.3-305, RSMo](#) , shall apply to [sections 469.401 to 469.467](#) for all purposes.”

### “ 469.409. Barring of claims for breach of duty to impartially administer a trust; applicable rules

“1. Any claim for breach of a trustee's duty to impartially administer a trust related, directly or indirectly, to an adjustment made by a fiduciary to the allocation between principal and income pursuant to subsection 1 of section 469.405 or any allocation made by the fiduciary pursuant to any authority or discretion specified in subsection 1 of section 469.403, unless previously barred by adjudication, consent or other limitation, shall be barred as provided in this section.

“(1) Any such claim brought by a qualified beneficiary is barred if not asserted in a judicial proceeding commenced within two years after the trustee has sent a report to that qualified beneficiary that adequately discloses the facts constituting the claim.

“(2) Any such claim brought by a beneficiary (other than a qualified beneficiary) with any interest whatsoever in the trust, no matter how remote or contingent, or whether or not the beneficiary is ascertainable or has the capacity to contract, is barred if not asserted in a judicial proceeding commenced within two years after the first to occur of:

“(a) The date the trustee sent a report to all qualified beneficiaries that adequately discloses the facts constituting the claim; or

“(b) The date the trustee sent a report to a person that represents the beneficiary under the provisions of subdivision (2) of subsection 2 of this section.

“2. For purposes of this section the following rules shall apply:

“(1) A report adequately discloses the facts constituting a claim if it provides sufficient information so that the beneficiary should know of the claim or reasonably should have inquired into its existence;

“(2) Section 469.402 shall apply in determining whether a beneficiary (including a qualified beneficiary) has received notice for purposes of this section;

“(3) The determination of the identity of all qualified beneficiaries shall be made on the date the report is deemed to have been sent; and

“(4) This section does not preclude an action to recover for fraud or misrepresentation related to the report.”

## MISSOURI

Enacted 2008 amendments in 2011, S.B. 59, effective August 28, 2011.

Added section 469.411 now provides:

**“ 469.411. Determination of unitrust amount--reduction for distributions--adjustments to net fair market value--definitions--determination of average net fair market value--applicability of section--net income of trust becomes unitrust amount, when**

“1. (1) If the provisions of this section apply to a trust, the unitrust amount determined for each accounting year of the trust shall be a percentage between three and five percent of the average net fair market value of the trust, as of the first day of the trust's current accounting year. The percentage applicable to a trust shall be that percentage specified by the terms of the governing instrument or by the election made in accordance with subdivision (2) of subsection 5 of this section.

“(2) The unitrust amount for the current accounting year computed pursuant to this section shall be proportionately reduced for any distributions, in whole or in part, other than distributions of the unitrust amount, and for any payments of expenses, including debts, disbursements and taxes, from the trust within a current accounting year that the trustee determines to be material and substantial, and shall be proportionately increased for the receipt, other than a receipt that represents a return on investment, of any additional property into the trust within a current accounting year;

“(3) For purposes of this section, the net fair market values of the assets held in the trust on the first business day of a prior accounting quarter shall be adjusted to reflect any reduction, in the case of a distribution or payment, or increase, in the case of a receipt, for the prior accounting year pursuant to subdivision (1) of this subsection, as if the distribution, payment or receipt had occurred on the first day of the prior accounting year;

“(4) In the case of a short accounting period, the trustee shall prorate the unitrust amount on a daily basis;

“(5) In the case where the net fair market value of an asset held in the trust has been incorrectly determined in any quarter, the unitrust amount shall be increased in the case of an undervaluation, or be decreased in the case of an overvaluation, by an amount equal to the difference between the unitrust amount determined based on the correct valuation of the asset and the unitrust amount originally determined.

“2. As used in this section, the following terms mean:

“(1) “Average net fair market value”, a rolling average of the fair market value of the assets held in the trust on the first business day of the lessor of the number of accounting quarters of the trust from the date of inception of the trust to the determination of the trust's average net fair market value, or twelve accounting quarters of the trust, regardless of whether this section applied to the ascertainment of net income for all valuation quarters;

“(2) “Current accounting year”, the accounting period of the trust for which the unitrust amount is being determined.

“3. In determining the average net fair market value of the assets held in the trust, there shall not be included the value of:

“(1) Any residential property or any tangible personal property that, as of the first business day of the current valuation year, one or more income beneficiaries of the trust have or had the right to occupy, or have or had the right to possess or control, other than in a capacity as trustee, and instead the right of occupancy or the right to possession or control shall be deemed to be the unitrust amount with respect to the residential property or the tangible personal property; or

“(2) Any asset specifically given to a beneficiary under the terms of the trust and the return on investment on that asset, which return on investment shall be distributable to the beneficiary.

“4. In determining the average net fair market value of the assets held in the trust pursuant to subsection 1 of this section, the trustee shall, not less often than annually, determine the fair market value of each asset of the trust that consists primarily of real property or other property that is not traded on a regular basis in an active market by appraisal or other reasonable method or estimate, and that determination, if made reasonably and in good faith,

shall be conclusive as to all persons interested in the trust. Any claim based on a determination made pursuant to this subsection shall be barred if not asserted in a judicial proceeding brought by any beneficiary with any interest whatsoever in the trust within two years after the trustee has sent a report to all qualified beneficiaries that adequately discloses the facts constituting the claim. The rules set forth in subsection 2 of section 469.409 shall apply to the barring of claims pursuant to this subsection.

“5. This section shall apply to the following trusts:

“(1) Any trust created after August 28, 2001, with respect to which the terms of the trust clearly manifest an intent that this section apply;

“(2) Any trust created under an instrument that became irrevocable on, before, or after August 28, 2001, if the trustee, in the trustee's discretion, elects to have this section apply unless the instrument creating the trust specifically prohibits an election under this subdivision. The trustee shall deliver notice to all qualified beneficiaries and the settlor of the trust, if he or she is then living, of the trustee's intent to make such an election at least sixty days before making that election. The trustee shall have sole authority to make the election. Section 469.402 shall apply for all purposes of this subdivision. An action or order by any court shall not be required. The election shall be made by a signed writing delivered to the settlor of the trust, if he or she is then living, and to all qualified beneficiaries. The election is irrevocable, unless revoked by order of the court having jurisdiction of the trust. The election may specify the percentage used to determine the unitrust amount pursuant to this section, provided that such percentage is between three and five percent, or if no percentage is specified, then that percentage shall be three percent. In making an election pursuant to this subsection, the trustee shall be subject to the same limitations and conditions as apply to an adjustment between income and principal pursuant to subsections 3 and 4 of section 469.405; and

“(3) No action of any kind based on an election made by a trustee pursuant to subdivision (2) of this subsection shall be brought against the trustee by any beneficiary of that trust three years from the effective date of that election.

“6. (1) Once the provisions of this section become applicable to a trust, the net income of the trust shall be the unitrust amount.

“(2) Unless otherwise provided by the governing instrument, the unitrust amount distributed each year shall be paid from the following sources for that year up to the full value of the unitrust amount in the following order:

“(a) Net income as determined if the trust were not a unitrust;

“(b) Other ordinary income as determined for federal income tax purposes;

“(c) Assets of the trust principal for which there is a readily available market value; and

“(d) Other trust principal.

“(3) Additionally, the trustee may allocate to trust income for each taxable year of the trust, or portion thereof:

“(a) Net short-term capital gain described in the Internal Revenue Code, [26 U.S.C. Section 1222\(5\)](#) , for such year, or portion thereof, but only to the extent that the amount so allocated together with all other amounts to trust income, as determined under the provisions of this chapter without regard to this section, for such year, or portion thereof, does not exceed the unitrust amount for such year, or portion thereof;

“(b) Net long-term capital gain described in the Internal Revenue Code, [26 U.S.C. Section 1222\(7\)](#) , for such year, or portion thereof, but only to the extent that the amount so allocated together with all other amounts, including amounts described in paragraph (a) of this subdivision, allocated to trust income for such year, or portion thereof, does not exceed the unitrust amount for such year, or portion thereof.

"7. A trust with respect to which this section applies on August 28, 2011, may calculate the unitrust amount in accordance with the provisions of this section, as it existed either before or after such date, as the trustee of such trust shall determine in a writing kept with the records of the trust in the trustee's discretion."

## **MONTANA**

Repealed the Uniform Principal and Income Act (1962) ( [MCA §§ 72-34-401](#) to [72-34-416](#) ), and enacted in lieu thereof the Uniform Principal and Income Act (1997) ( [MCA §§ 72-34-421](#) to [72-34-453](#) ) by L.2003, c. 506, approved April 25, 2003.

Adds sections, which provide:

### **" 72-34-425. Notice of proposed action -- objections by beneficiary -- liability of trustee -- proceedings**

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

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

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

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

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

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

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

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

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

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

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

"(7) If the trustee receives a written objection within the applicable period, either the trustee or a beneficiary may petition the court to have the proposed action taken as proposed, taken with modifications, or denied. In the proceeding, a beneficiary objecting to the proposed action has the burden of proving that the trustee's proposed action should not be taken. A beneficiary who has not objected is not estopped from opposing the proposed action in the proceeding. If the trustee decides not to implement the proposed action, the trustee shall notify the beneficiaries of the decision not to take the action and the reasons for the decision, and the trustee's decision not to implement the proposed action does not itself give rise to liability to any current or future beneficiary. A beneficiary may petition the court to have the action taken and has the burden of proving that it should be taken."

### **" 72-34-426. Proceedings relating to adjustments -- remedy**



"In a proceeding with respect to a trustee's exercise or nonexercise of the power to make an adjustment under 72-34-424, the sole remedy is to direct, deny, or revise an adjustment between principal and income."

## MONTANA

Enacted 2008 amendments in 2011, c. 285, effective January 1, 2012.

## NEBRASKA

Repealed the Uniform Principal and Income Act (1962) (R.R.S.1943, §§ 30-3101 to 30-3115), and enacted in lieu thereof the Uniform Principal and Income Act (1997) (R.R.S.1943, §§ 30-3116 to 30-3149) by L.2001, [LB 56](#) , effective September 1, 2001.

Adds sections, which provide:

### " § 30-3119.01. Conversion to total return trust.

"(1) Unless expressly prohibited by a trust, a trustee may release the power to adjust described in section 30-3119 and convert a trust to a total return trust as described in this section if all of the following apply:

"(a) The trustee determines that the conversion will enable the trustee to better carry out the intent of the settlor and the purpose of the trust;

"(b) The trustee sends written notice of the trustee's decision to convert the trust to a total return trust specifying a prospective effective date for the conversion which shall not be sooner than sixty days after the notice is sent and which shall include a copy of this section of law and shall specifically recite the time period within which a timely objection may be made. Such notice shall be sent to the qualified beneficiaries determined as of the date the notice is sent and assuming nonexercise of all powers of appointment;

"(c) There are one or more legally competent beneficiaries who are currently eligible to receive income from the trust and one or more legally competent beneficiaries who would receive a distribution of principal if the trust were to terminate immediately before the notice is given; and

"(d) No beneficiary has objected in writing to the conversion to a total return trust and delivered such objection to the trustee within sixty days after the notice was sent.

"(2) Conversion to a total return trust or reconversion to an income trust may be made by agreement between the trustee and all qualified beneficiaries of the trust. The trustee and all qualified beneficiaries of the trust may also agree to modify the distribution percentage, except that the trustee and the qualified beneficiaries may not agree to a distribution percentage of less than three percent or greater than five percent. The agreement may include any other actions a court could properly order pursuant to subsection (7) of this section.

"(3)(a) The trustee may, for any reason, elect to petition the court to order conversion to a total return trust including, without limitation, the reason that conversion under subsection (1) of this section is unavailable because:

"(i) A beneficiary timely objects to the conversion to a total return trust;

"(ii) There are no legally competent beneficiaries who are currently eligible to receive income from the trust; or

"(iii) There are no legally competent beneficiaries who would receive a distribution of principal if the trust were to terminate immediately.

"(b) A beneficiary may request the trustee to convert to a total return trust or adjust the distribution percentage pursuant to this subsection. If the trustee declines or fails to act within six months after receiving a written request from a beneficiary to do so, the beneficiary may petition the court to order the conversion or adjustment.

“(c) The trustee may petition the court prospectively to reconvert from a total return trust or to adjust the distribution percentage if the trustee determines that the reconversion or adjustment will enable the trustee to better carry out the purposes of the trust. A beneficiary may request the trustee to petition the court prospectively to reconvert from a total return trust or adjust the distribution percentage. If the trustee declines or fails to act within six months after receiving a written request from a beneficiary to do so, the beneficiary may petition the court to order the reconversion or adjustment.

“(d)(i) In a judicial proceeding instituted under this subsection, the trustee may present opinions and reasons concerning:

“(A) The trustee's support for or opposition to a conversion to a total return trust, a reconversion from a total return trust, or an adjustment of the distribution percentage of a total return trust, including whether the trustee believes conversion, reconversion, or adjustment of the distribution percentage would enable the trustee to better carry out the purposes of the trust; and

“(B) Any other matter relevant to the proposed conversion, reconversion, or adjustment of the distribution percentage.

“(ii) A trustee's actions undertaken in accordance with this subsection shall not be deemed improper or inconsistent with the trustee's duty of impartiality unless the court finds from all the evidence that the trustee acted in bad faith.

“(e) The court shall order conversion to a total return trust, reconversion prospectively from a total return trust, or adjustment of the distribution percentage of a total return trust if the court determines that the conversion, reconversion, or adjustment of the distribution percentage will enable the trustee to better carry out the purposes of the trust.

“(f) If a conversion to a total return trust is made pursuant to a court order, the trustee may reconvert the trust to an income trust only:

“(i) Pursuant to a subsequent court order; or

“(ii) By filing with the court an agreement made pursuant to subsection (2) of this section to reconvert to an income trust.

“(g) Upon a reconversion the power to adjust, as described in section 30-3119 and as it existed before the conversion, shall be revived.

“(h) An action may be taken under this subsection no more frequently than every two years, unless a court for good cause orders otherwise.

“(4)(a) During the time that a trust is a total return trust, the trustee shall administer the trust in accordance with the provisions of this subsection as follows, unless otherwise expressly provided by the terms of the trust:

“(i) The trustee shall invest the trust assets seeking a total return without regard to whether the return is from income or appreciation of principal;

“(ii) The trustee shall make income distributions in accordance with the trust subject to the provisions of this section;

“(iii) The distribution percentage for any trust converted to a total return trust by a trustee in accordance with subsection (1) of this section shall be four percent, unless a different percentage has been determined in an agreement made pursuant to subsection (2) of this section or ordered by the court pursuant to subsection (3) of this section; and

“(iv)(A) The trustee shall pay to a beneficiary in the case of an underpayment within a reasonable time and shall recover from a beneficiary in the case of an overpayment either by repayment by the beneficiary or by withholding from future distributions to the beneficiary:

“(I) An amount equal to the difference between the amount properly payable and the amount actually paid; and

“(II) Interest compounded annually at a rate per annum equal to the distribution percentage in the year or years during which the underpayment or overpayment occurs.

“(B) For purposes of subdivision (4)(a)(iv) of this section, accrual of interest may not commence until the beginning of the trust year following the year in which the underpayment or overpayment occurs.

“(b) For purposes of this subsection:

“(i) Distribution amount means an annual amount equal to the distribution percentage multiplied by the average net fair market value of the trust's assets. The average net fair market value of the trust's assets shall be the net fair market value of the trust's assets averaged over the lesser of:

“(A) The three preceding years; or

“(B) The period during which the trust has been in existence; and

“(ii) Income, as that term appears in the governing instrument, means the distribution amount.

“(5) The trustee may determine any of the following matters in administering a total return trust as the trustee deems necessary or helpful for the proper functioning of the trust:

“(a) The effective date of a conversion to a total return trust pursuant to subsection (1) of this section;

“(b) The manner of prorating the distribution amount for a short year in which a beneficiary's interest commences or ceases, or, if the trust is a total return trust for only part of the year or the trustee may elect to treat the trust year as two separate years, the first of which ends at the close of the day on which the conversion or reconversion occurs, and the second of which ends at the close of the trust year;

“(c) Whether distributions are made in cash or in kind;

“(d) The manner of adjusting valuations and calculations of the distribution amount to account for other payments from, or contributions to, the trust;

“(e) Whether to value the trust's assets annually or more frequently;

“(f) Which valuation dates to use and how many valuation dates to use;

“(g) Valuation decisions concerning any asset for which there is no readily available market value, including:

“(i) How frequently to value such an asset;

“(ii) Whether and how often to engage a professional appraiser to value such an asset; and

“(iii) Whether to exclude the value of such an asset from the net fair market value of the trust's assets for purposes of determining the distribution amount. For purposes of this section, any such asset so excluded shall be referred to as an excluded asset and the trustee shall distribute any net income received from the excluded asset as provided for in the governing instrument, subject to the following principles:

“(A) The trustee shall treat each asset for which there is no readily available market value as an excluded asset unless the trustee determines that there are compelling reasons not to do so and the trustee considers all relevant factors including the best interests of the beneficiaries;

“(B) If tangible personal property or real property is possessed or occupied by a beneficiary, the trustee may not limit or restrict any right of the beneficiary to use the property in accordance with the governing instrument regardless of whether the trustee treats the property as an excluded asset; and

“(C) By way of example and not by way of limitation, assets for which there is a readily available market value include cash and cash equivalents; stocks, bonds, and other securities and instruments for which there is an established market on a stock exchange, in an over-the-counter market, or otherwise; and any other property that can reasonably be expected to be sold within one week of the decision to sell without extraordinary efforts by the seller. By way of example and not by way of limitation, assets for which there is no readily available market value include stocks, bonds, and other securities and instruments for which there is no established market on a stock exchange, in an over-the-counter market, or otherwise; real property; tangible personal property; and artwork and other collectibles; and

“(h) Any other administrative matter that the trustee determines is necessary or helpful for the proper functioning of the total return trust.

“(6)(a) Expenses, taxes, and other charges that would otherwise be deducted from income if the trust was not a total return trust may not be deducted from the distribution amount.

“(b) Unless otherwise provided by the governing instrument, the distribution amount each year shall be deemed to be paid from the following sources for that year in the following order:

“(i) Net income determined as if the trust was not a total return trust;

“(ii) Other ordinary income as determined for federal income tax purposes;

“(iii) Net realized short-term capital gains as determined for federal income tax purposes;

“(iv) Net realized long-term capital gains as determined for federal income tax purposes;

“(v) Trust principal comprising assets for which there is a readily available market value; and

“(vi) Other trust principal.

“(7)(a) The court may order any of the following actions in a proceeding brought by a trustee or a beneficiary pursuant to subdivision (a), (b), or (c) of subsection (3) of this section:

“(i) Select a distribution percentage other than four percent, except that the court may not order a distribution percentage of less than three percent or greater than five percent;

“(ii) Average the valuation of the trust's net assets over a period other than three years;

“(iii) Reconvert prospectively from a total return trust or adjust the distribution percentage of a total return trust;

“(iv) Direct the distribution of net income, determined as if the trust were not a total return trust, in excess of the distribution amount as to any or all trust assets if the distribution is necessary to preserve a tax benefit; or

“(v) Change or direct any administrative procedure as the court determines is necessary or helpful for the proper functioning of the total return trust.

“(b) Nothing in this subsection shall be construed to limit the equitable jurisdiction of the court to grant other relief as the court deems proper.

“(8)(a) The distribution amount may not be less than the net income of the trust, determined without regard to the provisions of this section, either:

“(i) For a trust for which an estate tax or a gift tax marital deduction was claimed or may be claimed, in whole or in part, but only during the lifetime of the spouse for whom the trust was created; or

“(ii) For a trust that was exempt, in whole or in part, from generation-skipping transfer tax on September 4, 2005, by reason of any effective date or transition rule.

“(b) Conversion to a total return trust shall not affect any provision in the governing instrument:

“(i) That directs or authorizes the trustee to distribute principal;

“(ii) That directs or authorizes the trustee to distribute a fixed annuity or a fixed fraction of the value of trust assets;

“(iii) That authorizes a beneficiary to withdraw a portion or all of the principal; or

“(iv) That in any manner diminishes an amount permanently set aside for charitable purposes under the governing instrument unless both income and principal are set aside.

“(9) If a particular trustee is also a beneficiary of the trust and conversion or failure to convert would enhance or diminish the beneficial interest of that trustee or, if possession or exercise of the conversion power by a particular trustee alone would cause any individual to be treated as owner of a part of the trust for federal income tax purposes or cause a part of the trust to be included in the gross estate of any individual for federal estate tax purposes, then that particular trustee may not participate as a trustee in the exercise of the conversion power, except that:

“(a) The trustee may petition the court under subdivision (a) of subsection (3) of this section to order conversion in accordance with this section; and

“(b) A cotrustee or cotrustees to whom this subsection does not apply may convert the trust to a total return trust in accordance with subsection (1) or (2) of this section.

“(10) A trustee may irrevocably release the power granted by this section if the trustee reasonably believes the release is in the best interests of the trust and its beneficiaries. The release may be personal to the releasing trustee or it may apply generally to some or all subsequent trustees. The release may be for any specified period, including a period measured by the life of an individual.

“(11)(a) A trustee who reasonably and in good faith takes any action or omits to take any action under this section is not liable to any person interested in the trust. A discretionary act or omission by a trustee under this section shall be presumed to be reasonable and undertaken in good faith unless the act or omission is determined by a court to have been an abuse of discretion.

“(b) If a trustee reasonably and in good faith takes or omits to take any action under this section and a person interested in the trust opposes the act or omission, the person's exclusive remedy shall be to seek an order of the court directing the trustee to:

“(i) Convert the trust to a total return trust;

“(ii) Reconvert from a total return trust;

“(iii) Change the distribution percentage; or

“(iv) Order any administrative procedures the court determines are necessary or helpful for the proper functioning of the trust.

“(c) A claim for relief under this subsection that is not barred by adjudication, consent, or limitation is nevertheless barred as to any beneficiary who has received a statement fully disclosing the matter unless a proceeding to assert the claim is commenced within six months after receipt of the statement. A beneficiary is deemed to have received a statement if it is received by the beneficiary or the beneficiary's representative in a manner described in section 30-2222 or 30-3121.

“(12) A trustee has no duty to inform a beneficiary about the availability and provisions of this section. A trustee has no duty to review the trust to determine whether any action should be taken under this section unless the trustee is requested in writing by a qualified beneficiary to do so.

“(13)(a) This section applies to trusts in existence on September 4, 2005, and to trusts created on or after such date.

“(b) This section shall be construed to apply to the administration of a trust that is administered in Nebraska under Nebraska law or that is governed by Nebraska law with respect to the meaning and effect of its terms unless:

“(i) The trust is a trust described in the Internal Revenue Code of 1986, as amended, [26 U.S.C. section 170 \(f\) \(2\)\(B\)](#) , [664\(d\)](#) , [1361\(d\)](#) , [2702\(a\)\(3\)](#), or [2702\(b\)](#) ;

“(ii) Conversion of a trust to a total return trust is clearly contrary to the manifestation of the settlor's intent as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding; or

“(iii) The terms of a trust in existence on September 4, 2005, incorporate provisions that operate as a total return trust. The trustee or a beneficiary of such a trust may proceed under section 30-3121 to adopt provisions in this section that do not contradict provisions in the governing instrument.”

**“ § 30-3121. Proposed action; notice; objections.**

“(a) A trustee may give a notice of proposed action regarding a matter governed by the Uniform Principal and Income Act as provided in this section. For purposes of this section, a proposed action includes a course of action and a decision not to take action.

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

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

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

“(1) the name and mailing address of the trustee;

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

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

“(4) the time within which objections to the proposed action may be made, which shall be at least thirty days from the mailing of the notice of proposed action; and

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

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

“(f) A trustee is not liable to a beneficiary for an action regarding a matter governed by the act if the trustee does not receive a written objection to the proposed action from the beneficiary within the applicable period and the other requirements of this section are satisfied. If no beneficiary entitled to notice objects under this section, the provisions of section 30-3120 shall not apply and the trustee is not liable to any current or future beneficiary with respect to the proposed action.

“(g) If the trustee receives a written objection within the applicable period, either the trustee or a beneficiary may petition the court to have the proposed action taken as proposed, taken with modifications, or denied. In the proceeding, a beneficiary objecting to the proposed action has the burden of proving that the trustee’s proposed action should not be taken. A beneficiary who has not objected is not estopped from opposing the proposed action in the proceeding. If the trustee decides not to take the proposed action, the trustee shall notify the beneficiaries of the decision not to take the action and the reasons for the decision, and the trustee’s decision not to take the proposed action does not itself give rise to liability to any current or future beneficiary. A beneficiary may petition the court to have the action taken and has the burden of proving that it should be taken.”

## NEBRASKA

Added section 30-3119.01 now provides:

### “ 30-3119.01. Conversion to total return trust

“(1) Unless expressly prohibited by a trust, a trustee may release the power to adjust described in section 30-3119 and convert a trust to a total return trust as described in this section if all of the following apply:

“(a) The trustee determines that the conversion will enable the trustee to better carry out the intent of the settlor and the purpose of the trust;

“(b) The trustee sends written notice of the trustee’s decision to convert the trust to a total return trust specifying a prospective effective date for the conversion which shall not be sooner than sixty days after the notice is sent and which shall include a copy of this section of law and shall specifically recite the time period within which a timely objection may be made. Such notice shall be sent to the qualified beneficiaries determined as of the date the notice is sent and assuming nonexercise of all powers of appointment;

“(c) There are one or more legally competent beneficiaries who are currently eligible to receive income from the trust and one or more legally competent beneficiaries who would receive a distribution of principal if the trust were to terminate immediately before the notice is given; and

“(d) No beneficiary has objected in writing to the conversion to a total return trust and delivered such objection to the trustee within sixty days after the notice was sent.

“(2) Conversion to a total return trust or reconversion to an income trust may be made by agreement between the trustee and all qualified beneficiaries of the trust. The trustee and all qualified beneficiaries of the trust may also agree to modify the distribution percentage, except that the trustee and the qualified beneficiaries may not agree to a distribution percentage of less than three percent or greater than five percent. The agreement may include any other actions a court could properly order pursuant to subsection (7) of this section.

“(3)(a) The trustee may, for any reason, elect to petition the court to order conversion to a total return trust including, without limitation, the reason that conversion under subsection (1) of this section is unavailable because:

“(i) A beneficiary timely objects to the conversion to a total return trust;

“(ii) There are no legally competent beneficiaries who are currently eligible to receive income from the trust; or

“(iii) There are no legally competent beneficiaries who would receive a distribution of principal if the trust were to terminate immediately.

“(b) A beneficiary may request the trustee to convert to a total return trust or adjust the distribution percentage pursuant to this subsection. If the trustee declines or fails to act within six months after receiving a written request from a beneficiary to do so, the beneficiary may petition the court to order the conversion or adjustment.

“(c) The trustee may petition the court prospectively to reconvert from a total return trust or to adjust the distribution percentage if the trustee determines that the reconversion or adjustment will enable the trustee to better carry out the purposes of the trust. A beneficiary may request the trustee to petition the court prospectively to reconvert from a total return trust or adjust the distribution percentage. If the trustee declines or fails to act within six months after receiving a written request from a beneficiary to do so, the beneficiary may petition the court to order the reconversion or adjustment.

“(d)(i) In a judicial proceeding instituted under this subsection, the trustee may present opinions and reasons concerning:

“(A) The trustee's support for or opposition to a conversion to a total return trust, a reconversion from a total return trust, or an adjustment of the distribution percentage of a total return trust, including whether the trustee believes conversion, reconversion, or adjustment of the distribution percentage would enable the trustee to better carry out the purposes of the trust; and

“(B) Any other matter relevant to the proposed conversion, reconversion, or adjustment of the distribution percentage.

“(ii) A trustee's actions undertaken in accordance with this subsection shall not be deemed improper or inconsistent with the trustee's duty of impartiality unless the court finds from all the evidence that the trustee acted in bad faith.

“(e) The court shall order conversion to a total return trust, reconversion prospectively from a total return trust, or adjustment of the distribution percentage of a total return trust if the court determines that the conversion, reconversion, or adjustment of the distribution percentage will enable the trustee to better carry out the purposes of the trust.

“(f) If a conversion to a total return trust is made pursuant to a court order, the trustee may reconvert the trust to an income trust only:

“(i) Pursuant to a subsequent court order; or

“(ii) By filing with the court an agreement made pursuant to subsection (2) of this section to reconvert to an income trust.

“(g) Upon a reconversion the power to adjust, as described in section 30-3119 and as it existed before the conversion, shall be revived.

“(h) An action may be taken under this subsection no more frequently than every two years, unless a court for good cause orders otherwise.

“(4)(a) During the time that a trust is a total return trust, the trustee shall administer the trust in accordance with the provisions of this subsection as follows, unless otherwise expressly provided by the terms of the trust:

“(i) The trustee shall invest the trust assets seeking a total return without regard to whether the return is from income or appreciation of principal;

“(ii) The trustee shall make income distributions in accordance with the trust subject to the provisions of this section;

“(iii) The distribution percentage for any trust converted to a total return trust by a trustee in accordance with subsection (1) of this section shall be four percent, unless a different percentage has been determined in an agreement made pursuant to subsection (2) of this section or ordered by the court pursuant to subsection (3) of this section; and



“(iv)(A) The trustee shall pay to a beneficiary in the case of an underpayment within a reasonable time and shall recover from a beneficiary in the case of an overpayment either by repayment by the beneficiary or by withholding from future distributions to the beneficiary:

“(I) An amount equal to the difference between the amount properly payable and the amount actually paid; and

“(II) Interest compounded annually at a rate per annum equal to the distribution percentage in the year or years during which the underpayment or overpayment occurs.

“(B) For purposes of subdivision (4)(a)(iv) of this section, accrual of interest may not commence until the beginning of the trust year following the year in which the underpayment or overpayment occurs.

“(b) For purposes of this subsection:

“(i) Distribution amount means an annual amount equal to the distribution percentage multiplied by the average net fair market value of the trust's assets. The average net fair market value of the trust's assets shall be the net fair market value of the trust's assets averaged over the lesser of:

“(A) The three preceding years; or

“(B) The period during which the trust has been in existence; and

“(ii) Income, as that term appears in the governing instrument, means the distribution amount.

“(5) The trustee may determine any of the following matters in administering a total return trust as the trustee deems necessary or helpful for the proper functioning of the trust:

“(a) The effective date of a conversion to a total return trust pursuant to subsection (1) of this section;

“(b) The manner of prorating the distribution amount for a short year in which a beneficiary's interest commences or ceases, or, if the trust is a total return trust for only part of the year or the trustee may elect to treat the trust year as two separate years, the first of which ends at the close of the day on which the conversion or reconversion occurs, and the second of which ends at the close of the trust year;

“(c) Whether distributions are made in cash or in kind;

“(d) The manner of adjusting valuations and calculations of the distribution amount to account for other payments from, or contributions to, the trust;

“(e) Whether to value the trust's assets annually or more frequently;

“(f) Which valuation dates to use and how many valuation dates to use;

“(g) Valuation decisions concerning any asset for which there is no readily available market value, including:

“(i) How frequently to value such an asset;

“(ii) Whether and how often to engage a professional appraiser to value such an asset; and

“(iii) Whether to exclude the value of such an asset from the net fair market value of the trust's assets for purposes of determining the distribution amount. For purposes of this section, any such asset so excluded shall be referred to as an excluded asset and the trustee shall distribute any net income received from the excluded asset as provided for in the governing instrument, subject to the following principles:

“(A) The trustee shall treat each asset for which there is no readily available market value as an excluded asset unless the trustee determines that there are compelling reasons not to do so and the trustee considers all relevant factors including the best interests of the beneficiaries;

“(B) If tangible personal property or real property is possessed or occupied by a beneficiary, the trustee may not limit or restrict any right of the beneficiary to use the property in accordance with the governing instrument regardless of whether the trustee treats the property as an excluded asset; and

“(C) By way of example and not by way of limitation, assets for which there is a readily available market value include cash and cash equivalents; stocks, bonds, and other securities and instruments for which there is an established market on a stock exchange, in an over-the-counter market, or otherwise; and any other property that can reasonably be expected to be sold within one week of the decision to sell without extraordinary efforts by the seller. By way of example and not by way of limitation, assets for which there is no readily available market value include stocks, bonds, and other securities and instruments for which there is no established market on a stock exchange, in an over-the-counter market, or otherwise; real property; tangible personal property; and artwork and other collectibles; and

“(h) Any other administrative matter that the trustee determines is necessary or helpful for the proper functioning of the total return trust.

“(6)(a) Expenses, taxes, and other charges that would otherwise be deducted from income if the trust was not a total return trust may not be deducted from the distribution amount.

“(b) Unless otherwise provided by the governing instrument, the distribution amount each year shall be deemed to be paid from the following sources for that year in the following order:

“(i) Net income determined as if the trust was not a total return trust;

“(ii) Other ordinary income as determined for federal income tax purposes;

“(iii) Net realized short-term capital gains as determined for federal income tax purposes;

“(iv) Net realized long-term capital gains as determined for federal income tax purposes;

“(v) Trust principal comprising assets for which there is a readily available market value; and

“(vi) Other trust principal.

“(7)(a) The court may order any of the following actions in a proceeding brought by a trustee or a beneficiary pursuant to subdivision (a), (b), or (c) of subsection (3) of this section:

“(i) Select a distribution percentage other than four percent, except that the court may not order a distribution percentage of less than three percent or greater than five percent;

“(ii) Average the valuation of the trust's net assets over a period other than three years;

“(iii) Reconvert prospectively from a total return trust or adjust the distribution percentage of a total return trust;

“(iv) Direct the distribution of net income, determined as if the trust were not a total return trust, in excess of the distribution amount as to any or all trust assets if the distribution is necessary to preserve a tax benefit; or

“(v) Change or direct any administrative procedure as the court determines is necessary or helpful for the proper functioning of the total return trust.

“(b) Nothing in this subsection shall be construed to limit the equitable jurisdiction of the court to grant other relief as the court deems proper.

“(8)(a) In the case of a trust for which a marital deduction has been taken for federal tax purposes under [section 2056](#) or [section 2523 of the Internal Revenue Code of 1986](#), as amended, the spouse otherwise entitled to receive the net income of the trust shall have the right, by written instrument delivered to the trustee,

to compel the reconversion during that spouse's lifetime of the trust from a total return trust to an income trust, notwithstanding anything in this section to the contrary.

“(b) Conversion to a total return trust shall not affect any provision in the governing instrument:

“(i) That directs or authorizes the trustee to distribute principal;

“(ii) That directs or authorizes the trustee to distribute a fixed annuity or a fixed fraction of the value of trust assets;

“(iii) That authorizes a beneficiary to withdraw a portion or all of the principal; or

“(iv) That in any manner diminishes an amount permanently set aside for charitable purposes under the governing instrument unless both income and principal are set aside.

“(9) If a particular trustee is also a beneficiary of the trust and conversion or failure to convert would enhance or diminish the beneficial interest of that trustee or, if possession or exercise of the conversion power by a particular trustee alone would cause any individual to be treated as owner of a part of the trust for federal income tax purposes or cause a part of the trust to be included in the gross estate of any individual for federal estate tax purposes, then that particular trustee may not participate as a trustee in the exercise of the conversion power, except that:

“(a) The trustee may petition the court under subdivision (a) of subsection (3) of this section to order conversion in accordance with this section; and

“(b) A cotrustee or cotrustees to whom this subsection does not apply may convert the trust to a total return trust in accordance with subsection (1) or (2) of this section.

“(10) A trustee may irrevocably release the power granted by this section if the trustee reasonably believes the release is in the best interests of the trust and its beneficiaries. The release may be personal to the releasing trustee or it may apply generally to some or all subsequent trustees. The release may be for any specified period, including a period measured by the life of an individual.

“(11)(a) A trustee who reasonably and in good faith takes any action or omits to take any action under this section is not liable to any person interested in the trust. A discretionary act or omission by a trustee under this section shall be presumed to be reasonable and undertaken in good faith unless the act or omission is determined by a court to have been an abuse of discretion.

“(b) If a trustee reasonably and in good faith takes or omits to take any action under this section and a person interested in the trust opposes the act or omission, the person's exclusive remedy shall be to seek an order of the court directing the trustee to:

“(i) Convert the trust to a total return trust;

“(ii) Reconvert from a total return trust;

“(iii) Change the distribution percentage; or

“(iv) Order any administrative procedures the court determines are necessary or helpful for the proper functioning of the trust.

“(c) A claim for relief under this subsection that is not barred by adjudication, consent, or limitation is nevertheless barred as to any beneficiary who has received a statement fully disclosing the matter unless a proceeding to assert the claim is commenced within six months after receipt of the statement. A beneficiary is deemed to have received a statement if it is received by the beneficiary or the beneficiary's representative in a manner described in section 30-2222 or 30-3121.

“(12) A trustee has no duty to inform a beneficiary about the availability and provisions of this section. A trustee has no duty to review the trust to determine whether any action should be taken under this section unless the trustee is requested in writing by a qualified beneficiary to do so.

“(13)(a) This section applies to trusts in existence on September 4, 2005, and to trusts created on or after such date.

“(b) This section shall be construed to apply to the administration of a trust that is administered in Nebraska under Nebraska law or that is governed by Nebraska law with respect to the meaning and effect of its terms unless:

“(i) The trust is a trust described in the Internal Revenue Code of 1986, as amended, [26 U.S.C. section 170 \(f\) \(2\)\(B\)](#) , [664\(d\)](#) , [1361\(d\)](#) , [2702\(a\)\(3\)](#), or [2702\(b\)](#) ;

“(ii) Conversion of a trust to a total return trust is clearly contrary to the manifestation of the settlor's intent as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding; or

“(iii) The terms of a trust in existence on September 4, 2005, incorporate provisions that operate as a total return trust. The trustee or a beneficiary of such a trust may proceed under section 30-3121 to adopt provisions in this section that do not contradict provisions in the governing instrument.”

Adds an additional section, which provides:

**“ 30-3135.01. Trust; marital deduction; when provisions applicable**

“Section 30-3135, as amended by [Laws 2009, LB 80](#) , applies to a trust described in subsection (d) of section 30-3135 on and after the following dates:

“(1) If the trust is not funded as of the effective date of this act, the date of the decedent's death;

“(2) If the trust is initially funded in the calendar year beginning January 1, 2009, the date of the decedent's death; or

“(3) If the trust is not described in subdivision (1) or (2) of this section, January 1, 2009.”

**NEVADA**

Repealed the Uniform Principal and Income Act (1962) ( [NRS 164.140](#) to [164.370](#) ), and enacted the Uniform Principal and Income Act (1997) ( [NRS 164.700](#) , [164.780](#) to [164.925](#) ) by L.2003, c. 355, effective October 1, 2003.

**NEW HAMPSHIRE**

Adds a section, which provides:

**“ 564-C:6-602 Application of Chapter to Trusts and Estates.**

“(a) The effective date of this chapter shall be January 1, 2007.

“(b) Except as otherwise provided in this chapter, on the effective date of this chapter, the chapter shall apply:

“(1) to every inter vivos trust created on or after the effective date of this chapter except as otherwise expressly provided in the terms of the trust or in this chapter;

“(2) to any inter vivos trust created before the effective date of this chapter upon the election of the trustee to apply this chapter made in writing and delivered to the beneficiaries then entitled to receive income and principal from the trust;

“(3) to any estate existing or testamentary trust of a decedent who dies on or after the effective date of this chapter;

“(4) to any estate or testamentary trust upon the approval by a court of competent jurisdiction, upon either (A) a petition filed by an interested person or (B) the court on its own motion.

“(c) Nothing in this section imposes a duty on the trustee or any other fiduciary to make an election under this section, and the trustee or any other fiduciary is not liable for failing to make an election under this section.

“(d) Nothing in this chapter shall be construed to affect or change the form of accounting required under the rules of the probate court.”

## **NEW HAMPSHIRE**

Added additional section which provides:

### **“ 564-C:4-407A Charitable Remainder Unitrusts.**

“(a) In the case of a charitable remainder unitrust within the meaning of [section 664\(d\)\(2\) of the Internal Revenue Code](#) , in which the trust instrument contains an income exception described in [section 664\(d\)\(3\) of the Internal Revenue Code](#) , the trustee shall allocate receipts from each of the following assets in accordance with subsection (b), notwithstanding any other provision of this chapter:

“(1) an entity within the meaning of RSA 564-C:4-401(a);

“(2) an obligation to pay money to the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity;

“(3) a life insurance policy, unless the insured has died;

“(4) a private or commercial annuity, unless the payments within the meaning of RSA 564-C:4-409(a), have commenced;

“(5) a derivative within the meaning of RSA 564-C:4-414(a), except to the extent that the trustee accounts under RSA 564-C:4-403 for a transaction in that derivative; or

“(6) an asset-backed security within the meaning of RSA 564-C:4-415(a).

“(b) A trustee shall allocate to income the amount in excess of the asset's purchase price or the asset's value when it was acquired. A trustee shall allocate to principal the balance of the money or other property received.

“(c) This section shall apply to any charitable remainder unitrust created before, on, or after the effective date of this section.”

Added section 564-C:1-106 now provides:

### **“ 564-C:1-106 Trustee's Power to Convert to Unitrust.**

“(a) Unless expressly prohibited by the terms of the trust, a trustee may convert a trust into a unitrust as described in this section if all of the following apply:

“(1) The trustee determines that the conversion will enable the trustee to better carry out the intent of the settlor, as defined in RSA 564-B:1-103(15), and the purposes of the trust.

“(2) The trustee gives written notice of the trustee's intention to convert the trust into a unitrust and of how the unitrust will operate, including what initial decisions the trustee will make under this section, to all the qualified

beneficiaries, as defined in RSA 564-B:1-103(12) and including the director of charitable trusts if, with respect to the trust, the director has the right of a "qualified beneficiary" under RSA 564-B:1-110(c).

"(3) No qualified beneficiary objects to the conversion to a unitrust in a writing delivered to the trustee within 60 days of the mailing of the notice under subparagraph (a)(2).

"(b)(1) The trustee may petition the court to approve the conversion to a unitrust if a qualified beneficiary timely objects to the conversion of the unitrust.

"(2) A qualified beneficiary may request a trustee to convert to a unitrust. If the trustee does not convert, the beneficiary may petition the court to order the conversion.

"(3) The court shall approve the conversion or direct the requested conversion if the court concludes that the conversion will enable the trustee to better carry out the intent of the settlor and the purposes of the trust.

"(c) In deciding whether to exercise the power conferred by paragraph (a), a trustee may consider, among other things, all of the following:

"(1) the size of the trust;

"(2) the nature and estimated duration of the trust;

"(3) the liquidity and distribution requirements of the trust;

"(4) the needs for regular distributions and preservation and appreciation of capital;

"(5) the expected tax consequences of the conversion;

"(6) the assets held in the trust; the extent to which they consist of financial assets; interests in closely held enterprises, tangible and intangible personal property or real property; and the extent to which an asset is used by a beneficiary;

"(7) to the extent reasonably known to the trustee, the needs of the beneficiaries for present and future distributions authorized or required by the terms of the trust;

"(8) whether and to what extent the terms of the trust gives the trustee the power to invade principal or accumulate income or prohibits the trustee from invading principal or accumulating income and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income; and

"(9) the actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation.

"(d) After a trust is converted to a unitrust, all of the following apply:

"(1) The trustee shall follow an investment policy seeking a total return for the investments held by the trust, whether the return is to be derived:

"(A) from appreciation of capital;

"(B) from earnings and distributions from capital; or

"(C) from both.

"(2) The trustee shall make regular distributions in accordance with the governing instrument construed in accordance with the provisions of this section.

"(3) Under the terms of the trust, the term 'income' shall mean an annual distribution (the unitrust distribution) equal to not less than 3 percent nor more than 5 percent (the payout percentage) of the net fair market value

of the trust's assets as determined at the end of the calendar year, whether such assets would be considered income or principal under other provisions of this chapter, averaged over the lesser of:

“(A) The 3 preceding years; or

“(B) The period during which the trust has been in existence.

“(e) The trustee may in the trustee's discretion from time to time determine all of the following:

“(1) The effective date of a conversion to a unitrust.

“(2) The provisions for prorating a unitrust distribution for a short year in which a beneficiary's right to payments commences or ceases.

“(3) The frequency of unitrust distributions during the year.

“(4) The effect of other payments from or contributions to the trust on the trust's valuation.

“(5) How frequently to value nonliquid assets and whether to estimate their value.

“(6) Whether to omit from the calculations trust property occupied or possessed by a beneficiary.

“(7) Any other matters necessary for the proper functioning of the unitrust.

“(f)(1) Expenses which would be deducted from income if the trust were not a unitrust may not be deducted from the unitrust distribution.

“(2) Unless otherwise provided by the governing instrument, the unitrust distribution shall be paid from net income, as such term would be determined if the trust were not a unitrust. To the extent net income is insufficient, the unitrust distribution shall be paid from net realized short-term capital gains. To the extent income and net realized short-term capital gains are insufficient, the unitrust distribution shall be paid from net realized long-term capital gains. To the extent income and net realized short-term and long-term capital gains are insufficient, the unitrust distribution shall be paid from the principal of the trust.

“(g) The trustee or, if the trustee declines to do so, a beneficiary may petition the court to:

“(1) select a payout percentage different than 3 to 5 percent;

“(2) provide for a distribution of net income, as would be determined if the trust were not a unitrust, in excess of the unitrust distribution if such distribution is necessary to preserve a tax benefit;

“(3) average the valuation of the trust's net assets over a period other than 3 years; or

“(4) Reconvert from a unitrust.

“(h) A conversion to a unitrust does not affect a term of the trust directing or authorizing the trustee to distribute principal or authorizing a beneficiary to withdraw a portion or all of the principal.

“(i) A trustee may not convert a trust into a unitrust in any of the following circumstances:

“(1) If payment of the unitrust distribution would change the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets.

“(2) If the unitrust distribution would be made from any amount which is permanently set aside for charitable purposes under the terms of the trust and for which a federal estate or gift tax deduction has been taken, unless both income and principal are so set aside.

“(3) If:

“(A) Possessing or exercising the power to convert would cause an individual to be treated as the owner of all or part of the trust for federal income tax purposes; and

“(B) The individual would not be treated as the owner if the trustee did not possess the power to convert.

“(4) If:

“(A) possessing or exercising the power to convert would cause all or part of the trust assets to be subject to federal estate or gift tax with respect to an individual; and

“(B) the assets would not be subject to federal estate or gift tax with respect to the individual if the trustee did not possess the power to convert.

“(5) If the conversion would result in the disallowance of a federal estate tax or gift tax marital deduction which would be allowed if the trustee did not have the power to convert.

“(6) If the trustee is a beneficiary of the trust.

“(j)(1) If subparagraph (i)(3), (i)(4), or (i)(6) applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may convert the trust, unless the exercise of the power by the remaining trustee or trustees is prohibited by the terms of the trust.

“(2) If subparagraph (i)(3), (i)(4), or (i)(6) applies to all the trustees, the trustees may petition the court to direct a conversion.

“(k) A trustee may permanently release the power conferred by paragraph (a) or may release the power conferred by paragraph (a) for a specified period including a period measured by the life of an individual to convert to a unitrust if any of the following apply:

“(1) The trustee is uncertain about whether possessing or exercising the power will cause a result described in subparagraph (i)(3), (i)(4), or (i)(5).

“(2) The trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in paragraph (i).

“( l ) For the purposes of this section, a person may represent and bind another person in accordance with Article 3 of RSA 564-B.

“(m) Any trustee or disinterested person who in good faith takes or fails to take any action under this section shall not be liable to any person affected by such action or inaction, regardless of whether such person received written notice as provided in this section and regardless of whether such person was under a legal disability at the time of the delivery of such notice. Such person's exclusive remedy shall be to obtain an order of the court directing the trustee to convert an income trust to a unitrust, to reconvert from a unitrust to an income trust, or to change the percentage used to calculate the unitrust amount.

“(n) This section shall be construed as pertaining to the administration of a trust and shall be available to any trust that is administered in New Hampshire or that is governed by the laws of this section unless:

“(1) the terms of the trust reflect an intention that the current beneficiary or beneficiaries are to receive an amount other than a reasonable current return from the trust;

“(2) the trust is a trust having a guaranteed annuity interest or fixed percentage interest as described in [section 170\(f\)\(2\)\(B\) of the Internal Revenue Code](#) , a pooled income fund (within the meaning of [section 642\(c\)\(5\) of the Internal Revenue Code](#) ), a charitable remainder trust (within the meaning of [section 664\(d\) of the Internal Revenue Code](#) ), a qualified subchapter S trust (within the meaning of [section 1361\(c\) of the Internal Revenue Code](#) ), a personal residence trust (within the meaning of [section 2702\(a\)\(3\)\(A\) of the Internal Revenue Code](#) ),



or a trust in which one or more settlors retained a qualified interest (within the meaning of [section 2702\(b\) of the Internal Revenue Code](#) );

“(3) one or more persons to whom the trustee could distribute income have a power of withdrawal over the trust that is not subject to an ascertainable standard or that can be exercised to discharge a duty of support he or she possesses; or

“(4) the terms of the trust expressly prohibit the use of this section by specific reference to the chapter or expressly states the settlor's intent that net income not be calculated as a unitrust amount.”

Added section 564-C:6-602 now provides:

“ **564-C:6-602 Application of Chapter to Trusts and Estates.**

“(a) The effective date of this chapter shall be January 1, 2007.

“(b) Except as otherwise provided in this chapter, on the effective date of this chapter, the chapter shall apply:

“(1) to every inter vivos trust created on or after the effective date of this chapter except as otherwise expressly provided in the terms of the trust or in this chapter;

“(2) to any inter vivos trust created before the effective date of this chapter upon the election of the trustee to apply this chapter made in writing and delivered to the beneficiaries then entitled to receive income and principal from the trust;

“(3) to any estate or testamentary trust of a decedent who dies on or after the effective date of this chapter; and

“(4) to any other estate or testamentary trust upon the approval by a court of competent jurisdiction, upon either (A) a petition filed by an interested person or (B) the court on its own motion.

“(c) Nothing in this section imposes a duty on the trustee or any other fiduciary to make an election under this section, and the trustee or any other fiduciary is not liable for failing to make an election under this section.

“(d) Nothing in this chapter shall be construed to affect or change the form of accounting required under the rules of the probate court.”

**NEW JERSEY**

Repealed the Uniform Principal and Income Act (1962) ( [N.J.S.A. 3B:19A-1](#) to [3B:19A-35](#) ), and enacted in lieu thereof the Uniform Principal and Income Act (1997) ( [N.J.S.A. 3B:19B-1](#) to [3B:19B-31](#) ) by L.2001, c. 212, effective January 1, 2002.

**NEW MEXICO**

Repealed the Uniform Principal and Income Act (1962) ( [NMSA 1978, §§ 46-3-1](#) to [46-3-15](#) ), and enacted in lieu thereof the Uniform Principal and Income Act (1997) ( [NMSA 1978, §§ 46-3A-101](#) to [46-3A-603](#) ) by L.2001, c. 113, effective July 1, 2001.

Adds sections, which provide:

“ **§ 46-3A-105. Conversion to total return trust**

“A. Unless expressly prohibited by the governing instrument, a trustee may release the power to adjust as provided in [Section 46-3A-104 NMSA 1978](#) or convert a trust to a total return trust as provided in this section if all of the following apply:

“(1) the trust describes the amount that may or must be distributed to a beneficiary by referring to the trust's income and the trustee determines that conversion to a total return trust will enable the trustee to better carry out the purposes of the trust;

“(2) the trustee provides a written notice of the trustee's decision to convert the trust to a total return trust specifying a prospective effective date for the conversion that may not be sooner than sixty days after the notice is provided to the qualified beneficiaries, determined as of the date the notice is provided and assuming nonexercise of all powers of appointment;

“(3) there are one or more legally competent beneficiaries as provided in Paragraph (1) of [Subsection K of Section 46-3A-102 NMSA 1978](#) and one or more legally competent remainder beneficiaries described in either Paragraph (1) or (2) of [Subsection K of Section 46-3A-102 NMSA 1978](#) , determined as of the date the notice is provided; and

“(4) no beneficiary has objected in writing to the conversion to a total return trust and noticed the objection to the trustee within sixty days after the notice was provided.

“B. Conversion to a total return trust or reconversion to an income trust may be made by agreement between the trustee and all qualified beneficiaries of the trust. The trustee and all qualified beneficiaries may also agree to modify the distribution percentage, except that the trustee and the qualified beneficiaries may not agree to a distribution percentage less than three percent or greater than five percent.

“C. The trustee may elect to petition the court to order conversion to a total return trust, including the reason that conversion under Subsection A of this section is unavailable because:

“(1) a beneficiary timely objects to the conversion to a total return trust;

“(2) there are no legally competent beneficiaries described in Paragraph (1) of [Subsection K of Section 46-3A-102 NMSA 1978](#); or

“(3) there are no legally competent beneficiaries described in Paragraph (1) or (2) of [Subsection K of Section 46-3A-102 NMSA 1978](#) .

“D. A beneficiary may request the trustee to convert to a total return trust or adjust the distribution percentage pursuant to this section. If the trustee declines or fails to act within six months after receiving a written request from a beneficiary to do so, the beneficiary may petition the court to order the conversion or adjustment.

“E. The trustee may petition the court prospectively to reconvert from a total return trust or to adjust the distribution percentage if the trustee determines that the reconversion or adjustment will enable the trustee to better carry out the purposes of the trust. A beneficiary may request the trustee to petition the court prospectively to reconvert from a total return trust or adjust the distribution percentage. If the trustee declines or fails to act within six months after receiving a written request from a beneficiary to do so, the beneficiary may petition the court to order the reconversion or adjustment.

“F. In a judicial proceeding instituted under this section, the trustee may present information concerning:

“(1) the trustee's support for, or opposition to, a conversion to a total return trust, a reconversion from a total return trust or an adjustment of the distribution percentage of a total return trust, including whether the trustee believes conversion, reconversion or adjustment of the distribution percentage would enable the trustee to better carry out the purposes of the trust; and

“(2) any other matter relevant to the proposed conversion, reconversion or adjustment of the distribution percentage.

“G. A trustee's actions undertaken in accordance with this section shall not be determined improper or inconsistent with the trustee's duty of impartiality unless the court finds from all the evidence that the trustee acted in bad faith.

"H. The court may order conversion to a total return trust, reconversion prospectively from a total return trust or adjustment of the distribution percentage of a total return trust if the court determines that the conversion, reconversion or adjustment of the distribution percentage will enable the trustee to better carry out the purposes of the trust.

"I. If a conversion to a total return trust is made pursuant to a court order, the trustee may reconvert the trust to an income trust only:

"(1) pursuant to a subsequent court order; or

"(2) by filing with the court an agreement made pursuant to Subsection B of this section to reconvert to an income trust.

"J. Upon a reconversion, the power to adjust, as described in [Section 46-3A-104 NMSA 1978](#) and as it existed before the conversion, shall be revived.

"K. An action may be taken under this section no more frequently than every three years, unless the court for good cause orders otherwise."

**" § 46-3A-106. Administration of total return trust**

"A. During the period that a trust is a total return trust, the trustee shall administer the trust in accordance with the provisions of this section unless otherwise expressly provided by the terms of the trust.

"B. The trustee shall invest the trust assets seeking a total return without regard to whether the return is from income or appreciation of principal.

"C. The trustee shall make income distributions in accordance with the governing instrument subject to the provisions of this section.

"D. The distribution percentage for any trust converted to a total return trust by a trustee in accordance with Subsection A of [Section 46-3A-105 NMSA 1978](#) shall be four percent, unless a different percentage has been determined in an agreement made pursuant to Subsection B of [Section 46-3A-105 NMSA 1978](#) or ordered by the court pursuant to Subsection C of [Section 46-3A-105 NMSA 1978](#) .

"E. The trustee shall pay to a beneficiary in the case of an underpayment within a reasonable time, and shall recover from a beneficiary in the case of an overpayment, either by repayment by the beneficiary or by withholding from future distributions to the beneficiary:

"(1) an amount equal to the difference between the amount properly payable and the amount actually paid; and

"(2) interest compounded annually at a rate per annum equal to the distribution percentage in the year or years during which the underpayment or overpayment occurs; provided that accrual of interest may not commence until the beginning of the trust year following the year in which the underpayment or overpayment occurs.

"F. As used in [Sections 46-3A-105](#) through [46-3A-113 NMSA 1978](#):

"(1) 'income' as the term appears in the governing instrument means the distribution amount;

"(2) 'distribution amount' means the annual amount equal to the distribution percentage multiplied by the average net fair market value of the trust's assets; and

"(3) 'average net fair market value of the trust's assets' means the net fair market value of the trust's assets averaged over the lesser of the three preceding years or the period during which the trust has been in existence."

**" § 46-3A-107. Determination of matters in administration**

"A. The trustee may determine any of the following matters in administering a total return trust as the trustee deems necessary or helpful for the proper functioning of the trust:

"(1) the effective date of a conversion to a total return trust pursuant to [Section 46-3A-105 NMSA](#) 1978;

"(2) the manner of prorating the distribution amount for a short year in which a beneficiary's interest commences or ceases, or, if the trust is a total return trust for only part of the year, the trustee may elect to treat the trust year as two separate years, the first of which ends at the close of the day on which the conversion or reconversion occurs, and the second of which ends at the close of the trust year;

"(3) whether distributions are made in cash or in-kind;

"(4) the manner of adjusting valuations and calculations of the distribution amount to account for other payments from, or contributions to, the trust;

"(5) whether to value the trust's assets annually or more frequently;

"(6) which valuation dates to use and how many valuation dates to use; and

"(7) valuation decisions concerning any asset for which there is no readily available market value, including:

"(a) how frequently to value the asset;

"(b) whether and how often to engage a professional appraiser to value the asset; and

"(c) whether to exclude the value of the asset from the net fair market value of the trust's assets for purposes of determining the distribution amount.

"B. For purposes of this section, any asset excluded pursuant to Subparagraph (c) of Paragraph (7) of Subsection A of this section shall be referred to as an 'excluded asset' and the trustee shall distribute any net income received from the excluded asset as provided for in the governing instrument, subject to the following principles:

"(1) the trustee shall treat each asset for which there is no readily available market value as an excluded asset unless the trustee determines that there are compelling reasons not to do so and the trustee considers all relevant factors, including the best interests of the beneficiaries;

"(2) if tangible personal property or real property is possessed or occupied by a beneficiary, the trustee may not limit or restrict any right of the beneficiary to use the property in accordance with the governing instrument regardless of whether the trustee treats the property as an excluded asset;

"(3) assets for which there is a readily available market value include cash and cash equivalents; stocks, bonds and other securities and instruments for which there is an established market on a stock exchange, in an over-the-counter market or otherwise; and any other property that can reasonably be expected to be sold within one week of the decision to sell without extraordinary efforts by the seller;

"(4) assets for which there is no readily available market value include stocks, bonds and other securities and instruments for which there is no established market on a stock exchange, in an over-the-counter market or otherwise; real property; tangible personal property; and artwork and other collectibles."

**" § 46-3A-108. Distribution of total return trust**

"A. Expenses, taxes and other charges that would otherwise be deducted from income if the trust was not a total return trust may not be deducted from the distribution amount.

"B. Unless otherwise provided by the governing instrument, the distribution amount each year shall be deemed to be paid from the following sources for that year in the following order:

- “(1) net income determined as if the trust were not a total return trust;
- “(2) other ordinary income as determined for federal income tax purposes;
- “(3) net realized short-term capital gains as determined for federal income tax purposes;
- “(4) net realized long-term capital gains as determined for federal income tax purposes;
- “(5) trust principal comprising assets for which there is a readily available market value; and
- “(6) other trust principal.”

**“ § 46-3A-109. Restrictions on distributions**

“A. The distribution amount may not be less than the net income of the trust, determined without regard to the provisions of [Sections 46-3A-105](#) through [46-3A-113 NMSA 1978](#) , for a trust that was exempt, in whole or in part, from generation-skipping transfer tax on July 1, 2005 by reason of any effective date or transition rule.

“B. Conversion to a total return trust shall not affect any provisions in the governing instrument:

- “(1) that directs or authorizes the trustee to distribute principal;
- “(2) that directs or authorizes the trustee to distribute a fixed annuity or a fixed fraction of the value of trust assets;
- “(3) that authorizes a beneficiary to withdraw a portion or all of the principal; or
- “(4) that in any manner diminishes an amount permanently set aside for charitable purposes under the governing instrument unless both income and principal are set aside.”

**“ § 46-3A-110. Limitations on conversion**

“If a trustee is also a beneficiary of the trust and conversion or failure to convert would enhance or diminish the beneficial interest of that trustee, or if possession or exercise of the conversion power by a particular trustee alone would cause any individual to be treated as owner of a part of the trust for federal income tax purposes or cause a part of the trust to be included in the gross estate of any individual for federal estate tax purposes, then that trustee may not participate as a trustee in the exercise of the conversion power, except that:

“A. the trustee may petition the court under Subsection C of [Section 46-3A-105 NMSA 1978](#) to order conversion in accordance with this section; and

“B. a co-trustee or co-trustees to whom this section does not apply may convert the trust to a total return trust in accordance with [Sections 46-3A-105](#) and [46-3A-106 NMSA 1978](#) .”

**“ § 46-3A-111. Release**

“A trustee may irrevocably release the power granted by the provisions of [Sections 46-3A-105](#) through [46-3A-113 NMSA 1978](#) if the trustee reasonably believes the release is in the best interests of the trust and its beneficiaries. The release may be personal to the releasing trustee or it may apply generally to some or all subsequent trustees. The release may be for any specified period, including a period measured by the life of an individual.”

**“ § 46-3A-112. Remedies**

“A. A trustee who reasonably and in good faith takes any action or omits to take any action pursuant to [Sections 46-3A-105](#) through [46-3A-113 NMSA 1978](#) is not liable to any person interested in the trust.

“B. If a trustee reasonably and in good faith takes or omits to take any action pursuant to [Sections 46-3A-105](#) through [46-3A-113 NMSA 1978](#) and a person interested in the trust opposes the act or omission, in addition to

any other remedy otherwise provided or available by law, the person may seek an order of the court directing the trustee to:

“(1) convert the trust to a total return trust;

“(2) reconvert from a total return trust;

“(3) change the distribution percentage; or

“(4) order any administrative procedures the court determines are necessary or helpful for the proper functioning of the trust.

“C. A claim for relief pursuant to Subsection B of this section that is not barred by adjudication, consent or limitation is nevertheless barred as to any beneficiary who has received a written notice fully disclosing the matter unless a proceeding to assert the claim is commenced within six months after receipt of the statement.”

“ **§ 46-3A-113** . **Applicability**

“A. [Sections 46-3A-105](#) through [46-3A-113 NMSA 1978](#) shall apply to trusts in existence on July 1, 2005 and to trusts created on or after that date.

“B. [Sections 46-3A-105](#) through [46-3A-113 NMSA 1978](#) shall be construed to apply to the administration of a trust that is administered in New Mexico under New Mexico law or that is governed by New Mexico law with respect to the meaning and effect of its terms unless:

“(1) the trust is a trust described in [Section 170\(f\)\(2\)\(B\)](#) , [664\(d\)](#) , [2702\(a\)\(3\)](#) or [2702\(b\) of the federal Internal Revenue Code](#) of 1986;

“(2) the governing instrument expressly prohibits the use of [Sections 46-3A-105](#) through [46-3A-113 NMSA 1978](#) by specific reference to one or more provisions of those sections; or

“(3) the terms of a trust in existence on July 1, 2005 incorporate provisions that operate as a total return trust. The trustee or a beneficiary of such a trust may adopt provisions in [Sections 46-3A-105](#) through [46-3A-113 NMSA 1978](#) that do not contradict provisions in the governing instrument.”

## NEW MEXICO

Enacted 2008 amendments in 2011, c.124, effective January 1, 2012.

## NEW YORK

Repealed the Uniform Principal and Income Act (1962) ( [McKinney's EPTL 11-2.1](#) ), and enacted in lieu thereof the Uniform Principal and Income Act (1997) ( [McKinney's EPTL 11-A-1.1](#) to [11-A-6.4](#) ) by L.2001, c. 243, effective January 1, 2002.

## NORTH CAROLINA

Repealed the Uniform Principal and Income Act (1962) (G.S. §§ 37-16 to 37-40), and enacted the Uniform Principal and Income Act (1997) (G.S. §§ 37A-1-101 to 37A-6-602) by L.2003, c. 232, effective January 1, 2004.

Adds a Part 2, Conversion to Unitrust, consisting of sections 37A-1-104.1 to 37A-1-104.9, which provide:

“ **§ 37A-1-104.1. Definitions**

“For purposes of this Part:

“(1) ‘Code’ means the Internal Revenue Code of 1986, as amended from time to time, and any statutory enactment successor to the Code; reference to a specific section of the Code in this Part shall be considered a reference also to any successor provision dealing with the subject matter of that section of the Code.

“(2) ‘Competent beneficiary’ includes:

“a. A beneficiary who has attained the age of 18 and is not otherwise under a legal disability;

“b. A court-appointed guardian of an incompetent beneficiary;

“c. An attorney-in-fact or agent under a durable power of attorney for an incompetent beneficiary;

“d. A court-appointed guardian of a minor beneficiary's estate; and

“e. In the case of a minor beneficiary for whom no guardian has been appointed, a parent of the minor beneficiary, but only if the parent does not have an interest in the estate or trust that conflicts with the interest of the minor beneficiary.

“(3) ‘Disinterested person’ means a person who is not a related or subordinate party with respect to the person then acting as trustee of the trust and excludes the grantor of the trust and any interested trustee.

“(4) ‘Grantor’ means an individual who created an inter vivos trust.

“(5) ‘Income trust’ means a trust, created by either an inter vivos or a testamentary instrument, which directs or permits the trustee to distribute the net income of the trust to one or more persons, either in fixed proportions or in amounts or proportions determined by the trustee, and regardless of whether the trust directs or permits the trustee to distribute principal of the trust to one or more of those persons.

“(6) ‘Interested distributee’ means a person to whom distributions of income or principal can currently be made who has the power to remove the existing trustee and designate as successor a person who may be a related or subordinate party with respect to that distributee.

“(7) ‘Interested trustee’ means (i) an individual trustee to whom the net income or principal of the trust can currently be distributed or would be distributed if the trust were then to terminate and be distributed, (ii) any trustee who may be removed and replaced by an interested distributee, or (iii) an individual trustee whose legal obligation to support a beneficiary may be satisfied by distributions of income and principal of the trust.

“(8) ‘Related or subordinate party’ means a related or subordinate party as defined in [section 672\(c\)](#) of the Code.

“(9) ‘Total return unitrust’ means an income trust that has been converted under and meets the provisions of this Part.

“(9a) ‘Treasury regulations’ means the regulations, rulings, procedures, notices, or other administrative pronouncements issued by the Internal Revenue Service, as amended from time to time.

“(10) ‘Trustee’ means any person acting as trustee of the trust, except as otherwise expressly provided in this Part, whether acting in that person's discretion or on the direction of one or more persons acting in a fiduciary capacity.

“(11) ‘Unitrust amount’ means an amount computed as a percentage of the fair market value of the trust.”

**“ § 37A-1-104.2. Conversion in trustee's discretion without court approval**

“(a) Any trustee, other than an interested trustee, or, where two or more persons are acting as trustees, a majority of the trustees who are not interested trustees (in either case hereafter ‘trustee’), may, in the trustee's sole discretion and without court approval, (i) convert an income trust to a total return unitrust, (ii) reconvert a

total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust if:

“(1) The trustee adopts a written policy for the trust providing (i) in the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income, (ii) in the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income rather than unitrust amounts, or (iii) that the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed as stated in the policy;

“(2) The trustee sends written notice of its intention to take the action, along with copies of the written policy and this Part, to (i) the grantor of the trust, if living, (ii) all the competent beneficiaries who are currently receiving or eligible to receive distributions of income of the trust, (iii) without regard to the exercise of a general power of appointment, all competent beneficiaries who would receive or be eligible to receive the distributions of income of the trust if the interests of the beneficiaries currently receiving or eligible to receive the income terminated at the time of the giving of the notice but the termination of those interests would not cause the trust to terminate, (iv) without regard to the exercise of any power of appointment, all the competent beneficiaries who would receive principal of the trust if the trust were to terminate at the time of the giving of the notice, and (v) all persons acting as advisor or protector of the trust;

“(3) There is at least one competent beneficiary described in subdivision (2)(ii) of this subsection or subdivision (2)(iii) of this subsection and one competent beneficiary described in subdivision (2)(iv) of this subsection; and

“(4) No person receiving notice of the trustee's intention to take the proposed action objects to the action within 60 days of receipt of the notice by written instrument delivered to the trustee.

“(b) If there is no trustee of the trust other than an interested trustee, the interested trustee or, where two or more persons are acting as trustee and are interested trustees, a majority of the interested trustees may, in its sole discretion and without court approval, (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust if:

“(1) The trustee adopts a written policy for the trust providing (i) in the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income as determined under this Chapter, (ii) in the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income as determined under this Chapter rather than unitrust amounts, or (iii) that the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed as stated in the policy;

“(2) The trustee appoints a disinterested person who, in its sole discretion but acting in a fiduciary capacity, determines for the trustee (i) the percentage to be used to calculate the unitrust amount, (ii) the method to be used in determining the fair market value of the trust, and (iii) which assets, if any, are to be excluded in determining the unitrust amount;

“(3) The trustee sends written notice of its intention to take the action, along with copies of the written policy and this Part, and the determinations of the disinterested person to (i) the grantor of the trust, if living, (ii) all the competent beneficiaries who are currently receiving or eligible to receive distributions of income of the trust, (iii) without regard to the exercise of a general power of appointment, all competent beneficiaries who would receive or be eligible to receive the distributions of income of the trust if the interests of the beneficiaries currently receiving or eligible to receive the income terminated at the time of the giving of the notice but the termination of those interests would not cause the trust to terminate, (iv) without regard to the exercise of any power of appointment, all the competent beneficiaries who would receive principal of the trust if the trust were to terminate at the time of the giving of the notice, and (v) all persons acting as advisor or protector of the trust;

“(4) There is at least one competent beneficiary described in subdivision (3)(ii) of this subsection or subdivision (3)(iii) of this subsection and one competent beneficiary described in subdivision (3)(iv) of this subsection; and



“(5) No person receiving notice of the trustee's intention to take the proposed action of the trustee objects to the action or to the determination of the disinterested person within 60 days of receipt of the notice by written instrument delivered to the trustee.

“(c) A trustee may act under subsection (a) or (b) of this section with respect to a trust for which both income and principal have been set aside permanently for charitable purposes under the governing instrument and for which a federal estate or gift tax deduction has been taken, provided that:

“(1) Instead of sending written notice to the persons described in subdivisions (2) and (3) of subsection (a) of this section or subdivisions (2) and (3) of subsection (b) of this section, as the case may be, the trustee shall send written notice to the named charity or charities then entitled to receive income of the trust and, if no named charity or charities are entitled to receive all of the income, to the Attorney General of this State;

“(2) Subdivision (4) of subsection (a) of this section or subdivision (4) of subsection (b) of this section, as the case may be, shall not apply to this action; and

“(3) In each taxable year, the trustee shall distribute the greater of the unitrust amount or the amount required by section 4942 of the Code.”

**“ § 37A-1-104.3. Conversion with court approval**

“(a) If any trustee desires to (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust but does not have the ability to or elects not to do it under G.S. 36A-1-104.2, the trustee may petition the court for an order as the trustee considers appropriate. In the event, however, there is only one trustee of the trust and the trustee is an interested trustee or in the event there are two or more trustees of the trust and a majority of them are interested trustees, the court, in its own discretion or on the petition of the trustee or trustees or any person interested in the trust, may appoint a disinterested person who, acting in a fiduciary capacity, shall present information to the court as shall be necessary to enable the court to make its determinations under this Part.

“(b) A competent beneficiary may request the trustee to (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust. If the trustee does not take the action requested, the competent beneficiary may petition the court to order the trustee to take the action.

“(c) All proceedings under this section shall be conducted as provided in Article 3 of Chapter 36A of the General Statutes.”

**“ § 37A-1-104.4. Determination of unitrust amount**

“(a) The fair market value of the trust shall be determined at least annually, using a valuation date selected by the trustee in its discretion. The trustee, in its discretion, may use an average of the fair market value on the same valuation date for the current fiscal year and not more than three preceding fiscal years, if the use of this average appears desirable to reduce the impact of fluctuations in market value on the unitrust amount. Assets for which a fair market value cannot be readily ascertained shall be valued using valuation methods as are considered reasonable and appropriate by the trustee. Assets, such as a residence or tangible personal property, used by the trust beneficiary also may be excluded from the fair market value for computing the unitrust amount.

“(b) The percentage to be used in determining the unitrust amount shall be a reasonable current return from the trust, in any event not less than three percent (3%) nor more than five percent (5%), taking into account the intentions of the grantor of the trust as expressed in the governing instrument, the needs of the beneficiaries, general economic conditions, projected current earnings and appreciation for the trust, and projected inflation and its impact on the trust.

“(c) Repealed by S.L. 2005-244, § 4, eff. July 30, 2005.

“(d) Following the conversion of an income trust to a total return unitrust, the trustee:

“(1) Shall consider the unitrust amount as paid from net accounting income determined as if the trust were not a unitrust;

“(2) Shall then consider the unitrust amount as paid from ordinary income not allocable to net accounting income;

“(3) May, in the trustee's discretion, consider the unitrust amount as paid from net short-term gain described in [section 1222\(5\)](#) of the Code and then from net long-term capital gain described in [section 1222\(7\)](#) of the Code so long as the discretionary power is exercised consistently and in a reasonable and impartial manner, but the amount so paid from net capital gains may not be greater than the excess of the unitrust amount over the amount of distributable net income as defined in section 643(a) of the Code without regard to [section 1.643\(a\)-3\(b\) of the Treasury Regulations](#) , as amended from time to time; and

“(4) Shall then consider the unitrust amount as coming from the principal of the trust.”

**“ § 37A-1-104.5. Matters in trustee's discretion**

“In administering a total return unitrust, the trustee may, in its sole discretion but subject to the provisions of the governing instrument, determine:

“(1) The effective date of the conversion;

“(2) The timing of distributions, including provisions for prorating a distribution for a short year in which a beneficiary's right to payments commences or ceases;

“(3) Whether distributions are to be made in cash or in kind or partly in cash and partly in kind;

“(4) If the trust is reconverted to an income trust, the effective date of the reconversion; and

“(5) Any other administrative issues as may be necessary or appropriate to carry out the purposes of this Part.”

**“ § 37A-1-104.6. No effect on principal distributions**

“Conversion to a total return unitrust under this Part shall not affect any other provision of the governing instrument, if any, regarding distributions of principal. For purposes of this Part, the distribution of a unitrust amount is considered a distribution of income and not of principal.”

**“ § 37A-1-104.7. Marital deduction trusts**

“Notwithstanding anything in this Part to the contrary, in the case of any trust for which a marital deduction has been taken, in whole or in part, for federal tax purposes under [section 2056](#) or [section 2523](#) of the Code, the spouse otherwise entitled to receive the net income of the trust shall have the right, by written instrument delivered to the trustee, to compel for the spouse's lifetime (i) the conversion of the trust from an income trust to a total return unitrust or (ii) the reconversion of the trust from a total return unitrust to an income trust.”

**“ § 37A-1-104.8. No liability on part of trustee or disinterested person acting in good faith**

“No trustee or disinterested person who in good faith takes or fails to take any action under this Part shall be liable to any person affected by the action or inaction, regardless of whether the person received written notice as provided in this Part and regardless of whether the person was under a legal disability at the time of the delivery of the notice. The exclusive remedy for any person affected by an action or inaction shall be to obtain an order of the court directing the trustee (i) to convert an income trust to a total return unitrust, (ii) to reconvert from a total return unitrust to an income trust, or (iii) to change the percentage used to calculate the unitrust amount.”

**“ § 37A-1-104.9. Applicability**

“This Part shall apply to all trusts in existence on, or created after January 1, 2004, unless (i) the governing instrument contains a provision clearly expressing the grantor's intention that the current beneficiary or beneficiaries are to receive an amount other than a reasonable current return from the trust, (ii) the trust is a trust described in [section 170\(f\)\(2\)\(B\)](#) , [section 664\(d\)](#) , [section 2702\(a\)\(3\)](#), or [section 2702\(b\)](#) of the Code, (iii) the trust is a trust under which any amount is, or has been in the past, set aside permanently for charitable purposes unless the income from the trust also is devoted permanently to charitable purposes, or (iv) the governing instrument expressly prohibits use of this Part by specific reference to this Part, or expressly states the grantor's intent that net income not be calculated as a unitrust amount. A provision in the governing instrument that ‘the provisions of Part 2 of Article 1 of Chapter 37A of the General Statutes or any corresponding provision of future law, shall not be used in the administration of this trust.’ or ‘the trustee shall not determine the distributions to the income beneficiary as a unitrust amount.’ or similar words reflecting that intent is sufficient to preclude the use of this Part.”

Adds a Part 2A, Express Total Return Unitrusts, consisting of sections 37A-1-104.21 to 37A-1-104.26, which provide:

**“ § 37A-1-104.21. Definitions**

“(a) An ‘express total return unitrust’ means a trust that has a governing instrument requiring the distribution at least annually of a unitrust amount equal to a fixed percentage of not less than three percent (3%) nor more than five percent (5%) per year of the net fair market value of the trust's assets, valued at least annually.

“(b) ‘Code’ means the Internal Revenue Code as described in G.S. 37A-1-104.1(1).

“(c) ‘Treasury regulations’ means the treasury regulations described in G.S. 37A-1-104.1(9a). ”

**“ § 37A-1-104.22. Determination of unitrust amount**

“(a) The unitrust amount to be distributed by the express total return unitrust may be determined in the governing instrument by reference to the net fair market value of the trust's assets determined annually or averaged on a multiple year basis.

“(b) The terms of the governing instrument of an express total return unitrust may provide that:

“(1) Assets for which a fair market value cannot be readily ascertained shall be valued using valuation methods that the trustee considers reasonable and appropriate.

“(2) Assets, such as a residence property or tangible personal property, used by the trust beneficiary entitled to the unitrust amount may be excluded from the net fair market value for computing the unitrust amount.”

**“ § 37A-1-104.23. Effect of distribution of unitrust amount**

“The distribution from an express total return unitrust of the fixed percentage of not less than three percent (3%) nor more than five percent (5%) reasonably apportions between the income beneficiaries and remaindermen the total return of an express total return unitrust.”

**“ § 37A-1-104.24. Change or conversion of unitrust amount**

“(a) The terms of the governing instrument of an express total return unitrust may provide the method similar to the method provided under G.S. 37A-1-104.2(a) for changing the unitrust percentage or for converting from a unitrust to an income trust or for a reconversion of an income trust to a unitrust, or for all of these actions.

“(b) If the terms of the governing instrument of an express total return unitrust do not specifically or by reference to G.S. 37A-1-104.2 grant a power to the trustee to change the unitrust percentage or change to an income trust, the trustee shall not have that power.”

**“ § 37A-1-104.25. Determination of character of unitrust amount**

“Unless the terms of the governing instrument of the express total return unitrust specifically provide otherwise, the trustee:

“(1) Shall consider the unitrust amount as paid from net accounting income determined as if the trust were not a unitrust;

“(2) Shall then consider the unitrust amount as paid from ordinary income not allocable to net accounting income;

“(3) May, in the trustee's discretion, consider the unitrust amount as paid from net short-term gain described in [section 1222\(5\)](#) of the Code and then from net long-term capital gain described in [section 1222\(7\)](#) of the Code so long as this discretionary power is exercised consistently and in a reasonable and impartial manner, but the amount so paid from net capital gains may not be greater than the excess of the unitrust amount over the amount of distributable net income as defined in section 643(a) of the Code without regard to [section 1.643\(a\)-3\(b\) of the treasury regulations](#) ; and

“(4) Shall then consider the unitrust amount as coming from the principal of the trust.”

**“ § 37A-1-104.26. Unitrust amount in excess of a five percent payout**

“A trust that provides for a fixed percentage payout in excess of five percent (5%) per year is considered an express total return unitrust that pays out a fixed percentage of five percent (5%) per year and pays out principal to the extent that the fixed percentage payout exceeds five percent (5%) per year.”

## **NORTH CAROLINA**

In added Part 2, Conversion to Unitrust, section 37A-1-104.7 has been repealed, and sections 37A-1-104.1, 37A-1-104.2, 37A-1-104.3, 37A-1-104.4 and 37A-1-104.9 now provide:

**“ § 37A-1-104.1. Definitions**

“The following definitions apply to this Part:

“(1) Code. -- The Internal Revenue Code of 1986, as amended from time to time, and any statutory enactment successor to the Code; reference to a specific section of the Code in this Part shall be considered a reference also to any successor provision dealing with the subject matter of that section of the Code.

“(2) Repealed by S.L. 2007-106, § 45.

“(3) Disinterested person. -- A person who is not a related or subordinate party with respect to the person then acting as trustee of the trust and excludes the settlor of the trust and any interested trustee.

“(4) Repealed by S.L. 2007-106, § 45.

“(5) Income trust. -- A trust, created by either an inter vivos or a testamentary instrument, which directs or permits the trustee to distribute the net income of the trust to one or more persons, either in fixed proportions or in amounts or proportions determined by the trustee, and regardless of whether the trust directs or permits the trustee to distribute principal of the trust to one or more of those persons.

“(6) Interested distributee. -- A living beneficiary who is a distributee or permissible distributee of trust income or principal who has the power to remove the existing trustee and designate as successor a person who may be a related or subordinate party with respect to that distributee.

“(7) Interested trustee. -- Any of the following:

“a. An individual trustee who is a qualified beneficiary.

“b. Any trustee who may be removed and replaced by an interested distributee.

"c. An individual trustee whose legal obligation to support a beneficiary may be satisfied by distributions of income and principal of the trust.

"(7a) Legal disability. -- A person under a legal disability is a person who is a minor, an incompetent, or an unborn individual, or whose identity or location is unknown.

"(7b) Qualified beneficiary. -- A qualified beneficiary as defined in G.S. 36C-1-103(15).

"(8) Related or subordinate party. -- A related or subordinate party as defined in [section 672\(c\)](#) of the Code.

"(8a) Representative. -- A person who may represent and bind another as provided in Article 3 of Chapter 36C of the General Statutes, the provisions of which shall apply for purposes of this Article.

"(8b) Settlor. -- An individual, including a testator, who creates a trust.

"(9) Total return unitrust. -- An income trust that has been converted under and meets the provisions of this Part.

"(9a) Treasury regulations. -- The regulations, rulings, procedures, notices, or other administrative pronouncements issued by the Internal Revenue Service, as amended from time to time.

"(10) Trustee. -- Any person acting as trustee of the trust, except as otherwise expressly provided in this Part, whether acting in that person's discretion or on the direction of one or more persons acting in a fiduciary capacity.

"(11) Unitrust amount. -- An amount computed as a percentage of the fair market value of the trust."

**" § 37A-1-104.2. Conversion in trustee's discretion without court approval**

"(a) Any trustee, other than an interested trustee, or, where two or more persons are acting as trustees, a majority of the trustees who are not interested trustees (in either case hereafter 'trustee'), may, in the trustee's sole discretion and without court approval, (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust if all of the following apply:

"(1) The trustee adopts a written policy for the trust providing (i) in the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income, (ii) in the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income rather than unitrust amounts, or (iii) that the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed as stated in the policy.

"(2) The trustee gives written notice of its intention to take the action, including copies of the written policy and this Part, to (i) the settlor of the trust, if living, and (ii) all persons who are the qualified beneficiaries of the trust at the time the notice is given. If a qualified beneficiary is under a legal disability, notice shall be given to the representative of the qualified beneficiary if a representative is available without court order.

"(3) There is at least (i) one qualified beneficiary described in G.S. 36C-1-103(15)a. or b. who is not under a legal disability or a representative of a qualified beneficiary so described and (ii) one qualified beneficiary described in G.S. 36C-1-103(15)c. who is not under a legal disability or a representative of a qualified beneficiary so described.

"(4) No person receiving notice of the trustee's intention to take the proposed action objects to the action within 60 days after notice has been given. The objection shall be by written instrument delivered to the trustee.

"(b) If there is no trustee of the trust other than an interested trustee, the interested trustee or, where two or more persons are acting as trustee and are interested trustees, a majority of the interested trustees may, in its sole discretion and without court approval, (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust if all of the following apply:

“(1) The trustee adopts a written policy for the trust providing (i) in the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income as determined under this Chapter, (ii) in the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income as determined under this Chapter rather than unitrust amounts, or (iii) that the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed as stated in the policy.

“(2) The trustee appoints a disinterested person who, in its sole discretion but acting in a fiduciary capacity, determines for the trustee (i) the percentage to be used to calculate the unitrust amount, (ii) the method to be used in determining the fair market value of the trust, and (iii) which assets, if any, are to be excluded in determining the unitrust amount.

“(3) The trustee gives written notice of its intention to take the action, including copies of the written policy and this Part, and the determinations of the disinterested person to (i) the settlor of the trust, if living, and (ii) all persons who are the qualified beneficiaries of the trust at the time of the giving of the notice. If a qualified beneficiary is under a legal disability, notice shall be given to the representative of the qualified beneficiary if a representative is available without court order.

“(4) There is at least one (i) qualified beneficiary described in G.S. 36C-1-103(15)a. or b. or a representative of a beneficiary so described and (ii) one qualified beneficiary described in G.S. 36C-1-103(15)c. or a representative of a qualified beneficiary so described.

“(5) No person receiving notice of the trustee's intention to take the proposed action of the trustee objects to the action or to the determination of the disinterested person within 60 days after notice has been given. The objection must be by written instrument delivered to the trustee.

“(c) A trustee may act under subsection (a) or (b) of this section with respect to a trust for which both income and principal have been set aside permanently for charitable purposes under the governing instrument and for which a federal estate or gift tax deduction has been taken, provided that all of the following apply:

“(1) Instead of sending written notice to the persons described in subdivisions (2) and (3) of subsection (a) of this section or subdivisions (3) and (4) of subsection (b) of this section, as the case may be, the trustee shall send written notice to each charitable organization expressly designated to receive the income of the trust under the governing instrument and, if no charitable organization is expressly designated to receive all of the income of the trust under the governing instrument, to the Attorney General of this State.

“(2) Subdivision (4) of subsection (a) of this section or subdivision (5) of subsection (b) of this section, as the case may be, shall not apply to this action.

“(3) In each taxable year, the trustee shall distribute the greater of the unitrust amount or the amount required by section 4942 of the Code.

“(d) The provisions of G.S. 36C-1-109 regarding notices and the sending of documents to persons under Chapter 36C of the General Statutes shall apply for purposes of notices and the sending of documents under this section.”

**“ § 37A-1-104.3. Conversion with court approval**

“(a) If any trustee desires to (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust but does not have the ability to or elects not to do it under G.S. 37A-1-104.2, the trustee may petition the court for an order as the trustee considers appropriate. In the event, however, there is only one trustee of the trust and the trustee is an interested trustee or in the event there are two or more trustees of the trust and a majority of them are interested trustees, the court, in its own discretion or on the petition of the trustee or trustees or any person interested in the trust, may appoint a disinterested person who, acting in a fiduciary capacity, shall present information to the court as shall be necessary to enable the court to make its determinations under this Part.

“(b) A qualified beneficiary or a representative of a qualified beneficiary may request the trustee to (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust. If the trustee does not take the action requested, the qualified beneficiary or a representative of the qualified beneficiary may petition the court to order the trustee to take the action.

“(c) All proceedings under this section shall be conducted as provided in Article 2 of Chapter 36C of the General Statutes.”

**“ § 37A-1-104.4. Determination of unitrust amount**

“(a) The fair market value of the trust shall be determined at least annually, using a valuation date selected by the trustee in its discretion. The trustee, in its discretion, may use an average of the fair market value on the same valuation date for the current fiscal year and not more than three preceding fiscal years, if the use of this average appears desirable to reduce the impact of fluctuations in market value on the unitrust amount. Assets for which a fair market value cannot be readily ascertained shall be valued using valuation methods as are considered reasonable and appropriate by the trustee. Assets, such as a residence or tangible personal property, used by the trust beneficiary may be excluded from the fair market value for computing the unitrust amount.

“(b) The percentage to be used in determining the unitrust amount shall be a reasonable current return from the trust, in any event not less than three percent (3%) nor more than five percent (5%), taking into account the intentions of the settlor of the trust as expressed in the governing instrument, the needs of the beneficiaries, general economic conditions, projected current earnings and appreciation for the trust, and projected inflation and its impact on the trust.

“(c) Repealed by S.L. 2005-244, § 4.

“(d) Following the conversion of an income trust to a total return unitrust, the trustee:

“(1) Shall consider the unitrust amount as paid from net accounting income determined as if the trust were not a unitrust;

“(2) Shall then consider the unitrust amount as paid from ordinary income not allocable to net accounting income;

“(3) May, in the trustee's discretion, consider the unitrust amount as paid from net short-term gain described in [section 1222\(5\)](#) of the Code and then from net long-term capital gain described in [section 1222\(7\)](#) of the Code so long as the discretionary power is exercised consistently and in a reasonable and impartial manner, but the amount so paid from net capital gains may not be greater than the excess of the unitrust amount over the amount of distributable net income as defined in section 643(a) of the Code without regard to [section 1.643\(a\)-3\(b\) of the Treasury Regulations](#) , as amended from time to time; and

“(4) Shall then consider the unitrust amount as coming from the principal of the trust.”

**“ § 37A-1-104.9. Applicability**

“This Part shall apply to all trusts in existence on, or created after January 1, 2004, unless (i) the governing instrument contains a provision clearly expressing the settlor's intention that the current beneficiary or beneficiaries are to receive an amount other than a reasonable current return from the trust, (ii) the trust is a trust described in [section 170\(f\)\(2\)\(B\)](#) , [section 664\(d\)](#) , [section 2702\(a\)\(3\)](#), or [section 2702\(b\)](#) of the Code, (iii) the trust is a trust under which any amount is, or has been in the past, set aside permanently for charitable purposes unless the income from the trust also is devoted permanently to charitable purposes, or (iv) the governing instrument expressly prohibits use of this Part by specific reference to this Part, or expressly states the settlor's intent that net income not be calculated as a unitrust amount. A provision in the governing instrument that ‘the provisions of Part 2 of Article 1 of Chapter 37A of the General Statutes or any corresponding provision of future law, shall not be used in the administration of this trust.’ or ‘the trustee shall not determine the distributions to the income beneficiary as a unitrust amount.’ or similar words reflecting that intent is sufficient to preclude the use of this Part.”

## NORTH DAKOTA

Repealed the Uniform Principal and Income Act (1962) ( [NDCC 59-04.1-01](#) to [59-04.1-17](#) ), and enacted in lieu thereof the Uniform Principal and Income Act (1997) ( [NDCC 59-04.2-01](#) to [59-04.2-30](#) ) by L.1999, c. 532, effective August 1, 1999.

Adds a section, which provides:

### “ **59-04.2-30 Certain charitable remainder unitrusts.**

“1. Notwithstanding any other provision of this chapter, unless the trust instrument directs otherwise, an increase in the value of the obligations described in this subsection owned by a charitable remainder unitrust of the type authorized in [section 664\(d\)\(3\) of the Internal Revenue Code](#) [ [26 U.S.C. 664\(d\)\(3\)](#) ] or its successor provisions is distributable as income when it becomes available for distribution:

“a. A zero coupon bond;

“b. An annuity contract before annuitization;

“c. A life insurance contract before the death of the insured;

“d. An interest in a common trust fund as defined in [section 584 of the Internal Revenue Code](#) [ [26 U.S.C. 584](#) ] or its successor provisions;

“e. An interest in a partnership as defined in [section 7701 of the Internal Revenue Code](#) [ [26 U.S.C. 7701](#) ] or its successor provisions; and

“f. Any other obligation for the payment of money that is payable at a future time in accordance with a fixed, variable, or discretionary schedule of appreciation in excess of the price at which it was issued.

“2. The increase in value of the obligations described in subsection 1 is distributable to the beneficiary who was the income beneficiary at the time of the increase.

“3. For purposes of this section, the increase in value of an obligation described in subsection 1 is available for distribution only when the trustee receives cash on account of the obligation. If the obligation is surrendered or liquidated partially, the cash available must be attributed first to the increase.”

## OHIO

Repealed the Uniform Principal and Income Act (1962) (R.C. §§ 1340.01 to 1340.13; 2109.66, 2109.67), and enacted in lieu thereof the Uniform Principal and Income Act (1997) (R.C. §§ 1340.40 to 1340.91) by L.2002, No. 186, effective December 9, 2002.

## OHIO

Repealed the Uniform Principal and Income Act (R.C. §§ 1340.40 to 1340.91) and reenacted the Uniform Principal and Income Act as R.C. §§ 5812.01 to 5812.52 by L.2006, H.B. No. 416, effective January 1, 2007.

## OKLAHOMA

Repealed the majority of the Uniform Principal and Income Act (1931) ( [60 Okl.St. Ann. §§ 175.26](#) to [175.36](#) ), and enacted in lieu thereof the 1997 Revised Uniform Act ( [60 Okl.St. Ann. §§ 175.101](#) to [175.602](#) ) by L.1998, c. 115, effective November 1, 1998. The definitional section of the 1931 act ( [60 Okl.St. Ann. § 175.3](#) ) was also the definitional section for the Uniform Trusts Act.

## OKLAHOMA



Adds a section, which provides:

**“ § 175.603. Application of Section 175.409 of Title 60 to trusts--Particular dates**

< TRANSITIONAL MATTERS >

“ [Section 175.409 of Title 60 of the Oklahoma Statutes](#) applies to a trust described in subsection D of [Section 175.409 of Title 60 of the Oklahoma Statutes](#) on and after the following dates:

- “1. If the trust is not funded as of November 1, 2009, the date of the decedent's death;
- “2. If the trust is initially funded in the calendar year beginning January 1, 2009, the date of the decedent's death;  
or
- “3. If the trust is not described in paragraph 1 or 2 of this section, January 1, 2009.”

**OREGON**

Repealed the Uniform Principal and Income Act (1962) (ORS 129.005 to 129.125), and enacted the Uniform Principal and Income Act (1997) (ORS 116.007, 129.200 to 129.450) by L.2003, c. 279, effective January 1, 2004.

Adds sections, which provide:

**“ 116.007. Allocation of income**

“(1) Unless the will otherwise provides and subject to subsection (2) of this section, all expenses incurred in connection with the settlement of a decedent's estate, including debts, funeral expenses, estate taxes, interest and penalties concerning taxes, family allowances, fees of attorneys and personal representatives, and court costs shall be charged against the principal of the estate.

“(2) Unless the will otherwise provides, income from the assets of a decedent's estate after the death of the testator and before distribution, including income from property used to discharge liabilities, shall be determined in accordance with the rules applicable to a trustee under ORS chapter 129 and this section and distributed as follows:

“(a) To specific legatees and devisees, the income from the property bequeathed or devised to them respectively, less taxes, ordinary repairs, and other expenses of management and operation of the property, and an appropriate portion of interest accrued since the death of the testator and of taxes imposed on income, excluding taxes on capital gains, that accrue during the period of administration.

“(b) To all other legatees and devisees, except legatees of pecuniary bequests that are not in trust and that do not qualify for the marital deduction provided for in [section 2056 of the Internal Revenue Code](#) ( [26 U.S.C. 2056](#) ), the balance of the income, less the balance of taxes, ordinary repairs, and other expenses of management and operation of all property from which the estate is entitled to income, interest accrued since the death of the testator, and taxes imposed on income, excluding taxes on capital gains, that accrue during the period of administration, in proportion to their respective interests in the undistributed assets of the estate computed at times of distribution on the basis of inventory value.

“(3) Income received by a trustee under subsection (2) of this section shall be treated as income of the trust.”

**“ 129.225. Conversion to unitrust.**

“(1) As used in this section, ‘beneficiary’ means a person who has an interest in the trust to be converted and who has the legal capacity to take all actions authorized under this section.

“(2)(a) Unless expressly prohibited by the terms of the trust, a trustee may release the power to make adjustments under ORS 129.215 (1) and convert a trust into a unitrust if the trustee determines that the

conversion will enable the trustee to carry out more accurately the intent of the settlor and the purposes of the trust and that operation of the trust as a unitrust is consistent with the duties of the trustee under ORS 129.210 (2).

“(b) Not less than 60 days before making a conversion under this section, a trustee must give written notice to all beneficiaries who either are eligible to receive income from the trust at the time the notice is given, or who would receive a distribution of principal if the trust were to terminate immediately before the notice is given and no power of appointment was exercised. The notice must indicate that the trustee intends to release the power to adjust and to convert the trust into a unitrust, must describe how the unitrust will operate and must include a description of the initial decisions the trustee will make under this section.

“(c) A trustee may not convert a trust to a unitrust under this section if any beneficiary objects to the conversion to a unitrust in a writing delivered to the trustee within 60 days after notice is given under this subsection.

“(3) The trustee or any beneficiary may file a petition to seek issuance of a court order directing conversion of a trust to a unitrust. The court shall order the requested conversion if the court concludes that the conversion will enable the trustee to carry out more accurately the intent of the settlor and the purposes of the trust, and that operation of the trust as a unitrust is consistent with the duties of the trustee under ORS 129.210 (2).

“(4) After a trust is converted to a unitrust under this section, all of the following apply:

“(a) The trustee must invest and manage trust assets as a prudent investor, and must follow an investment policy seeking a total return for trust investments, whether that return is derived from appreciation of principal or from earnings and distributions from principal.

“(b) The trustee must make regular distributions in accordance with the terms of the trust. All provisions of the trust relating to distribution of income shall be construed to refer to an annual unitrust distribution equal to four percent of the fair market value of trust assets, averaged over the lesser of the three preceding calendar years or the period during which the trust has been in existence.

“(c) In calculating the unitrust distribution, the trustee shall use the value of trust assets on the first business day of each calendar year for purposes of determining average value. The trustee may, in the trustee's discretion, determine the manner in which the unitrust distribution will be prorated for a year in which a beneficiary's right to payments begins or ends, the effect on trust asset valuation of other payments from or contributions to the trust, whether to estimate the value of nonliquid assets, whether to omit from the calculations trust property occupied or possessed by a beneficiary and any other matters necessary for the proper administration of the unitrust.

“(d) Expenses that would be deducted from income under this chapter if the trust was not a unitrust shall not be deducted from the unitrust distribution.

“(e) Unless otherwise provided by the terms of the trust, the unitrust distribution must be paid first from net income, as that amount would be determined if the trust were not a unitrust. To the extent that net income is insufficient, the unitrust distribution shall be paid first from net realized short-term capital gains, then from net realized long-term capital gains and finally from trust principal.

“(f) Conversion to a unitrust does not affect any provision in the terms of the trust directing or authorizing a trustee to distribute trust principal or authorizing a beneficiary to withdraw a portion or all of the principal.

“(5) The trustee or any beneficiary may file a petition to seek issuance of a court order directing any of the following:

“(a) The distribution of net income, as that amount would be determined if the trust were not a unitrust, in excess of the unitrust distribution, if the excess distribution is necessary to preserve a tax benefit.

“(b) The selection of a period other than three years for purposes of calculating average trust asset values.

“(c) Reconversion from a unitrust. If a reconversion is ordered, the power to make adjustments under ORS 129.215 (1) is revived.

“(6) A trustee does not have and may not exercise any power under this section in any of the following circumstances:

“(a) The unitrust distribution would be made from any amount that is permanently set aside for charitable purposes under the terms of the trust and for which a charitable deduction from federal gift, estate or income taxes has been taken.

“(b) The possession or exercise of the power would cause an individual to be treated as the owner of all or part of the trust for federal income tax purposes and the individual would not be treated as an owner if the trustee did not possess or exercise the power.

“(c) The possession or exercise of the power would cause all or any part of the trust assets to be subject to any federal gift or estate tax with respect to an individual and the trust assets would not be subject to that taxation if the trustee did not possess or exercise the power.

“(d) The possession or exercise of the power would result in the disallowance of a marital deduction from federal estate or gift tax that would be allowed if the trustee did not possess or exercise the power.

“(e) The trustee is a beneficiary of the trust.

“(7) If subsection (6) of this section applies to a trustee and there is more than one trustee, a cotrustee to whom subsection (6) of this section does not apply may possess and exercise the powers under this section unless the possession or exercise of those powers is not permitted by the terms of the trust. If subsection (6) of this section restricts all trustees from possessing or exercising a power under this section, a trustee may file a petition requesting that the court order the requested action.”

## OREGON

Enacted 2008 amendments in 2011, c.307, effective June 9, 2011.

Added section 116.007 now provides:

“(1) Unless the will otherwise provides and subject to subsection (2) of this section, all expenses incurred in connection with the settlement of a decedent's estate, including debts, funeral expenses, estate taxes, interest and penalties concerning taxes, family allowances, fees of attorneys and personal representatives and court costs, shall be charged against the principal of the estate.

“(2) Unless the will otherwise provides, income from the assets of a decedent's estate after the death of the testator and before distribution, including income from property used to discharge liabilities, shall be determined in accordance with the rules applicable to a trustee under ORS chapter 129 and this section and distributed as follows:

“(a) To specific legatees and devisees, the income from the property bequeathed or devised to them respectively, less taxes, ordinary repairs, and other expenses of management and operation of the property, and an appropriate portion of interest accrued since the death of the testator and of taxes imposed on income, excluding taxes on capital gains, that accrue during the period of administration.

“(b) To all other legatees and devisees, except legatees of pecuniary bequests that are not in trust and that do not qualify for the marital deduction provided for in [section 2056 of the Internal Revenue Code](#) ( [26 U.S.C. 2056](#) ), the balance of the income, less the balance of taxes, ordinary repairs, and other expenses of management and operation of all property from which the estate is entitled to income, interest accrued since the death of the testator, and taxes imposed on income, excluding taxes on capital gains, that accrue during

the period of administration, in proportion to their respective interests in the undistributed assets of the estate computed at times of distribution on the basis of inventory value.

“(3) Income received by a trustee under subsection (2) of this section shall be treated as income of the trust.”

## **PENNSYLVANIA**

Repealed the Uniform Principal and Income Act (1931) ( [20 Pa. C.S.A. §§ 8101 to 8112](#) ), and enacted in lieu thereof the Uniform Principal and Income Act (1997) ( [20 Pa. C.S.A. §§ 8101 to 8191](#) ) by L.2002, c. 50, approved May 16, 2002.

Adds sections, which provide:

### **“ § 8105. Power to convert to unitrust**

“(a) **Conversion.**-- Unless expressly prohibited by the governing instrument, a trustee may release the power under section 8104 (relating to trustee's power to adjust) and convert a trust into a unitrust as described in this section if all of the following apply:

“(1) The trustee determines that the conversion will enable the trustee to better carry out the intent of the settlor or testator and the purposes of the trust.

“(2) The trustee gives written notice of the trustee's intention to release the power to adjust and to convert the trust into a unitrust and of how the unitrust will operate, including what initial decisions the trustee will make under this section, to all the sui juris beneficiaries who:

“(i) are currently eligible to receive income from the trust; and

“(ii) would receive, if no powers of appointment were exercised, a distribution of principal if the trust were to terminate immediately prior to the giving of notice.

“(3) There is at least one sui juris beneficiary under paragraph (2)(i) and at least one sui juris beneficiary under paragraph (2)(ii).

“(4) No sui juris beneficiary objects to the conversion to a unitrust in a writing delivered to the trustee within 60 days of the mailing of the notice under paragraph (2).

### **“(b) Judicially approved conversion.**--

“(1) The trustee may petition the court to approve the conversion to a unitrust if any of the following apply:

“(i) A beneficiary timely objects to the conversion to a unitrust.

“(ii) There are no sui juris beneficiaries under subsection (a)(2)(i).

“(iii) There are no sui juris beneficiaries under subsection (a)(2)(ii).

“(2) A beneficiary may request a trustee to convert to a unitrust. If the trustee does not convert, the beneficiary may petition the court to order the conversion.

“(3) The court shall approve the conversion or direct the requested conversion if the court concludes that the conversion will enable the trustee to better carry out the intent of the settlor or testator and the purposes of the trust.

“(c) **Consideration.**-- In deciding whether to exercise the power conferred by subsection (a), a trustee may consider, among other things, all of the following:

“(1) The size of the trust.

“(2) The nature and estimated duration of the trust.

“(3) The liquidity and distribution requirements of the trust.

“(4) The needs for regular distributions and preservation and appreciation of capital.

“(5) The expected tax consequences of the conversion.

“(6) The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property or real property; and the extent to which an asset is used by a beneficiary.

“(7) To the extent reasonably known to the trustee, the needs of the beneficiaries for present and future distributions authorized or required by the governing instrument.

“(8) Whether and to what extent the governing instrument gives the trustee the power to invade principal or accumulate income or prohibits the trustee from invading principal or accumulating income and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income.

“(9) The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation.

“ **(d) Post conversion.**-- After a trust is converted to a unitrust, all of the following apply:

“(1) The trustee shall follow an investment policy seeking a total return for the investments held by the trust, whether the return is to be derived:

“(i) from appreciation of capital;

“(ii) from earnings and distributions from capital; or

“(iii) from both.

“(2) The trustee shall make regular distributions in accordance with the governing instrument construed in accordance with the provisions of this section.

“(3) The term ‘income’ in the governing instrument shall mean an annual distribution (the unitrust distribution) equal to 4% (the payout percentage) of the net fair market value of the trust's assets, whether such assets would be considered income or principal under other provisions of this chapter, averaged over the lesser of:

“(i) the three preceding years; or

“(ii) the period during which the trust has been in existence.

“ **(e) Discretion of trustee.**-- The trustee, may in the trustee's discretion from time to time, determine all of the following:

“(1) The effective date of a conversion to a unitrust.

“(2) The provisions for prorating a unitrust distribution for a short year in which a beneficiary's right to payments commences or ceases.

“(3) The frequency of unitrust distributions during the year.

“(4) The effect of other payments from or contributions to the trust on the trust's valuation.

“(5) Whether to value the trust's assets annually or more frequently.

“(6) What valuation dates to use.

“(7) How frequently to value nonliquid assets and whether to estimate their value.

“(8) Whether to omit from the calculations trust property occupied or possessed by a beneficiary.

“(9) Any other matters necessary for the proper functioning of the unitrust.

“(f) **Allocation.**--

“(1) Expenses which would be deducted from income if the trust were not a unitrust may not be deducted from the unitrust distribution.

“(2) Unless otherwise provided by the governing instrument, the unitrust distribution shall be paid from net income as such term would be determined if the trust were not a unitrust. To the extent net income is insufficient, the unitrust distribution shall be paid from net realized short-term capital gains. To the extent income and net realized short-term capital gains are insufficient, the unitrust distribution shall be paid from net realized long-term capital gains. To the extent income and net realized short-term and long-term capital gains are insufficient, the unitrust distribution shall be paid from the principal of the trust.

“(g) **Court orders.**-- The trustee or, if the trustee declines to do so, a beneficiary may petition the court to:

“(1) Select a payout percentage different than 4%.

“(2) Provide for a distribution of net income, as would be determined if the trust were not a unitrust, in excess of the unitrust distribution if such distribution is necessary to preserve a tax benefit.

“(3) Average the valuation of the trust's net assets over a period other than three years.

“(4) Reconvert from a unitrust. Upon a reconversion, the power to adjust under section 8104 shall be revived.

“(h) **Application.**-- A conversion to a unitrust does not affect a provision in the governing instrument directing or authorizing the trustee to distribute principal or authorizing a beneficiary to withdraw a portion or all of the principal.

“(i) **Prohibited conversions.**-- A trustee may not convert a trust into a unitrust in any of the following circumstances:

“(1) If payment of the unitrust distribution would change the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets.

“(2) If the unitrust distribution would be made from any amount which is permanently set aside for charitable purposes under the governing instrument and for which a Federal estate or gift tax deduction has been taken, unless both income and principal are so set aside.

“(3) If:

“(i) possessing or exercising the power to convert would cause an individual to be treated as the owner of all or part of the trust for Federal income tax purposes; and

“(ii) the individual would not be treated as the owner if the trustee did not possess the power to convert.

“(4) If:

“(i) possessing or exercising the power to convert would cause all or part of the trust assets to be subject to Federal estate or gift tax with respect to an individual; and

“(ii) the assets would not be subject to Federal estate or gift tax with respect to the individual if the trustee did not possess the power to convert.

“(5) If the conversion would result in the disallowance of a Federal estate tax or gift tax marital deduction which would be allowed if the trustee did not have the power to convert.

“(6) If the trustee is a beneficiary of the trust.

“ **(j) Permissible conversion when otherwise prohibited.--**

“(1) If subsection (i)(3), (4) or (6) applies to a trustee and there is more than one trustee, a co-trustee to whom the provision does not apply may convert the trust unless the exercise of the power by the remaining trustee or trustees is prohibited by the governing instrument.

“(2) If subsection (i)(3), (4) or (6) applies to all the trustees, the trustees may petition the court to direct a conversion.

“ **(k) Release of the power to convert.--**

“(1) A trustee may release the power conferred by subsection (a) to convert to a unitrust if any of the following apply:

“(i) The trustee is uncertain about whether possessing or exercising the power will cause a result described in subsection (i)(3), (4) or (5).

“(ii) The trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (i).

“(2) The release may be permanent or for a specified period, including a period measured by the life of an individual.”

“ **§ 8113. Charitable trusts**

“ **(a) Election.--** Notwithstanding the foregoing provisions of this chapter, the trustee of a trust held exclusively for charitable purposes may elect to be governed by this section unless the governing instrument expressly provides that the election provided by this section shall not be available.

“ **(b) Eligibility for election.--** To make an election under this section, the trustee shall adopt and follow an investment policy seeking a total return for the investments held by the trust, whether the return is to be derived from appreciation of capital or earnings and distributions with respect to capital or both. The policy constituting the election shall be in writing, shall be maintained as part of the permanent records of the trust and shall recite that it constitutes an election to be governed by this section.

“ **(c) Effect of election.--** If an election is made to be governed by this section, the term ‘income’ shall mean a percentage of the value of the trust. The trustee shall, in a writing maintained as part of the permanent records of the trust, annually select the percentage and determine that it is consistent with the long-term preservation of the real value of the principal of the trust, but in no event shall the percentage be less than 2% nor more than 7% per year. The term ‘principal’ shall mean all other assets held by the trustee with respect to the trust.

“ **(d) Revocation of election.--** The trustee may revoke an election to be governed by this section if the revocation is made as part of an alternative investment policy seeking the long-term preservation of the real value of the principal of the trust. The revocation and alternative investment policy shall be in writing and maintained as part of the permanent records of the trust.

“ **(e) Value determination.--** For purposes of applying this section, the value of the trust shall be the fair market value of the cash and other assets held by the trustee with respect to the trust, whether such assets would be considered ‘income’ or ‘principal’ under the other provisions of this chapter, determined at least annually and

averaged over a period of three or more preceding years. However, if the trust has been in existence less than three years, the average shall be determined over the period during which the trust has been in existence.”

**“ § 8163. Discretionary allocation of disbursements**

“Subject to sections 8161 (relating to mandatory disbursements from income) and 8162 (relating to mandatory disbursements from principal), a trustee may, in the trustee's discretion, allocate to income or principal or partly to each ordinary expenses incurred in connection with the administration, management or preservation of trust property and the distribution of income, including, but not limited to, the compensation of the trustee and of any person providing investment advisory, custodian or income tax return preparation services to the trustee.”

**PENNSYLVANIA**

Added section 8105 now provides:

**“ § 8105. Power to convert to unitrust**

**“(a) Conversion.** --Unless expressly prohibited by the governing instrument, a trustee may release the power under section 8104 (relating to trustee's power to adjust) and convert a trust into a unitrust as described in this section if all of the following apply:

“(1) The trustee determines that the conversion will enable the trustee to better carry out the intent of the settlor or testator and the purposes of the trust.

“(2) The trustee gives written notice of the trustee's intention to release the power to adjust and to convert the trust into a unitrust and of how the unitrust will operate, including what initial decisions the trustee will make under this section, to all the sui juris beneficiaries who:

“(i) are currently eligible to receive income from the trust;

“(ii) would be eligible to receive, if no powers of appointment were exercised, income from the trust if the interest of all those eligible to receive income under subparagraph (i) were to terminate immediately prior to the giving of notice; and

“(iii) would receive, if no powers of appointment were exercised, a distribution of principal if the trust were to terminate immediately prior to the giving of notice.

“(3) There is at least one sui juris beneficiary under paragraph (2)(i) and at least one sui juris beneficiary under either paragraph (2)(ii) or (iii).

“(4) No sui juris beneficiary objects to the conversion to a unitrust in a writing delivered to the trustee within 60 days of the mailing of the notice under paragraph (2).

**“(b) Judicially approved conversion.** --

“(1) The trustee may petition the court to approve the conversion to a unitrust if any of the following apply:

“(i) A beneficiary timely objects to the conversion to a unitrust.

“(ii) There are no sui juris beneficiaries under subsection (a)(2)(i).

“(iii) There are no sui juris beneficiaries under either subsection (a)(2)(ii) or (iii).

“(2) A beneficiary may request a trustee to convert to a unitrust. If the trustee does not convert, the beneficiary may petition the court to order the conversion.



“(3) The court shall approve the conversion or direct the requested conversion if the court concludes that the conversion will enable the trustee to better carry out the intent of the settlor or testator and the purposes of the trust.

“(c) **Consideration.** --In deciding whether to exercise the power conferred by subsection (a), a trustee may consider, among other things, all of the following:

“(1) The size of the trust.

“(2) The nature and estimated duration of the trust.

“(3) The liquidity and distribution requirements of the trust.

“(4) The needs for regular distributions and preservation and appreciation of capital.

“(5) The expected tax consequences of the conversion.

“(6) The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property or real property; and the extent to which an asset is used by a beneficiary.

“(7) To the extent reasonably known to the trustee, the needs of the beneficiaries for present and future distributions authorized or required by the governing instrument.

“(8) Whether and to what extent the governing instrument gives the trustee the power to invade principal or accumulate income or prohibits the trustee from invading principal or accumulating income and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income.

“(9) The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation.

“(d) **Post conversion.** --After a trust is converted to a unitrust, all of the following apply:

“(1) The trustee shall follow an investment policy seeking a total return for the investments held by the trust, whether the return is to be derived:

“(i) from appreciation of capital;

“(ii) from earnings and distributions from capital; or

“(iii) from both.

“(2) The trustee shall make regular distributions in accordance with the governing instrument construed in accordance with the provisions of this section.

“(3) The term “income” in the governing instrument shall mean an annual distribution (the unitrust distribution) equal to 4% (the payout percentage) of the net fair market value of the trust's assets, whether such assets would be considered income or principal under other provisions of this chapter, averaged over the lesser of:

“(i) the preceding years in the smoothing period selected by the trustee; or

“(ii) the period during which the trust has been in existence.

“(e) **Discretion of trustee.** --The trustee may, in the trustee's discretion from time to time, determine all of the following:

“(1) The effective date of a conversion to a unitrust.

“(2) The provisions for prorating a unitrust distribution for a short year in which a beneficiary's right to payments commences or ceases.

“(3) The frequency of unitrust distributions during the year.

“(4) The effect of other payments from or contributions to the trust on the trust's valuation.

“(5) Whether to value the trust's assets annually or more frequently.

“(5.1) Whether to average the net assets of the trust over a smoothing period of three, four or five years.

“(6) What valuation dates to use.

“(7) How frequently to value nonliquid assets and whether to estimate their value.

“(8) Whether to omit from the calculations trust property occupied or possessed by a beneficiary.

“(9) Any other matters necessary for the proper functioning of the unitrust.

“(f) **Allocation.** --

“(1) Expenses which would be deducted from income if the trust were not a unitrust may not be deducted from the unitrust distribution.

“(2) Unless otherwise provided by the governing instrument, the unitrust distribution shall be considered to have been paid from the following sources in order of priority:

“(i) net income determined as if the trust were not a unitrust;

“(ii) ordinary income for Federal income tax purposes that is not allocable to net income under subparagraph (i);

“(iii) net realized short-term capital gains for Federal income tax purposes;

“(iv) net realized long-term capital gains for Federal income tax purposes; and

“(v) the principal of the trust estate.

“(g) **Court orders.** --The trustee or, if the trustee declines to do so, a beneficiary may petition the court to:

“(1) Select a payout percentage different than 4%.

“(2) Provide for a distribution of net income, as would be determined if the trust were not a unitrust, in excess of the unitrust distribution if such distribution is necessary to preserve a tax benefit.

“(3) Average the valuation of the trust's net assets over a period other than three years.

“(4) Reconvert from a unitrust. Upon a reconversion, the power to adjust under section 8104 shall be revived.

“(g.1) **Reconversion from unitrust.** --A trustee may reconvert a unitrust following the same procedures as in subsection (a) for converting a trust into a unitrust with the exception that the written notice shall state that the intent is to reconvert the unitrust into a trust for which income is defined under this chapter. Upon reconversion, the power to adjust under section 8104 shall be revived.

“(h) **Application.** --A conversion to a unitrust does not affect a provision in the governing instrument directing or authorizing the trustee to distribute principal or authorizing a beneficiary to withdraw a portion or all of the principal.

**“(i) Prohibited conversions.** --A trustee may not convert a trust into a unitrust in any of the following circumstances:

“(1) If payment of the unitrust distribution would change the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets.

“(2) If the unitrust distribution would be made from trust funds which are permanently set aside for charitable purposes under the governing instrument and for which a Federal estate or gift tax charitable deduction has been taken, unless both income and principal are so set aside. If both income and principal are so set aside, then section 8113 (relating to charitable trusts) and not this section shall be available.

“(3) If:

“(i) possessing or exercising the power to convert would cause an individual to be treated as the owner of all or part of the trust for Federal income tax purposes; and

“(ii) the individual would not be treated as the owner if the trustee did not possess the power to convert.

“(4) If:

“(i) possessing or exercising the power to convert would cause all or part of the trust assets to be subject to Federal estate or gift tax with respect to an individual; and

“(ii) the assets would not be subject to Federal estate or gift tax with respect to the individual if the trustee did not possess the power to convert.

“(5) If the conversion would result in the disallowance of a Federal estate tax or gift tax marital deduction which would be allowed if the trustee did not have the power to convert.

“(6) If the trustee is a beneficiary of the trust.

**“(j) Permissible conversion when otherwise prohibited.** --

“(1) If subsection (i)(3), (4) or (6) applies to a trustee and there is more than one trustee, a co-trustee to whom the provision does not apply may convert the trust unless the exercise of the power by the remaining trustee or trustees is prohibited by the governing instrument.

“(2) If subsection (i)(3), (4) or (6) applies to all the trustees, the trustees may petition the court to direct a conversion.

**“(k) Release of the power to convert.** --

“(1) A trustee may release the power conferred by subsection (a) to convert to a unitrust if any of the following apply:

“(i) The trustee is uncertain about whether possessing or exercising the power will cause a result described in subsection (i)(3), (4) or (5).

“(ii) “The trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (i).

“(2) The release may be permanent or for a specified period, including a period measured by the life of an individual.”

Added section 8113 now provides:

**“ § 8113. Charitable trusts**

“ **(a) Election.** --Notwithstanding the foregoing provisions of this chapter, the trustee of a trust held exclusively for charitable purposes may elect to be governed by this section unless the governing instrument expressly provides that the election provided by this section shall not be available.

“ **(b) Eligibility for election.** --To make an election under this section, the trustee shall adopt and follow an investment policy seeking a total return for the investments held by the trust, whether the return is to be derived from appreciation of capital or earnings and distributions with respect to capital or both. The policy constituting the election shall be in writing, shall be maintained as part of the permanent records of the trust and shall recite that it constitutes an election to be governed by this section.

“ **(c) Effect of election.** --If an election is made to be governed by this section, the term ‘income’ shall mean a percentage of the value of the trust. The trustee shall, in a writing maintained as part of the permanent records of the trust, select the percentage and determine that it is consistent with the long-term preservation of the real value of the principal of the trust, but in no event shall the percentage be less than 2% nor more than 7% per year. The term ‘principal’ shall mean all other assets held by the trustee with respect to the trust. The selection may be made either annually or subject to change only when the trustee deems such change necessary and prudent.

“ **(d) Revocation of election.** --The trustee may revoke an election to be governed by this section if the revocation is made as part of an alternative investment policy seeking the long-term preservation of the real value of the principal of the trust. The revocation and alternative investment policy shall be in writing and maintained as part of the permanent records of the trust.

“ **(e) Value determination.** --For purposes of applying this section, the value of the trust shall be the fair market value of the cash and other assets held by the trustee with respect to the trust, whether such assets would be considered ‘income’ or ‘principal’ under the other provisions of this chapter, determined at least annually and averaged over a period of three or more preceding years. However, if the trust has been in existence less than three years, the average shall be determined over the period during which the trust has been in existence.

“ **(f) Charitable organizations.** --For a charitable organization defined under the act of June 17, 1971 (P.L. 181, No. 23), known as the Charitable Instruments Act of 1971, the provisions of that act shall supersede subsection (c) if necessary to comply with the minimum investment return requirements.”

Adds an additional section, which provides:

“ **§ 8107. Express trusts**

“ **(a) General rule.** --In the absence of a contrary intent appearing in the governing instrument of an express unitrust, the governing instrument shall be construed in accordance with the following rules:

“(1) The trustee shall follow an investment policy seeking a total return for the investments held by the trust, whether the return is to be derived from:

“(i) appreciation of capital;

“(ii) earnings and distributions from capital; or

“(iii) both.

“(2) The unitrust distribution shall be an annual distribution of an amount equal to 4% of the net fair market value of the trust's assets, whether the assets would be considered income or principal under other provisions of this chapter, averaged over the lesser of:

“(i) the three preceding years; or

“(ii) the period during which the trust has been in existence.

“(3) The trustee may, in the trustee's discretion from time to time, determine all of the following:

“(i) The provisions for prorating a unitrust distribution for a short year in which the beneficiary's right to payments commences or ceases.

“(ii) The frequency of unitrust distributions during the year.

“(iii) The effect of other payments from or contributions to the trust on the trust's valuation.

“(iv) Whether to value the trust's assets annually or more frequently.

“(v) What valuation dates to use.

“(vi) How frequently to value nonliquid assets and whether to estimate their value.

“(vii) Whether to omit from the calculations residential real estate, tangible personal property or other trust property used, occupied or possessed by a beneficiary.

“(viii) Any other matters necessary for the proper functioning of the unitrust.

“(4) Expenses which would be deducted from income if the trust were not a unitrust shall not be deducted from the unitrust distribution.

“(5) The unitrust distribution shall be considered to have been paid from the following sources in order of priority:

“(i) net income determined as if the trust were not an express unitrust;

“(ii) ordinary income for Federal income tax purposes that is not allocable to net income under subparagraph (i);

“(iii) net realized short-term capital gains for Federal income tax purposes;

“(iv) net realized long-term capital gains for Federal income tax purposes; and

“(v) the principal of the trust estate.

“(b) **Definition.** --As used in this section, the term ‘express unitrust’ shall mean a trust which by its governing instrument creates a trust, other than a trust solely for charitable purposes or a qualified charitable split interest trust under [section 664\(d\)](#) or [170\(f\)\(2\)\(B\) of the Internal Revenue Code of 1986](#) (Public Law 99-514, [26 U.S.C. § 664\(d\)](#) or [170\(f\)\(2\)\(B\)](#)), and provides for an annual distribution, the unitrust distribution, equal to a fixed percentage of the net fair market value of the trust's assets, valued at least annually, and computed with reference to such value in one or more years. If the fixed percentage is not less than 3% nor more than 5%, the unitrust distribution shall be considered the income of the trust for the purposes of this chapter.”

## **SOUTH CAROLINA**

Repealed provisions constituting the Uniform Principal and Income Act (1962) ( [Code 1976, §§ 21-35-10 to 21-35-210](#) ), and reenacted the same as part of the South Carolina Probate Code ( [Code 1976, §§ 62-7-401 to 62-7-421](#) ) by L.1986, c. 539, effective July 1, 1987.

Amended and added provisions to the Uniform Principal and Income Act (1962) ( [Code 1976, §§ 62-7-401 to 62-7-421](#) ), so as to effectively adopt the Uniform Principal and Income Act (1997) ( [Code 1976, §§ 62-7-401 to 62-7-432](#) ), by L.2001, c. 80, effective July 18, 2001.

Repealed the Uniform Principal and Interest Act (Codes 1976, [§§ 62-7-401 to 62-7-432](#) ), and enacted the Uniform Trust Code (Codes 1976, [§§ 62-7-101 to 62-7-1106](#)) by L.2005, c. 66, effective January 1, 2006.

The provisions of the Uniform Principal and Income Act were reenacted as sections 62-7-901 to 62-7-932 of the South Carolina Trust Code.

## **SOUTH CAROLINA**

While the South Carolina act is a substantial adoption of major provisions of the Uniform Act, as a result of significant changes and additions, it now departs from the official text in such manner that the various instances of substitution, omission and additional matter cannot be clearly indicated by statutory notes.

## **SOUTH DAKOTA**

Enacted the Uniform Principal and Income Act (1997) [ [SDCL 55-13A-101](#) to [55-13A-602](#) ] by L.2007, c. 282, effective July 1, 2007, without repealing the Uniform Principal and Income Act (1962).

Section 55-13-18 of the Uniform Principal and Interest Act (1962) provides:

### **“ 55-13-18. Application of chapter to existing trusts and estates**

“The provisions of this chapter may not be utilized by any trust created after June 30, 2007, or by any decedent's estate based upon a will executed subsequent to June 30, 2007. Any trust or decedent's estate not otherwise prohibited by this section from utilizing this chapter may apply the provisions of this chapter to such trust or decedent's estate upon the making of an election as provided in [§ 55-13A-602](#) .”

Section 55-13A-602 of the Uniform Principal and Interest Act (1997) provides:

### **“ 55-13A-602. Application of chapter to existing trusts and estates**

“This chapter applies to every trust or will created after July 1, 2007, except as otherwise expressly provided in the will or the terms of the trust or in this chapter. No trust or decedent's estate based upon a will executed after July 1, 2007, may utilize the provisions of chapter 55-13. Every trust existing on June 30, 2007, or any decedent's estate existing on June 30, 2007, and based upon a will executed prior to July 1, 2007, may elect to apply the provisions of either chapter 55-13 or this chapter. The election may be made by the trustee or personal representative upon providing sixty days written notice of the election to the beneficiaries of the trust or estate, as the case may be.

“Any election made prior to July 1, 2008, is hereby ratified and remains in full force and effect.

“The provisions of [§ 55-13A-409](#) as amended by SL 2009, ch 252, [§ 35](#) apply to a trust described in [§ 55-13A-409\(d\)](#) on and after the following dates:

“(1) If the trust is not funded as of July 1, 2009, the date of the decedent's death;

“(2) If the trust is initially funded in the calendar year beginning January 1, 2010, the date of the decedent's death;

“(3) If the trust is not described in subdivision (1) or (2), January 1, 2010.”

## **TENNESSEE**

Repealed the Uniform Principal and Income Act (1931) ( T.C.A. §§ 35-6-101 to 35-6-115 ), and enacted in lieu thereof the Uniform Principal and Income Act (1997) ( T.C.A. §§ 35-6-101 to 35-6-602 ) by L.2000, c. 829, effective July 1, 2000.

Adds sections, which provide:

### **“35-6-105. Optional notice.**

“(a) A trustee may, but is not required to, give a notice of proposed action regarding a matter governed by this chapter as provided in this section. For the purpose of this section, a proposed action includes:

“(1) An individual action;

“(2) A course of action; or

“(3) A decision not to take action.

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

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

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

“(1) The name and mailing address of the trustee;

“(2) The name and telephone number of a person who may be contacted for additional information;

“(3) A description of the action proposed to be taken and an explanation of the reasons for the action;

“(4) The time within which objections to the proposed action can be made, which shall be at least sixty (60) days from the mailing of the notice of proposed action; and

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

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

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

“(g) If the trustee receives a written objection within the applicable period, either the trustee or a beneficiary may petition the court to have the proposed action taken as proposed, taken with modifications, or denied. In the proceeding, a beneficiary objecting to the proposed action has the burden of proving that the trustee's proposed action should not be taken. A beneficiary who has not objected is not estopped from opposing the proposed action in the proceeding. If the trustee decides not to implement the proposed action, the trustee shall notify the beneficiaries of the decision not to take the action and the reasons for the decision, and the trustee's decision not to implement the proposed action does not itself give rise to liability to any current or future beneficiary. A beneficiary may petition the court to have the action taken, and has the burden of proving that it should be taken.”

“ **35-6-106. Remedy.**

“With respect to a trustee's exercise or nonexercise of the power to make an adjustment under § 35-5-104, the sole remedy is to direct, deny, or revise an adjustment between principal and income.”

“ **35-6-107. Records.**

“A trustee who elects to exercise any power or not to exercise any power under this chapter shall maintain only such records that may be necessary or appropriate in the discretion of the trustee to support such determination at the time the determination is made and shall not be required to maintain records not necessary for the administration of the trust.”

**TEXAS**

Repealed the Uniform Principal and Income Act (1962) ( [V.T.C.A. Property Code §§ 113.101 to 113.111](#) ), and enacted in lieu thereof the Uniform Principal and Income Act (1997) ( [V.T.C.A. Property Code §§ 116.001 to 116.206](#) ) by L.2003, c. 659, effective January 1, 2004.

Adds a section, which provides:

**“ § 116.007. Provisions Regarding Noncharitable Unitrusts**

“(a) This section does not apply to a charitable remainder unitrust as defined by [Section 664\(d\), Internal Revenue Code of 1986](#) ( [26 U.S.C. Section 664](#) ), as amended.

“(b) In this section:

“(1) ‘Unitrust’ means a trust the terms of which require distribution of a unitrust amount.

“(2) ‘Unitrust amount’ means a distribution mandated by the terms of a trust in an amount equal to a fixed percentage of not less than three or more than five percent per year of the net fair market value of the trust's assets, valued at least annually. The unitrust amount may be determined by reference to the net fair market value of the trust's assets in one year or more than one year.

“(c) Distribution of the unitrust amount is considered a distribution of all of the income of the unitrust and shall not be considered a fundamental departure from applicable state law. A distribution of the unitrust amount reasonably apportions the total return of a unitrust.

“(d) Unless the terms of the trust specifically provide otherwise, a distribution of the unitrust amount shall be treated as first being made from the following sources in order of priority:

“(1) from net accounting income determined as if the trust were not a unitrust;

“(2) from ordinary accounting income not allocable to net accounting income;

“(3) from net realized short-term capital gains;

“(4) from net realized long-term capital gains; and

“(5) from the principal of the trust estate.”

**UTAH**

Repealed the Uniform Principal and Income Act (1962) ( [U.C.A. 1953, 22-3-1 to 22-3-16](#) ), and enacted in lieu thereof the Uniform Principal and Income Act (1997) ( [U.C.A. 1953, 22-3-101 to 22-3-603](#) ) by L.2004, c. 285, effective May 3, 2004.

Adds sections, which provide:

**“ § 22-3-106. Adjustments**

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

## VERMONT

Repealed the Uniform Principal and Income Act (1931) ( [14 V.S.A. §§ 3301](#) to [3313](#) ), and enacted the Uniform Principal and Income Act (1997) ( [14 V.S.A. §§ 3321](#) to [3376](#) ) by 2011, Adj. Sess., No. 114, effective July 1, 2012.

## VIRGINIA

Repealed the Uniform Principal and Income Act (1931) (Code 1950, §§ 55-253 to 55-268), and enacted the Uniform Principal and Income Act (1997) (Code 1950, §§ 55-277.1 to 55-277.33) by L.1999, c. 975, effective January 1, 2000.

Adds a section, which provides:

“ **§ 55-277.31. Expenses and receipts; nontrust estates**

"A. The provisions of this chapter concerning the allocation and apportionment of receipts and expenses to principal and income shall govern the allocation and apportionment of receipts and expenses between a tenant and a remainderman where no trust has been created, except as otherwise provided in subsection B or C, and except for any provision that requires the exercise of a discretionary power by a trustee.

"B. The cost of, or special taxes or assessments for, an improvement representing an addition of value to property forming part of the principal shall be paid by the tenant, when such improvement cannot reasonably be expected to outlast the estate of the tenant. In all other cases a portion thereof only shall be paid by the tenant, while the remainder shall be paid by the remainderman. Such portion shall be ascertained by taking that percentage of the total which is found by dividing the present value of the tenant's estate by the present value of an estate corresponding to the reasonably expected duration of the improvement. The computation of present values of the estate shall be made on the expectancy basis set forth in 55-269.1 and no other evidence of duration or expectancy shall be considered. When either tenant or remainderman has incurred an expense for the benefit of his own estate and without the consent or agreement of the other, he shall pay such expense in full.

"C. The rules of this section are subject to any agreement of the parties."

## VIRGINIA

The provisions of the Uniform Principal and Income Act (§§ 55-277.1 to 55-277.33) were recodified as §§ 64.2-1000 to 64.2-1032 by Acts 2012, c. 614, effective October 1, 2012.

Added section § 55-277.4:1 has been renumbered as § 64.2-1003 and now provides:

### " § 64.2-1003. Total return unitrust

"A. As used in this section:

""Disinterested person" means a person who is not a "related or subordinate party," as that term is defined in [§ 672\(c\) of the Internal Revenue Code](#) (hereinafter referred to in this section as the "I.R.C.," and all such references shall include the specific section referred to and any successor provisions thereof) with respect to the person then acting as trustee of the trust, and excludes the grantor of the trust and any interested trustee.

""Grantor" means an individual who created an inter vivos or a testamentary trust.

""Grantor-created unitrust" means a trust created either by an inter vivos or a testamentary instrument that provides that the trust shall be administered in the manner of a total return unitrust as provided in this section.

""Income trust" means a trust, created by either an inter vivos or a testamentary instrument, that directs or permits the trustee to distribute the net income of the trust to one or more persons, either in fixed proportions or in amounts or proportions determined by the trustee, and regardless of whether the trust directs or permits the trustee to distribute the principal of the trust to one or more such persons.

""Interested distributee" means a person to whom distributions of income or principal can currently be made who has the power to remove the existing trustee and designate as successor a person who may be a "related or subordinate party" as defined in [I.R.C. § 672\(c\)](#), with respect to such distributee.

""Interested trustee" means (i) an individual trustee to whom the net income or principal of the trust can currently be distributed or would be distributed if the trust were then to terminate and be distributed; (ii) any trustee who may be removed and replaced by an interested distributee; or (iii) an individual trustee whose legal obligation to support a beneficiary may be satisfied by distributions of income and principal of the trust.

""Total return unitrust" means (i) an income trust that has been converted under and meets the provisions of this section; or (ii) a grantor-created unitrust.

“Trustee” means all persons acting as trustee of the trust, except where expressly noted otherwise, whether acting in their discretion or at the direction of one or more persons acting in a fiduciary capacity.

“Unitrust amount” means an amount computed as a percentage of the fair market value of the trust.

“B. A trustee, other than an interested trustee, or where two persons are acting as trustees the trustee that is not an interested trustee, or where more than two persons are acting as trustee a majority of the trustees who are not an interested trustee, may, in his sole discretion and without judicial approval, (i) convert an income trust to a total return unitrust; (ii) convert a total return unitrust to an income trust; or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust if:

“1. The trustee adopts a written policy for the trust providing: (i) in the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income; (ii) in the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income rather than unitrust amounts; or (iii) that the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed as stated in the policy;

“2. The trustee sends notice in a manner authorized under § 64.2-707 of his intention to take such action, along with copies of such written policy and this section, to (i) the grantor of the trust, if living; (ii) without regard to the exercise of any power of appointment, the qualified beneficiaries of the trust then determined under §§ 64.2-701 and 64.2-708, other than the Attorney General; and (iii) all persons acting as advisor or protector of the trust. The representation provisions of §§ 64.2-714, 64.2-716, 64.2-717, and 64.2-718 shall apply to notice under this subdivision;

“3. At least one member of each class of qualified beneficiaries receiving notice under clause (ii) of subdivision 2 is (i) legally competent, (ii) in the case of a charitable organization, then existing, or (iii) represented in the manner set forth in subdivision 2; and

“4. No person receiving such notice objects, by written instrument delivered to the trustee, to the proposed action of the trustee within 30 days of receipt of such notice.

“C. If there is no trustee of the trust other than an interested trustee, the interested trustee or, where two or more persons are acting as trustee and are interested trustees, a majority of such interested trustees may, in his sole discretion and without judicial approval, (i) convert an income trust to a total return unitrust; (ii) convert a total return unitrust to an income trust; or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust if:

“1. The trustee adopts a written policy for the trust providing: (i) in the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income; (ii) in the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income rather than unitrust amounts; or (iii) that the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed as stated in the policy;

“2. The trustee appoints a disinterested person who, in his sole discretion but acting in a fiduciary capacity: (i) in the case of conversion to a total return unitrust, determines for the trustee (a) the percentage to be used to calculate the unitrust amount, (b) the method to be used in determining the fair market value of the trust, and (c) which assets, if any, are to be excluded in determining the unitrust amount; and (ii) determines for the trustee that conversion is in the best interests of the trust;

“3. The trustee sends notice in a manner authorized under § 64.2-707 of his intention to take such action, along with copies of such written policy and this section, to (i) the grantor of the trust, if living; (ii) without regard to the exercise of any power of appointment, the qualified beneficiaries of the trust then determined under §§ 64.2-701 and 64.2-708, other than the Attorney General; and (iii) all persons acting as advisor or protector of the trust. The representation provisions of §§ 64.2-714, 64.2-716, 64.2-717, and 64.2-718 shall apply to notice under this subdivision;

"4. At least one member of each class of qualified beneficiaries receiving notice under clause (ii) of subdivision 3 is (i) legally competent, (ii) in the case of a charitable organization, then existing, or (iii) represented in the manner set forth in subdivision 3; and

"5. No person receiving such notice objects, by written instrument delivered to the trustee, to the proposed action of the trustee or the determinations of the disinterested person within 30 days of receipt of such notice.

"D. If any trustee desires to convert an income trust to a total return unitrust, convert a total return unitrust to an income trust, or change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust but does not have the ability to or elects not to do it under the provisions of subsection B or C, the trustee may petition the circuit court in which the trustee qualified, or if there is no such qualification, the circuit court for the jurisdiction in which the trustee or beneficiary resides, or if the trustee is a corporate trustee and there is no resident beneficiary, the circuit court where the trust account is administered, for such order as the trustee deems appropriate. In the event, however, there is only one trustee of such trust and such trustee is an interested trustee or in the event there are two or more trustees of such trust and a majority of them are interested trustees, the court, in its own discretion or on the petition of such trustee or trustees or any person interested in the trust, may appoint a disinterested person who, acting in a fiduciary capacity, shall present such information to the court as shall be necessary to enable the court to make its determinations hereunder. Any qualified beneficiary of the trust then determined under §§ 64.2-701 and 64.2-708, other than the Attorney General, may also petition such circuit court to convert an income trust to a total return unitrust, convert a total return unitrust to an income trust, or change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust assets.

"E. The fair market value of the trust shall be determined at least annually, using such valuation date or dates or averages of valuation dates as are deemed appropriate. Any asset for which a fair market value cannot be readily ascertained shall be valued using such valuation methods as are deemed reasonable and appropriate. Any such asset may be excluded from valuation, provided all income received with respect to such asset is distributed to the extent distributable in accordance with the terms of the governing instrument.

"F. The percentage to be used in determining the unitrust amount shall be a reasonable current return from the trust, in any event no less than three percent nor more than five percent, either as provided by the grantor in the governing instrument in the case of a grantor-created unitrust, or otherwise taking into account the intentions of the grantor of the trust as expressed in the governing instrument, the needs of the beneficiaries, general economic conditions, projected current earnings and appreciation for the trust, and projected inflation and its impact on the trust.

"G. Following the conversion of an income trust to a total return unitrust, or upon the creation of a grantor-created unitrust, the trustee:

"1. Shall treat the unitrust amount as if it were net income of the trust for purposes of determining the amount available, from time to time, for distribution from the trust, and the distribution of the unitrust amount shall be considered in full satisfaction of the distribution of all of the net income of the trust;

"2. May allocate to trust income for each taxable year of the trust, or portion thereof:

"a. Net short-term capital gain described in [I.R.C. § 1222\(5\)](#) , for such year or portion thereof, but only to the extent that the amount so allocated together with all other amounts allocated to trust income for such year or portion thereof does not exceed the unitrust amount for such year or portion thereof; and

"b. Net long-term capital gain described in [I.R.C. § 1222\(7\)](#) , for such year or portion thereof, but only to the extent that the amount so allocated together with all other amounts, including amounts described in subdivision 2 a, allocated to trust income for such year, or portion thereof, does not exceed the unitrust amount for such year, or portion thereof; and

"3. Shall treat the unitrust amount as if it were income of the trust for purposes of determining the amount of trustee compensation where the governing instrument directs that such compensation be based wholly or partially on income.

"H. In administering a total return unitrust, the trustee may, in his sole discretion but subject to the provisions of the governing instrument, determine (i) if the trust is converted to a total return unitrust, the effective date of the conversion; (ii) the timing of distributions, including provisions for prorating a distribution for a short year in which a beneficiary's right to payments commences or ceases; (iii) whether distributions are to be made in cash or in kind or partly in cash and partly in kind; (iv) if the trust is converted to an income trust, the effective date of such conversion; and (v) such other administrative matters as may be necessary or appropriate to carry out the purposes of this section.

"I. Conversion to a total return unitrust under the provisions of this section shall not affect any other provision of the governing instrument, if any, regarding distributions of principal.

"J. Subject to the provisions of the governing instrument, this section shall be construed as pertaining to the administration of a trust and shall be available to any trust that is administered under Virginia law, regardless of the date the trust was created, unless:

"1. The governing instrument reflects an intention that the current beneficiary or beneficiaries are to receive an amount other than a reasonable current return from the trust;

"2. The trust is a pooled income fund described in [I.R.C. § 642\(c\)\(5\)](#) , or a charitable-remainder trust described in [I.R.C. § 664\(d\)](#) ; or

"3. The governing instrument expressly prohibits use of this section by specific reference to this section or expressly reflects the grantor's intent that net income not be calculated as a unitrust amount. A provision in the governing instrument that "The provisions of [§ 64.2-1003, Code of Virginia](#) , as amended, or any corresponding provision of future law, shall not be used in the administration of this trust," or "My trustee shall not determine the distributions to the income beneficiary as a unitrust amount," or similar words reflecting such intent shall be sufficient to preclude the use of this section.

"K. Any trustee or disinterested person who in good faith takes or fails to take any action under this section shall not be liable to any person affected by such action or inaction, regardless of whether such person received written notice as provided in this section and regardless of whether such person was under a legal disability at the time of the delivery of such notice. Such person's exclusive remedy shall be to obtain an order of the court directing the trustee to convert an income trust to a total return unitrust, to convert from a total return unitrust to an income trust, or to change the percentage used to calculate the unitrust amount."

## WASHINGTON

Repealed the Uniform Principal and Income Act (1962) ( [West's RCWA 11.104.010](#) to [11.104.940](#) ), and enacted in lieu thereof the Uniform Principal and Income Act (1997) ( [West's RCWA 11.104A.001](#) to [11.104A.905](#) ) by L.2002, c. 345, effective January 1, 2003.

Adds sections, which provide:

### " 11.104A.040. Power to convert to unitrust

"(a)(1) In this section, 'beneficiary' means a person who has an interest in the trust to be converted and who has the legal capacity to act in his, her, or its own right with respect to all actions that such person may take under this section.

"(2) In this section, 'unitrust' means both a trust converted into a unitrust under this section and a trust initially established as a unitrust. Unless inconsistent with the terms of the trust or will, subsections (f), (g), (h), (i), and (m) of this section apply to the unitrust initially so established.

"(b) Unless expressly prohibited by the terms of the trust, a trustee may release the power to make adjustments under [RCW 11.104A.020](#) and convert a trust into a unitrust as described in this section if all of the following apply:

- “(1) The trustee determines that the conversion will enable the trustee better to carry out the intent of the settlor or testator and the purposes of the trust.
- “(2) The trustee gives written notice of the trustee's intention to release the power to adjust and to convert the trust into a unitrust and of how the unitrust will operate, including what initial decisions the trustee will make under this section, to each beneficiary who, on the date the notice is given:
- “(i) Is a distributee or permissible distributee of trust income or principal; or
- “(ii) Would be a distributee or permissible distributee of trust principal if the interests of the distributees described in (2)(i) of this subsection terminated and the trust then terminated immediately before the notice was given and if no powers of appointment were exercised.
- “(3) There is at least one beneficiary under (2)(i) of this subsection and at least one other person who is a beneficiary under (2)(ii) of this subsection.
- “(4) No beneficiary objects to the conversion to a unitrust in a writing delivered to the trustee within sixty days after the notice is given under (2) of this subsection.
- “(c) The parties, as defined by [RCW 11.96A.030\(4\)](#) , may agree to convert a trust to or from a unitrust by means of a binding agreement under chapter 11.96A RCW.
- “(d)(1) The trustee may petition the court under chapter 11.96A RCW to order a conversion to a unitrust if either of the following apply:
- “(i) A party, as defined by [RCW 11.96A.030\(4\)](#) , timely objects to the conversion to a unitrust; or
- “(ii) There are no beneficiaries under (2)(i) and (ii) of this subsection.
- “(2) A party, as defined by [RCW 11.96A.030\(4\)](#) , may request a trustee to convert to a unitrust. If the trustee does not convert, the party, as defined by [RCW 11.96A.030\(4\)](#) , may petition the court to order the conversion.
- “(3) The court shall approve the conversion or direct the requested conversion if the court concludes that the conversion will enable the trustee to better carry out the intent of the settlor or testator and the purposes of the trust.
- “(e) In deciding whether to exercise a power to convert to a unitrust under this section, a trustee may consider, among other things, the factors set forth in [RCW 11.104A.020\(b\)](#) .
- “(f) After a trust is converted to a unitrust, all of the following apply:
- “(1) The trustee shall follow an investment policy seeking a total return for the investments held by the trust, whether the return is to be derived:
- “(i) From appreciation of principal;
- “(ii) From earnings and distributions from principal; or
- “(iii) From both.
- “(2) The trustee shall make regular distributions in accordance with the terms of the trust, or the terms of the will, as the case may be, construed in accordance with the provisions of this section.
- “(3) Unless expressly prohibited by the terms of the trust, the term ‘income’ in the terms of a trust or a will means an annual distribution, the ‘unitrust distribution,’ equal to the percentage, the ‘payout percentage, that is no less than three percent and no more than five percent and that the trustee may determine in the trustee's discretion from time to time, or, if the trustee makes no determination, that shall be four percent of the net fair market value

of the trust's assets, whether such assets would be considered income or principal under other provisions of this chapter, averaged over the lesser of:

“(i) The three preceding years; or

“(ii) The period during which the trust has been in existence.

“(g) The trustee may in the trustee's discretion from time to time determine all of the following:

“(1) The effective date of a conversion to a unitrust.

“(2) The provisions for prorating a unitrust distribution for a short year in which a beneficiary's right to payments commences or ceases.

“(3) The frequency of unitrust distributions during the year.

“(4) The effect of other payments from or contributions to the trust on the trust's valuation.

“(5) Whether to value the trust's assets annually or more frequently.

“(6) What valuation dates to use.

“(7) How frequently to value nonliquid assets and whether to estimate their value.

“(8) Whether to omit from the calculations trust property occupied or possessed by a beneficiary.

“(9) Any other matters necessary for the proper functioning of the unitrust.

“(h)(1) Expenses which would be deducted from income if the trust were not a unitrust may not be deducted from the unitrust distribution.

“(2) Unless otherwise provided by the terms of the trust, the unitrust distribution shall be paid from net income, as such term would be determined if the trust were not a unitrust. To the extent net income is insufficient, the unitrust distribution shall be paid from net realized short-term capital gains. To the extent net income and net realized short-term capital gains are insufficient, the unitrust distribution shall be paid from net realized long-term capital gains. To the extent net income and net realized short-term and long-term capital gains are insufficient, the unitrust distribution shall be paid from the principal of the trust.

“(3) To the extent necessary to cause gains from the sale or exchange of unitrust assets to be treated as income under any federal, state, or local income tax (for example, [section 643 of the Internal Revenue Code](#) and its regulations, including [Treasury Regulation § 1.643\(b\)-1](#), as amended or renumbered), the trustee has the discretionary power to allocate the gains to income, so long as the power is reasonably and impartially exercised.

“(i) The trustee or, if the trustee declines to do so, a beneficiary may petition the court:

“(1) To change the payout percentage.

“(2) To provide for a distribution of net income, as would be determined if the trust were not a unitrust, in excess of the unitrust distribution if such distribution is necessary to preserve a tax benefit.

“(3) To average the valuation of the trust's net assets over a period other than three years.

“(4) To reconvert from a unitrust.

“(j) Upon a reconversion, the power to adjust under [RCW 11.104A.020](#) is revived.

“(k) A conversion to a unitrust does not affect a provision in the terms of a trust directing or authorizing the trustee to distribute principal or authorizing a beneficiary to withdraw a portion or all of the principal.

“(1) A trustee may not possess or exercise any power under this section in any of the following circumstances:

“(1) The unitrust distribution would be made from any amount that is permanently set aside for charitable purposes under the terms of a trust and for which a charitable deduction from a federal gift or estate tax has been taken unless both income and principal are so set aside.

“(2) The possession or exercise of the power would cause an individual to be treated as the owner of all or part of the trust for federal income tax purposes and the individual would not be treated as the owner if the trustee did not possess or exercise the power.

“(3) The possession or exercise of the power would cause all or any part of the trust estate to be subject to any federal gift or estate tax with respect to the individual and the trust estate would not be subject to such taxation if the trustee did not possess or exercise the power.

“(4) The possession or exercise of the power would result in the disallowance of a federal gift or estate tax marital deduction which would be allowed if the trustee did not have the power.

“(5) The trustee is a beneficiary of the trust.

“(m) If subsection (1)(2), (3), or (5) of this section applies to a trustee and there is more than one trustee or an additional trustee who is appointed by a court order, a binding agreement, or otherwise under chapter 11.96A RCW, a cotrustee to whom subsection (1)(2), (3), or (5) of this section does not apply may possess and exercise the power unless the possession or exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust. If subsection (1)(2), (3), or (5) of this section restricts all trustees from possessing or exercising a power under this section, the trustee may petition a court under chapter 11.96A RCW for the court to effect the intended conversion or action.

“(n) A trustee may release any power conferred by this section if any of the following applies:

“(1) The trustee is uncertain about whether possessing or exercising the power will cause a result described in subsection (1)(2), (3), or (4) of this section.

“(2) The trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (1) of this section.

“The release may be permanent or for a specified period, including a period measured by the life of an individual.”

“ **11.104A.901. Application of chapter 11.96A RCW**

“Nothing in chapter 345, Laws of 2002 is intended to restrict the application of chapter 11.96A RCW to issues, questions, or disputes that arise under or that relate to chapter 345, Laws of 2002. Any and all such issues, questions, or disputes shall be resolved judicially or nonjudicially under chapter 11.96A RCW.”

“ **11.104A.903. Captions, article and part headings not law**

“Captions, article headings, and part headings used in this chapter are not any part of the law.”

**WASHINGTON**

Adds additional sections, which provide:

“ **11.104A.906. Transitional matters**

“ [RCW 11.104A.180](#) applies to a trust described in [RCW 11.104A.180\(d\)](#) on and after the following dates:

“(a) If the trust is not funded as of July 26, 2009, the date of the decedent's death.



“(b) If the trust is initially funded in the calendar year beginning January 1, 2009, the date of the decedent's death.

“(c) If the trust is not described in subsection (a) or (b) of this section, January 1, 2009.”

**“ 11.104A.907. Construction--Chapter applicable to state registered domestic partnerships--2009 c 521**

“For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships.”

**WEST VIRGINIA**

Repealed the Uniform Principal and Income Act (1931) (Code, 36-6-1 to 36-6-17), and enacted in lieu thereof the Uniform Principal and Income Act (1997) (Code, 44B-1-101 to 44B-6-604) by L.2000, c. 273, effective July 1, 2000.

Adds sections, which provide:

**“ § 44B-1-105. Trustee's Right to Give Notice**

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

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

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

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

“(1) The name and mailing address of the trustee;

“(2) The name and telephone number of a person who may be contacted for additional information;

“(3) A description of the action proposed to be taken and an explanation of the reasons for the action;

“(4) The time within which objections to the proposed action can be made, which shall be at least thirty days from the mailing of the notice of proposed action;

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

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

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

“(g) If the trustee receives a written objection within the applicable period, either the trustee or a beneficiary may petition the court to have the proposed action taken as proposed, taken with modifications, or denied. In the proceeding, a beneficiary objecting to the proposed action has the burden of proving that the trustee's proposed action should not be taken. A beneficiary who has not objected is not estopped from opposing the proposed action in the proceeding. If the trustee decides not to implement the proposed action, the trustee shall notify the beneficiaries of the decision not to take the action and the reasons for the decision, and the trustee's decision not to implement the proposed action does not itself give rise to liability to any current or future beneficiary. A beneficiary may petition the court to have the action taken, and has the burden of proving that it should be taken.

“(h) In a proceeding with respect to a trustee's exercise or nonexercise of the power to make an adjustment under section one hundred four, the sole remedy is to direct, deny, or devise an adjustment between principal and income.

“(i) Nothing in this section is intended to create or imply a duty to give notice and a trustee is not liable for choosing not to give notice or for not considering whether to give notice.

“(j) This chapter applies to any will and trust established under an instrument executed on or after the effective date of this chapter except as otherwise expressly provided in the will or terms of the trust or in this chapter, or if the trustee or personal representative elects in either's sole discretion to administer the trust or will under this chapter. With respect to any will or trust established under an instrument executed prior to the effective date of this chapter, this chapter applies if the trustee or personal representative elects, in either's sole discretion, to administer the trust or will under this chapter.”

**“§ 44B-5-507. Effect on marital deduction.**

“If a marital deduction gift is made in trust, in addition to the other provisions of this chapter, each of the following provisions also applies to the marital deduction trust:

“(a) The transferor's spouse is the only beneficiary of income or principal of the marital deduction property as long as the spouse is alive. Nothing in this subdivision precludes exercise by the transferor's spouse of a power of appointment included in a trust that qualifies as a general power of appointment marital deduction trust.

“(b) Subject to the provisions of subdivision (d) of this section, the transferor's spouse is entitled to all of the income of the marital deduction property as long as the spouse is alive. Nothing in this subdivision precludes exercise by the transferor's spouse of a power of appointment included in a trust that qualifies as a general power of appointment marital deduction trust.

“(c) The transferor's spouse has the right to require that the trustee of the trust make unproductive marital deduction property productive or to convert it into productive property within a reasonable time.

“(d) Notwithstanding the provisions of section three hundred three, article three of this chapter, in the case of a qualified terminable interest property under [26 U.S.C. § 2056\(b\)\(7\)](#) or [26 U.S.C. § 2523 \(f\)](#) , as the same are in effect on the effective date of this chapter, on termination of the interest of the transferor's spouse in the trust all of the remaining accrued or undistributed income shall pass to the estate of the transferor's spouse, unless the instrument provides a different disposition that qualifies for the marital deduction.”

**WEST VIRGINIA**

Adds additional sections, which provide:

**“ § 44B-1-104a. Total return unitrust**

“(a) As used in this section:

“(1) ‘Disinterested person’ means a person who is not a ‘related or subordinate party’, as defined in [I.R.C. § 672\(c\)](#) et seq., with respect to the person then acting as trustee of the trust, and excludes the grantor of the trust and any interested trustee.

“(2) ‘Income Trust’ means a trust, created by either an inter vivos or a testamentary instrument, which directs or permits the trustee to distribute the net income of the trust to one or more persons, either in fixed proportions or in amounts or proportions determined by the trustee, and regardless of whether the trust directs or permits the trustee to distribute the principal of the trust to one or more such persons.

“(3) ‘Interested distributee’ means a person to whom distributions of income or principal can currently be made who has the power to remove the existing trustee and designate as successor a person who may be a ‘related or subordinate party’ as defined in [I.R.C. § 672\(c\)](#) with respect to such distributee.

“(4) ‘Interested trustee’ means: (i) An individual trustee to whom the net income or principal of the trust can currently be distributed or would be distributed if the trust were then to terminate and be distributed; (ii) any individual trustee who may be removed and replaced by an interested distributee; or (iii) an individual trustee whose legal obligation to support a beneficiary may be satisfied by distributions of income and principal of the trust.

“(5) ‘Total return unitrust’ means an income trust, which has been converted under and meets the provisions of this section.

“(6) ‘Trustee’ means all persons acting as trustee of the trust, except where expressly noted otherwise, whether acting in their discretion or at the direction of one or more persons acting in a fiduciary capacity.

“(7) ‘Grantor’ means an individual who created an inter vivos or a testamentary trust.

“(8) ‘Unitrust amount’ means an amount computed as a percentage of the fair market value of the trust.

“(b) A trustee, other than an interested trustee, or where two or more persons are acting as trustee a majority of the trustees who are not an interested trustee, may, in its sole discretion and without judicial approval: (i) Convert an income trust to a total return unitrust; (ii) reconvert a total return unitrust to an income trust; or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust if:

“(1) The trustee adopts a written policy for the trust providing: (i) In the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income; (ii) in the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income rather than unitrust amounts; or (iii) that the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed as stated in the policy; and

“(2) The trustee sends written notice of its intention to take such action, along with copies of such written policy and this section, to: (i) The grantor of the trust, if living; (ii) all living persons who are currently receiving or eligible to receive distributions of income of the trust; (iii) all living persons who would receive principal of the trust if the trust were to terminate at the time of the giving of such notice, without regard to the exercise of any power of appointment, or, if the trust does not provide for its termination, all living persons who would receive or be eligible to receive distributions of income or principal of the trust if the persons identified in clause (ii) of this subdivision (2) were deceased; and (iv) all persons acting as advisor or protector of the trust; and at least one person receiving notice under each of clauses (ii) and (iii) of subdivision (2) is legally competent.

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

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

“(i) The name and mailing address of the trustee;

- “(ii) The name and telephone number of a person who may be contacted for additional information;
- “(iii) A description of the action proposed to be taken and an explanation of the reasons for the action;
- “(iv) The time within which objections to the proposed action can be made, which shall be at least thirty days from the mailing of the notice of proposed action; and
- “(v) The date on or after which the proposed action may be taken or is effective.
- “(C) A beneficiary may object to the proposed action by mailing a written objection to the trustee at the address stated in the notice of proposed action within the time period specified in the notice of proposed action.
- “(D) A trustee is not liable to a beneficiary for an action regarding a matter governed by this chapter if the trustee does not receive a written objection to the proposed action from the beneficiary within the applicable period and the other requirements of this section are satisfied. If no beneficiary entitled to notice objects under this section, the trustee is not liable to any current or future beneficiary with respect to the proposed action.
- “(c) If there is no trustee of the trust other than an interested trustee, the interested trustee or, where two or more persons are acting as trustee and are interested trustees, a majority of such interested trustees may, in its sole discretion and without judicial approval: (i) Convert an income trust to a total return unitrust; (ii) reconvert a total return unitrust to an income trust; or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust if:
- “(1) The trustee adopts a written policy for the trust providing: (i) In the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income; (ii) in the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income rather than unitrust amounts; or (iii) that the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed as stated in the policy;
- “(2) The trustee appoints a disinterested person who, in its sole discretion but acting in a fiduciary capacity, determines for the trustee: (i) The percentage to be used to calculate the unitrust amount; (ii) the method to be used in determining the fair market value of the trust; and (iii) which assets, if any, are to be excluded in determining the unitrust amount;
- “(3) The trustee sends written notice of its intention to take such action, along with copies of such written policy and this section, to: (i) The grantor of the trust, if living; (ii) all living persons who are currently receiving or eligible to receive distributions of income of the trust; (iii) all living persons who would receive principal of the trust if the trust were to terminate at the time of the giving of such notice, without regard to the exercise of any power of appointment, or, if the trust does not provide for its termination, all living persons who would receive or be eligible to receive distributions of income or principal of the trust if the persons identified in clause (ii) of subdivision (2) of this section were deceased; and (iv) all persons acting as advisor or protector of the trust; and at least one person receiving notice under each of clauses (ii) and (iii) of subdivision (2) of this section is legally competent.
- “(A) Notice of the proposed action need not be given to any person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.
- “(B) The notice of the proposed action shall state that it is given pursuant to this section and shall state all of the following:
- “(i) The name and mailing address of the trustee;
- “(ii) The name and telephone number of a person who may be contacted for additional information;
- “(iii) A description of the action proposed to be taken and an explanation of the reasons for the action;
- “(iv) The time within which objections to the proposed action can be made, which shall be at least thirty days from the mailing of the notice of proposed action; and

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

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

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

“(d) If any trustee desires to convert an income trust to a total return unitrust, reconvert a total return unitrust to an income trust or change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust but does not have the ability to or elects not to do it under the provisions of subsections (b) or (c) of this section, the trustee may petition the circuit court of the county in which the trustee or beneficiary resides, or if the trustee is a corporate trustee and there is no resident beneficiary, the circuit court of the county where the trust account is administered, for such order as the trustee deems appropriate. In the event, however, there is only one trustee of the trust and the trustee is an interested trustee or in the event there are two or more trustees of the trust and a majority of them are interested trustees, the court, in its own discretion or on the petition of such trustee or trustees or any person interested in the trust, may appoint a disinterested person who, acting in a fiduciary capacity, shall present such information to the court as shall be necessary to enable the court to make its determinations hereunder.

“(e) The fair market value of the trust shall be determined at least annually, using a valuation date or dates or averages of valuation dates as are deemed appropriate. Assets for which a fair market value cannot be readily ascertained shall be valued using the valuation methods as are deemed reasonable and appropriate. Assets may be excluded from valuation, provided all income received with respect to the assets is distributed to the extent distributable in accordance with the terms of the governing instrument.

“(f) The percentage to be used in determining the unitrust amount shall be a reasonable current return from the trust, in any event no less than three percent nor more than five percent, taking into account the intentions of the grantor of the trust as expressed in the governing instrument, the needs of the beneficiaries, general economic conditions, projected current earnings and appreciation for the trust and projected inflation and its impact on the trust.

“(g) Following the conversion of an income trust to a total return unitrust, the trustee:

“(1) Shall consider the unitrust amount as paid from net accounting income determined as if the trust were not a unitrust;

“(2) Shall then consider the unitrust amount as paid from ordinary income not allocable to net accounting income;

“(3) After calculating the trust's capital gain net income described in [I.R.C. § 1222\(9\)](#) , [26 U.S.C. § 1222\(9\)](#) , may consider the unitrust amount as paid from net short-term capital gain described in [I.R.C. § 1222\(5\)](#) , [26 U.S.C. § 1222\(5\)](#) and then from net long-term capital gain described in [I.R.C. § 1222\(7\)](#) , [26 U.S.C. § 1222\(7\)](#) ; and

“(4) Shall then consider the unitrust amount as coming from the principal of the trust.

“(h) In administering a total return unitrust, the trustee may, in its sole discretion but subject to the provisions of the governing instrument, determine: (i) The effective date of the conversion; (ii) the timing of distributions, including provisions for prorating a distribution for a short year in which a beneficiary's right to payments commences or ceases; (iii) whether distributions are to be made in cash or in kind or partly in cash and partly in kind; (iv) if the trust is reconverted to an income trust, the effective date of such reconversion; and (v) such other administrative matters as may be necessary or appropriate to carry out the purposes of this section.

“(i) In the case of a trust for which a marital deduction has been taken for federal tax purposes under [I.R.C. § 2056](#) or [§ 2523](#) , [26 U.S.C. § 2056](#) or [2523](#) , the spouse otherwise entitled to receive the net income of

the trust shall have the right, by written instrument delivered to the trustee, to compel the reconversion during his or her lifetime of the trust from a total return unitrust to an income trust, notwithstanding anything in this section to the contrary.

“(j) Conversion to a total return unitrust under the provisions of this section shall not affect any other provision of the governing instrument, if any, regarding distributions of principal.

“(k) This section shall be construed as pertaining to the administration of a trust and shall be available to any trust that is administered under West Virginia law unless:

“(1) The governing instrument reflects an intention that the current beneficiary or beneficiaries are to receive an amount other than a reasonable current return from the trust;

“(2) The trust is a trust described in [I.R.C. § 170\(f\)\(2\)\(B\)](#) or [I.R.C. § 664 \(d\)](#) ; or

“(3) The governing instrument expressly prohibits use of this section by specific reference to this section or expressly reflects the grantor's intent that net income not be calculated as a unitrust amount.

“( l ) Any trustee or disinterested person who in good faith takes or fails to take any action under this section shall not be liable to any person affected by the action or inaction, regardless of whether such person received written notice as provided in this section and regardless of whether the person was under a legal disability at the time of the delivery of the notice. The person's exclusive remedy shall be to obtain an order of the court directing the trustee to convert an income trust to a total return unitrust, to reconvert from a total return unitrust to an income trust or to change the percentage used to calculate the unitrust amount.

“(m) The following provisions shall apply to a trust that, by its governing instrument, requires or permits the distribution, at least annually, of a unitrust amount equal to a fixed percentage of not less than three nor more than five percent per year of the fair market value of the trust's assets, valued at least annually, the trust to be referred to in this section as an ‘express total return unitrust.’

“(1) The unitrust amount for an express total return unitrust may be determined by reference to the fair market value of the trust's assets in one year or more than one year.

“(2) Distribution of a fixed percentage unitrust amount is considered a distribution of all of the income of the express total return unitrust.

“(3) An express total return unitrust may or may not provide a mechanism for changing the unitrust percentage similar to the mechanism provided under this section, based upon the factors noted therein, and may or may not provide for a conversion from a unitrust to an income trust and/or a reconversion of an income trust to a unitrust similar to the mechanism under this section.

“(4) If an express total return unitrust does not specifically or by reference to this section deny a power to change the unitrust percentage or to convert to an income trust, then the trustee shall have such power.

“(5) The distribution of a fixed percentage of not less than three percent nor more than five percent reasonably apportions the total return of an express total return unitrust.

“(6) The trust instrument may grant discretion to the trustee to adopt a consistent practice of treating capital gains as part of the unitrust distribution, to the extent that the unitrust distribution exceeds the net accounting income, or it may specify the ordering of such classes of income.

“(7) Unless the terms of the trust specifically provide otherwise, a distribution of the unitrust amount from an express total return unitrust shall be considered to have been made from the following sources in order of priority:

“(A) From net accounting income determined as if the trust were not a unitrust;

“(B) From ordinary income not allocable to net accounting income;

“(C) After calculating the trust's capital gain net income as described in Internal Revenue Code [26 U.S.C. § 1, et seq. § 1222\(9\)](#) , [26 U.S.C. § 1222\(9\)](#) , from net realized short-term capital gain as described in [I.R.C. § 1222\(5\)](#) , [26 U.S.C. § 1222\(5\)](#) and then from net realized long-term capital gain described in [I.R.C. § 1222\(7\)](#) , [26 U.S.C. § 1222\(7\)](#) ; and

“(D) From the principal of the trust.

“(8) The trust instrument may provide that:

“(A) Assets for which a fair market value cannot be readily ascertained shall be valued using such valuation methods as are deemed reasonable and appropriate; and

“(B) Assets used by a trust beneficiary, such as a residence property or tangible personal property, may be excluded from the net fair market value for computing the unitrust amount.”

**“ § 44B-6-606. Transitional Matters**

“Section four hundred nine, article four of this chapter, as amended during the regular session of the 2009 Legislature, applies to a trust described in subsection (d) of section four hundred nine, article four of this chapter on and after the following dates:

“(1) If the trust is not funded as of the effective date of the amendments to this chapter enacted during the regular session of the two thousand nine legislature, the date of the decedent's death.

“(2) If the trust is initially funded in the calendar year beginning the first day of January, two thousand nine, the date of the decedent's death.

(3) If the trust is not described in paragraph (1) or (2), the first day of January, two thousand nine.”

**WISCONSIN**

Repealed the Uniform Principal and Income Act (1962) ( [W.S.A. 701.20](#) ), and enacted in lieu thereof the Uniform Principal and Income Act (1997) ( [W.S.A. 701.20](#) ) by L.2005, c. 10, effective May 17, 2005.

The provisions of the Uniform Principal and Interest Act (1997) are found in one section of the Wisconsin statutes ( [W.S.A. 701.20](#) ). Adds additional provisions (designated as subsections in the Wisconsin act), which provide:

“ **(4c) Notice to beneficiaries of proposed action.** (b) A trustee may, but is not required to, obtain approval of a proposed action under sub. (4)(a) by providing a written notice that complies with all of the following:

“1. Is given at least 30 days before the proposed effective date of the proposed action.

“2. Is given in the manner provided in ch. 879, except that notice by publication is not required.

“3. Is given to all sui juris beneficiaries who are any of the following:

“a. Income beneficiaries currently eligible to receive income from the trust.

“b. Eligible to receive, if no powers of appointment were exercised, income from the trust if the interest of all of those eligible to receive income under subd. 3. a. were to terminate immediately before the giving of notice.

“c. A recipient, if no powers of appointment were exercised, of a distribution of principal if the trust were to terminate immediately before the giving of the notice.

“4. States that it is given in accordance with this subsection and discloses the following information:

“a. The identification of the trustee.

"b. A description of the proposed action.

"c. The time within which a beneficiary may object to the proposed action, which shall be at least 30 days after the giving of the notice.

"d. The effective date of the proposed action if no objection is received from any beneficiary within the time specified in subd. 4.c.

"(c) If a trustee gives notice of a proposed action under this subsection, the trustee is not required to give notice to a sui juris beneficiary who consents to the proposed action in writing at any time before or after the proposed action is taken.

"(d) A sui juris beneficiary may object to the proposed action by giving a written objection to the trustee within the time specified in the notice under par. (b)4.c.

"(e) A trustee may decide not to take a proposed action after the trustee receives a written objection to the proposed action or at any other time for any other reason. In that case, the trustee shall give written notice to the sui juris beneficiaries of the decision not to take the proposed action.

"(f) If a trustee receives a written objection to a proposed action within the time specified in the notice under par. (b)4.c., either the trustee or the beneficiary making the written objection may petition the court to have the proposed action approved, modified, or prohibited. In the court proceeding, the beneficiary objecting to the proposed action has the burden of proving that the proposed action should be modified or prohibited. A beneficiary who did not make the written objection may oppose the proposed action in the court proceeding.

"(g) For purposes of this subsection, a proposed action under sub. (4) includes a course of action or a decision not to take action under sub. (4)."

" **(4g) Conversion to unitrust.** (a) Subject to par. (d), a trust may be converted to a unitrust in any of the following ways:

"1. By the trustee, at his or her own discretion or at the request of a beneficiary, if all of the following apply:

"a. The trustee determines that the conversion will enable the trustee to better carry out the purposes of the trust.

"b. The trustee provides notice in the same manner as provided in sub. (4c)(b) of the trustee's intention to convert the trust to a unitrust, and the notice advises how the unitrust will operate, including the fixed percentage under par. (c)1. and any other initial determinations under par. (c)4. that the trustee intends to follow.

"c. There is at least one sui juris beneficiary under sub. (4c)(b)3. a. and at least one other sui juris beneficiary under sub. (4c)(b)3. b. or c.

"d. Every sui juris beneficiary consents to the conversion to a unitrust in a writing delivered to the trustee.

"e. The terms of the trust describe the amount that may or must be distributed by referring to the trust income.

"2. By a court on the petition of the trustee or a beneficiary, if all of the following apply:

"a. The trustee or beneficiary has provided notice under sub. (4c) of the intention to request the court to convert the trust to a unitrust, and the notice advises how the unitrust will operate, including the fixed percentage under par. (c)1. and any other initial determinations under par. (c)4. that will be requested.

"b. The court determines that the conversion to a unitrust will enable the trustee to better carry out the purposes of the trust.

"(b) In deciding whether to convert the trust to a unitrust under par. (a)1., the trustee shall consider all relevant factors under sub. (4)(b)1. to 9.



“(c)1. If a trust is converted to a unitrust under this subsection by the trustee or a court, notwithstanding sub. (3)(a)1. and 4. and s. 701.21(4) the trustee shall make distributions in accordance with the creating instrument, except that any reference in the creating instrument to ‘income’ means a fixed percentage of the net fair market value of the unitrust’s assets, whether such assets otherwise would be considered income or principal under this section, averaged over a preceding period determined by the trustee, which is at least 3 years but not more than 5 years, or the period since the original trust was created, whichever is less.

“2. a. Subject to subd. 2. b., if the trust is converted to a unitrust under par. (a)1., the trustee shall determine the fixed percentage to be applied under subd. 1., and the notice under par. (a)1. b. must state the fixed percentage. If the trust is converted to a unitrust under par. (a)2., the court shall determine the fixed percentage to be applied under subd. 1.

“b. Any fixed percentage under subd. 1. that is determined by a trustee may not be less than 3 percent nor more than 5 percent.

“3. After a trust is converted to a unitrust, the trustee may, subject to the notice requirement under sub. (4c) and with the consent of every sui juris beneficiary, do any of the following:

“a. Convert the unitrust back to the original trust under the creating instrument.

“b. Change the fixed percentage under subd. 1., subject to subd. 2. b.

“4. After a trust is converted to a unitrust, a trustee may determine or change any of the following:

“a. The frequency of distributions during the year.

“b. Standards for prorating a distribution for a short year in which a beneficiary’s right to payments commences or ceases.

“c. The effect on the valuation of the unitrust’s assets of other payments from, or contributions to, the unitrust.

“d. How, and how frequently, to value the unitrust’s assets.

“e. The valuation dates to use.

“f. Whether to omit from the calculation of the value of the unitrust’s assets unitrust property occupied by or in the possession of a beneficiary.

“g. The averaging under subd. 1. to a different preceding period, which is at least 3 years but not more than 5 years.

“h. Any other matters necessary for the proper functioning of the unitrust.

“5. The trustee may not deduct from a unitrust distribution expenses that would be deducted from income if the trust were not a unitrust.

“6. Unless otherwise provided by the creating instrument, the unitrust distribution is considered to have been paid from the following sources in the order of priority:

“a. Net income, determined as if the trust were not a unitrust.

“b. Ordinary income for federal income tax purposes that is not net income under subd. 6.a.

“c. Net realized short-term capital gains for federal income tax purposes.

“d. Net realized long-term capital gain for federal income tax purposes.

“e. Principal.

"7. A court may, on the petition of the trustee or a beneficiary, do any of the following:

"a. Change the fixed percentage that was determined under subd. 2. by the trustee or by a prior court order.

"b. If necessary to preserve a tax benefit, provide for a distribution of net income, determined as if the trust were not a unitrust, that exceeds the unitrust distribution.

"c. Average the valuation of the unitrust's assets over a period other than that specified in subd. 1.

"d. Require the unitrust to be converted back to the original trust under the creating instrument.

"8. Conversion to a unitrust under this subsection does not affect a provision in the creating instrument that directs or authorizes the trustee to distribute principal or that authorizes a beneficiary to withdraw a portion or all of the principal.

"(d)1. A trust may not be converted under this subsection to a unitrust if any of the following applies:

"a. The creating instrument specifically prohibits the conversion.

"b. Payment of the unitrust distribution will change the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets.

"c. The unitrust distribution will be made from any amount that is permanently set aside for charitable purposes under the creating instrument and for which an estate or gift tax charitable deduction has been taken, unless both income and principal are so set aside.

"d. Converting to a unitrust will cause an individual to be treated as the owner of all or part of the trust for income tax purposes and the individual would not be treated as the owner if the trust were not converted.

"e. Converting to a unitrust will cause all or a part of the trust assets to be subject to estate or gift tax with respect to an individual and the trust assets would not be subject to estate or gift tax with respect to the individual if the trust were not converted.

"f. Converting to a unitrust will result in the disallowance of an estate or gift tax marital deduction that would be allowed if the trust were not converted.

"g. A trustee is a beneficiary of the trust.

"2. Notwithstanding subd. 1., if a trust may not be converted to a unitrust solely because subd. 1. g. applies to a trustee, a cotrustee, if any, to whom subd. 1.g. does not apply may convert the trust to a unitrust under par. (a)1., unless prohibited by the creating instrument, or a court may convert the trust to a unitrust under par. (a)2. on the petition of a trustee or beneficiary.

"(e) A trustee may release the power conferred by par. (a)1. if the trustee is uncertain about whether possessing or exercising the power will cause a result described in par. (d)1.b. to f. or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in par. (d)1. The release may be permanent or for a specified period, including a period measured by the life of an individual."

"(4j) **Express unitrusts.** (a) In this subsection 'express unitrust' means any trust that by its governing instrument requires the distribution at least annually of a unitrust amount equal to a fixed percentage of the net fair market value of the trust's assets, valued at least annually, other than a trust solely for charitable purposes or a charitable split-interest trust under [section 664\(d\)](#) or [170\(f\)\(2\)\(B\) of the Internal Revenue Code](#) .

"(b) The following apply to an express unitrust:

"1. To the extent not otherwise provided for in the governing instrument, the unitrust amount of not less than 3 percent nor more than 5 percent may be determined by reference to the net fair market value of the trust's assets averaged over a preceding period determined by the trustee, which is at least 3 years but not more than 5 years.

"2. Distribution of such a fixed percentage unitrust amount of not less than 3 percent nor more than 5 percent is a distribution of all of the income of the unitrust and is an income interest.

"3. Such a distribution of a fixed percentage of not less than 3 percent nor more than 5 percent is a reasonable apportionment of the total return of the trust.

"4. A trust that provides for a fixed annual percentage payout in excess of 5 percent per year of the net fair market value of the trust is considered to be a 5 percent express unitrust, paying out all of the income of the unitrust, and to have paid out principal of the trust to the extent that the fixed percentage payout exceeds 5 percent per year.

"5. The governing instrument may grant discretion to the trustee to adopt a consistent practice of treating capital gains as part of the unitrust distribution, to the extent that the unitrust distribution exceeds the income determined as if the trust were not a unitrust, or it may specify the ordering of such classes of income.

"6. Unless the terms of the trust specifically provide otherwise, a distribution of the unitrust amount is considered to have been made from the following sources in the following order of priority:

"a. Net income determined as if the trust were not a unitrust.

"b. Ordinary income for federal income tax purposes that is not net income under subd. 6.a.

"c. Net realized short-term capital gains for federal income tax purposes.

"d. Net realized long-term capital gains for federal income tax purposes.

"e. Principal.

"7. The trust document may provide that assets used by the trust beneficiary, such as a residence or tangible personal property, may be excluded from the net fair market value for computing the unitrust amount. Such use may be considered equivalent to the income or unitrust amount.

"8. In the absence of contrary provisions in the governing document of an express unitrust, the provisions of sub. (4g)(c)1., 4., and 5. apply."

" **(4k) Power to treat capital gains as part of a distribution.** Unless prohibited by the governing instrument, a trustee may cause gains from the sale or exchange of trust assets, as determined for federal income tax purposes, to be taxed for federal income tax purposes as part of a distribution of income that has been increased by an adjustment from principal to income under sub. (4), of a unitrust distribution, of a fixed annuity distribution, or of a principal distribution to a beneficiary."

" **(31) Limits on liability.** (a) If a trustee sends to all beneficiaries a written communication relating to the trust, any action against the trustee that is based on the subject of the written communication shall be commenced within 2 years after the trustee sends the written communication or be barred.

"(b)1. A written communication is sent to a sui juris beneficiary on the date on which the written communication is delivered personally to the sui juris beneficiary or on the date on which the written communication is postmarked if mailed to the sui juris beneficiary at his or her last-known address.

"2. A written communication is sent to a beneficiary who is not a sui juris beneficiary on the date on which the written communication is delivered personally to the beneficiary's parent or legal guardian or on the date on which the written communication is postmarked if mailed to the beneficiary's parent or legal guardian at his or her last-known address.

“(c) The identity of all of the beneficiaries shall be determined on the date on which the written communication is sent.

“(d) Paragraph (a) does not apply to an action based on fraud or misrepresentation with respect to the written communication.”

## WISCONSIN

Repealed the Uniform Principal and Income Act (1962) ( [W.S.A. 701.20](#) ), and enacted in lieu thereof the Uniform Principal and Income Act (1997) ( [W.S.A. 701.20](#) ) by L.2005, c. 10, effective May 17, 2005. The provisions of the Uniform Principal and Income Act (1997) are found in one section of the Wisconsin statutes ( [W.S.A. 701.20](#) ),

[W.S.A. 701.20](#) was repealed by L.2013, Act. 92, effective July 1, 2014, and the provisions of the Uniform Principal and Income Act (1997) were renumbered in [W.S.A. sections 701.1101](#) to [701.1136](#) , also by L.2013, Act. 92, effective July 1, 2014.

While the Wisconsin act is a substantial adoption of major provisions of the Uniform Act, as a result of significant changes and additions, it now departs from the official text in such manner that the various instances of substitution, omission and additional matter cannot be clearly indicated by statutory notes.

## WYOMING

Repealed the Uniform Principal and Income Act (1962) ( [Wyo.Stat. Ann. §§ 2-3-601](#) to [2-3-614](#) ), and enacted in lieu thereof the Uniform Principal and Income Act (1997) ( [Wyo.Stat. Ann. §§ 2-3-801](#) to [2-3-834](#) ) by L.2001, c. 11, effective July 1, 2001.

Adds a section, which provides:

**“ § 2-3-805. Notice of proposed action; objections of beneficiary; liability of trustee; proceedings**

“(a) Unless a trust instrument requires otherwise, a trustee may give notice of proposed action regarding a matter governed by this act as provided in this section. For the purpose of this section, a proposed action includes a course of action and a decision not to take action.

“(b) If a trustee elects to give notice under this section, the trustee shall mail notice of the proposed action to all beneficiaries who are receiving, or are entitled to receive, income under the trust or to receive a distribution of principal if the trust were terminated at the time the notice is given.

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

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

“(i) The name and mailing address of the trustee;

“(ii) The name and telephone number of a person who may be contacted for additional information;

“(iii) A description of the action proposed to be taken and an explanation of the reasons for the action;

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

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

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

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

“(g) If the trustee receives a written objection within the applicable period, either the trustee or a beneficiary may petition the court to have the proposed action taken as proposed, taken with modifications, or denied. In the proceeding, a beneficiary objecting to the proposed action has the burden of proving that the trustee's proposed action should not be taken. A beneficiary who has not objected is not estopped from opposing the proposed action in the proceeding. If the trustee decides not to implement the proposed action, the trustee shall notify the beneficiaries of the decision not to take the action and the reasons for the decision, and the trustee's decision not to implement the proposed action does not itself give rise to liability to any current or future beneficiary. A beneficiary may petition the court to have the action taken, and has the burden of proving that it should be taken.”

## WYOMING

Adds an additional section which provides:

### “§ 2-3-835. Trustee discretion to include capital gains in income

“(a) To the extent a trustee is given the power to make mandatory or discretionary distributions of income, the trustee may, on an annual basis, include realized capital gains in trust income and in determining [section 643\(a\) of the Internal Revenue Code](#) distributable net income, if the allocation is reasonable and impartial.

“(b) To the extent a trustee is given the power to make mandatory or discretionary distributions of principal, the trustee may, on an annual basis, include realized capital gains in determining [Section 643\(a\) Internal Revenue Code](#) distributable net income, if the allocation is reasonable and impartial.”