

ASSEMBLY, No. 3261

STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED MARCH 1, 2001

Sponsored by:

Assemblyman CHRISTOPHER "KIP" BATEMAN

District 16 (Morris and Somerset)

Assemblyman PETER J. BIONDI

District 16 (Morris and Somerset)

SYNOPSIS

Replaces "Revised Uniform Principal and Income Act" with "Uniform Principal and Income Act of 2000."

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning principal and income guidelines for trusts and
2 estates and repealing N.J.S.3B:19A-1 et seq.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. This act shall be known and may be cited as the "Uniform
8 Principal and Income Act of 2000."

9
10 2. As used in this act:

11 "Accounting period" means a calendar year unless another
12 12-month period is selected by a fiduciary. The term includes a
13 portion of a calendar year or other 12-month period that begins when
14 an income interest begins or ends when an income interest ends.

15 "Beneficiary" includes, in the case of a decedent's estate, an heir,
16 legatee and devisee and, in the case of a trust, an income beneficiary
17 and a remainder beneficiary.

18 "Fiduciary" means a personal representative or a trustee. The term
19 includes an executor, administrator, successor personal representative,
20 special administrator and a person performing substantially the same
21 function.

22 "Income" means money or property that a fiduciary receives as
23 current return from a principal asset. The term includes a portion of
24 receipts from a sale, exchange or liquidation of a principal asset, to the
25 extent provided in sections 10 through 24 of this act.

26 "Income beneficiary" means a person to whom net income of a trust
27 is or may be payable.

28 "Income interest" means the right of an income beneficiary to
29 receive all or part of net income, whether the terms of the trust require
30 it to be distributed or authorize it to be distributed in the trustee's
31 discretion.

32 "Mandatory income interest" means the right of an income
33 beneficiary to receive net income that the terms of the trust require the
34 fiduciary to distribute.

35 "Net income" means the total receipts allocated to income during
36 an accounting period minus the disbursements made from income
37 during the period, plus or minus transfers under this act to or from
38 income during the period.

39 "Person" means an individual, corporation, business trust, estate,
40 trust, partnership, limited liability company, association, joint venture,
41 government, governmental subdivision, agency or instrumentality,
42 public corporation or any other legal or commercial entity.

43 "Principal" means property held in trust for distribution to a
44 remainder beneficiary when the trust terminates.

45 "Remainder beneficiary" means a person entitled to receive
46 principal when an income interest ends.

1 “Terms of a trust” means the manifestation of the intent of a settlor
2 or decedent with respect to the trust, expressed in a manner that
3 admits of its proof in a judicial proceeding, whether by written or
4 spoken words or by conduct.

5 “Trustee” includes an original, additional or successor trustee,
6 whether or not appointed or confirmed by a court.

7

8 3. a. In allocating receipts and disbursements to or between
9 principal and income, and with respect to any matter within the scope
10 of sections 5 through 9 of this act, a fiduciary:

11 (1) shall administer a trust or estate in accordance with the terms
12 of the trust or the will, even if there is a different provision in this act;

13 (2) may administer a trust or estate by the exercise of a
14 discretionary power of administration given to the fiduciary by the
15 terms of the trust or the will, even if the exercise of the power
16 produces a result different from a result required or permitted by this
17 act;

18 (3) shall administer a trust or estate in accordance with this act if
19 the terms of the trust or the will do not contain a different provision
20 or do not give the fiduciary a discretionary power of administration;
21 and

22 (4) shall add a receipt or charge a disbursement to principal to the
23 extent that the terms of the trust and this act do not provide a rule for
24 allocating the receipt or disbursement to or between principal and
25 income.

26 b. In exercising the power to adjust under subsection a. of section
27 4 of this act or a discretionary power of administration regarding a
28 matter within the scope of this act, whether granted by the terms of a
29 trust, a will or this act, a fiduciary shall administer a trust or estate
30 impartially, based on what is fair and reasonable to all of the
31 beneficiaries, except to the extent that the terms of the trust or the will
32 clearly manifest an intention that the fiduciary shall or may favor one
33 or more of the beneficiaries. A determination in accordance with this
34 act is presumed to be fair and reasonable to all of the beneficiaries.

35

36 4. a. A trustee may adjust between principal and income to the
37 extent the trustee considers necessary if the trustee invests and
38 manages trust assets as a prudent investor, the terms of the trust
39 describe the amount that may or shall be distributed to a beneficiary by
40 referring to the trust’s income and the trustee determines, after
41 applying the rules in subsection a. of section 3 of this act, that the
42 trustee is unable to comply with subsection b. of section 3 of this act.

43 b. In deciding whether and to what extent to exercise the power
44 conferred by subsection a. of this section, a trustee shall consider all
45 factors relevant to the trust and its beneficiaries, including the
46 following factors to the extent they are relevant:

- 1 (1) the nature, purpose and expected duration of the trust;
 - 2 (2) the intent of the settlor;
 - 3 (3) the identity and circumstances of the beneficiaries;
 - 4 (4) the needs for liquidity, regularity of income and preservation
 - 5 and appreciation of capital;
 - 6 (5) the assets held in the trust; the extent to which they consist of
 - 7 financial assets, interests in closely held enterprises, tangible and
 - 8 intangible personal property or real property; the extent to which an
 - 9 asset is used by a beneficiary; and whether an asset was purchased by
 - 10 the trustee or received from the settlor;
 - 11 (6) the net amount allocated to income under the other sections of
 - 12 this act and the increase or decrease in the value of the principal
 - 13 assets, which the trustee may estimate as to assets for which market
 - 14 values are not readily available;
 - 15 (7) whether and to what extent the terms of the trust give the
 - 16 trustee the power to invade principal or accumulate income or prohibit
 - 17 the trustee from invading principal or accumulating income, and the
 - 18 extent to which the trustee has exercised a power from time to time to
 - 19 invade principal or accumulate income;
 - 20 (8) the actual and anticipated effect of economic conditions on
 - 21 principal and income and effects of inflation and deflation; and
 - 22 (9) the anticipated tax consequences of an adjustment.
- 23 c. A trustee shall not make an adjustment:
- 24 (1) that diminishes the income interest in a trust that requires all of
 - 25 the income to be paid at least annually to a spouse and for which an
 - 26 estate tax or gift tax marital deduction would be allowed, in whole or
 - 27 in part, if the trustee did not have the power to make the adjustment;
 - 28 (2) that reduces the actuarial value of the income interest in a trust
 - 29 to which a person transfers property with the intent to qualify for a gift
 - 30 tax exclusion;
 - 31 (3) that changes the amount payable to a beneficiary as a fixed
 - 32 annuity or a fixed fraction of the value of the trust assets;
 - 33 (4) from any amount that is permanently set aside for charitable
 - 34 purposes under a will or the terms of a trust unless both income and
 - 35 principal are so set aside;
 - 36 (5) if possessing or exercising the power to make an adjustment
 - 37 causes an individual to be treated as the owner of all or part of the
 - 38 trust for income tax purposes, and the individual would not be treated
 - 39 as the owner if the trustee did not possess the power to make an
 - 40 adjustment;
 - 41 (6) if possessing or exercising the power to make an adjustment
 - 42 causes all or part of the trust assets to be included for estate tax
 - 43 purposes in the estate of an individual who has the power to remove
 - 44 a trustee or appoint a trustee, or both, and the assets would not be
 - 45 included in the estate of the individual if the trustee did not possess the
 - 46 power to make an adjustment;

1 (7) if the trustee is a beneficiary of the trust; or
2 (8) if the trustee is not a beneficiary, but the adjustment would
3 benefit the trustee directly or indirectly.

4 d. If paragraph (5), (6), (7) or (8) of subsection c. of this section
5 applies to a trustee and there is more than one trustee, a cotrustee to
6 whom the provision does not apply may make the adjustment unless
7 the exercise of the power by the remaining trustee or trustees is not
8 permitted by the terms of the trust.

9 e. A trustee may release the entire power conferred by subsection
10 a. of this section or may release only the power to adjust from income
11 to principal or the power to adjust from principal to income if the
12 trustee is uncertain about whether possessing or exercising the power
13 will cause a result described in paragraphs (1) through (6) or (8) of
14 subsection c. of this section, or if the trustee determines that
15 possessing or exercising the power will or may deprive the trust of a
16 tax benefit or impose a tax burden not described in subsection c. of
17 this section. The release may be permanent or for a specified period,
18 including a period measured by the life of an individual.

19 f. Terms of a trust that limit the power of a trustee to make an
20 adjustment between principal and income do not affect the application
21 of this section unless it is clear from the terms of the trust that the
22 terms are intended to deny the trustee the power of adjustment
23 conferred by subsection a. of this section.

24

25 5. After a decedent dies, in the case of an estate or after an income
26 interest in a trust ends, the following rules apply:

27 a. A fiduciary of an estate or of a terminating income interest shall
28 determine the amount of net income and net principal receipts received
29 from property specifically given to a beneficiary under the rules in
30 sections 7 through 30 of this act which apply to trustees and the rules
31 in subsection e. of this section. The fiduciary shall distribute the net
32 income and net principal receipts to the beneficiary who is to receive
33 the specific property.

34 b. A fiduciary shall determine the remaining net income of a
35 decedent's estate or a terminating income interest under the rules in
36 sections 7 through 30 of this act which apply to trustees and by:

37 (1) including in net income all income from property used to
38 discharge liabilities;

39 (2) paying from income or principal, in the fiduciary's discretion,
40 fees of attorneys, accountants and fiduciaries, court costs and other
41 expenses of administration and interest on death taxes, but the
42 fiduciary may pay those expenses from income of property passing to
43 a trust for which the fiduciary claims an estate tax marital or charitable
44 deduction only to the extent that the payment of those expenses from
45 income will not cause the reduction or loss of the deduction; and

46 (3) paying from principal all other disbursements made or incurred

1 in connection with the settlement of a decedent's estate or the winding
2 up of a terminating income interest, including debts, funeral expenses,
3 disposition of remains, family allowances and death taxes and related
4 penalties that are apportioned to the estate or terminating income
5 interest by the will, the terms of the trust or applicable law.

6 c. A fiduciary shall distribute to a beneficiary who receives a
7 pecuniary amount outright the interest or any other amount provided
8 by the will, the terms of the trust or applicable law from net income
9 determined under subsection b. of this section or from principal to the
10 extent that net income is insufficient. If a beneficiary is to receive a
11 pecuniary amount outright from a trust after an income interest ends
12 and no interest or other amount is provided for by the terms of the
13 trust or applicable law, the fiduciary shall distribute the interest or
14 other amount to which the beneficiary would be entitled under
15 applicable law if the pecuniary amount were required to be paid under
16 a will.

17 d. A fiduciary shall distribute the net income remaining after
18 distributions required by subsection c. of this section in the manner
19 described in section 6 of this act to all other beneficiaries, including a
20 beneficiary who receives a pecuniary amount in trust, even if the
21 beneficiary holds an unqualified power to withdraw assets from the
22 trust or other presently exercisable general power of appointment over
23 the trust.

24 e. A fiduciary shall not reduce principal or income receipts from
25 property described in subsection a. of this section because of a
26 payment described in section 25 or 26 of this act to the extent that the
27 will, the terms of the trust, or applicable law requires the fiduciary to
28 make the payment from assets other than the property or to the extent
29 that the fiduciary recovers or expects to recover the payment from a
30 third party. The net income and principal receipts from the property
31 are determined by including all of the amounts the fiduciary receives
32 or pays with respect to the property, whether those amounts accrued
33 or became due before, on or after the date of a decedent's death or an
34 income interest's terminating event, and by making a reasonable
35 provision for amounts that the fiduciary believes the estate or
36 terminating income interest may become obligated to pay after the
37 property is distributed.

38

39 6. a. Each beneficiary described in subsection d. of section 5 of
40 this act is entitled to receive a portion of the net income equal to the
41 beneficiary's fractional interest in undistributed principal assets, using
42 values as of the distribution date. If a fiduciary makes more than one
43 distribution of assets to beneficiaries to whom this section applies,
44 each beneficiary, including one who does not receive part of the
45 distribution, is entitled, as of each distribution date, to the net income
46 the fiduciary has received after the date of death or terminating event

1 or earlier distribution date but has not distributed as of the current
2 distribution date.

3 b. In determining a beneficiary's share of net income, the following
4 rules apply:

5 (1) The beneficiary is entitled to receive a portion of the net
6 income equal to the beneficiary's fractional interest in the
7 undistributed principal assets immediately before the distribution date,
8 including assets that later may be sold to meet principal obligations.

9 (2) The beneficiary's fractional interest in the undistributed
10 principal assets shall be calculated without regard to property
11 specifically given to a beneficiary and property required to pay
12 pecuniary amounts not in trust.

13 (3) The beneficiary's fractional interest in the undistributed
14 principal assets shall be calculated on the basis of the aggregate value
15 of those assets as of the distribution date without reducing the value
16 by any unpaid principal obligation.

17 (4) The distribution date for purposes of this section may be the
18 date as of which the fiduciary calculates the value of the assets if that
19 date is reasonably near the date on which assets are actually
20 distributed.

21 c. If a fiduciary does not distribute all of the collected but
22 undistributed net income to each person as of a distribution date, the
23 fiduciary shall maintain appropriate records showing the interest of
24 each beneficiary in that net income.

25 d. A fiduciary may apply the rules in this section, to the extent that
26 the fiduciary considers it appropriate, to net gain or loss realized after
27 the date of death or terminating event or earlier distribution date from
28 the disposition of a principal asset if this section applies to the income
29 from the asset.

30

31 7. a. An income beneficiary is entitled to net income from the date
32 on which the income interest begins. An income interest begins on the
33 date specified in the terms of the trust or, if no date is specified, on the
34 date an asset becomes subject to a trust or successive income interest.

35 b. An asset becomes subject to a trust:

36 (1) on the date it is transferred to the trust in the case of an asset
37 that is transferred to a trust during the transferor's life;

38 (2) on the date of a testator's death in the case of an asset that
39 becomes subject to a trust by reason of a will, even if there is an
40 intervening period of administration of the testator's estate; or

41 (3) on the date of an individual's death in the case of an asset that
42 is transferred to a fiduciary by a third party because of the individual's
43 death.

1 c. An asset becomes subject to a successive income interest on the
2 day after the preceding income interest ends, as determined under
3 subsection d. of this section, even if there is an intervening period of
4 administration to wind up the preceding income interest.

5 d. An income interest ends on the day before an income beneficiary
6 dies or another terminating event occurs, or on the last day of a period
7 during which there is no beneficiary to whom a trustee may distribute
8 income.

9
10 8. a. A trustee shall allocate an income receipt or disbursement
11 other than one to which paragraph (1) of subsection b. of section 5 of
12 this act applies to principal if its due date occurs before a decedent
13 dies in the case of an estate or before an income interest begins in the
14 case of a trust or successive income interest.

15 b. A trustee shall allocate an income receipt or disbursement to
16 income if its due date occurs on or after the date on which a decedent
17 dies or an income interest begins and it is a periodic due date. An
18 income receipt or disbursement shall be treated as accruing from day
19 to day if its due date is not periodic or it has no due date. The portion
20 of the receipt or disbursement accruing before the date on which a
21 decedent dies or an income interest begins shall be allocated to
22 principal and the balance shall be allocated to income.

23 c. An item of income or an obligation is due on the date the payer
24 is required to make a payment. If a payment date is not stated, there
25 is no due date for the purposes of this act. Distributions to
26 shareholders or other owners from an entity to which section 10 of this
27 act applies are deemed to be due on the date fixed by the entity for
28 determining who is entitled to receive the distribution or, if no date is
29 fixed, on the declaration date for the distribution. A due date is
30 periodic for receipts or disbursements that are to be paid at regular
31 intervals under a lease or an obligation to pay interest or if an entity
32 customarily makes distributions at regular intervals.

33
34 9. a. As used in this section, “undistributed income” means net
35 income received before the date on which an income interest ends.
36 The term does not include an item of income or expense that is due or
37 accrued or net income that has been added or is required to be added
38 to principal under the terms of the trust.

39 b. When a mandatory income interest ends, the trustee shall pay to
40 a mandatory income beneficiary who survives that date, or the estate
41 of a deceased mandatory income beneficiary whose death causes the
42 interest to end, the beneficiary’s share of the undistributed income that
43 is not disposed of under the terms of the trust, unless the beneficiary
44 has an unqualified power to revoke more than five percent of the trust
45 immediately before the income interest ends. In the latter case, the
46 undistributed income from the portion of the trust that may be revoked

1 shall be added to principal.

2 c. When a trustee's obligation to pay a fixed annuity or a fixed
3 fraction of the value of the trust's assets ends, the trustee shall prorate
4 the final payment if and to the extent required by applicable law to
5 accomplish a purpose of the trust or its settlor relating to income, gift,
6 estate or other tax requirements.

7

8 10. a. As used in this section, "entity" means a corporation,
9 partnership, limited liability company, regulated investment company,
10 real estate investment trust, common trust fund or any other
11 organization in which a trustee has an interest other than a trust or
12 estate to which section 11 of this act applies, a business or activity to
13 which section 12 of this act applies or an asset-backed security to
14 which section 24 of this act applies.

15 b. Except as otherwise provided in this section, a trustee shall
16 allocate to income money received from an entity.

17 c. A trustee shall allocate the following receipts from an entity to
18 principal:

19 (1) property other than money;

20 (2) money received in one distribution or a series of related
21 distributions in exchange for part or all of a trust's interest in the
22 entity;

23 (3) money received in total or partial liquidation of the entity; and

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

27 d. Money is received in partial liquidation:

28 (1) to the extent that the entity, at or near the time of a distribution,
29 indicates that it is a distribution in partial liquidation; or

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

34 e. Money is not received in partial liquidation, nor may it be taken
35 into account under paragraph (2) of subsection d. of this section, to
36 the extent that it does not exceed the amount of income tax that a
37 trustee or beneficiary must pay on taxable income of the entity that
38 distributes the money.

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

1 11. A trustee shall allocate to income an amount received as a
2 distribution of income from a trust or an estate in which the trust has
3 an interest other than a purchased interest, and shall allocate to
4 principal an amount received as a distribution of principal from such
5 a trust or estate. If a trustee purchases an interest in a trust that is an
6 investment entity, or a decedent or donor transfers an interest in such
7 a trust to a trustee, section 10 or 24 of this act applies to a receipt
8 from the trust.

9
10 12. a. If a trustee who conducts a business or other activity
11 determines that it is in the best interest of all the beneficiaries to
12 account separately for the business or activity instead of accounting
13 for it as part of the trust's general accounting records, the trustee may
14 maintain separate accounting records for its transactions, whether or
15 not its assets are segregated from other trust assets.

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

27 c. Activities for which a trustee may maintain separate accounting
28 records include:

- 29 (1) retail, manufacturing, service and other traditional business
30 activities;
31 (2) farming;
32 (3) raising and selling livestock and other animals;
33 (4) management of rental properties;
34 (5) extraction of minerals and other natural resources;
35 (6) timber operations; and
36 (7) activities to which section 23 of this act applies.

37
38 13. A trustee shall allocate to principal:

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

43 b. Money or other property received from the sale, exchange,
44 liquidation or change in form of a principal asset, including realized
45 profit, subject to sections 10 through 24 of this act;

1 c. Amounts recovered from third parties to reimburse the trust
2 because of disbursements described in paragraph (7) of subsection a.
3 of section 26 of this act or for other reasons to the extent not based on
4 the loss of income;

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

9 e. Net income received in an accounting period during which there
10 is no beneficiary to whom a trustee may or shall distribute income; and

11 f. Other receipts as provided in sections 17 through 24 of this act.

12
13 14. To the extent that a trustee accounts for receipts from rental
14 property pursuant to this section, the trustee shall allocate to income
15 an amount received as rent of real or personal property, including an
16 amount received for cancellation or renewal of a lease. An amount
17 received as a refundable deposit, including a security deposit or a
18 deposit that is to be applied as rent for future periods, shall be added
19 to principal and held subject to the terms of the lease and is not
20 available for distribution to a beneficiary until the trustee's contractual
21 obligations have been satisfied with respect to that amount.

22
23 15. a. An amount received as interest, whether determined at a
24 fixed, variable or floating rate, on an obligation to pay money to the
25 trustee, including an amount received as consideration for prepaying
26 principal, shall be allocated to income without any provision for
27 amortization of premium.

28 b. A trustee shall allocate to principal an amount received from the
29 sale, redemption or other disposition of an obligation to pay money to
30 the trustee more than one year after it is purchased or acquired by the
31 trustee, including an obligation whose purchase price or value when
32 it is acquired is less than its value at maturity. If the obligation
33 matures within one year after it is purchased or acquired by the
34 trustee, an amount received in excess of its purchase price or its value
35 when acquired by the trust shall be allocated to income.

36 c. This section does not apply to an obligation to which section 18,
37 19, 20, 21, 23 or 24 of this act applies.

38
39 16. a. Except as otherwise provided in subsection b. of this
40 section, a trustee shall allocate to principal the proceeds of a life
41 insurance policy or other contract in which the trust or its trustee is
42 named as beneficiary, including a contract that insures the trust or its
43 trustee against loss for damage to, destruction of or loss of title to a
44 trust asset. The trustee shall allocate dividends on an insurance policy
45 to income if the premiums on the policy are paid from income, and to
46 principal if the premiums are paid from principal.

1 b. A trustee shall allocate to income proceeds of a contract that
2 insures the trustee against loss of occupancy or other use by an income
3 beneficiary, loss of income or, subject to section 12 of this act, loss of
4 profits from a business.

5 c. This section does not apply to a contract to which section 18 of
6 this act applies.

7
8 17. If a trustee determines that an allocation between principal and
9 income required by section 18, 19, 20, 21 or 24 of this act is
10 insubstantial, the trustee may allocate the entire amount to principal
11 unless one of the circumstances described in subsection c. of section
12 4 of this act applies to the allocation. This power may be exercised by
13 a cotrustee in the circumstances described in subsection d. of section
14 4 of this act and may be released for the reasons and in the manner
15 described in subsection e. of section 4 of this act. An allocation is
16 presumed to be insubstantial if:

17 (1) the amount of the allocation would increase or decrease net
18 income in an accounting period, as determined before the allocation,
19 by less than 10 percent; or

20 (2) the value of the asset producing the receipt for which the
21 allocation would be made is less than 10 percent of the total value of
22 the trust's assets at the beginning of the accounting period.

23
24 18. a. As used in this section, "payment" means a payment that a
25 trustee may receive over a fixed number of years or during the life of
26 one or more individuals because of services rendered or property
27 transferred to the payer in exchange for future payments. The term
28 includes a payment made in money or property from the payer's
29 general assets or from a separate fund created by the payer, including
30 a private or commercial annuity, an individual retirement account and
31 a pension, profit-sharing, stock-bonus, or stock-ownership plan.

32 b. To the extent that a payment is characterized as interest or a
33 dividend or a payment made in lieu of interest or a dividend, a trustee
34 shall allocate it to income. The trustee shall allocate to principal the
35 balance of the payment and any other payment received in the same
36 accounting period that is not characterized as interest, a dividend or
37 an equivalent payment.

38 c. If no part of a payment is characterized as interest, a dividend or
39 an equivalent payment, and all or part of the payment is required to be
40 made, a trustee shall allocate to income 10 percent of the part that is
41 required to be made during the accounting period and the balance to
42 principal. If no part of a payment is required to be made or the
43 payment received is the entire amount to which the trustee is entitled,
44 the trustee shall allocate the entire payment to principal. For purposes
45 of this subsection, a payment is not "required to be made" to the
46 extent that it is made because the trustee exercises a right of

1 withdrawal.

2 d. If, to obtain an estate tax marital deduction for a trust, a trustee
3 must allocate more of a payment to income than provided for by this
4 section, the trustee shall allocate to income the additional amount
5 necessary to obtain the marital deduction.

6 e. This section does not apply to payments to which section 19 of
7 this act applies.

8

9 19. a. As used in this section, "liquidating asset" means an asset
10 whose value will diminish or terminate because the asset is expected
11 to produce receipts for a period of limited duration. The term includes
12 a leasehold, patent, copyright, royalty right and right to receive
13 payments during a period of more than one year under an arrangement
14 that does not provide for the payment of interest on the unpaid
15 balance. The term does not include a payment subject to section 18 of
16 this act, resources subject to section 20 of this act, timber subject to
17 section 21 of this act, an activity subject to section 23 of this act, an
18 asset subject to section 24 of this act, or any asset for which the
19 trustee establishes a reserve for depreciation under section 27 of this
20 act.

21 b. A trustee shall allocate to income 10 percent of the receipts from
22 a liquidating asset and the balance to principal.

23

24 20. a. To the extent that a trustee accounts for receipts from an
25 interest in minerals or other natural resources pursuant to this section,
26 the trustee shall allocate them as follows:

27 (1) if received as nominal delay rental or nominal annual rent on a
28 lease, a receipt shall be allocated to income;

29 (2) if received from a production payment, a receipt shall be
30 allocated to income if and to the extent that the agreement creating the
31 production payment provides a factor for interest or its equivalent.
32 The balance shall be allocated to principal;

33 (3) if an amount received as a royalty, shut-in-well payment, take-
34 or-pay payment, bonus or delay rental is more than nominal, 90
35 percent shall be allocated to principal and the balance to income;

36 (4) if an amount is received from a working interest or any other
37 interest not provided for in paragraph (1), (2) or (3) of this subsection
38 a., 90 percent of the net amount received shall be allocated to principal
39 and the balance to income.

40 b. An amount received on account of an interest in water that is
41 renewable shall be allocated to income. If the water is not renewable,
42 90 percent of the amount shall be allocated to principal and the
43 balance to income.

44 c. This act applies whether or not a decedent or donor was
45 extracting minerals, water or other natural resources before the
46 interest became subject to the trust.

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

8
9 21. a. To the extent that a trustee accounts for receipts from the
10 sale of timber and related products pursuant to this section, the trustee
11 shall allocate the net receipts:

12 (1) to income to the extent that the amount of timber removed from
13 the land does not exceed the rate of growth of the timber during the
14 accounting periods in which a beneficiary has a mandatory income
15 interest;

16 (2) to principal to the extent that the amount of timber removed
17 from the land exceeds the rate of growth of the timber or the net
18 receipts are from the sale of standing timber;

19 (3) to or between income and principal if the net receipts are from
20 the lease of timberland or from a contract to cut timber from land
21 owned by a trust, by determining the amount of timber removed from
22 the land under the lease or contract and applying the rules in
23 paragraphs (1) and (2) of this subsection a.; or

24 (4) to principal to the extent that advance payments, bonuses and
25 other payments are not allocated pursuant to paragraph (1), (2) or (3)
26 of this subsection a.

27 b. In determining net receipts to be allocated pursuant to
28 subsection a. of this section, a trustee shall deduct and transfer to
29 principal a reasonable amount for depletion.

30 c. This section applies whether or not a decedent or transferor was
31 harvesting timber from the property before it became subject to the
32 trust.

33 d. If a trust owns an interest in timberland on the effective date of
34 this act, the trustee may allocate net receipts from the sale of timber
35 and related products as provided in this act or in the manner used by
36 the trustee before the effective date of this act. If the trust acquires an
37 interest in timberland after the effective date of this act, the trustee
38 shall allocate net receipts from the sale of timber and related products
39 as provided in this act.

40
41 22. a. If a marital deduction is allowed for all or part of a trust
42 whose assets consist substantially of property that does not provide
43 the spouse with sufficient income from or use of the trust assets, and
44 if the amounts that the trustee transfers from principal to income under
45 section 4 of this act and distributes to the spouse from principal
46 pursuant to the terms of the trust are insufficient to provide the spouse

1 with the beneficial enjoyment required to obtain the marital deduction,
2 the spouse may require the trustee to make property productive of
3 income, convert property within a reasonable time or exercise the
4 power conferred by subsection a. of section 4 of this act. The trustee
5 may decide which action or combination of actions to take.

6 b. In cases not governed by subsection a. of this section, proceeds
7 from the sale or other disposition of an asset are principal without
8 regard to the amount of income the asset produces during any
9 accounting period.

10
11 23. a. As used in this section, “derivative” means a contract or
12 financial instrument or a combination of contracts and financial
13 instruments which gives a trust the right or obligation to participate in
14 some or all changes in the price of a tangible or intangible asset or
15 group of assets, or changes in a rate, an index of prices or rates or
16 other market indicator for an asset or a group of assets.

17 b. To the extent that a trustee does not account under section 12
18 of this act for transactions in derivatives, the trustee shall allocate to
19 principal receipts from and disbursements made in connection with
20 those transactions.

21 c. If a trustee grants an option to buy property from the trust,
22 whether or not the trust owns the property when the option is granted,
23 grants an option that permits another person to sell property to the
24 trust or acquires an option to buy property for the trust or an option
25 to sell an asset owned by the trust, and the trustee or other owner of
26 the asset is required to deliver the asset if the option is exercised, an
27 amount received for granting the option shall be allocated to principal.
28 An amount paid to acquire the option shall be paid from principal. A
29 gain or loss realized upon the exercise of an option, including an
30 option granted to a settlor of the trust for services rendered, shall be
31 allocated to principal.

32
33 24. a. As used in this section, “asset-backed security” means an
34 asset whose value is based upon the right it gives the owner to receive
35 distributions from the proceeds of financial assets that provide
36 collateral for the security. The term includes an asset that gives the
37 owner the right to receive from the collateral financial assets only the
38 interest or other current return or only the proceeds other than interest
39 or current return. The term does not include an asset to which section
40 10 or 18 of this act applies.

41 b. If a trust receives a payment from interest or other current
42 return and from other proceeds of the collateral financial assets, the
43 trustee shall allocate to income the portion of the payment which the
44 payer identifies as being from interest or other current return and shall
45 allocate the balance of the payment to principal.

46 c. If a trust receives one or more payments in exchange for the

1 trust's entire interest in an asset-backed security in one accounting
2 period, the trustee shall allocate the payments to principal. If a
3 payment is one of a series of payments that will result in the
4 liquidation of the trust's interest in the security over more than one
5 accounting period, the trustee shall allocate 10 percent of the payment
6 to income and the balance to principal.

7

8 25. A trustee shall make the following disbursements from income
9 to the extent that they are not disbursements to which paragraph (1)
10 or (2) of subsection b. of section 5 of this act applies:

11 a. one-half of the regular compensation of the trustee and of any
12 person providing investment advisory or custodial services to the
13 trustee;

14 b. one-half of all expenses for accountings, judicial proceedings, or
15 other matters that involve both the income and remainder interests;

16 c. all of the other ordinary expenses incurred in connection with the
17 administration, management, or preservation of trust property and the
18 distribution of income, including interest, ordinary repairs, regularly
19 recurring taxes assessed against principal and expenses of a proceeding
20 or other matter that concerns primarily the income interest; and

21 d. recurring premiums on insurance covering the loss of a principal
22 asset or the loss of income from or use of the asset.

23

24 26. a. A trustee shall make the following disbursements from
25 principal:

26 (1) the remaining one-half of the disbursements described in
27 subsections a. and b. of section 25 of this act;

28 (2) all of the trustee's compensation calculated on principal as a fee
29 for acceptance, distribution, or termination, and disbursements made
30 to prepare property for sale;

31 (3) payments on the principal of a trust debt;

32 (4) expenses of a proceeding that concerns primarily principal,
33 including a proceeding to construe the trust or to protect the trust or
34 its property;

35 (5) premiums paid on a policy of insurance not described in
36 subsection d. of section 25 of this act of which the trust is the owner
37 and beneficiary;

38 (6) estate, inheritance and other transfer taxes, including penalties,
39 apportioned to the trust; and

40 (7) disbursements related to environmental matters, including
41 reclamation, assessing environmental conditions, remedying and
42 removing environmental contamination, monitoring remedial activities
43 and the release of substances, preventing future releases of substances,
44 collecting amounts from persons liable or potentially liable for the
45 costs of those activities, penalties imposed under environmental laws
46 or regulations and other payments made to comply with those laws or

1 regulations, statutory or common law claims by third parties and
2 defending claims based on environmental matters.

3 b. If a principal asset is encumbered with an obligation that
4 requires income from that asset to be paid directly to the creditor, the
5 trustee shall transfer from principal to income an amount equal to the
6 income paid to the creditor in reduction of the principal balance of the
7 obligation.

8

9 27. a. As used in this section, “depreciation” means a reduction in
10 value due to wear, tear, decay, corrosion or gradual obsolescence of
11 a fixed asset having a useful life of more than one year.

12 b. A trustee may transfer to principal a reasonable amount of the
13 net cash receipts from a principal asset that is subject to depreciation,
14 but may not transfer any amount for depreciation:

15 (1) of that portion of real property used or available for use by a
16 beneficiary as a residence or of tangible personal property held or
17 made available for the personal use or enjoyment of a beneficiary;

18 (2) during the administration of a decedent’s estate; or

19 (3) under this section if the trustee is accounting under section 12
20 of this act for the business or activity in which the asset is used.

21 c. An amount transferred to principal need not be held as a
22 separate fund.

23

24 28. a. If a trustee makes or expects to make a principal
25 disbursement described in this section, the trustee may transfer an
26 appropriate amount from income to principal in one or more
27 accounting periods to reimburse principal or to provide a reserve for
28 future principal disbursements.

29 b. Principal disbursements to which subsection a. of this section
30 applies include the following, but only to the extent that the trustee
31 has not been and does not expect to be reimbursed by a third party:

32 (1) an amount chargeable to income but paid from principal because
33 it is unusually large, including extraordinary repairs;

34 (2) a capital improvement to a principal asset, whether in the form
35 of changes to an existing asset or the construction of a new asset,
36 including special assessments;

37 (3) disbursements made to prepare property for rental, including
38 tenant allowances, leasehold improvements and broker’s commissions;

39 (4) periodic payments on an obligation secured by a principal asset
40 to the extent that the amount transferred from income to principal for
41 depreciation is less than the periodic payments; and

42 (5) disbursements described in paragraph (7) of subsection a. of
43 section 26 of this act.

44 c. If the asset whose ownership gives rise to the disbursements
45 becomes subject to a successive income interest after an income
46 interest ends, a trustee may continue to transfer amounts from income

1 to principal as provided in subsection a. of this section.

2

3 29. a. A tax required to be paid by a trustee based on receipts
4 allocated to income shall be paid from income.

5 b. A tax required to be paid by a trustee based on receipts allocated
6 to principal shall be paid from principal, even if the tax is called an
7 income tax by the taxing authority.

8 c. A tax required to be paid by a trustee on the trust's share of an
9 entity's taxable income shall be paid proportionately:

10 (1) from income to the extent that receipts from the entity are
11 allocated to income; and

12 (2) from principal to the extent that:

13 (a) receipts from the entity are allocated to principal; and

14 (b) the trust's share of the entity's taxable income exceeds the total
15 receipts described in paragraph (1) and subparagraph (a) of this
16 paragraph (2).

17 d. For purposes of this section, receipts allocated to principal or
18 income shall be reduced by the amount distributed to a beneficiary
19 from principal or income for which the trust receives a deduction in
20 calculating the tax.

21

22 30. a. A fiduciary may make adjustments between principal and
23 income to offset the shifting of economic interests or tax benefits
24 between income beneficiaries and remainder beneficiaries which arise
25 from:

26 (1) elections and decisions, other than those described in subsection
27 b. of this section, that the fiduciary makes from time to time regarding
28 tax matters;

29 (2) an income tax or any other tax that is imposed upon the
30 fiduciary or a beneficiary as a result of a transaction involving or a
31 distribution from the estate or trust; or

32 (3) the ownership by an estate or trust of an interest in an entity
33 whose taxable income, whether or not distributed, is includable in the
34 taxable income of the estate, trust or a beneficiary.

35 b. If the amount of an estate tax marital deduction or charitable
36 contribution deduction is reduced because a fiduciary deducts an
37 amount paid from principal for income tax purposes instead of
38 deducting it for estate tax purposes, and as a result estate taxes paid
39 from principal are increased and income taxes paid by an estate, trust
40 or beneficiary are decreased, each estate, trust or beneficiary that
41 benefits from the decrease in income tax shall reimburse the principal
42 from which the increase in estate tax is paid. The total reimbursement
43 shall equal the increase in the estate tax to the extent that the principal
44 used to pay the increase would have qualified for a marital deduction
45 or charitable contribution deduction but for the payment. The
46 proportionate share of the reimbursement for each estate, trust or

1 beneficiary whose income taxes are reduced shall be the same as its
2 proportionate share of the total decrease in income tax. An estate or
3 trust shall reimburse principal from income.

4
5 31. In applying and construing this act, consideration shall be given
6 to the fact that this is a uniform act, and there is a need to promote
7 uniformity of the act with respect to its subject matter among states
8 that enact it.

9
10 32. This act applies to every trust or decedent's estate existing on
11 the effective date of this act, except as otherwise expressly provided
12 in the will or terms of the trust or in this act.

13
14 33. N.J.S.3B:19A-1 et seq. is repealed.

15
16 34. This act shall take effect immediately.

17
18
19 STATEMENT

20
21 This bill enacts the Uniform Principal and Income Act as revised in
22 1997 by the National Conference of Commissioners on Uniform State
23 Laws, and replaces the Revised Uniform Principal and Income Act
24 adopted in this State in 1991.

25 Like the prior law, the new Uniform Principal and Income Act
26 provides procedures by which trustees administering an estate are to
27 separate principal from income and ensure that the intention of the
28 trust creator is the guiding principle for management of the estate.
29 The central innovations of the new act, however, are to allow trustees
30 greater discretion in allocating income and expenses between a trust's
31 principal and income and the flexibility to invest assets for a total
32 return, as long as the investments are prudent.

33 In addition, the new act clarifies required allocations of acquired
34 assets and regulates trustees' handling of derivatives, options, deferred
35 payment obligations and synthetic financial assets. The act also
36 addresses disbursements made to comply with environmental laws and
37 imbalances or inequities that may result from tax elections.