

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 1007

AN ACT

To repeal sections 214.330, 469.401, 469.402, 469.403, 469.405, 469.409, 469.411, 469.413, 469.415, 469.417, 469.419, 469.421, 469.423, 469.425, 469.427, 469.429, 469.431, 469.432, 469.433, 469.435, 469.437, 469.439, 469.441, 469.443, 469.445, 469.447, 469.449, 469.451, 469.453, 469.455, 469.457, 469.459, 469.461, 469.463, 469.465, and 469.467, RSMo, and to enact in lieu thereof forty-eight new sections relating to trust and estate administration.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 214.330, 469.401, 469.402, 469.403, 469.405, 469.409, 469.411, 469.413, 469.415, 469.417, 469.419, 469.421, 469.423, 469.425, 469.427, 469.429, 469.431, 469.432, 469.433, 469.435, 469.437, 469.439, 469.441, 469.443, 469.445, 469.447, 469.449, 469.451, 469.453, 469.455, 469.457, 469.459, 469.461, 469.463, 469.465, and 469.467, RSMo, are repealed and forty-eight new sections enacted in lieu thereof, to be known as sections 214.330, 469.399, 469.401, 469.402, 469.403, 469.404, 469.405, 469.413, 469.415, 469.417, 469.419, 469.421, 469.423, 469.425, 469.427, 469.429, 469.431, 469.432, 469.433, 469.435, 469.437, 469.439, 469.441, 469.443, 469.445, 469.446, 469.447, 469.449, 469.451, 469.453, 469.455, 469.456, 469.457, 469.459, 469.462, 469.463, 469.464, 469.465, 469.467, 469.471, 469.473, 469.475, 469.477, 469.479, 469.481, 469.483, 469.485, and 469.487, to read as follows:

214.330. 1. (1) The endowed care trust fund required by sections 214.270 to 214.410 shall be permanently set aside in trust or in accordance with the provisions of subsection 2 of this section. The trustee of the endowed

care trust shall be a state or federally chartered financial institution authorized to exercise trust powers in Missouri. The contact information for a trust officer or duly appointed representative of the trustee with knowledge and access to the trust fund accounting and trust fund records must be disclosed to the office or its duly authorized representative upon request.

(2) The trust fund records, including all trust fund accounting records, shall be maintained in the state of Missouri at all times or shall be electronically stored so that the records may be made available in the state of Missouri within fifteen business days of receipt of a written request. The operator of an endowed care cemetery shall maintain a current name and address of the trustee and the records custodian for the endowed care trust fund and shall supply such information to the office, or its representative, upon request.

(3) Missouri law shall control all endowed care trust funds and the Missouri courts shall have jurisdiction over endowed care trusts regardless of where records may be kept or various administrative tasks may be performed.

2. An endowed care trust fund shall be administered in accordance with Missouri law governing trusts, including but not limited to the applicable provisions of chapters 456 and 469, except as specifically provided in this subsection or where the provisions of sections 214.270 to 214.410 provide differently, provided that a cemetery operator shall not in any circumstances be authorized to restrict, enlarge, change, or modify the requirements of this section or the provisions of chapters 456 and 469 by agreement or otherwise.

(1) Income and principal of an endowed care trust fund shall be determined under the provisions of law applicable

to trusts, except that the provisions of section 469.405 shall not apply.

(2) No principal shall be distributed from an endowed care trust fund except to the extent that a unitrust election is in effect with respect to such trust under the provisions of [section 469.411] sections 469.471 to 469.487.

(3) No right to transfer jurisdiction from Missouri under section 456.1-108 shall exist for endowed care trusts.

(4) All endowed care trusts shall be irrevocable.

(5) No trustee shall have the power to terminate an endowed care trust fund under the provisions of section 456.4-414.

(6) A unitrust election made in accordance with the provisions of chapter 469 shall be made by the cemetery operator in the terms of the endowed care trust fund agreement itself, not by the trustee.

(7) No contract of insurance shall be deemed a suitable investment for an endowed care trust fund.

(8) The income from the endowed care fund may be distributed to the cemetery operator at least annually on a date designated by the cemetery operator, but no later than sixty days following the end of the trust fund year. Any income not distributed within sixty days following the end of the trust's fiscal year shall be added to and held as part of the principal of the trust fund.

3. The cemetery operator shall have the duty and responsibility to apply the income distributed to provide care and maintenance only for that part of the cemetery designated as an endowed care section and not for any other purpose.

4. In addition to any other duty, obligation, or requirement imposed by sections 214.270 to 214.410 or the endowed care trust agreement, the trustee's duties shall be

the maintenance of records related to the trust and the accounting for and investment of moneys deposited by the operator to the endowed care trust fund.

(1) For the purposes of sections 214.270 to 214.410, the trustee shall not be deemed responsible for the care, the maintenance, or the operation of the cemetery, or for any other matter relating to the cemetery, or the proper expenditure of funds distributed by the trustee to the cemetery operator, including, but not limited to, compliance with environmental laws and regulations.

(2) With respect to cemetery property maintained by endowed care funds, the cemetery operator shall be responsible for the performance of the care and maintenance of the cemetery property.

5. If the endowed care cemetery fund is not permanently set aside in a trust fund as required by subsection 1 of this section, then the funds shall be permanently set aside in an escrow account in the state of Missouri. Funds in an escrow account shall be placed in an endowed care trust fund under subsection 1 if the funds in the escrow account exceed three hundred fifty thousand dollars, unless otherwise approved by the division for good cause. The account shall be insured by the Federal Deposit Insurance Corporation or comparable deposit insurance and held in a state or federally chartered financial institution authorized to do business in Missouri and located in this state.

(1) The interest from the escrow account may be distributed to the cemetery operator at least in annual or semiannual installments, but not later than six months following the calendar year. Any interest not distributed within six months following the end of the calendar year

shall be added to and held as part of the principal of the account.

(2) The cemetery operator shall have the duty and responsibility to apply the interest to provide care and maintenance only for that part of the cemetery in which burial space shall have been sold and with respect to which sales the escrow account shall have been established and not for any other purpose. The principal of such funds shall be kept intact. The cemetery operator's duties shall be the maintenance of records and the accounting for an investment of moneys deposited by the operator to the escrow account. For purposes of sections 214.270 to 214.410, the administrator of the office of endowed care cemeteries shall not be deemed to be responsible for the care, maintenance, or operation of the cemetery. With respect to cemetery property maintained by cemetery care funds, the cemetery operator shall be responsible for the performance of the care and maintenance of the cemetery property owned by the cemetery operator.

(3) The division may approve an escrow agent if the escrow agent demonstrates the knowledge, skill, and ability to handle escrow funds and financial transactions and is of good moral character.

6. The cemetery operator shall be accountable to the owners of burial space in the cemetery for compliance with sections 214.270 to 214.410.

7. Excluding funds held in an escrow account, all endowed care trust funds shall be administered in accordance with an endowed care trust fund agreement, which shall be submitted to the office by the cemetery operator for review and approval. The endowed care cemetery shall be notified in writing by the office of endowed care cemeteries regarding the approval or disapproval of the endowed care

trust fund agreement and regarding any changes required to be made for compliance with sections 214.270 to 214.410 and the rules and regulations promulgated thereunder.

8. All endowed care cemeteries shall be under a continuing duty to file with the office of endowed care cemeteries and to submit for prior approval any and all changes, amendments, or revisions of the endowed care trust fund agreement at least thirty days before the effective date of such change, amendment, or revision.

9. If the endowed care trust fund agreement, or any changes, amendments, or revisions filed with the office, are not disapproved by the office within thirty days after submission by the cemetery operator, the endowed care trust fund agreement, or the related change, amendment, or revision, shall be deemed approved and may be used by the cemetery operator and the trustee. Notwithstanding any other provision of this section, the office may review and disapprove an endowed care trust fund agreement, or any submitted change, amendment, or revision, after the thirty days provided herein or at any other time if the agreement is not in compliance with sections 214.270 to 214.410 or the rules promulgated thereunder. Notice of disapproval by the office shall be in writing and delivered to the cemetery operator and the trustee within ten days of disapproval.

10. Funds in an endowed care trust fund or escrow account may be commingled with endowed care funds for other endowed care cemeteries, provided that the cemetery operator and the trustee shall maintain adequate accounting records of the disbursements, contributions, and income allocated for each cemetery.

11. By accepting the trusteeship of an endowed care trust or accepting funds as an escrow agent pursuant to sections 214.270 to 214.410, the trustee or escrow agent

submits personally to the jurisdiction of the courts of this state and the office of endowed care cemeteries regarding the administration of the trust or escrow account. A trustee or escrow agent shall consent in writing to the jurisdiction of the state of Missouri and the office in regards to the trusteeship or the operation of the escrow account and to the appointment of the office of secretary of state as its agent for service of process regarding any administrative or legal actions relating to the trust or the escrow account, if it has no designated agent for service of process located in this state. Such consent shall be filed with the office prior to accepting funds pursuant to sections 214.270 to 214.410 as trustee or as an escrow agent on a form provided by the office by rule.

469.399. Sections 469.399 to 469.487 shall be known and may be cited as the "Missouri Uniform Fiduciary Income and Principal Act".

469.401. As used in sections [469.401] 469.399 to [469.467] 469.487, the following terms mean:

(1) "Accounting period", a calendar year unless [another twelve-month period is selected by] a fiduciary selects another period of twelve calendar months or approximately twelve calendar months. The term "accounting period" includes a [portion] part of a calendar year or [other twelve-month] another period [that] of twelve calendar months or approximately twelve calendar months that begins when an income interest begins or ends when an income interest ends;

(2) "Asset-backed security", a security that is serviced primarily by the cash flows of a discrete pool of fixed or revolving receivables or other financial assets that by their terms convert into cash within a finite time. The term "asset-backed security" includes rights or other

assets that ensure the servicing or timely distribution of proceeds to the holder of the asset-backed security. The term "asset-backed security" does not include an asset to which section 469.423, 469.437, or 469.447 applies;

(3) "Beneficiary", includes:

(a) For a trust:

a. A current beneficiary, including a current income beneficiary and a beneficiary that may receive only principal;

b. A remainder beneficiary; and

c. Any other successor beneficiary;

(b) For an estate, an heir, legatee, and devisee [of a decedent's estate, and an income beneficiary and a remainder beneficiary of a trust, including any type of entity that has a beneficial interest in either an estate or a trust]; and

(c) For a life estate or term interest, a person that holds a life estate, term interest, or remainder or other interest following a life estate or term interest;

(4) "Court", any court in this state having jurisdiction relating to a trust, estate, life estate, or other term interest described in subdivision (2) of subsection 1 of section 469.402;

(5) "Current income beneficiary", a beneficiary to which a fiduciary may distribute net income, whether or not the fiduciary also may distribute principal to the beneficiary;

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

terms "distribute", "distributed", and "distributee" have corresponding meanings;

(7) "Estate", a decedent's estate. The term "estate" includes the property of the decedent as the estate is originally constituted and the property of the estate as it exists at any time during administration;

[(3)] (8) "Fiduciary", includes a trustee, trust protector determined in section 456.8-808, personal representative, [trustee, executor, administrator, successor personal representative, special administrator and any other person performing substantially the same function] life tenant, holder of a term "fiduciary" interest, and person acting under a delegation from a fiduciary. The term "fiduciary" includes a person that holds property for a successor beneficiary whose interest may be affected by an allocation of receipts and expenditures between income and principal. If there are two or more cofiduciaries, the term "fiduciary" includes all cofiduciaries acting under the terms of the trust and applicable law;

[(4)] (9) "Income", money or other property [that] a fiduciary receives as current return from [a] principal [asset, including a portion]. The term "income" includes a part of receipts from a sale, exchange, or liquidation of a principal asset, [as] to the extent provided in sections 469.423 to 469.449;

[(5) "Income beneficiary", a person to whom net income of a trust is or may be payable;

(6)] (10) "Income interest", the right of [an] a current income beneficiary to receive all or part of net income, whether the terms of the trust require [it] the net income to be distributed or authorize [it] the net income to be distributed in the [trustee's] fiduciary's discretion.

The term "income interest" includes the right of a current beneficiary to use property held by a fiduciary;

(11) "Independent person", a person that is not:

(a) For a trust:

a. A qualified beneficiary as defined in section 456.1-103;

b. A settlor of the trust; or

c. An individual whose legal obligation to support a beneficiary may be satisfied by a distribution from the trust;

(b) For an estate, a beneficiary;

(c) A spouse, parent, brother, sister, or issue of an individual described in paragraph (a) or (b) of this subdivision;

(d) A corporation, partnership, limited liability company, or other entity in which persons described in paragraphs (a) to (c) of this subdivision, in the aggregate, have voting control; or

(e) An employee of a person described in paragraph (a), (b), (c), or (d) of this subdivision;

[(7)] (12) "Mandatory income interest", the right of [an] a current income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute;

[(8)] (13) "Net income", [if section 469.411 applies to the trust, the unitrust amount, or if section 469.411 does not apply to the trust,] the total [receipts allocated to income] allocations during an accounting period to income under the terms of a trust and sections 469.399 to 469.487 minus the disbursements [made from income during the same period, plus or minus transfers pursuant to sections 469.401 to 469.467 to or from income during the same period] during the period, other than distributions, allocated to income under the terms of the trust and sections 469.399 to

469.487. To the extent the trust is a unitrust under sections 469.471 to 469.487, the term "net income" means the unitrust amount determined thereunder. The term "net income" includes an adjustment from principal to income under section 469.405. The term "net income" does not include an adjustment from income to principal under section 469.405;

[(9)] (14) "Person", an individual, [corporation, business trust,] estate, trust, [partnership, limited liability company, association, joint venture] business or nonprofit entity, public corporation, government[,] or governmental subdivision, agency, or instrumentality, [public corporation] or [any] other legal [or commercial] entity;

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

[(10)] (16) "Principal", property held in trust for distribution to [a remainder], production of income for, or use by a current or successor beneficiary [when the trust terminates];

[(11) "Qualified beneficiary", a beneficiary defined in section 456.1-103;

(12) "Remainder beneficiary", a person entitled to receive principal when an income interest ends;

[(13)] (17) "Record", information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(18) "Settlor", a person, including a testator, that creates or contributes property to a trust. If more than one person creates or contributes property to a trust, the

term "settlor" includes each person, to the extent of the trust property attributable to that person's contribution, except to the extent another person has the power to revoke or withdraw that portion;

(19) "Special tax benefit":

(a) Exclusion of a transfer to a trust from gifts described in 26 U.S.C. Section 2503(b), as amended, because of the qualification of an income interest in the trust as a present interest in property;

(b) Status as a qualified subchapter S trust described in 26 U.S.C. Section 1361(d) (3), as amended, at a time the trust holds stock of an S corporation described in 26 U.S.C. Section 1361(a) (1), as amended;

(c) An estate or gift tax marital deduction for a transfer to a trust under 26 U.S.C. Section 2056 or 2523, as amended, which depends or depended in whole or in part on the right of the settlor's spouse to receive the net income of the trust;

(d) Exemption in whole or in part of a trust from the federal generation-skipping transfer tax imposed by 26 U.S.C. Section 2601, as amended, because the trust was irrevocable on September 25, 1985, if there is any possibility that:

a. A taxable distribution, as defined in 26 U.S.C. Section 2612(b), as amended, could be made from the trust; or

b. A taxable termination, as defined in 26 U.S.C. Section 2612(a), as amended, could occur with respect to the trust; or

(e) An inclusion ratio, as defined in 26 U.S.C. Section 2642(a), as amended, of the trust which is less than one, if there is any possibility that:

a. A taxable distribution, as defined in 26 U.S.C. Section 2612(b), as amended, could be made from the trust; or

b. A taxable termination, as defined in 26 U.S.C. Section 2612(a), as amended, could occur with respect to the trust;

(20) "Successive interest", the interest of a successor beneficiary;

(21) "Successor beneficiary", a person entitled to receive income or principal or to use property when an income interest or other current interest ends;

(22) "Terms of a trust":

(a) Except as otherwise provided in paragraph (b) of this subdivision, the manifestation of the settlor's [or decedent's] intent regarding a trust's provisions as:

a. Expressed in [a manner which is] the trust instrument; or

b. Established by other evidence that would be admissible [as proof] in a judicial proceeding[, whether by written or spoken words or by conduct];

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

a. A trustee or trust director in accordance with applicable law;

b. Court order; or

c. A nonjudicial settlement agreement under section 456.1-111;

(c) For an estate, a will; or

(d) For a life estate or term interest, the corresponding manifestation of the rights of the beneficiaries;

(23) "Trust":

(a) Includes:

a. An express trust, private or charitable, with additions to the trust, wherever and however created; and

b. A trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust; and

(b) Does not include:

a. A constructive trust;

b. A resulting trust, conservatorship, guardianship, multi-party account, custodial arrangement for a minor, business trust, voting trust, security arrangement, liquidation trust, or trust for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, retirement benefits, or employee benefits of any kind; or

c. An arrangement under which a person is a nominee, escrowee, or agent for another;

[(14)] (24) "Trustee", a person, other than a personal representative, that owns or holds property for the benefit of a beneficiary. The term "trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court;

[(15) "Unitrust amount", net income as defined by section 469.411]

(25) "Will", any testamentary instrument recognized by applicable law that makes a legally effective disposition of an individual's property, effective at the individual's death. The term "will" includes a codicil or other amendment to a testamentary instrument.

469.402. [The provisions of sections 456.3-301 to 456.3-305 shall apply to sections 469.401 to 469.467 for all purposes.] 1. Except as otherwise provided in the terms of a trust or sections 469.399 to 469.487, sections 469.399 to 469.487 apply to:

(1) A trust or estate; and

(2) A life estate or other term interest in which the interest of one or more persons will be succeeded by the interest of one or more other persons.

2. Except as otherwise provided in the terms of a trust or sections 469.399 to 469.487, sections 469.399 to 469.487 apply when this state is the principal place of administration of a trust or estate or the situs of property that is not held in a trust or estate and is subject to a life estate or other term interest described in subdivision (2) of subsection 1 of this section. By accepting the trusteeship of a trust having its principal place of administration in this state or by moving the principal place of administration of a trust to this state, the trustee submits to the application of sections 469.399 to 469.487 to any matter within the scope of sections 469.399 to 469.487 involving the trust.

469.403. 1. [In allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of] In making an allocation or determination or exercising discretion pursuant to sections 469.413 to 469.421, a fiduciary shall:

(1) [Shall] Act in good faith, based on what is fair and reasonable to all beneficiaries;

(2) Administer a trust or estate [under] impartially, except to the extent the terms of the trust manifest an intent that the fiduciary shall or [the will] may favor one or more beneficiaries;

(3) Administer the trust or estate in accordance with the terms of the trust, even if there is a different provision in sections [469.401] 469.399 to [469.467] 469.487; and

[(2) May] (4) Administer [a] the trust or estate [by exercising] in accordance with sections 469.399 to 469.487,

except to the extent the terms of the trust provide otherwise or authorize the fiduciary to determine otherwise.

2. A fiduciary's allocation, determination, or exercise of discretion pursuant to sections 469.399 to 409.487 is presumed to be fair and reasonable to all beneficiaries. A fiduciary may exercise a discretionary power of administration given to the fiduciary by the terms of the trust [or the will, even if the], and an exercise of the power that produces a result different from a result required or permitted by sections [469.401] 469.399 to [469.467;] 469.487 does not create an inference that the fiduciary abused the fiduciary's discretion.

[(3) Shall administer a trust or estate pursuant]

3. A fiduciary shall:

(1) Add a receipt to [sections 469.401 to 469.467 if] principal, to the extent neither the terms of the trust [or the will do not contain a different provision or do not give] nor sections 469.399 to 469.487 allocate the [fiduciary a discretionary power of administration] receipt between income and principal; and

[(4) Shall add a receipt or] (2) Charge a disbursement to principal, to the extent [that the terms of the trust and sections 469.401 to 469.467 do not provide a rule for allocating the receipt or disbursement to or between principal and income.

2. In exercising the power to adjust pursuant to section 469.405 or a discretionary power of administration regarding a matter within the scope of sections 469.401 to 469.467, whether granted by the terms of a trust, a will, or sections 469.401 to 469.467, a fiduciary shall administer a trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an

intent that the fiduciary shall or may favor one or more of the beneficiaries. A determination in accordance with sections 469.401 to 469.467 is presumed to be fair and reasonable to all of the beneficiaries] neither the terms of the trust nor sections 469.399 to 469.487 allocate the disbursement between income and principal.

4. A fiduciary may exercise the power to adjust under section 469.405, convert an income trust to a unitrust under subdivision (1) of subsection 1 of section 469.475, change the percentage or method used to calculate a unitrust amount under subdivision (2) of subsection 1 of section 469.475, or convert a unitrust to an income trust under subdivision (3) of subsection 1 of section 469.475, if the fiduciary determines the exercise of the power will assist the fiduciary to administer the trust or estate impartially.

5. Factors the fiduciary shall consider in making the determination under subsection 4 of this section include:

- (1) The terms of the trust;
- (2) The nature, distribution standards, and expected duration of the trust;
- (3) The effect of the allocation rules, including specific adjustments between income and principal, under sections 407.413 to 407.461;
- (4) The desirability of liquidity and regularity of income;
- (5) The desirability of the preservation and appreciation of principal;
- (6) The extent to which an asset is used or may be used by a beneficiary;
- (7) The increase or decrease in the value of principal assets, reasonably determined by the fiduciary;
- (8) Whether and to what extent the terms of the trust give the fiduciary power to accumulate income or invade

principal or prohibit the fiduciary from accumulating income or invading principal;

(9) The extent to which the fiduciary has accumulated income or invaded principal in preceding accounting periods;

(10) The effect of current and reasonably expected economic conditions; and

(11) The reasonably expected tax consequences of the exercise of the power.

469.404. 1. As used in this section, the term "fiduciary decision" means:

(1) A fiduciary's allocation between income and principal or other determination regarding income and principal required or authorized by the terms of the trust or sections 469.399 to 469.487;

(2) The fiduciary's exercise or nonexercise of a discretionary power regarding income and principal granted by the terms of the trust or sections 469.399 to 469.487, including the power to adjust under section 469.405, convert an income trust to a unitrust under subdivision (1) of subsection 1 of section 469.475, change the percentage or method used to calculate a unitrust amount under subdivision (2) of subsection 1 of section 469.475, or convert a unitrust to an income trust under subdivision (3) of subsection 1 of section 469.475; or

(3) The fiduciary's implementation of a decision described in subdivision (1) or (2) of this subsection.

2. The court shall not order a fiduciary to change a fiduciary decision unless the court determines that the fiduciary decision was an abuse of the fiduciary's discretion.

3. If the court determines that a fiduciary decision was an abuse of the fiduciary's discretion, the court may order a remedy authorized by law, including under section

456.10-1001. To place the beneficiaries in the positions the beneficiaries would have occupied if there had not been an abuse of the fiduciary's discretion, the court may order:

(1) The fiduciary to exercise or refrain from exercising the power to adjust under section 469.405;

(2) The fiduciary to exercise or refrain from exercising the power to convert an income trust to a unitrust under subdivision (1) of subsection 1 of section 469.475, change the percentage or method used to calculate a unitrust amount under subdivision (2) of subsection 1 of section 469.475, or convert a unitrust to an income trust under subdivision (3) of subsection 1 of section 469.475;

(3) The fiduciary to distribute an amount to a beneficiary;

(4) A beneficiary to return some or all of a distribution; or

(5) The fiduciary to withhold an amount from one or more future distributions to a beneficiary.

4. On petition by a fiduciary for instruction, the court may determine whether a proposed fiduciary decision will result in an abuse of the fiduciary's discretion. If the petition describes the proposed decision, contains sufficient information to inform the beneficiary of the reasons for making the proposed decision and the facts on which the fiduciary relies, and explains how the beneficiary will be affected by the proposed decision, a beneficiary that opposes the proposed decision has the burden to establish that it will result in an abuse of the fiduciary's discretion.

469.405. 1. [A trustee may adjust between principal and income to the extent the trustee considers necessary if the trustee invests and manages trust assets as a prudent investor, the terms of the trust describe the amount that

may or shall be distributed to a beneficiary by referring to the trust's income, and the trustee determines, after applying subsection 1 of section 469.403, that the trustee is unable to comply with subsection 2 of section 469.403.] Except as otherwise provided in the terms of a trust or this section, a fiduciary, in a record, without court approval, may adjust between income and principal if the fiduciary determines the exercise of the power to adjust will assist the fiduciary to administer the trust or estate impartially.

2. This section does not create a duty to exercise or consider the power to adjust under subsection 1 of this section or to inform a beneficiary about the applicability of this section.

3. A fiduciary that in good faith exercises or fails to exercise the power to adjust under subsection 1 of this section is not liable to a person affected by the exercise or failure to exercise.

[2.] 4. In deciding whether and to what extent to exercise the power [conferred by] to adjust under subsection 1 of this section, a [trustee] fiduciary shall consider all factors the fiduciary considers relevant [to the trust and its beneficiaries], including [the following] relevant factors [to the extent relevant:] in subsection 5 of section 469.403 and the application of sections 469.423, 469.435, and 469.445.

[(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, including the extent to which such assets consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property, and the extent to which such assets are used by a beneficiary, and whether such assets were purchased by the trustee or received from the settlor;

(6) The net amount allocated to income pursuant to sections 469.401 to 469.467, other than this section, 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) 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;

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

(9) The anticipated tax consequences of an adjustment.

3.] 5. A trustee may fiduciary shall not exercise the power under subsection 1 of this section to make an adjustment or under section 469.435 to make a determination that an allocation is insubstantial if:

(1) That diminishes the income interest in a trust which requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment;

(2) That reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;

(3) That changes] The adjustment or determination would reduce the amount payable to a [beneficiary] current income beneficiary from a trust that qualifies for a special tax benefit, except to the extent the adjustment is made to provide for a reasonable apportionment of the total return of the trust between the current income beneficiary and successor beneficiaries;

(2) The adjustment or determination would change the amount payable to a beneficiary, as a fixed annuity or a fixed fraction of the value of the trust assets, under the terms of the trust;

[(4) From any] (3) The adjustment or determination would reduce an amount that is permanently set aside for a charitable [purposes] purpose under [a will or] the terms of [a] the trust [to the extent that the existence of the power to adjust would change the character of the amount], unless both income and principal are set aside for [federal income, gift or estate tax purposes] the charitable purpose;

[(5) If] (4) Possessing or exercising the power [to make an adjustment causes an individual] would cause a person 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 make an adjustment] federal income tax purposes;

[(6) If] (5) Possessing or exercising the power [to make an adjustment causes] would cause all or part of the value of the trust assets to be included [for estate tax purposes] in the gross estate of an individual [who has] for federal estate tax purposes;

(6) Possessing or exercising the power [to remove or appoint a trustee, or both,] would cause an individual to be treated as making a gift for federal gift tax purposes;

(7) The fiduciary is not an independent person;

(8) The trust is irrevocable and [the assets would not be included in the estate of the individual if the trustee did not possess] provides for income to be paid to the settlor and possessing or exercising the power [to make an adjustment] would cause the adjusted principal or income to be considered an available resource or available income under a public-benefit program; or

[(7) If the trustee is a beneficiary of the trust; or

(8) If the trustee is not a beneficiary, but the adjustment would benefit the trustee directly or indirectly]

(9) The trust is a unitrust under sections 469.471 to 469.487.

[4.] 6. If [subdivision (5), (6), (7) or (8) of] subsection [3] 5 of this section applies to a [trustee and there is more than one trustee, a cotrustee to whom the provision does] fiduciary:

(1) A cofiduciary to which subdivisions (4) to (7) of subsection 5 of this section do not apply may [make] exercise the [adjustment] power to adjust unless the exercise of the power by the remaining [trustee or trustees] cofiduciary or cofiduciaries is not permitted by the terms of the trust or law other than sections 469.399 to 469.487; and

(2) If there is no cofiduciary to which subdivisions (4) to (7) of subsection 5 of this section do not apply, the fiduciary may appoint a cofiduciary to which subdivisions (4) to (7) of subsection 5 of this section do not apply, which may be a special fiduciary with limited powers, and the appointed cofiduciary may exercise the power to adjust

under subsection 1 of this section, unless the appointment of a cofiduciary or the exercise of the power by a cofiduciary is not permitted by the terms of the trust or law other than under sections 469.399 to 469.487.

[5.] 7. A [trustee] fiduciary may release [the entire power conferred by subsection 1 of this section, or may release only the power to adjust from income to principal or the power to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will] or delegate to a cofiduciary the power to adjust under subsection 1 of this section if the fiduciary determines that the fiduciary's possession or exercise of the power will or may:

(1) Cause a result described in subdivisions (1) to (6) or subdivision (8) of subsection [3] 5 of this section [,]; or [if the trustee determines that possessing or exercising the power will or may]

(2) Deprive the trust of a tax benefit or impose a tax burden not described in subdivisions (1) to (6) of subsection [3] 5 of this section.

8. A fiduciary's release or delegation to a cofiduciary under subsection 7 of this section of the power to adjust under subsection 1 of this section:

(1) Shall be in a record;

(2) Applies to the entire power, unless the release or delegation provides a limitation, which may be a limitation to the power to adjust:

(a) From income to principal;

(b) From principal to income;

(c) For specified property; or

(d) In specified circumstances;

(3) For a delegation, may be modified by a redelegation under this subsection by the cofiduciary to which the delegation is made; and

(4) Subject to subdivision (3) of this subsection, is [may be] permanent [or for] unless the release or delegation provides a specified period, including a period measured by the life of an individual or the lives of more than one individual.

[6.] 9. Terms of a trust that deny or limit the power [of a trustee] to [make an adjustment] adjust between income and principal [and income] do not affect the application of this section unless [it is clear from] the terms of the trust [that the terms are intended to] expressly deny [the trustee] or limit the power [of adjustment conferred by] to adjust under subsection 1 of this section.

10. The exercise of the power to adjust under subsection 1 of this section in any accounting period may apply to the current period, the immediately preceding period, and one or more subsequent periods.

11. A description of the exercise of the power to adjust under subsection 1 of this section shall be:

(1) Included in a report, if any, sent to beneficiaries under subsection 3 of section 456.8-813; or

(2) Communicated at least annually to the qualified beneficiaries defined under section 456.1-103 other than all beneficiaries that receive or are entitled to receive income from the trust or would be entitled to receive a distribution of principal if the trust were terminated at the time the notice is sent, assuming no power of appointment is exercised.

469.413. [After a decedent dies, in the case] 1. This section applies when:

(1) The death of an individual results in the creation of an estate[, or after] or trust; or

(2) An income interest in a trust [ends, the following rules apply:] terminates, whether the trust continues or is distributed.

[(1)] 2. A fiduciary of an estate or [of a terminating] trust with an income interest that terminates shall determine, under subsection 7 of this section and sections 469.417 to 469.462, the amount of net income and net principal receipts received from property specifically given to a beneficiary [pursuant to the rules in sections 469.417 to 469.461 which apply to trustees and the rules in subdivision (5) of this section]. The fiduciary shall distribute the net income and net principal receipts to the beneficiary [who] that is to receive the specific property[;].

[(2)] 3. A fiduciary shall determine the [remaining] income and net income of [a decedent's] an estate or [a terminating] income interest [pursuant to the rules in] in a trust that terminates, other than the amount of net income determined under subsection 2 of this section, under sections 469.417 to [469.461 which apply to trustees] 469.462 and by:

[(a)] (1) Including in net income all income from property used or sold to discharge liabilities;

[(b)] (2) Paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants, and fiduciaries[;], court costs and other expenses of administration[;], and interest on [death] estate and inheritance taxes and other taxes imposed because of the decedent's death, but the fiduciary may pay [those] the expenses from income of property passing to a trust for

which the fiduciary claims ~~[an]~~ a federal estate tax marital or charitable deduction only to the extent ~~[that]~~:

(a) The payment of ~~[those]~~ the expenses from income will not cause the reduction or loss of the deduction; ~~[and]~~ or

(b) The fiduciary makes an adjustment under subsection 2 of section 469.462; and

~~[(c)]~~ (3) Paying from principal ~~[all]~~ other disbursements made or incurred in connection with the settlement of ~~[a decedent's]~~ the estate or the winding up of ~~[a terminating]~~ an income interest~~[,]~~ that terminates, including:

(a) To the extent authorized by the decedent's will, the terms of the trust, or applicable law, debts, funeral expenses, disposition of remains, family allowances, ~~[and death taxes]~~ estate and inheritance taxes, and other taxes imposed because of the decedent's death; and

(b) Related penalties that are apportioned, by the decedent's will, the terms of the trust, or applicable law, to the estate or ~~[terminating]~~ income interest ~~[by the will, the terms of the trust, or applicable law;]~~ that terminates.

~~[(3) A fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright the interest or any other amount provided by the will, the terms of the trust, or in the absence of any such provisions, the provisions of section 473.633, from net income determined pursuant to subdivision (2) of this section or from principal to the extent that net income is insufficient.]~~

4. If a decedent's will, the terms of a trust, or applicable law provides for the payment of interest or the equivalent of interest to a beneficiary that receives a pecuniary amount outright, the fiduciary shall make the payment from net income determined under subsection 3 of

this section or from principal to the extent net income is insufficient.

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

[(4)] 6. A fiduciary shall distribute [the] net income remaining after [distributions] payments required by [subdivision (3)] subsections 4 and 5 of this section in the manner described in section 469.415 to all other beneficiaries, including a beneficiary [who] that receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust[;].

[(5)] 7. A fiduciary [may] shall not reduce principal or income receipts from property described in [subdivision (1)] subsection 2 of this section because of a payment described in sections 469.451 and 469.453 to the extent [that] the decedent's will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent [that] the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property [are] shall be determined by including [all of] the amounts the fiduciary receives or pays [with respect to] regarding the property, whether [those amounts] the amount accrued or became due before, on, or after the

date of [a] the decedent's death or an income interest's terminating event, and [by] making a reasonable provision for [amounts that the fiduciary believes] an amount the estate or [terminating] income interest may become obligated to pay after the property is distributed.

469.415. 1. [Each] Except to the extent sections 469.471 to 469.487 apply for a beneficiary that is a trust, each beneficiary described in subdivision [(4)] (6) of section 469.413 is entitled to receive a [portion] share of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to [whom] which this section applies, each beneficiary, including [one who] a beneficiary that does not receive part of the distribution, is entitled, as of each distribution date, to a share of the net income the fiduciary [has] received after the [date of] decedent's death [or], an income interest's other terminating event, or [earlier] the preceding distribution [date but has not distributed as of the current distribution date] by the fiduciary.

2. In determining a beneficiary's share of net income under subsection 1 of this section, the following rules apply:

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

(2) The beneficiary's fractional interest [in the undistributed principal assets shall] under subdivision (1) of this subsection shall be calculated [without regard to

property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust;

(3) The beneficiary's fractional interest in the undistributed principal assets shall be calculated :

(a) On the basis of the aggregate value of those the assets as of the distribution date without reducing the value by any unpaid principal obligation; and

(b) Without regard to:

a. Property specifically given to a beneficiary under the decedent's will or the terms of the trust; and

b. Property required to pay pecuniary amounts not in trust; and

~~[(4)]~~ (3) The distribution date for purposes of this section under subdivision (1) of this subsection may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which the assets are actually distributed.

3. ~~[If]~~ To the extent a fiduciary does not distribute under this section all of the collected but undistributed net income to each person beneficiary as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in ~~[that]~~ the net income.

4. If this section applies to income from an asset, a fiduciary may apply the rules in this section, to the extent that the fiduciary considers it appropriate, to net gain or loss realized from the disposition of the asset after the date of death or decedent's death, an income interest's terminating event, or earlier the preceding distribution date from the disposition of a principal asset if this section applies to the income from the asset by the fiduciary.

469.417. 1. An income beneficiary is entitled to net income in accordance with the terms of the trust from the date [on which the] an income interest begins. [An] The income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to [a trust or successive income interest]:

- (1) The trust for the current income beneficiary; or
- (2) A successive interest for a successor beneficiary.

2. An asset becomes subject to a trust under subdivision (1) of subsection 1 of this section:

(1) [On the date it is transferred to the trust in the case of] For an asset that is transferred to [a] the trust during the [transferor's] settlor's life, on the date the asset is transferred;

(2) [On the date of a testator's death in the case of] For an asset that becomes subject to [a] the trust [by reason] because of a [will] decedent's death, on the date of the decedent's death, even if there is an intervening period of administration of the [testator's] decedent's estate; or

(3) [On the date of an individual's death in the case of] For an asset that is transferred to a fiduciary by a third party because of [the individual's] a decedent's death, on the date of the decedent's death.

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

4. An income interest ends on the day before an income beneficiary dies or another terminating event occurs^[,] or on the last day of a period during which there is no

beneficiary to [whom] which a [trustee] fiduciary may or shall distribute income.

469.419. 1. A [trustee] fiduciary shall allocate an income receipt or disbursement, other than [one] a receipt to which [subdivision (1)] subsection 2 of section 469.413 applies, to principal if its due date occurs before [a decedent dies in the case of] the date on which:

(1) For an estate, the decedent died; or [before]

(2) For a trust or successive interest, an income interest begins [in the case of a trust or successive income interest].

2. [A trustee shall allocate an income receipt or disbursement to income if its] If the due date of a periodic income receipt or disbursement occurs on or after the date on which a decedent [dies] died or an income interest [begins and it is a periodic due date. An income] began, a fiduciary shall allocate the receipt or disbursement to income.

3. If an income receipt or disbursement is not periodic or has no due date, a fiduciary shall [be treated] treat the receipt or disbursement under this section as accruing from day to day [if its due date is not periodic or it has no due date]. The fiduciary shall allocate to principal the portion of the receipt or disbursement accruing before the date on which a decedent [dies] died or an income interest [begins shall be allocated to principal] began, and to income the balance [shall be allocated to income].

[3.] 4. A receipt or disbursement is periodic under subsections 2 and 3 of this section if:

(1) The receipt or disbursement shall be paid at regular intervals under an obligation to make payments; or

(2) The payer customarily makes payments at regular intervals.

5. An item of income or [an] obligation is due under this section on the date [a payment] the payer is required to make a payment. If a payment date is not stated, there is no due date [for the purposes of sections 469.401 to 469.467].

6. Distributions to shareholders or other owners from an entity to which section 469.423 applies are [deemed to be] due:

(1) On the date fixed by or on behalf of the entity for determining [who is] the persons entitled to receive the distribution [or,];

(2) If no date is fixed, on the [declaration] date [for] of the decision by or on behalf of the entity to make the distribution[. A due date is periodic for receipts or disbursements that shall be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals]; or

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

469.421. 1. [For purposes of] As used in this section, the [phrase] term "undistributed income" means net income received on or before the date on which an income interest ends. The [phrase] term "undistributed income" does not include an item of income or expense that is due or accrued[,] or net income that has been added or is required to be added to principal under the terms of the trust.

2. Except as otherwise provided in subsection 3 of this section, when a mandatory income interest of a beneficiary ends, the [trustee] fiduciary shall pay [to a

mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end,] the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust [unless the] to the beneficiary or, if the beneficiary does not survive the date the interest ends, to the beneficiary's estate.

3. If a beneficiary has an unqualified power to [revoke] withdraw more than five percent of the value of a trust immediately before [the] an income interest ends[. In the latter case,]:

(1) The fiduciary shall allocate to principal the undistributed income from the portion of the trust that may be [revoked shall be added to principal] withdrawn; and

(2) Subsection 2 of this section applies only to the balance of the undistributed income.

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

469.423. 1. [For purposes of] As used in this section, the [term] following terms mean:

(1) "Capital distribution", an entity distribution of money that is a:

(a) Return of capital; or

(b) Distribution in total or partial liquidation of the entity;

(2) "Entity" [means]:

(a) A corporation, partnership, limited liability company, regulated investment company, real estate

investment trust, common trust fund, or any other organization [in which a trustee has an interest, other than a trust or estate to which section 469.425 applies, a business or activity to which section 469.427 applies, or an asset-backed security to which section 469.449 applies.] or arrangement in which a fiduciary owns or holds an interest, whether or not the entity is a taxpayer for federal income tax purposes; and

(b) The term "entity" does not include:

a. A trust or estate to which section 469.425 applies;

b. A business or other activity to which section 469.427 applies that is not conducted by an entity described in paragraph (a) of this subdivision;

c. An asset-backed security; or

d. An instrument or arrangement to which section 469.446 applies;

(3) "Entity distribution", a payment or transfer by an entity made to a person in the person's capacity as an owner or holder of an interest in the entity.

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

[2.] 3. Except as otherwise provided in [this section] subdivisions (2) to (4) of subsection 4 of this section, a [trustee] fiduciary shall allocate to income:

(1) Money received [from] in an entity[.

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

(1) Property other than money;

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

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

(4) Money received from an entity that is] distribution; and

(2) Tangible personal property of nominal value received from the entity.

4. A fiduciary shall allocate to principal:

(1) Property received in an entity distribution that is not:

(a) Money; or

(b) Tangible personal property of nominal value;

(2) Money received in an entity distribution in an exchange for part or all of the fiduciary's interest in the entity, to the extent the entity distribution reduces the fiduciary's interest in the entity relative to the interests of other persons that own or hold interests in the entity;

(3) Money received in an entity distribution that the fiduciary determines or estimates is a capital distribution;

and

(4) Money received in an entity distribution from an entity that is:

(a) A regulated investment company or [a] real estate investment trust if the money [distributed] received is a capital gain dividend for federal income tax purposes[.]

4. Money is received in partial liquidation:

(1) To the extent that the entity, at or near the time of a distribution, indicates that such money is a distribution in partial liquidation; or

(2) If]; or

(b) Treated for federal income tax purposes comparably to the treatment described in paragraph (a) of this subdivision.

5. A fiduciary may determine or estimate that money received in an entity distribution is a capital distribution:

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

(a) Determines, on the basis of information known to the fiduciary, that the characterization is or may be incorrect; or

(b) Owns or holds more than fifty percent of the voting interest in the entity;

(2) By determining or estimating, on the basis of information known to the fiduciary or provided to the fiduciary by or on behalf of the entity, that the total amount of money and property received by the fiduciary in [a] the entity distribution or a series of related entity distributions is or will be greater than twenty percent of the [entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt.

5. Money is not received in partial liquidation, nor may it be taken into account pursuant to subdivision (2) of subsection 4 of this section, to the extent that such money does not exceed the amount of income tax that a trustee or beneficiary shall pay on taxable income of the entity that distributes the money.

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

(3) If neither subdivision (1) nor (2) of this subsection applies, by considering the factors in subsection 6 of this section and the information known to the fiduciary or provided to the fiduciary by or on behalf of the entity.

6. In making a determination or estimate under subdivision (3) of subsection 5 of this section, a fiduciary may consider:

(1) A characterization of an entity distribution provided by or on behalf of the entity;

(2) The amount of money or property received in:

(a) The entity distribution; or

(b) What the fiduciary determines is or will be a series of related entity distributions;

(3) The amount described in subdivision (2) of this subsection compared to the amount the fiduciary determines or estimates is, during the current or preceding accounting periods:

(a) The entity's operating income;

(b) The proceeds of the entity's sale or other disposition of:

a. All or part of the business or other activity conducted by the entity;

b. One or more business assets that are not sold to customers in the ordinary course of the business or other activity conducted by the entity; or

c. One or more assets other than business assets, unless the entity's primary activity is to invest in assets to realize gain on the disposition of all or some of the assets;

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

(d) The entity's regular, periodic entity distributions;

(e) The amount of money the entity has accumulated;

(f) The amount of money the entity has borrowed;

(g) The amount of money the entity has received from the sources described in sections 469.433, 469.439, 469.441, and 469.443; and

(h) The amount of money the entity has received from a source not otherwise described in this subdivision; and

(4) Any other factor the fiduciary determines is relevant.

7. If, after applying subsections 3 to 6 of this section, a fiduciary determines that a part of an entity distribution is a capital distribution but is in doubt about the amount of the entity distribution that is a capital distribution, the fiduciary shall allocate to principal the amount of the entity distribution that is in doubt.

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

9. If a fiduciary receives additional information about the application of this section to an entity distribution after the fiduciary has paid part of the entity distribution to a beneficiary, the fiduciary is not required to change or recover the payment to the beneficiary but may consider that information in determining whether to exercise the power to adjust under section 469.405.

469.425. A **[trustee]** fiduciary shall allocate to income an amount received as a distribution of income,___

including a unitrust distribution under sections 469.471 to 469.487, from a trust or [an] estate in which the [trust] fiduciary has an interest, other than [a] an interest the fiduciary purchased [interest] in a trust that is an investment entity, and shall allocate to principal an amount received as a distribution of principal from [such a] the trust or estate. If a [trustee] fiduciary purchases, or receives from a settlor, an interest in a trust that is an investment entity, [or a decedent or donor transfers an interest in such a trust to a trustee,] section 469.423 [or], 469.446, or 469.449 [shall apply] applies to a receipt from the trust.

469.427. 1. [If a trustee who conducts] This section applies to a business or other activity conducted by a fiduciary if the fiduciary determines that it is in the [best interest] interests of [all] the beneficiaries to account separately for the business or other activity instead of:

(1) Accounting for [it] the business or other activity as part of the [trust's] fiduciary's general accounting records[,]; or

(2) Conducting the [trustee] business or other activity through an entity described in paragraph (a) of subdivision (2) of subsection 1 of section 469.423.

2. A fiduciary may [maintain separate accounting records] account separately under this section for [its] the transactions of a business or other activity, whether or not [its] assets of the business or other activity are segregated from other [trust] assets held by the fiduciary.

[2.] 3. A [trustee who] fiduciary that accounts separately under this section for a business or other activity:

(1) May determine:

(a) The extent to which the net cash receipts [shall] of the business or other activity shall be retained for:

a. Working capital[,];

b. The acquisition or replacement of fixed assets[,];

and

c. Other reasonably foreseeable needs of the business or other activity[,]; and

(b) The extent to which the remaining net cash receipts are accounted for as principal or income in the [trust's] fiduciary's general accounting records[. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee] for the trust;

(2) May make a determination under subdivision (1) of this subsection separately and differently from the fiduciary's decisions concerning distributions of income or principal; and

(3) Shall account for the net amount received from the sale of an asset of the business or other activity, other than a sale in the ordinary course of the business or other activity, as principal in the [trust's] fiduciary's general accounting records for the trust, to the extent the [trustee] fiduciary determines that the net amount received is no longer required in the conduct of the business or other activity.

[3.] 4. Activities for which a [trustee may maintain separate accounting records] fiduciary may account separately under this section include:

(1) Retail, manufacturing, service, and other traditional business activities;

(2) Farming;

(3) Raising and selling livestock and other animals;

(4) [Management of] Managing rental properties;

- (5) [Extraction of] Extracting minerals, water, and other natural resources;
- (6) Growing and cutting timber [operations]; [and]
- (7) [Activities] An activity to which section 469.446, 469.447, or 469.449 applies[.]; and
- (8) Any other business conducted by the fiduciary.

469.429. A [trustee] fiduciary shall allocate to principal:

- (1) To the extent not allocated to income [pursuant to] under sections [469.401] 469.399 to [469.467] 469.487, [assets] an asset received from [a transferor]:

- (a) An individual during the [transferor's] individual's lifetime[, a decedent's];

- (b) An estate[.];

- (c) A trust [with a terminating] on termination of an income interest[.]; or

- (d) A payer under a contract naming the [trust or its trustee] fiduciary as beneficiary;

- (2) Except as otherwise provided in sections 469.423 to 469.449, money or other property received from the sale, exchange, liquidation, or change in form of a principal asset[, including realized profit, subject to sections 469.423 to 469.467];

- (3) [Amounts] An amount recovered from a third [parties] party to reimburse the [trust] fiduciary because of [disbursements] a disbursement described in [subdivision (7) of] subsection 1 of section 469.453 or for [other reasons] another reason to the extent not based on [the] loss of income;

- (4) Proceeds of property taken by eminent domain, [but a separate award made] except that proceeds awarded for [the] loss of income [with respect to] in an accounting period [during which] are income if a current income

beneficiary had a mandatory income interest [is income] during the period;

(5) Net income received in an accounting period during which there is no beneficiary to [whom] which a [trustee] fiduciary may or shall distribute income; and

(6) Other receipts as provided in sections 469.435 to 469.449.

469.431. To the extent [that a trustee accounts] a fiduciary does not account for [receipts from] the management of rental property [pursuant to this section] as a business under section 469.427, the [trustee] fiduciary shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods[, shall be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.]:

(1) Shall be added to principal and held subject to the terms of the lease, except as otherwise provided by law other than sections 469.399 to 469.487; and

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

469.432. 1. This section does not apply to an obligation to which section 469.437, 469.439, 469.441, 469.443, 469.446, 469.447, or 469.449 applies.

2. A fiduciary shall allocate to income, without provision for amortization of premium, an amount received as interest[, whether determined at a fixed, variable or

floating rate,] on an obligation to pay money to the [trustee] fiduciary, including an amount received as consideration for prepaying principal[, shall be allocated to income without any provision for amortization of premium].

[2.] 3. A [trustee] fiduciary shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the [trustee more than one year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity. If the obligation matures within one year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust shall be allocated to income] fiduciary. A fiduciary shall allocate to income the increment in value of a bond or other obligation for the payment of money bearing no stated interest but payable or redeemable, at maturity or another future time, in an amount that exceeds the amount in consideration of which it was issued.

[3. This section does not apply to an obligation to which section 469.437, 469.439, 469.441, 469.443, 469.447 or 469.449 applies.]

469.433. 1. This section does not apply to a contract to which section 469.437 applies.

2. Except as otherwise provided in subsection [2] 3 of this section, a [trustee] fiduciary shall allocate to principal the proceeds of a life insurance policy or other contract [in which the trust or its trustee is named] received by the fiduciary as beneficiary, including a contract that insures [the trust or its trustee] against [loss for] damage to, destruction of, or loss of title to [a trust] an asset. The [trustee] fiduciary shall allocate

dividends on an insurance policy to income [if] to the extent premiums on the policy are paid from income[,] and to principal [if] to the extent premiums on the policy are paid from principal.

[2.] 3. A [trustee] fiduciary shall allocate to income proceeds of a contract that insures the [trustee] fiduciary against loss of:

(1) Occupancy or other use by [an income beneficiary, loss of] a current income[,] beneficiary;

(2) Income; or[,]

(3) Subject to section 469.427, [loss of] profits from a business.

[3. This section does not apply to a contract to which section 469.437 applies.]

469.435. 1. If a [trustee] fiduciary determines that an allocation between income and principal [and income] required by section 469.437, 469.439, 469.441, 469.443 or 469.449 is insubstantial, the [trustee] fiduciary may allocate the entire amount to principal, unless [one of the circumstances described in] subsection [3] 5 of section 469.405 applies to the allocation. [This power]

2. A fiduciary may [be exercised by a cotrustee in the circumstances described in subsection 4 of section 469.405 and may be released for the reasons and in the manner described in subsection 5 of section 469.405.] presume an allocation is [presumed to be] insubstantial under subsection 1 of this section if:

(1) The amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than ten percent; [or] and

(2) [The value of] The asset producing the receipt [for which the allocation would] to be [made is] allocated has a fair market value less than ten percent of the total

fair market value of the [trust's] assets owned or held by the fiduciary at the beginning of the accounting period.

3. The power to make a determination under subsection 1 of this section may be:

(1) Exercised by a cofiduciary in the manner described in subsection 6 of section 469.405; or

(2) Released or delegated for a reason described in subsection 7 of section 469.405 and in the manner described in subsection 8 of section 469.405.

469.437. 1. As used in this section, the following terms mean:

(1) ["Payment", an amount that is:

(a) Received or withdrawn from a plan; or

(b) One of a series of distributions that have been or will be received over a fixed number of years or during the life of one or more individuals under any contractual or other arrangement, or is a single payment from a plan that the trustee could have received over a fixed number of years or during the life of one or more individuals;

(2) "Plan", a contractual, custodial, trust or other arrangement that provides for distributions to the trust, including, but not limited to, qualified retirement plans, Individual Retirement Accounts, Roth Individual Retirement Accounts, public and private annuities, and deferred compensation, including payments received directly from an entity as defined in section 469.423 regardless of whether or not such distributions are made from a specific fund or account.

2. If any portion of a payment is characterized as a distribution to the trustee of interest, dividends or a dividend equivalent, the trustee shall allocate the portion so characterized to income. The trustee shall allocate the balance of that payment to principal.

3. If no part of a payment is allocated to income pursuant to subsection 2 of this section, then for each accounting period of the trust that any payment is received by the trust with respect to the trust's interest in a plan, the trustee shall allocate to income that portion of the aggregate value of all payments received by the trustee in that accounting period equal to the amount of plan income attributable to the trust's interest in the plan for that calendar year. The trustee shall allocate the balance of that payment to principal.

4. For purposes of this section, if a payment is received from a plan that maintains a separate account or fund for its participants or account holders, including, but not limited to, defined contribution retirement plans, Individual Retirement Accounts, Roth Individual Retirement Accounts, and some types of deferred compensation plans, the phrase "plan income" shall mean either the amount of the plan account or fund held for the benefit of the trust that, if the plan account or fund were a trust, would be allocated to income pursuant to sections 469.401 to 469.467 for that accounting period, or four percent of the value of the plan account or fund on the first day of that accounting period. The method of determining plan income pursuant to this subsection shall be chosen by the trustee in the trustee's discretion. The trustees may change the method of determining plan income pursuant to this subsection for any future accounting period.

5. For purposes of this section if the payment is received from a plan that does not maintain a separate account or fund for its participants or account holders, including by way of example and not limitation defined benefit retirement plans and some types of deferred compensation plans, the term "plan income" shall mean four

percent of the total present value of the trust's interest in the plan as of the first day of the accounting period, based on reasonable actuarial assumptions as determined by the trustee.

6. Notwithstanding subsections 1 to 5 of this section, with respect to a trust where an election to qualify for a marital deduction under Section 2056(b)(7) or Section 2523(f) of the Internal Revenue Code of 1986, as amended, has been made, or a trust that qualified for the marital deduction under either Section 2056(b)(5) or Section 2523(e) of the Internal Revenue Code of 1986, as amended, a trustee shall determine the plan income for the accounting period as if the plan were a trust subject to sections 469.401 to 469.467. Upon request of the surviving spouse, the trustee shall demand that the person administering the plan distribute the plan income to the trust. The trustee shall allocate a payment from the plan to income to the extent of the plan income and distribute that amount to the surviving spouse. The trustee shall allocate the balance of the payment to principal. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent the plan income exceeds payments made from the plan to the trust during the accounting period.

7. If, to obtain an estate or gift tax marital deduction for a trust, a trustee shall allocate more of a payment to income than provided for by this section, the trustee shall allocate to income the additional amount necessary to obtain the marital deduction.] "Internal income of a separate fund", the amount determined under subsection 2 of this section;

(2) "Marital trust", a trust:

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

(b) That qualifies for a marital deduction with respect to the settlor's estate under 26 U.S.C. Section 2056, as amended, because:

a. An election to qualify for a marital deduction under 26 U.S.C. Section 2056(b) (7), as amended, has been made; or

b. The trust qualifies for a marital deduction under 26 U.S.C. Section 2056(b) (5), as amended;

(3) "Payment", an amount a fiduciary may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future amounts the fiduciary may receive. The term "payment" includes an amount received in money or property from the payer's general assets or from a separate fund created by the payer;

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

2. For each accounting period, the following rules apply to a separate fund:

(1) The fiduciary shall determine the internal income of the separate fund as if the separate fund was a trust subject to sections 469.399 to 469.487;

(2) If the fiduciary cannot determine the internal income of the separate fund under subdivision (1) of this subsection, the internal income of the separate fund is deemed to equal three percent of the value of the separate fund, according to the most recent statement of value preceding the beginning of the accounting period; and

(3) If the fiduciary cannot determine the value of the separate fund under subdivision (2) of this subsection, the value of the separate fund is deemed to equal the present value of the expected future payments, as determined under 26 U.S.C. Section 7520, as amended, for the month preceding the beginning of the accounting period for which the computation is made.

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

4. The fiduciary of a marital trust shall:

(1) Withdraw from a separate fund the amount the current income beneficiary of the trust requests the fiduciary to withdraw, not greater than the amount by which the internal income of the separate fund during the accounting period exceeds the amount the fiduciary otherwise receives from the separate fund during the period;

(2) Transfer from principal to income the amount the current income beneficiary requests the fiduciary to transfer, not greater than the amount by which the internal income of the separate fund during the period exceeds the amount the fiduciary receives from the separate fund during the period after the application of subdivision (1) of this subsection; and

(3) Distribute to the current income beneficiary as income:

(a) The amount of the internal income of the separate fund received or withdrawn during the period; and

(b) The amount transferred from principal to income under subdivision (2) of this subsection.

5. For a trust, other than a marital trust, of which one or more current income beneficiaries are entitled to a

distribution of all the current net income, the fiduciary shall transfer from principal to income the amount by which the internal income of a separate fund during the accounting period exceeds the amount the fiduciary receives from the separate fund during the period.

469.439. 1. As used in this section, the [phrase] term "liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a [period of] limited [duration] time. The [phrase] term "liquidating asset" includes a leasehold, patent, copyright, royalty right, and right to receive payments during a period of more than one year under an arrangement that does not provide for the payment of interest on the unpaid balance. [The phrase]

2. This section does not [include a payment] apply to a receipt subject to section 469.423, 469.437, [resources subject to section] 469.441, [timber subject to section] 469.443, [an activity subject to section] 469.446, 469.447, [an asset subject to section] 469.449, or [any asset for which the trustee establishes a reserve for depreciation pursuant to section] 469.455.

[2.] 3. A [trustee] fiduciary shall allocate:

(1) To income [ten percent of the receipts from]:

(a) A receipt produced by a liquidating asset [and the balance], to the extent the receipt does not exceed three percent of the value of the asset; or

(b) If the fiduciary cannot determine the value of the asset, ten percent of the receipt; and

(2) To principal, the balance of the receipt.

469.441. 1. To the extent [that a trustee accounts for receipts] a fiduciary does not account for a receipt from an interest in minerals, water, or other natural resources [pursuant to this section] as a business under

section 469.427, the [trustee] fiduciary shall allocate [them as follows] the receipt:

(1) [If] To income, to the extent received:

(a) As [nominal] delay rental or [nominal] annual rent on a lease[, a receipt shall be allocated to income];

(b) As a factor for interest or the equivalent of interest under an agreement creating a production payment; or

(c) On account of an interest in renewable water;

(2) To principal, if received from a production payment, [a receipt shall be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance shall be allocated to principal;] to the extent paragraph (b) of subdivision (1) of this subsection does not apply; or

(3) [If an amount received] Between income and principal equitably, to the extent received:

(a) On account of an interest in nonrenewable water;

(b) As a royalty, shut-in-well payment, take-or-pay payment, or bonus [or delay rental is more than nominal, ninety percent shall be allocated to principal and the balance to income]; or

[(4) If an amount is received] (c) From a working interest or any other interest not provided for in subdivision (1) [,] or (2) [or (3)] of this subsection [,] ninety percent of the net amount received shall be allocated to principal and the balance to income] or paragraph (a) or (b) of this subdivision.

2. [An amount received on account of] This section applies to an interest [in water that is renewable shall be allocated to income. If the water is not renewable, ninety percent of the amount shall be allocated to principal and the balance to income.]

3. Sections 469.401 to 469.467 apply] owned or held by a fiduciary whether or not a [decedent or donor] settlor was extracting minerals, water, or other natural resources before the fiduciary owned or held the interest [became subject to the trust].

3. An allocation of a receipt under subdivision (3) of subsection 1 of this section is presumed to be equitable if the amount allocated to principal is equal to the amount allowed by Title 26 of the United States Code, as amended, as a deduction for depletion of the interest.

4. If a [trust] fiduciary owns or holds an interest in minerals, water, or other natural resources [on] before August 28, [2001] 2024, the [trustee] fiduciary may allocate receipts from the interest as provided in [sections 469.401 to 469.467] this section or in the manner used by the [trustee] fiduciary before August 28, [2001] 2024. If the [trust] fiduciary acquires an interest in minerals, water, or other natural resources on or after August 28, [2001] 2024, the [trustee] fiduciary shall allocate receipts from the interest as provided in [sections 469.401 to 469.467] this section.

469.443. 1. To the extent [that a trustee accounts] a fiduciary does not account for receipts from the sale of timber and related products [pursuant to this section] as a business under section 469.427, the [trustee] fiduciary shall allocate the net receipts:

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

(2) To principal, to the extent [that] the amount of timber [removed] cut from the land exceeds the rate of

growth of the timber or the net receipts are from the sale of standing timber;

(3) [To or] Between income and principal if the net receipts are from the lease of [timberland] land used for growing and cutting timber or from a contract to cut timber from land [owned by a trust], by determining the amount of timber [removed] cut from the land under the lease or contract and applying the rules in subdivisions (1) and (2) of this subsection; or

(4) To principal, to the extent [that] advance payments, bonuses, and other payments are not allocated [pursuant to either] under subdivision (1), (2), or (3) of this subsection.

2. In determining net receipts to be allocated [pursuant to] under subsection 1 of this section, a [trustee] fiduciary shall deduct and transfer to principal a reasonable amount for depletion.

3. [Sections 469.401 to 469.467 apply] This section applies to land owned or held by a fiduciary whether or not a [decedent or transferor] settlor was [harvesting] cutting timber from the land before the fiduciary owned or held the property [before it became subject to the trust].

4. If a [trust] fiduciary owns or holds an interest in [timberland on] land used for growing and cutting timber before August 28, [2001] 2024, the [trustee] fiduciary may allocate net receipts from the sale of timber and related products as provided in [sections 469.401 to 469.467] this section or in the manner used by the [trustee] fiduciary before August 28, [2001] 2024. If the [trust] fiduciary acquires an interest in [timberland] land used for growing and cutting timber on or after August 28, [2001] 2024, the [trustee] fiduciary shall allocate net receipts from the

sale of timber and related products as provided in [sections 469.401 to 469.467] this section.

469.445. 1. If a trust received property for which a gift or estate tax marital deduction [is allowed for all or part of a trust whose] was allowed and the settlor's spouse holds a mandatory income interest in the trust, the spouse may require the trustee, to the extent the trust assets [consist substantially of property that does] otherwise do not provide the spouse with sufficient income from or use of the trust assets[, and if the amounts that the trustee transfers from principal to income pursuant to section 469.405 and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital] to qualify for the deduction, [the spouse may require the trustee] to:

(1) Make property productive of income[,];

(2) Convert property to property productive of income within a reasonable time[,]; or

(3) Exercise the power [conferred by subsection 1 of] to adjust under section 469.405.

2. The trustee may decide which action or combination of actions in subsection 1 of this section to take.

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

469.446. A fiduciary shall allocate receipts from or related to a financial instrument or arrangement not otherwise addressed by sections 469.399 to 469.487. The allocation shall be consistent with sections 469.447 and 469.449.

469.447. 1. As used in this section, the term "derivative" means a contract [or financial], instrument, other arrangement, or [a] combination of contracts [and financial], instruments, or other arrangements, the value, rights, and obligations of which [gives a trust the right or obligation to participate in some or all changes in the price of a] are, in whole or in part, dependent on or derived from an underlying tangible or intangible asset [or group of assets, or changes in a rate, an index of prices or], group of tangible or intangible assets, index, or occurrence of an event. The term "derivative" includes stocks, fixed income securities, and financial instruments and arrangements based on indices, commodities, interest rates, [or other market indicator for an asset or a group of assets] weather-related events, and credit default events.

2. To the extent [that a trustee] a fiduciary does not account [pursuant to section 469.427 for transactions] for a transaction in derivatives[, the trustee] as a business under section 469.427, the fiduciary shall allocate [to principal] ten percent of receipts from the transaction and ten percent of disbursements made in connection with [those transactions] the transaction to income and the balance to principal.

3. The provisions of subsection 4 of this section apply if:

(1) A [trustee] fiduciary:

(a) Grants an option to buy property from [the] a trust, whether or not the trust owns the property when the option is granted[,];

(b) Grants an option that permits another person to sell property to the trust[,];

(c) Acquires an option to buy property for the trust or an option to sell an asset owned by the trust[,];

(2) The [trustee] fiduciary or other owner of the asset is required to deliver the asset if the option is exercised[,].

4. If this subsection applies, the fiduciary shall allocate ten percent to income and the balance to principal of the following amounts:

(1) An amount received for granting the option [shall be allocated to principal.];

(2) An amount paid to acquire the option [shall be paid from principal. A]; and

(3) Gain or loss realized [upon] on the exercise [of an option, including an option granted to a settlor], exchange, settlement, offset, closing, or expiration of the [trust for services rendered, shall be allocated to principal] option.

469.449. 1. [As used in this section, the phrase "asset-backed security" means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The phrase includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The phrase does not include an asset to which section 469.423 or 469.437 applies.

2. If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the trustee] Except as otherwise provided in subsection 2 of this section, a fiduciary shall allocate to income [the portion of] a receipt from or related to an asset-backed security, to the extent the [payment which the] payer identifies the payment as being from interest or other current return, and [shall

allocate] to principal the balance of the [payment to principal] receipt.

[3.] 2. If a [trust] fiduciary receives one or more payments in exchange for part or all of the [trust's entire] fiduciary's interest in an asset-backed security [in one accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that will result in the], including a liquidation or redemption of the [trust's] fiduciary's interest in the security [over more than one accounting period,] the [trustee] fiduciary shall allocate [ten] to income ten percent of receipts from the [payment to income] transaction and [the balance to principal] ten percent of disbursements made in connection with the transaction, and to principal the balance of the receipts and disbursements.

469.451. [A trustee shall make the following disbursements from income to the extent that they are not disbursements to which paragraph (b) or (c) of] Subject to section 469.456, and except as otherwise provided in subdivision (2) or (3) of subsection 3 of section 469.413 [applies], a fiduciary shall disburse from income:

(1) One-half of:

(a) The regular compensation of the [trustee] fiduciary and [of] any person providing investment advisory [or], custodial, or other services to the [trustee] fiduciary, to the extent income is sufficient; and

[(2) One-half of all expenses] (b) An expense for [accountings] an accounting, judicial [proceedings] or nonjudicial proceeding, or other [matters] matter that [involve] involves both [the] income and [remainder] successive interests, to the extent income is sufficient;

[(3) All of the other] (2) The balance of the disbursements described in subdivision (1) of this section,

to the extent a fiduciary that is an independent person determines that making those disbursements from income would be in the interests of the beneficiaries;

(3) Another ordinary [expenses] expense incurred in connection with [the] administration, management, or preservation of [trust] property and [the] distribution of income, including interest, an ordinary [repairs] repair, regularly recurring [taxes] tax assessed against principal, and [expenses] an expense of [a] an accounting, judicial or nonjudicial proceeding, or other matter that [concerns] involves primarily [the] an income interest, to the extent income is sufficient; and

(4) [Recurring premiums] A premium on insurance covering [the] loss of a principal asset or [the loss of] income from or use of the asset.

469.453. 1. [A trustee shall make the following disbursements] Subject to section 469.457, and except as otherwise provided in subdivision (2) of subsection 3 of section 469.413, a fiduciary shall disburse from principal:

(1) The [remaining one-half] balance of the disbursements described in [subdivisions (1) and (2)] subsections 1 and 3 of section 469.451, after application of subsection 2 of section 469.451;

(2) [All of] The [trustee's] fiduciary's compensation calculated on principal as a fee for acceptance, distribution, or termination[, and disbursements made to prepare property for sale];

(3) [Payments] A payment of an expense to prepare for or execute a sale or other disposition of property;

(4) A payment on the principal of a trust debt;

[(4) Expenses of a] (5) A payment of an expense of an accounting, judicial or nonjudicial proceeding, or other matter that [concerns] involves primarily [an interest in]

principal, including a proceeding to construe the terms of the trust or protect property;

~~[(5) Premiums paid on a policy of]~~ (6) A payment of a premium for insurance, including title insurance, not described in subdivision (4) of section 469.451 of which the [trust] fiduciary is the owner and beneficiary;

~~[(6)]~~ (7) A payment of an estate[,] or inheritance [and other transfer taxes] tax or other tax imposed because of the death of a decedent, including penalties, apportioned to the trust; and

~~[(7) Extraordinary expenses incurred in connection with the management and preservation of trust property;~~

~~(8) Expenses for a capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments; and~~

~~(9) Disbursements]~~ (8) A payment:

(a) Related to environmental matters, including:

a. Reclamation[,];

b. Assessing environmental conditions[,];

c. Remedying and removing environmental contamination[,];

d. Monitoring remedial activities and the release of substances[,];

e. Preventing future releases of substances[,];

f. Collecting amounts from persons liable or potentially liable for the costs of [those] activities[,] described in subparagraphs a. to e. of this paragraph;

g. Penalties imposed under environmental laws or regulations [and];

h. Other [payments made] actions to comply with [those] environmental laws or regulations[,];

i. Statutory or common law claims by third parties[.];
and

j. Defending claims based on environmental matters[.];
and

(b) For a premium for insurance for matters described in paragraph (a) of this subdivision.

2. If a principal asset is encumbered with an obligation that requires income from [that] the asset to be paid directly to [the] a creditor, the [trustee] fiduciary shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

469.455. 1. [As used] In this section, [the term] "depreciation" means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a [fixed] tangible asset having a useful life of more than one year.

2. A [trustee] fiduciary may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but [may] shall not transfer any amount for depreciation:

(1) Of [that portion] the part of real property used or available for use by a beneficiary as a residence [or];

(2) Of tangible personal property held or made available for the personal use or enjoyment of a beneficiary; or

[(2) During the administration of a decedent's estate; or]

(3) [Pursuant to] Under this section [if the trustee is accounting pursuant to section 469.427], to the extent the fiduciary accounts:

(a) Under section 469.439 for the asset; or

(b) Under section 469.427 for the business or other activity in which the asset is used.

3. An amount transferred to principal under this section need not be separately held [as a separate fund].

469.456. 1. If a fiduciary makes or expects to make an income disbursement described in subsection 2 of this section, the fiduciary may transfer an appropriate amount from principal to income in one or more accounting periods to reimburse income.

2. To the extent the fiduciary has not been and does not expect to be reimbursed by a third party, income disbursements to which subsection 1 of this section applies include:

(1) An amount chargeable to principal but paid from income because principal is illiquid;

(2) A disbursement made to prepare property for sale, including improvements and commissions; and

(3) A disbursement described in subsection 1 of section 469.453.

3. If an asset whose ownership gives rise to an income disbursement becomes subject to a successive interest after an income interest ends, the fiduciary may continue to make transfers under subsection 1 of this section.

469.457. 1. If a [trustee] fiduciary makes or expects to make a principal disbursement described in subsection 2 of this section, the [trustee] fiduciary may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or [to] provide a reserve for future principal disbursements.

2. To the extent a fiduciary has not been and does not expect to be reimbursed by a third party, principal disbursements to which subsection 1 of this section applies include [the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party]:

(1) An amount chargeable to income but paid from principal because [it] income is [unusually large, including extraordinary repairs] not sufficient;

(2) [Disbursements] The cost of an improvement to principal, whether a change to an existing asset or the construction of a new asset, including a special assessment;

(3) A disbursement made to prepare property for rental, including tenant allowances, leasehold improvements, and [broker's] commissions;

[(3)] (4) A periodic [payments] payment on an obligation secured by a principal asset, to the extent [that] the amount transferred from income to principal for depreciation is less than the periodic [payments] payment;
and

[(4) Disbursements] (5) A disbursement described in [subdivision (7) of] subsection 1 of section 469.453.

3. If [the] an asset whose ownership gives rise to [the disbursements] a principal disbursement becomes subject to a successive [income] interest after an income interest ends, [a trustee] the fiduciary may continue to [transfer amounts from income to principal as provided in] make transfers under subsection 1 of this section.

469.459. 1. A tax required to be paid by a [trustee] fiduciary that is based on receipts allocated to income shall be paid from income.

2. A tax required to be paid by a [trustee] fiduciary that is based on receipts allocated to principal shall be paid from principal, even if the tax is called an income tax by the taxing authority.

3. Subject to subsection 4 of this section and sections 469.456, 469.457, and 469.462, a tax required to be paid by a [trustee] fiduciary on [the trust's] a share of an

entity's taxable income in an accounting period shall be paid from:

(1) [From] Income and principal proportionately to the [extent that] allocation between income and principal of receipts from the entity [are allocated to income] in the period; and

(2) [From] Principal to the extent [that] the tax exceeds the receipts from the entity [are allocated only to principal] in the period.

4. After applying subsections 1 to 3 of this section, [the trustee] a fiduciary shall adjust income or principal receipts, to the extent [that] the [trust's] taxes the fiduciary pays are reduced because [the trust receives] of a deduction for a payment made to a beneficiary.

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

(1) An election or decision the fiduciary makes regarding a tax matter, other than a decision to claim an income tax deduction to which subsection 2 of this section applies;

(2) An income tax or other tax imposed on the fiduciary or a beneficiary as a result of a transaction involving the fiduciary or a distribution by the fiduciary;
or

(3) Ownership by the fiduciary of an interest in an entity, a part of whose taxable income, whether or not distributed, is includable in the taxable income of the fiduciary or a beneficiary.

2. If the amount of an estate tax marital or charitable deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes

instead of deducting it for estate tax purposes and, as a result, estate taxes paid from principal are increased and income taxes paid by the fiduciary or a beneficiary are decreased, the fiduciary shall charge each beneficiary that benefits from the decrease in income tax to reimburse the principal from which the increase in estate tax is paid. The total reimbursement shall equal the increase in the estate tax, to the extent the principal used to pay the increase would have qualified for a marital or charitable deduction but for the payment. The share of the reimbursement for each fiduciary or beneficiary whose income taxes are reduced shall be the same as its share of the total decrease in income tax.

3. A fiduciary that charges a beneficiary under subsection 2 of this section may offset the charge by obtaining payment from the beneficiary, withholding an amount from future distributions to the beneficiary, or adopting another method or combination of methods.

469.463. In applying and construing sections [469.401] 469.399 to [469.467] 469.487, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

469.464. The provisions of sections 469.399 to 469.487 modify, limit, or supersede the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but do not modify, limit, or supersede 15 U.S.C. Section 7001(c) or authorize electronic delivery of any of the notices described in 15 U.S.C. Section 7003(b).

469.465. If any provision of sections [469.401] 469.399 to [469.467] 469.487 or [the] its application [of these sections] to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of sections [469.401] 469.399 to [469.467]

469.487 which can be given effect without the invalid provision or application and to this end, the provisions of sections 469.399 to 469.487 are severable.

469.467. The provisions of sections [469.401] 469.399 to [469.467] 469.487 apply to [every] a trust or [decedent's] estate existing or created on or after August 28, [2001] 2024, except as otherwise expressly provided in the [will or] terms of the trust or [in] sections [469.401] 469.399 to [469.467] 469.487.

469.471. As used in sections 469.471 to 469.487, the following terms mean:

(1) "Applicable value", the amount of the net fair market value of a trust taken into account under section 469.483;

(2) "Express unitrust", a trust for which, under the terms of the trust without regard to sections 469.471 to 469.487, income or net income shall or may be calculated as a unitrust amount;

(3) "Income trust", a trust that is not a unitrust;

(4) "Net fair market value of a trust", the fair market value of the assets of the trust, less the noncontingent liabilities of the trust;

(5) "Unitrust", a trust for which net income is a unitrust amount. The term "unitrust" includes an express unitrust;

(6) "Unitrust amount", an amount computed by multiplying a determined value of a trust by a determined percentage. For a unitrust administered under a unitrust policy, the term "unitrust amount" means the applicable value multiplied by the unitrust rate;

(7) "Unitrust policy", a policy described in sections 469.479 to 469.487 and adopted under section 469.475;

(8) "Unitrust rate", the rate used to compute the unitrust amount for a unitrust administered under a unitrust policy.

469.473. 1. Except as otherwise provided in subsection 2 of this section, sections 469.471 to 469.487 apply to:

(1) An income trust, unless the terms of the trust expressly prohibit use of sections 469.471 to 469.487 by a specific reference to these sections or an explicit expression of intent that net income not be calculated as a unitrust amount; and

(2) An express unitrust, except to the extent the terms of the trust explicitly:

(a) Prohibit use of sections 469.471 to 469.487 by a specific reference to such sections;

(b) Prohibit conversion to an income trust; or

(c) Limit changes to the method of calculating the unitrust amount.

2. Sections 469.471 to 469.487 do not apply to a trust described in 26 U.S.C. Section 170(f)(2)(B), 642(c)(5), 664(d), 2702(a)(3)(A)(ii) or (iii), or 2702(b), as amended.

3. An income trust to which sections 469.471 to 469.487 apply under subdivision (1) of subsection 1 of this section may be converted to a unitrust under sections 469.471 to 469.487 regardless of the terms of the trust concerning distributions. Conversion to a unitrust under sections 469.471 to 469.487 does not affect other terms of the trust concerning distributions of income or principal.

4. Sections 469.471 to 469.487 apply to an estate only to the extent a trust is a beneficiary of the estate. To the extent of the trust's interest in the estate, the estate may be administered as a unitrust, the administration of the estate as a unitrust may be discontinued, or the percentage

or method used to calculate the unitrust amount may be changed, in the same manner as for a trust under sections 469.471 to 469.487.

5. Sections 469.471 to 469.487 do not create a duty to take or consider action under sections 469.471 to 469.487 or to inform a beneficiary about the applicability of sections 469.471 to 469.487.

6. A fiduciary that in good faith takes or fails to take an action under sections 469.471 to 469.487 is not liable to a person affected by the action or inaction.

469.475. 1. A fiduciary, without court approval, by complying with subsections 2 and 6 of this section, may:

(1) Convert an income trust to a unitrust if the fiduciary adopts in a record a unitrust policy for the trust providing:

(a) That in administering the trust the net income of the trust will be a unitrust amount rather than net income determined without regard to sections 469.471 to 469.487; and

(b) The percentage and method used to calculate the unitrust amount;

(2) Change the percentage or method used to calculate a unitrust amount for a unitrust if the fiduciary adopts in a record a unitrust policy or an amendment or replacement of a unitrust policy providing changes in the percentage or method used to calculate the unitrust amount; or

(3) Convert a unitrust to an income trust if the fiduciary adopts in a record a determination that, in administering the trust, the net income of the trust will be net income determined without regard to sections 469.471 to 469.487 rather than a unitrust amount.

2. A fiduciary may take an action under subsection 1 of this section if:

(1) The fiduciary determines that the action will assist the fiduciary to administer a trust impartially;

(2) The fiduciary sends a notice in a record, in the manner required by section 469.477, describing and proposing to take the action;

(3) The fiduciary sends a copy of the notice under subdivision (2) of this subsection to each settlor of the trust that is:

(a) If an individual, living; or

(b) If not an individual, in existence;

(4) At least one member of each class of the qualified beneficiaries described under section 456.1-103 receiving the notice under subdivision (2) of this subsection is:

(a) If an individual, legally competent;

(b) If not an individual, in existence; or

(c) Represented in the manner provided in subsection 2 of section 469.477; and

(5) The fiduciary does not receive, by the date specified in the notice under subdivision (5) of subsection 4 of section 469.477, an objection in a record to the action proposed under subdivision (2) of this subsection from a person to which the notice under subdivision (2) of this subsection is sent.

3. If a fiduciary receives, not later than the date stated in the notice under subdivision (5) of subsection 4 of section 469.477, an objection in a record described in subdivision (4) of subsection 4 of section 469.477 to a proposed action, the fiduciary or a beneficiary may request the court to have the proposed action taken as proposed, taken with modifications, or prevented. A person described in subsection 1 of section 469.477 may oppose the proposed action in the proceeding under this subsection, whether or not the person:

(1) Consented under subsection 3 of section 469.477; or
(2) Objected under subdivision (4) of subsection 4 of
section 469.477.

4. If, after sending a notice under subdivision (2) of
subsection 2 of this section, a fiduciary decides not to
take the action proposed in the notice, the fiduciary shall
notify in a record each person described in subsection 1 of
section 469.477 of the decision not to take the action and
the reasons for the decision.

5. If a beneficiary requests in a record that a
fiduciary take an action described in subsection 1 of this
section and the fiduciary declines to act or does not act
within ninety days after receiving the request, the
beneficiary may request the court to direct the fiduciary to
take the action requested.

6. In deciding whether and how to take an action
authorized by subsection 1 of this section, or whether and
how to respond to a request by a beneficiary under
subsection 5 of this section, a fiduciary shall consider all
factors relevant to the trust and the beneficiaries,
including relevant factors in subsection 5 of section
469.403.

7. A fiduciary may release or delegate the power to
convert an income trust to a unitrust under subdivision (1)
of subsection 1 of this section, change the percentage or
method used to calculate a unitrust amount under subdivision
(2) of subsection 1 of this section, or convert a unitrust
to an income trust under subdivision (3) of subsection 1 of
this section, for a reason described in subsection 7 of
section 469.405 and in the manner described in subsection 8
of section 469.405.

469.477. 1. A notice required by subdivision (3) of subsection 2 of section 469.475 shall be sent in a manner authorized under section 456.1-109 to:

(1) The qualified beneficiaries defined under section 456.1-103;

(2) Each person acting as trust protector under section 456.8-808; and

(3) Each person that is granted a power over the trust by the terms of the trust, to the extent the power is exercisable when the person is not then serving as a trustee:

(a) Including a:

a. Power over the investment, management, or distribution of trust property or other matters of trust administration; and

b. Power to appoint or remove a trustee or person described in this paragraph; and

(b) Excluding a:

a. Power of appointment;

b. Power of a beneficiary over the trust, to the extent the exercise or nonexercise of the power affects the beneficial interest of the beneficiary or another beneficiary represented by the beneficiary under sections 456.3-301 to 456.3-305 with respect to the exercise or nonexercise of the power; and

c. Power over the trust if the terms of the trust provide that the power is held in a nonfiduciary capacity and the power shall be held in a nonfiduciary capacity to achieve a tax objective under 26 U.S.C., as amended.

2. The representation provisions of sections 456.3-301 to 456.3-305 apply to notice under this section.

3. A person may consent in a record at any time to action proposed under subdivision (2) of subsection 2 of section 469.475. A notice required by subdivision (2) of

subsection 2 of section 469.475 need not be sent to a person that consents under this subsection.

4. A notice required by subdivision (2) of subsection 2 of section 469.475 shall include:

(1) The action proposed under subdivision (2) of subsection 2 of section 469.475;

(2) For a conversion of an income trust to a unitrust, a copy of the unitrust policy adopted under subdivision (1) of subsection 1 of section 469.475;

(3) For a change in the percentage or method used to calculate the unitrust amount, a copy of the unitrust policy or amendment or replacement of the unitrust policy adopted under subdivision (2) of subsection 1 of section 469.475;

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

(5) The date by which an objection under subdivision (4) shall be received by the fiduciary, which shall be at least thirty days after the date the notice is sent;

(6) The date on which the action is proposed to be taken and the date on which the action is proposed to take effect;

(7) The name and contact information of the fiduciary; and

(8) The name and contact information of a person that may be contacted for additional information.

469.479. 1. In administering a unitrust under sections 469.471 to 469.487, a fiduciary shall follow a unitrust policy adopted under subdivision (1) or (2) of subsection 1 of section 469.475 or amended or replaced under subdivision (2) of section 1 of section 469.475.

2. A unitrust policy shall provide:

(1) The unitrust rate or the method for determining the unitrust rate under section 469.481;

(2) The method for determining the applicable value under section 469.483; and

(3) The rules described in sections 469.481 to 469.487 that apply in the administration of the unitrust, whether the rules are:

(a) Mandatory, as provided in subsection 1 of section 469.483 and subsection 1 of section 469.485; or

(b) Optional, as provided in section 469.481, subsection 2 of section 469.483, subsection 2 of section 469.485, and subsection 1 of section 469.487, to the extent the fiduciary elects to adopt such rules.

469.481. 1. Except as otherwise provided in subdivision (1) of subsection 2 of section 469.487, a unitrust rate may be:

(1) A fixed unitrust rate; or

(2) A unitrust rate that is determined for each period using:

(a) A market index or other published data; or

(b) A mathematical blend of market indices or other published data over a stated number of preceding periods.

2. Except as otherwise provided in subdivision (1) of subsection 2 of section 469.487, a unitrust policy may provide:

(1) A limit on how high the unitrust rate determined under subdivision (2) of subsection 1 of this section may rise;

(2) A limit on how low the unitrust rate determined under subdivision (2) of subsection 1 of this section may fall;

(3) A limit on how much the unitrust rate determined under subdivision (2) of subsection 1 of this section may

increase over the unitrust rate for the preceding period or a mathematical blend of unitrust rates over a stated number of preceding periods;

(4) A limit on how much the unitrust rate determined under subdivision (2) of subsection 1 of this section may decrease below the unitrust rate for the preceding period or a mathematical blend of unitrust rates over a stated number of preceding periods; or

(5) A mathematical blend of any of the unitrust rates determined under subdivision (2) of subsection 1 of this section and subdivisions (1) to (4) of this subsection.

469.483. 1. A unitrust policy shall provide the method for determining the fair market value of an asset for the purpose of determining the unitrust amount, including:

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

(2) The date for valuing the asset in each period in which the asset is valued.

2. Except as otherwise provided in subdivision (2) of subsection 2 of section 469.487, a unitrust policy may provide methods for determining the amount of the net fair market value of the trust to take into account in determining the applicable value, including:

(1) Obtaining an appraisal of an asset for which fair market value is not readily available;

(2) Exclusion of specific assets or groups or types of assets;

(3) Other exceptions or modifications of the treatment of specific assets or groups or types of assets;

(4) Identification and treatment of cash or property held for distribution;

(5) Use of:

(a) An average of fair market values over a stated number of preceding periods; or

(b) Another mathematical blend of fair market values over a stated number of preceding periods;

(6) A limit on how much the applicable value of all assets, groups of assets, or individual assets may increase over:

(a) The corresponding applicable value for the preceding period; or

(b) A mathematical blend of applicable values over a stated number of preceding periods;

(7) A limit on how much the applicable value of all assets, groups of assets, or individual assets may decrease below:

(a) The corresponding applicable value for the preceding period; or

(b) A mathematical blend of applicable values over a stated number of preceding periods;

(8) The treatment of accrued income and other features of an asset that affect value; and

(9) Determining the liabilities of the trust, including treatment of liabilities to conform with the treatment of assets under subdivisions (1) to (8) of this subsection.

469.485. 1. A unitrust policy shall provide the period used under sections 469.481 and 469.483. Except as otherwise provided in subdivision (3) of subsection 2 of section 469.481, the period may be:

(1) A calendar year;

(2) A twelve-month period other than a calendar year;

(3) A calendar quarter;

(4) A three-month period other than a calendar quarter; or

(5) Another period.

2. Except as otherwise provided in subsection 2 of section 469.487, a unitrust policy may provide standards for:

(1) Using fewer preceding periods under paragraph (b) of subdivision (2) of subsection 1 of section 469.481 or subdivision (3) or (4) of subsection 2 of section 469.481 if:

(a) The trust was not in existence in a preceding period; or

(b) Market indices or other published data are not available for a preceding period;

(2) Using fewer preceding periods under paragraph (a) or (b) of subdivision (5) of subsection 2 of section 469.483, paragraph (b) of subdivision (6) of subsection 2 of section 469.483, or paragraph (b) of subdivision (7) of subsection 2 of section 469.483 if:

(a) The trust was not in existence in a preceding period; or

(b) Fair market values are not available for a preceding period; and

(3) Prorating the unitrust amount on a daily basis for a part of a period in which the trust or the administration of the trust as a unitrust or the interest of any beneficiary commences or terminates.

469.487. 1. A unitrust policy may:

(1) Provide methods and standards for:

(a) Determining the timing of distributions;

(b) Making distributions in cash or in kind or partly in cash and partly in kind; or

(c) Correcting an underpayment or overpayment to a beneficiary based on the unitrust amount if there is an error in calculating the unitrust amount;

(2) Specify sources and the order of sources, including categories of income for federal income tax

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

(3) Provide other standards and rules the fiduciary determines serve the interests of the beneficiaries.

2. If a trust qualifies for a special tax benefit or a fiduciary is not an independent person:

(1) The unitrust rate established under section 469.481 shall not be less than three percent or more than five percent;

(2) The only provisions of section 469.483 that apply are subsection 1 of section 469.483; subdivisions (1), (4), and (9) of subsection 2 of section 469.483; and paragraph (a) of subdivision (5) of subsection 2 of section 469.483;

(3) The only period that may be used under section 469.485 is a calendar year under subdivision (1) of subsection 1 of section 469.485; and

(4) The only other provisions of section 469.485 that apply are paragraph (a) of subdivision (2) of subsection 2 of section 469.485 and subdivision (3) of subsection 2 of section 469.485.

[469.409. 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.]

[469.411. 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.]

[469.461. 1. A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries which arise from:

(1) Elections and decisions, other than those described in subsection 2 of this section, that the fiduciary makes from time to time regarding tax matters;

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

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

2. If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal are increased and income taxes paid by an estate, trust or beneficiary are decreased, each estate, trust or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement shall equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust or beneficiary whose income taxes are reduced shall be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.]