

SENATE BILL NO. 246

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR CRAWFORD.

0457S.01H

KRISTINA MARTIN, Secretary

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,
2 469.405, 469.409, 469.411, 469.413, 469.415, 469.417, 469.419,
3 469.421, 469.423, 469.425, 469.427, 469.429, 469.431, 469.432,
4 469.433, 469.435, 469.437, 469.439, 469.441, 469.443, 469.445,
5 469.447, 469.449, 469.451, 469.453, 469.455, 469.457, 469.459,
6 469.461, 469.463, 469.465, and 469.467, RSMo, are repealed and
7 forty-eight new sections enacted in lieu thereof, to be known
8 as sections 214.330, 469.399, 469.401, 469.402, 469.403,
9 469.404, 469.405, 469.413, 469.415, 469.417, 469.419, 469.421,
10 469.423, 469.425, 469.427, 469.429, 469.431, 469.432, 469.433,
11 469.435, 469.437, 469.439, 469.441, 469.443, 469.445, 469.446,
12 469.447, 469.449, 469.451, 469.453, 469.455, 469.456, 469.457,
13 469.459, 469.462, 469.463, 469.464, 469.465, 469.467, 469.471,
14 469.473, 469.475, 469.477, 469.479, 469.481, 469.483, 469.485,
15 and 469.487, to read as follows:

214.330. 1. (1) The endowed care trust fund required
2 by sections 214.270 to 214.410 shall be permanently set

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

3 aside in trust or in accordance with the provisions of
4 subsection 2 of this section. The trustee of the endowed
5 care trust shall be a state or federally chartered financial
6 institution authorized to exercise trust powers in
7 Missouri. The contact information for a trust officer or
8 duly appointed representative of the trustee with knowledge
9 and access to the trust fund accounting and trust fund
10 records must be disclosed to the office or its duly
11 authorized representative upon request.

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

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

26 2. An endowed care trust fund shall be administered in
27 accordance with Missouri law governing trusts, including but
28 not limited to the applicable provisions of chapters 456 and
29 469, except as specifically provided in this subsection or
30 where the provisions of sections 214.270 to 214.410 provide
31 differently, provided that a cemetery operator shall not in
32 any circumstances be authorized to restrict, enlarge,
33 change, or modify the requirements of this section or the
34 provisions of chapters 456 and 469 by agreement or otherwise.

35 (1) Income and principal of an endowed care trust fund
36 shall be determined under the provisions of law applicable
37 to trusts, except that the provisions of section 469.405
38 shall not apply.

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

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

45 (4) All endowed care trusts shall be irrevocable.

46 (5) No trustee shall have the power to terminate an
47 endowed care trust fund under the provisions of section
48 456.4-414.

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

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

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

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

67 4. In addition to any other duty, obligation, or
68 requirement imposed by sections 214.270 to 214.410 or the
69 endowed care trust agreement, the trustee's duties shall be
70 the maintenance of records related to the trust and the
71 accounting for and investment of moneys deposited by the
72 operator to the endowed care trust fund.

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

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

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

97 (1) The interest from the escrow account may be
98 distributed to the cemetery operator at least in annual or

99 semiannual installments, but not later than six months
100 following the calendar year. Any interest not distributed
101 within six months following the end of the calendar year
102 shall be added to and held as part of the principal of the
103 account.

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

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

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

128 7. Excluding funds held in an escrow account, all
129 endowed care trust funds shall be administered in accordance
130 with an endowed care trust fund agreement, which shall be

131 submitted to the office by the cemetery operator for review
132 and approval. The endowed care cemetery shall be notified
133 in writing by the office of endowed care cemeteries
134 regarding the approval or disapproval of the endowed care
135 trust fund agreement and regarding any changes required to
136 be made for compliance with sections 214.270 to 214.410 and
137 the rules and regulations promulgated thereunder.

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

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

159 10. Funds in an endowed care trust fund or escrow
160 account may be commingled with endowed care funds for other
161 endowed care cemeteries, provided that the cemetery operator
162 and the trustee shall maintain adequate accounting records

163 of the disbursements, contributions, and income allocated
164 for each cemetery.

165 11. By accepting the trusteeship of an endowed care
166 trust or accepting funds as an escrow agent pursuant to
167 sections 214.270 to 214.410, the trustee or escrow agent
168 submits personally to the jurisdiction of the courts of this
169 state and the office of endowed care cemeteries regarding
170 the administration of the trust or escrow account. A
171 trustee or escrow agent shall consent in writing to the
172 jurisdiction of the state of Missouri and the office in
173 regards to the trusteeship or the operation of the escrow
174 account and to the appointment of the office of secretary of
175 state as its agent for service of process regarding any
176 administrative or legal actions relating to the trust or the
177 escrow account, if it has no designated agent for service of
178 process located in this state. Such consent shall be filed
179 with the office prior to accepting funds pursuant to
180 sections 214.270 to 214.410 as trustee or as an escrow agent
181 on a form provided by the office by rule.

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

469.401. As used in sections [469.401] **469.399** to
2 [469.467] **469.487**, the following terms mean:

3 (1) "Accounting period", a calendar year, unless
4 [another twelve-month period is selected by] a fiduciary
5 **selects another period of twelve calendar months or**
6 **approximately twelve calendar months.** The term "accounting
7 **period"** includes a [portion] **part** of a calendar year or
8 [other twelve-month] **another period [that] of twelve**
9 **calendar months or approximately twelve calendar months that**

10 begins when an income interest begins or ends when an income
11 interest ends;

12 (2) "Asset-backed security", a security that is
13 serviced primarily by the cash flows of a discrete pool of
14 fixed or revolving receivables or other financial assets
15 that by their terms convert into cash within a finite time.
16 The term "asset-backed security" includes rights or other
17 assets that ensure the servicing or timely distribution of
18 proceeds to the holder of the asset-backed security. The
19 term "asset-backed security" does not include an asset to
20 which section 469.423, 469.437, or 469.447 applies;

21 (3) "Beneficiary", includes:

22 (a) For a trust:

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

26 b. A remainder beneficiary; and

27 c. Any other successor beneficiary;

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

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

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

40 (5) "Current income beneficiary", a beneficiary to
41 which a fiduciary may distribute net income, whether or not

42 the fiduciary also may distribute principal to the
43 beneficiary;

44 (6) "Distribution", a payment or transfer by a
45 fiduciary to a beneficiary in the beneficiary's capacity as
46 a beneficiary, made under the terms of the trust, without
47 consideration other than the beneficiary's right to receive
48 the payment or transfer under the terms of the trust. The
49 terms "distribute", "distributed", and "distributee" have
50 corresponding meanings;

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

55 [(3)] (8) "Fiduciary", includes a trustee, trust
56 protector determined under section 456.8-808, personal
57 representative, [trustee, executor, administrator, successor
58 personal representative, special administrator and any other
59 person performing substantially the same function] life
60 tenant, holder of a term "fiduciary" interest, and person
61 acting under a delegation from a fiduciary. The term
62 "fiduciary" includes a person that holds property for a
63 successor beneficiary whose interest may be affected by an
64 allocation of receipts and expenditures between income and
65 principal. If there are two or more cofiduciaries, the term
66 "fiduciary" includes all cofiduciaries acting under the
67 terms of the trust and applicable law;

68 [(4)] (9) "Income", money or other property [that] a
69 fiduciary receives as current return from [a] principal
70 [asset, including a portion]. The term "income" includes a
71 part of receipts from a sale, exchange, or liquidation of a
72 principal asset, [as] to the extent provided in sections
73 469.423 to 469.449;

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

76 (6)] (10) "Income interest", the right of [an] a
77 **current** income beneficiary to receive all or part of net
78 income, whether the terms of the trust require [it] **the net**
79 **income** to be distributed or authorize [it] **the net income** to
80 be distributed in the [trustee's] **fiduciary's** discretion.
81 **The term "income interest" includes the right of a current**
82 **beneficiary to use property held by a fiduciary;**

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

84 (a) For a trust:

85 a. A qualified beneficiary as defined in section 456.1-
86 103;

87 b. A settlor of the trust; or

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

91 (b) For an estate, a beneficiary;

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

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

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

101 [(7)] (12) "Mandatory income interest", the right of
102 [an] a **current** income beneficiary to receive net income that
103 the terms of the trust require the fiduciary to distribute;

104 [(8)] (13) "Net income", [if section 469.411 applies
105 to the trust, the unitrust amount, or if section 469.411

106 does not apply to the trust,] the total [receipts allocated
107 to income] **allocations** during an accounting period **to income**
108 **under the terms of a trust and sections 469.399 to 469.487**
109 minus the disbursements [made from income during the same
110 period, plus or minus transfers pursuant to sections 469.401
111 to 469.467 to or from income] during the [same] **accounting**
112 **period, other than distributions, allocated to income under**
113 **the terms of the trust and sections 469.399 to 469.487. To**
114 **the extent the trust is a unitrust under sections 469.471 to**
115 **469.487, the term "net income" means the unitrust amount**
116 **determined under sections 469.471 to 469.487. The term "net**
117 **income" includes an adjustment from principal to income**
118 **under section 469.405. The term "net income" does not**
119 **include an adjustment from income to principal under section**
120 **469.405;**

121 [(9)] (14) "Person", an individual, [corporation,
122 business trust,] estate, trust, [partnership, limited
123 liability company, association, joint venture] **business or**
124 **nonprofit entity, public corporation, government[,]** or
125 governmental subdivision, agency, or instrumentality,
126 [public corporation] or [any] other legal [or commercial]
127 entity;

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

133 [(10)] (16) "Principal", property held in trust for
134 distribution to [a remainder], **production of income for, or**
135 **use by a current or successor** beneficiary [when the trust
136 terminates];

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

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

141 (13)] (17) "Record", information that is inscribed on
142 a tangible medium or that is stored in an electronic or
143 other medium and is retrievable in perceivable form;

144 (18) "Settlor", a person, including a testator, that
145 creates or contributes property to a trust. If more than
146 one person creates or contributes property to a trust, the
147 term "settlor" includes each person, to the extent of the
148 trust property attributable to that person's contribution,
149 except to the extent another person has the power to revoke
150 or withdraw that portion;

151 (19) "Special tax benefit":

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

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

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

165 (d) Exemption in whole or in part of a trust from the
166 federal generation-skipping transfer tax imposed by 26
167 U.S.C. Section 2601, as amended, because the trust was

168 irrevocable on September 25, 1985, if there is any
169 possibility that:

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

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

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

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

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

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

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

188 (22) "Terms of a trust":

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

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

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

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

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

201 b. Court order; or

202 c. A nonjudicial settlement agreement under section
203 456.1-111;

204 (c) For an estate, a will; or

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

208 (23) "Trust":

209 (a) Includes:

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

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

215 (b) Does not include:

216 a. A constructive trust;

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

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

226 [(14)] (24) "Trustee", a person, other than a personal
227 representative, that owns or holds property for the benefit
228 of a beneficiary. The term "trustee" includes an original,
229 additional, or successor trustee, whether or not appointed
230 or confirmed by a court;

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

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

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

5 (1) A trust or estate; and

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

9 2. Except as otherwise provided in the terms of a
10 trust or sections 469.399 to 469.487, the provisions of
11 sections 469.399 to 469.487 apply when this state is the
12 principal place of administration of a trust or estate or
13 the situs of property that is not held in a trust or estate
14 and is subject to a life estate or other term interest
15 described in subdivision (2) of subsection 1 of this
16 section. By accepting the trusteeship of a trust having its
17 principal place of administration in this state or by moving
18 the principal place of administration of a trust to this
19 state, the trustee submits to the application of sections
20 469.399 to 469.487 to any matter within the scope of
21 sections 469.399 to 469.487 involving the trust.

469.403. 1. In [allocating receipts and disbursements
2 to or between principal and income, and with respect to any
3 matter within the scope of] making an allocation or

4 **determination or exercising discretion under** sections
5 469.413 to 469.421, a fiduciary **shall**:

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

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

12 (3) Administer the trust or estate in accordance with
13 **the terms of the trust,** even if there is a different
14 provision in sections **[469.401] 469.399 to [469.467]**
15 **469.487; and**

16 **[(2) May] (4) Administer [a] the trust or estate [by**
17 **exercising] in accordance with sections 469.399 to 469.487,**
18 **except to the extent the terms of the trust provide**
19 **otherwise or authorize the fiduciary to determine otherwise.**

20 2. A fiduciary's allocation, determination, or
21 exercise of discretion pursuant to sections 469.399 to
22 469.487 is presumed to be fair and reasonable to all
23 beneficiaries. A fiduciary may exercise a discretionary
24 power of administration given to the fiduciary by the terms
25 of the trust **[or the will, even if the], and an** exercise of
26 the power **that** produces a result different from a result
27 required or permitted by sections **[469.401] 469.399 to**
28 **[469.467;] 469.487 does not create an inference that the**
29 **fiduciary abused the fiduciary's discretion.**

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

31 3. A fiduciary shall:

32 (1) Add a receipt to **[sections 469.401 to 469.467 if]**
33 **principal, to the extent neither** the terms of the trust **[or**
34 **the will do not contain a different provision or do not**
35 **give] nor sections 469.399 to 469.487 allocate** the

36 [fiduciary a discretionary power of administration] **receipt**
37 **between income and principal;** and

38 [(4) Shall add a receipt or] **(2)** Charge a
39 disbursement to principal, to the extent [that] **neither** the
40 terms of the trust [and] **nor** sections [469.401] **469.399** to
41 [469.467 do not provide a rule for allocating the receipt
42 or] **469.487 allocate the** disbursement [to or] between
43 [principal and] income **and principal.**

44 [2. In exercising the power to adjust pursuant to
45 section 469.405 or a discretionary power of administration
46 regarding a matter within the scope of sections 469.401 to
47 469.467, whether granted by the terms of a trust, a will, or
48 sections 469.401 to 469.467, a fiduciary shall administer a
49 trust or estate impartially, based on what is fair and
50 reasonable to all of the beneficiaries, except to the extent
51 that the terms of the trust or the will clearly manifest an
52 intent that the fiduciary shall or may favor one or more of
53 the beneficiaries. A determination in accordance with
54 sections 469.401 to 469.467 is presumed to be fair and
55 reasonable to all of the beneficiaries]

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

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

67 **(1) The terms of the trust;**

68 (2) The nature, distribution standards, and expected
69 duration of the trust;

70 (3) The effect of the allocation rules, including
71 specific adjustments between income and principal, under
72 sections 407.413 to 407.461;

73 (4) The desirability of liquidity and regularity of
74 income;

75 (5) The desirability of the preservation and
76 appreciation of principal;

77 (6) The extent to which an asset is used or may be
78 used by a beneficiary;

79 (7) The increase or decrease in the value of principal
80 assets, reasonably determined by the fiduciary;

81 (8) Whether and to what extent the terms of the trust
82 give the fiduciary power to accumulate income or invade
83 principal or prohibit the fiduciary from accumulating income
84 or invading principal;

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

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

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

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

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

7 (2) The fiduciary's exercise or nonexercise of a
8 discretionary power regarding income and principal granted
9 by the terms of the trust or sections 469.399 to 469.487,

10 including the power to adjust under section 469.405, convert
11 an income trust to a unitrust under subdivision (1) of
12 subsection 1 of section 469.475, change the percentage or
13 method used to calculate a unitrust amount under subdivision
14 (2) of subsection 1 of section 469.475, or convert a
15 unitrust to an income trust under subdivision (3) of
16 subsection 1 of section 469.475; or

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

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

23 3. If the court determines that a fiduciary decision
24 was an abuse of the fiduciary's discretion, the court may
25 order a remedy authorized by law, including under section
26 456.10-1001. To place the beneficiaries in the positions
27 the beneficiaries would have occupied if there had not been
28 an abuse of the fiduciary's discretion, the court may order:

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

31 (2) The fiduciary to exercise or refrain from
32 exercising the power to convert an income trust to a
33 unitrust under subdivision (1) of subsection 1 of section
34 469.475, change the percentage or method used to calculate a
35 unitrust amount under subdivision (2) of subsection 1 of
36 section 469.475, or convert a unitrust to an income trust
37 under subdivision (3) of subsection 1 of section 469.475;

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

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

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

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

 469.405. 1. [A trustee may adjust between principal
2 and income to the extent the trustee considers necessary if
3 the trustee invests and manages trust assets as a prudent
4 investor, the terms of the trust describe the amount that
5 may or shall be distributed to a beneficiary by referring to
6 the trust's income, and the trustee determines, after
7 applying subsection 1 of section 469.403, that the trustee
8 is unable to comply with subsection 2 of section 469.403]
9 Except as otherwise provided in the terms of a trust or this
10 section, a fiduciary, in a record, without court approval,
11 may adjust between income and principal if the fiduciary
12 determines the exercise of the power to adjust will assist
13 the fiduciary to administer the trust or estate impartially.

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

18 3. A fiduciary that in good faith exercises or fails
19 to exercise the power to adjust under subsection 1 of this

20 **section is not liable to a person affected by the exercise**
21 **or failure to exercise.**

22 [2.] 4. In deciding whether and to what extent to
23 exercise the power [conferred by] **to adjust under** subsection
24 1 of this section, a [trustee] **fiduciary** shall consider all
25 factors **the fiduciary considers** relevant [to the trust and
26 its beneficiaries], including [the following] **relevant**
27 factors [to the extent relevant:] **in subsection 5 of section**
28 **469.403 and the application of sections 469.423, 469.435,**
29 **and 469.445.**

30 [(1) The nature, purpose and expected duration of the
31 trust;

32 (2) The intent of the settlor;

33 (3) The identity and circumstances of the
34 beneficiaries;

35 (4) The needs for liquidity, regularity of income, and
36 preservation and appreciation of capital;

37 (5) The assets held in the trust, including the extent
38 to which such assets consist of financial assets, interests
39 in closely held enterprises, tangible and intangible
40 personal property, or real property, and the extent to which
41 such assets are used by a beneficiary, and whether such
42 assets were purchased by the trustee or received from the
43 settlor;

44 (6) The net amount allocated to income pursuant to
45 sections 469.401 to 469.467, other than this section, and
46 the increase or decrease in the value of the principal
47 assets, which the trustee may estimate as to assets for
48 which market values are not readily available;

49 (7) Whether and to what extent the terms of the trust
50 give the trustee the power to invade principal or accumulate
51 income, or prohibit the trustee from invading principal or

52 accumulating income, and the extent to which the trustee has
53 exercised a power from time to time to invade principal or
54 accumulate income;

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

58 (9) The anticipated tax consequences of an adjustment.

59 3.] 5. A [trustee may] **fiduciary shall not exercise**
60 **the power under subsection 1 of this section to make an**
61 **adjustment or under section 469.435 to make a determination**
62 **that an allocation is insubstantial if:**

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

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

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

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

82 [(4) From any] (3) **The adjustment or determination**
83 **would reduce an amount that is permanently set aside for a**

84 charitable [purposes] **purpose** under [a will or] the terms of
85 [a] **the** trust [to the extent that the existence of the power
86 to adjust would change the character of the amount], **unless**
87 **both income and principal are** set aside for [federal income,
88 gift or estate tax purposes] **the charitable purpose;**

89 [(5) If] **(4)** Possessing or exercising the power [to
90 make an adjustment causes an individual] **would cause a**
91 **person** to be treated as the owner of all or part of the
92 trust for **federal** income tax purposes[, and the individual
93 would not be treated as the owner if the trustee did not
94 possess the power to make an adjustment];

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

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

103 **(7)** The fiduciary is not an independent person;

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

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

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

114 **(9)** The trust is a unitrust under sections 469.471 to
115 **469.487.**

116 [4.] 6. If [subdivision (5), (6), (7) or (8) of]
117 subsection [3] 5 of this section applies to a [trustee and
118 there is more than one trustee, a cotrustee to whom the
119 provision does] **fiduciary:**

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

127 (2) **If there is no cofiduciary to which subdivisions**
128 **(4) to (7) of subsection 5 of this section do not apply, the**
129 **fiduciary may appoint a cofiduciary to which subdivisions**
130 **(4) to (7) of subsection 5 of this section do not apply,**
131 **which may be a special fiduciary with limited powers, and**
132 **the appointed cofiduciary may exercise the power to adjust**
133 **under subsection 1 of this section, unless the appointment**
134 **of a cofiduciary or the exercise of the power by a**
135 **cofiduciary is not permitted by the terms of the trust or**
136 **law other than under sections 469.399 to 469.487.**

137 [5.] 7. A [trustee] **fiduciary** may release [the entire
138 power conferred by subsection 1 of this section, or may
139 release only] **or delegate to a cofiduciary** the power to
140 adjust [from income to principal or the power to adjust from
141 principal to income if the trustee is uncertain about
142 whether possessing or exercising] **under subsection 1 of this**
143 **section if the fiduciary determines that the fiduciary's**
144 **possession or exercise of the power will or may:**

145 (1) Cause a result described in subdivisions (1) to
146 (6) or subdivision (8) of subsection [3] 5 of this section

147 [,] ; or [if the trustee determines that possessing or
148 exercising the power will or may]

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

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

155 (1) Shall be in a record;

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

159 (a) From income to principal;

160 (b) From principal to income;

161 (c) For specified property; or

162 (d) In specified circumstances;

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

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

170 [6.] 9. Terms of a trust that deny or limit the power
171 [of a trustee] to [make an adjustment] adjust between income
172 and principal [and income] do not affect the application of
173 this section unless [it is clear from] the terms of the
174 trust [that the terms are intended to] expressly deny [the
175 trustee] or limit the power [of adjustment conferred by] to
176 adjust under subsection 1 of this section.

177 10. The exercise of the power to adjust under
178 subsection 1 of this section in any accounting period may

179 apply to the current period, the immediately preceding
180 period, and one or more subsequent periods.

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

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

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

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

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

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

8 [(1)] 2. A fiduciary of an estate or [of a
9 terminating] trust with an income interest that terminates
10 shall determine, under subsection 7 of this section and
11 sections 469.417 to 469.462, the amount of net income and
12 net principal receipts received from property specifically
13 given to a beneficiary [pursuant to the rules in sections
14 469.417 to 469.461 which apply to trustees and the rules in
15 subdivision (5) of this section]. The fiduciary shall
16 distribute the net income and net principal receipts to the
17 beneficiary [who] that is to receive the specific
18 property[;].

19 [(2)] **3.** A fiduciary shall determine the [remaining]
20 **income and** net income of [a decedent's] **an** estate or [a
21 **terminating**] income interest [pursuant to the rules in] **in a**
22 **trust that terminates, other than the amount of net income**
23 **determined under subsection 2 of this section, under**
24 sections 469.417 to [469.461 which apply to trustees]
25 **469.462** and by:

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

28 [(b)] **(2)** Paying from income or principal, in the
29 fiduciary's discretion, fees of attorneys, accountants, and
30 fiduciaries[;], court costs and other expenses of
31 administration[;], and interest on [death] **estate and**
32 **inheritance taxes and other taxes imposed because of the**
33 **decedent's death**, but the fiduciary may pay [those] **the**
34 expenses from income of property passing to a trust for
35 which the fiduciary claims [an] **a federal** estate tax marital
36 or charitable deduction only to the extent [that]:

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

40 (b) **The fiduciary makes an adjustment under subsection**
41 **2 of section 469.462; and**

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

47 (a) **To the extent authorized by the decedent's will,**
48 **the terms of the trust, or applicable law,** debts, funeral
49 expenses, disposition of remains, family allowances, **estate**

50 and [death] inheritance taxes, and other taxes imposed
51 because of the decedent's death; and

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

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

63 4. If a decedent's will, the terms of a trust, or
64 applicable law provides for the payment of interest or the
65 equivalent of interest to a beneficiary that receives a
66 pecuniary amount outright, the fiduciary shall make the
67 payment from net income determined under subsection 3 of
68 this section or from principal to the extent net income is
69 insufficient.

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

79 [(4)] 6. A fiduciary shall distribute [the] net income
80 remaining after [distributions] payments required by
81 [subdivision (3)] subsections 4 and 5 of this section in the

82 manner described in section 469.415 to all other
83 beneficiaries, including a beneficiary [who] that receives a
84 pecuniary amount in trust, even if the beneficiary holds an
85 unqualified power to withdraw assets from the trust or other
86 presently exercisable general power of appointment over the
87 trust[;].

88 [(5)] 7. A fiduciary [may] shall not reduce principal
89 or income receipts from property described in [subdivision
90 (1)] subsection 2 of this section because of a payment
91 described in sections 469.451 and 469.453 to the extent
92 [that] the decedent's will, the terms of the trust, or
93 applicable law requires the fiduciary to make the payment
94 from assets other than the property or to the extent [that]
95 the fiduciary recovers or expects to recover the payment
96 from a third party. The net income and principal receipts
97 from the property [are] shall be determined by including
98 [all of] the amounts the fiduciary receives or pays [with
99 respect to] regarding the property, whether [those amounts]
100 the amount accrued or became due before, on, or after the
101 date of [a] the decedent's death or an income interest's
102 terminating event, and [by] making a reasonable provision
103 for [amounts that the fiduciary believes] an amount the
104 estate or [terminating] income interest may become obligated
105 to pay after the property is distributed.

469.415. 1. [Each] Except to the extent sections
2 469.471 to 469.487 apply for a beneficiary that is a trust,
3 each beneficiary described in subdivision [(4)] (6) of
4 section 469.413 is entitled to receive a [portion] share of
5 the net income equal to the beneficiary's fractional
6 interest in undistributed principal assets, using values as
7 of the distribution date. If a fiduciary makes more than
8 one distribution of assets to beneficiaries to [whom] which

9 this section applies, each beneficiary, including [one who]
10 **a beneficiary that** does not receive part of the
11 distribution, is entitled, as of each distribution date, to
12 **a share of** the net income the fiduciary [has] received after
13 the [date of] **decedent's** death [or], **an income interest's**
14 **other** terminating event, or [earlier] **the preceding**
15 distribution [date but has not distributed as of the current
16 distribution date] **by the fiduciary.**

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

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

25 (2) The beneficiary's fractional interest [in the
26 undistributed principal assets] **under subdivision (1) of**
27 **this subsection** shall be calculated [without regard to
28 property specifically given to a beneficiary and property
29 required to pay pecuniary amounts not in trust];

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

32 (a) On the [basis of the] aggregate value of [those]
33 **the** assets as of the distribution date without reducing the
34 value by any unpaid principal obligation; **and**

35 (b) **Without regard to:**

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

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

40 [(4)] (3) The distribution date [for purposes of this
 41 section] **under subdivision (1) of this subsection** may be the
 42 date as of which the fiduciary calculates the value of the
 43 assets if that date is reasonably near the date on which **the**
 44 assets are [actually] distributed.

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

51 4. **If this section applies to income from an asset**, a
 52 fiduciary may apply the rules in this section[, to the
 53 extent that the fiduciary considers it appropriate,] to net
 54 gain or loss realized **from the disposition of the asset**
 55 after the [date of] **decedent's** death [or], **an income**
 56 **interest's** terminating event, or [earlier] **the preceding**
 57 distribution [date from the disposition of a principal asset
 58 if this section applies to the income from the asset] **by the**
 59 **fiduciary.**

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

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

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

11 (1) [On the date it is transferred to the trust in the
 12 case of] **For** an asset that is transferred to [a] **the** trust

13 during the [transferor's] settlor's life, on the date the
14 asset is transferred;

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

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

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

30 4. An income interest ends on the day before an income
31 beneficiary dies or another terminating event occurs[,] or
32 on the last day of a period during which there is no
33 beneficiary to [whom] which a [trustee] fiduciary may or
34 shall distribute income.

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

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

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

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

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

27 [3.] 4. **A receipt or disbursement is periodic under**
28 **subsections 2 and 3 of this section if:**

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

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

33 5. An item of income or [an] obligation is due **under**
34 **this section** on the date [a payment] **the payer** is required
35 **to make a payment.** If a payment date is not stated, there
36 is no due date [for the purposes of sections 469.401 to
37 469.467].

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

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

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

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

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

8 2. **Except as otherwise provided in subsection 3 of**
9 **this section,** when a mandatory income interest **of a**
10 **beneficiary** ends, the **[trustee] fiduciary** shall pay **[to a**
11 **mandatory income beneficiary who survives that date, or the**
12 **estate of a deceased mandatory income beneficiary whose**
13 **death causes the interest to end,]** the beneficiary's share
14 of the undistributed income that is not disposed of under
15 the terms of the trust **[unless] to the beneficiary or, if**
16 **the beneficiary does not survive the date the interest ends,**
17 **to the beneficiary's estate.**

18 3. **If a beneficiary has an unqualified power to**
19 **[revoke] withdraw** more than five percent of the **value of a**

20 trust immediately before [the] an income interest ends[. In
21 the latter case,]:

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

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

27 [3.] 4. When a [trustee's] fiduciary's obligation to
28 pay a fixed annuity or a fixed fraction of the value of [the
29 trust's] assets ends, the [trustee] fiduciary shall prorate
30 the final payment [if and to the extent] as required [by
31 applicable law to accomplish a purpose of the trust or its
32 settlor relating] to preserve an income tax, gift tax,
33 estate tax, or other tax [requirements] benefit.

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

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

5 (a) Return of capital; or

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

8 (2) "Entity" [means]:

9 (a) A corporation, partnership, limited liability
10 company, regulated investment company, real estate
11 investment trust, common trust fund, or any other
12 organization [in which a trustee has an interest, other than
13 a trust or estate to which section 469.425 applies, a
14 business or activity to which section 469.427 applies, or an
15 asset-backed security to which section 469.449 applies] or
16 arrangement in which a fiduciary owns or holds an interest,
17 whether or not the entity is a taxpayer for federal income
18 tax purposes; and

- 19 (b) The term "entity" does not include:
- 20 a. A trust or estate to which section 469.425 applies;
- 21 b. A business or other activity to which section
- 22 469.427 applies that is not conducted by an entity described
- 23 in paragraph (a) of this subdivision;
- 24 c. An asset-backed security; or
- 25 d. An instrument or arrangement to which section
- 26 469.446 applies;

27 (3) "Entity distribution", a payment or transfer by an

28 entity made to a person in the person's capacity as an owner

29 or holder of an interest in the entity.

30 2. In this section, an attribute or action of an

31 entity includes an attribute or action of any other entity

32 in which the entity owns or holds an interest, including an

33 interest owned or held indirectly through another entity.

34 [2.] 3. Except as otherwise provided in subdivisions

35 (2) to (4) of subsection 4 of this section, a [trustee]

36 fiduciary shall allocate to income:

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

38 3. A trustee shall allocate the following receipts

39 from an entity to principal:

40 (1) Property other than money;

41 (2) Money received in one distribution or a series of

42 related distributions in exchange for part or all of a

43 trust's interest in the entity;

44 (3) Money received in total or partial liquidation of

45 the entity; and

46 (4) Money received from an entity that is]

47 distribution; and

48 (2) Tangible personal property of nominal value

49 received from the entity.

50 4. A fiduciary shall allocate to principal:

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

53 (a) Money; or

54 (b) Tangible personal property of nominal value;

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

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

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

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

68 4. Money is received in partial liquidation:

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

72 (2) If]; or

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

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

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

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

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

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

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

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

109 (3) If neither subdivision (1) nor (2) of this
110 subsection applies, by considering the factors in subsection
111 6 of this section and the information known to the fiduciary
112 or provided to the fiduciary by or on behalf of the entity.

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

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

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

119 (a) The entity distribution; or

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

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

126 (a) The entity's operating income;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

469.425. A [trustee] fiduciary shall allocate to
2 income an amount received as a distribution of income,
3 including a unitrust distribution under sections 469.471 to
4 469.487, from a trust or [an] estate in which the [trust]
5 fiduciary has an interest, other than [a] an interest the

6 **fiduciary** purchased [interest] in a trust that is an
7 **investment entity**, and shall allocate to principal an amount
8 received as a distribution of principal from [such a] **the**
9 trust or estate. If a [trustee] **fiduciary** purchases, or
10 **receives from a settlor**, an interest in a trust that is an
11 investment entity, [or a decedent or donor transfers an
12 interest in such a trust to a trustee,] section 469.423,
13 **469.446**, or 469.449 [shall apply] **applies** to a receipt from
14 the trust.

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

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

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

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

18 [2.] 3. A [trustee who] **fiduciary that** accounts
19 **separately under this section** for a business or other
20 activity:

21 (1) May determine:

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

- 24 a. Working capital[,];
- 25 b. The acquisition or replacement of fixed assets[,];
- 26 and
- 27 c. Other reasonably foreseeable needs of the business
- 28 or **other** activity[,]; and

29 **(b)** The extent to which the remaining net cash

30 receipts are accounted for as principal or income in the

31 [trust's] **fiduciary's** general accounting records[. If a

32 trustee sells assets of the business or other activity,

33 other than in the ordinary course of the business or

34 activity, the trustee] **for the trust;**

35 **(2) May make a determination under subdivision (1) of**

36 **this subsection separately and differently from the**

37 **fiduciary's decisions concerning distributions of income or**

38 **principal; and**

39 **(3) Shall account for the net amount received from the**

40 **sale of an asset of the business or other activity, other**

41 **than a sale in the ordinary course of the business or other**

42 **activity, as principal in the [trust's] fiduciary's general**

43 **accounting records for the trust, to the extent the**

44 **[trustee] fiduciary determines that the net amount received**

45 **is no longer required in the conduct of the business or**

46 **other activity.**

47 **[3.] 4. Activities for which a [trustee may maintain**

48 **separate accounting records] fiduciary may account**

49 **separately under this section include:**

- 50 (1) Retail, manufacturing, service, and other
- 51 traditional business activities;
- 52 (2) Farming;
- 53 (3) Raising and selling livestock and other animals;
- 54 (4) [Management of] **Managing** rental properties;

- 55 (5) **[Extraction of] Extracting** minerals, **water**, and
56 other natural resources;
- 57 (6) **Growing and cutting** timber **[operations]**; **[and]**
- 58 (7) **[Activities] An activity** to which section **469.446**,
59 **469.447**, **or 469.449** applies; **and**
- 60 (8) **Any other business conducted by the fiduciary.**

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

- 3 (1) To the extent not allocated to income **[pursuant**
4 **to] under** sections **[469.401] 469.399** to **[469.467] 469.487**,
5 **[assets] an asset** received from **[a transferor]**:
- 6 (a) **An individual** during the **[transferor's]**
7 **individual's** lifetime**[, a decedent's]**;
- 8 (b) **An estate****[,]**;
- 9 (c) A trust **[with a terminating] on termination of an**
10 **income interest****[,]**; or
- 11 (d) A payer under a contract naming the **[trust or its**
12 **trustee] fiduciary** as beneficiary;
- 13 (2) **Except as otherwise provided in sections 469.423**
14 **to 469.449**, money or other property received from the sale,
15 exchange, liquidation, or change in form of a principal
16 asset**[, including realized profit, subject to sections**
17 **469.423 to 469.467]**;
- 18 (3) **[Amounts] An amount** recovered from **a** third
19 **[parties] party** to reimburse the **[trust] fiduciary** because
20 of **[disbursements] a disbursement** described in **[subdivision**
21 **(7) of]** subsection 1 of section 469.453 or for **[other**
22 **reasons] another reason** to the extent not based on **[the]**
23 loss of income;
- 24 (4) Proceeds of property taken by eminent domain, **[but**
25 **a separate award made] except that proceeds awarded** for
26 **[the] loss of income [with respect to] in** an accounting

27 period [during which] **are income if** a current income
28 beneficiary had a mandatory income interest [is income]
29 **during the period;**

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

33 (6) Other receipts as provided in sections 469.435 to
34 469.449.

469.431. To the extent [that a trustee accounts] a
2 **fiduciary does not account** for [receipts from] **the**
3 **management of** rental property [pursuant to this section] **as**
4 **a business under section 469.427,** the [trustee] **fiduciary**
5 shall allocate to income an amount received as rent of real
6 or personal property, including an amount received for
7 cancellation or renewal of a lease. An amount received as a
8 refundable deposit, including a security deposit or a
9 deposit that is to be applied as rent for future periods[,]:

10 (1) Shall be added to principal and held subject to
11 the terms of the lease [and is not], **except as otherwise**
12 **provided by law other than sections 469.399 to 469.487; and**

13 (2) **Is not allocated to income or** available for
14 distribution to a beneficiary until the [trustee's]
15 **fiduciary's** contractual obligations have been satisfied with
16 respect to that amount.

469.432. 1. **This section does not apply to an**
2 **obligation to which section 469.437, 469.439, 469.441,**
3 **469.443, 469.446, 469.447, or 469.449 applies.**

4 2. **A fiduciary shall allocate to income, without**
5 **provision for amortization of premium,** an amount received as
6 interest[, whether determined at a fixed, variable or
7 floating rate,] on an obligation to pay money to the
8 [trustee] **fiduciary,** including an amount received as

9 consideration for prepaying principal[, shall be allocated
10 to income without any provision for amortization of premium].

11 [2.] 3. A [trustee] **fiduciary** shall allocate to
12 principal an amount received from the sale, redemption, or
13 other disposition of an obligation to pay money to the
14 [trustee more than one year after it is purchased or
15 acquired by the trustee, including an obligation whose
16 purchase price or value when it is acquired is less than its
17 value at maturity. If the obligation matures within one
18 year after it is purchased or acquired by the trustee, an
19 amount received in excess of its purchase price or its value
20 when acquired by the trust shall be allocated to income.

21 3. This section does not apply to an obligation to
22 which section 469.437, 469.439, 469.441, 469.443, 469.447 or
23 469.449 applies] **fiduciary. A fiduciary shall allocate to**
24 **income the increment in value of a bond or other obligation**
25 **for the payment of money bearing no stated interest but**
26 **payable or redeemable, at maturity or another future time,**
27 **in an amount that exceeds the amount in consideration of**
28 **which it was issued.**

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

3 2. Except as otherwise provided in subsection [2] 3 of
4 this section, a [trustee] **fiduciary** shall allocate to
5 principal the proceeds of a life insurance policy or other
6 contract [in which the trust or its trustee is named]
7 **received by the fiduciary** as beneficiary, including a
8 contract that insures [the trust or its trustee] against
9 [loss for] damage to, destruction of, or loss of title to [a
10 trust] **an asset.** The [trustee] **fiduciary** shall allocate
11 dividends on an insurance policy to income [if] **to the**
12 **extent** premiums on the policy are paid from income[,] and to

13 principal [if] to the extent premiums on the policy are paid
14 from principal.

15 [2.] 3. A [trustee] fiduciary shall allocate to income
16 proceeds of a contract that insures the [trustee] fiduciary
17 against loss of:

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

20 (2) Income[,]; or[,]

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

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

469.435. 1. If a [trustee] fiduciary determines that
2 an allocation between income and principal [and income]
3 required by section 469.437, 469.439, 469.441, 469.443 or
4 469.449 is insubstantial, the [trustee] fiduciary may
5 allocate the entire amount to principal, unless [one of the
6 circumstances described in] subsection [3] 5 of section
7 469.405 applies to the allocation. [This power]

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

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

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

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

22 **3. The power to make a determination under subsection**
23 **1 of this section may be:**

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

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

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

3 **(1) "Internal income of a separate fund", the amount**
4 **determined under subsection 2 of this section;**

5 **(2) "Marital trust", a trust:**

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

9 **(b) That qualifies for a marital deduction with**
10 **respect to the settlor's estate under 26 U.S.C. Section**
11 **2056, as amended, because:**

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

15 **b. The trust qualifies for a marital deduction under**
16 **26 U.S.C. Section 2056(b) (5), as amended;**

17 **(3) "Payment", an amount [that is:**

18 **(a) Received or withdrawn from a plan; or**

19 **(b) One of a series of distributions that have been or**
20 **will be received] a fiduciary may receive over a fixed**

21 **number of years or during the life of one or more**

22 **individuals [under any contractual or other arrangement, or**

23 **is a single payment from a plan that the trustee could have**

24 received over a fixed number of years or during the life of
25 one or more individuals] **because of services rendered or**
26 **property transferred to the payer in exchange for future**
27 **amounts the fiduciary may receive. The term "payment"**
28 **includes an amount received in money or property from the**
29 **payer's general assets or from a separate fund created by**
30 **the payer;**

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

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

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

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

72 5. For purposes of this section if the payment is
73 received from a plan that does not maintain a separate
74 account or fund for its participants or account holders,
75 including by way of example and not limitation defined
76 benefit retirement plans and some types of deferred
77 compensation plans, the term "plan income" shall mean four
78 percent of the total present value of the trust's interest
79 in the plan as of the first day of the accounting period,
80 based on reasonable actuarial assumptions as determined by
81 the trustee.

82 6. Notwithstanding subsections 1 to 5 of this section,
83 with respect to a trust where an election to qualify for a
84 marital deduction under Section 2056(b)(7) or Section
85 2523(f) of the Internal Revenue Code of 1986, as amended,
86 has been made, or a trust that qualified for the marital

87 deduction under either Section 2056(b)(5) or Section 2523(e)
88 of the Internal Revenue Code of 1986, as amended, a trustee
89 shall determine the plan income for the accounting period as
90 if the plan were a trust subject to sections 469.401 to
91 469.467. Upon request of the surviving spouse, the trustee
92 shall demand that the person administering the plan
93 distribute the plan income to the trust. The trustee shall
94 allocate a payment from the plan to income to the extent of
95 the plan income and distribute that amount to the surviving
96 spouse. The trustee shall allocate the balance of the
97 payment to principal. Upon request of the surviving spouse,
98 the trustee shall allocate principal to income to the extent
99 the plan income exceeds payments made from the plan to the
100 trust during the accounting period.

101 7. If, to obtain an estate or gift tax marital
102 deduction for a trust, a trustee shall allocate more of a
103 payment to income than provided for by this section, the
104 trustee shall allocate to income the additional amount
105 necessary to obtain the marital deduction.]

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

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

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

114 (2) If the fiduciary cannot determine the internal
115 income of the separate fund under subdivision (1) of this
116 subsection, the internal income of the separate fund is
117 deemed to equal three percent of the value of the separate

118 fund, according to the most recent statement of value
119 preceding the beginning of the accounting period; and

120 (3) If the fiduciary cannot determine the value of the
121 separate fund under subdivision (2) of this subsection, the
122 value of the separate fund is deemed to equal the present
123 value of the expected future payments, as determined under
124 26 U.S.C. Section 7520, as amended, for the month preceding
125 the beginning of the accounting period for which the
126 computation is made.

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

131 4. The fiduciary of a marital trust shall:

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

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

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

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

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

151 5. For a trust, other than a marital trust, of which
152 one or more current income beneficiaries are entitled to a
153 distribution of all the current net income, the fiduciary
154 shall transfer from principal to income the amount by which
155 the internal income of a separate fund during the accounting
156 period exceeds the amount the fiduciary receives from the
157 separate fund during the accounting period.

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

10 2. This section does not [include a payment] apply to
11 a receipt subject to section 469.423, 469.437, [resources
12 subject to section] 469.441, [timber subject to section]
13 469.443, [an activity subject to section] 469.446, 469.447,
14 [an asset subject to section] 469.449, or [any asset for
15 which the trustee establishes a reserve for depreciation
16 pursuant to section] 469.455.

17 [2.] 3. A [trustee] fiduciary shall allocate:

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

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

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

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

 469.441. 1. To the extent [that a trustee accounts
2 for receipts] **a fiduciary does not account for a receipt**
3 from an interest in minerals, **water**, or other natural
4 resources [pursuant to this section] **as a business under**
5 **section 469.427**, the [trustee] **fiduciary** shall allocate
6 [them as follows] **the receipt:**

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

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

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

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

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

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

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

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

27 [(4) If an amount is received] (c) From a working
28 interest or any other interest not provided for in
29 subdivision (1) [,] **or** (2) [or (3)] of this subsection[,]
30 **ninety percent of the net amount received shall be allocated**

31 to principal and the balance to income] or paragraph (a) or
32 (b) of this subdivision.

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

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

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

48 4. If a [trust] **fiduciary** owns or holds an interest in
49 minerals, water, or other natural resources [on] **before**
50 August 28, [2001] **2025**, the [trustee] **fiduciary** may allocate
51 receipts from the interest as provided in [sections 469.401
52 to 469.467] **this section** or in the manner used by the
53 [trustee] **fiduciary** before August 28, [2001] **2025**. If the
54 [trust] **fiduciary** acquires an interest in minerals, water,
55 or other natural resources **on or** after August 28, [2001]
56 **2025**, the [trustee] **fiduciary** shall allocate receipts from
57 the interest as provided in [sections 469.401 to 469.467]
58 **this section**.

469.443. 1. To the extent [that a trustee accounts] a
2 **fiduciary does not account** for receipts from the sale of
3 timber and related products [pursuant to this] **as a business**

4 **under** section 469.427, the [trustee] **fiduciary** shall
5 allocate the net receipts:

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

10 (2) To principal, to the extent [that] the amount of
11 timber [removed] **cut** from the land exceeds the rate of
12 growth of the timber or the net receipts are from the sale
13 of standing timber;

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

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

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

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

34 4. If a [trust] **fiduciary** owns or holds an interest in
35 [timberland on] **land used for growing and cutting timber**

36 **before** August 28, [2001] 2025, the [trustee] **fiduciary** may
37 allocate net receipts from the sale of timber and related
38 products as provided in [sections 469.401 to 469.467] **this**
39 **section** or in the manner used by the [trustee] **fiduciary**
40 before August 28, [2001] 2025. If the [trust] **fiduciary**
41 acquires an interest in [timberland] **land used for growing**
42 **and cutting timber on or** after August 28, [2001] 2025, the
43 [trustee] **fiduciary** shall allocate net receipts from the
44 sale of timber and related products as provided in [sections
45 469.401 to 469.467] **this section.**

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

- 15 (1) Make property productive of income[,];
- 16 (2) Convert property **to property productive of income**
17 within a reasonable time[,]; or
- 18 (3) Exercise the power [conferred by subsection 1 of]
19 **to adjust under** section 469.405.

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

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

2 **469.446. A fiduciary shall allocate receipts from or**
3 **related to a financial instrument or arrangement not**
4 **otherwise addressed by sections 469.399 to 469.487. The**
5 **allocation shall be consistent with sections 469.447 and**
6 **469.449.**

7 469.447. 1. As used in this section, the term
8 "derivative" means a contract [or financial], instrument,
9 other arrangement, or [a] combination of contracts [and
10 financial], instruments, or other arrangements, the value,
11 rights, and obligations of which [gives a trust the right or
12 obligation to participate in some or all changes in the
13 price of a] are, in whole or in part, dependent on or
14 derived from an underlying tangible or intangible asset [or]
15 group of tangible or intangible assets, [or changes in a
16 rate, an] index [of prices], or occurrence of an event. The
17 term "derivative" includes stocks, fixed income securities,
18 and financial instruments and arrangements based on indices,
19 commodities, interest rates, [or other market indicator for
20 an asset or a group of assets] weather-related events, and
21 credit default events.

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

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

26 (1) A [trustee] **fiduciary:**

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

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

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

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

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

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

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

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

469.449. 1. [As used in this section, the phrase
2 "asset-backed security" means an asset whose value is based
3 upon the right it gives the owner to receive distributions
4 from the proceeds of financial assets that provide
5 collateral for the security. The phrase includes an asset
6 that gives the owner the right to receive from the
7 collateral financial assets only the interest or other

8 current return or only the proceeds other than interest or
9 current return. The phrase does not include an asset to
10 which section 469.423 or 469.437 applies.

11 2. If a trust receives a payment from interest or
12 other current return and from other proceeds of the
13 collateral financial assets, the trustee] **Except as**
14 **otherwise provided in subsection 2 of this section, a**
15 **fiduciary** shall allocate to income [the portion of the
16 payment which] **a receipt from or related to an asset-backed**
17 **security, to the extent** the payer identifies **the payment** as
18 being from interest or other current return, and [shall
19 allocate] **to principal** the balance of the [payment to
20 principal] **receipt.**

21 [3.] 2. If a [trust] **fiduciary** receives one or more
22 payments in exchange for **part or all of** the [trust's entire]
23 **fiduciary's** interest in an asset-backed security [in one
24 accounting period, the trustee shall allocate the payments
25 to principal. If a payment is one of a series of payments
26 that will result in the], **including a liquidation or**
27 **redemption** of the [trust's] **fiduciary's** interest in the
28 security [over more than one accounting period,] the
29 [trustee] **fiduciary** shall allocate **to income** ten percent of
30 **receipts from** the [payment to income] **transaction** and [the
31 balance] **ten percent of disbursements made in connection**
32 **with the transaction, and** to principal **the balance of the**
33 **receipts and disbursements.**

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

7 (1) One-half of:

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

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

17 [(3) All of the other] (2) **The balance of the**
18 **disbursements described in subdivision (1) of this section,**
19 **to the extent a fiduciary that is an independent person**
20 **determines that making those disbursements from income would**
21 **be in the interests of the beneficiaries;**

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

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

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

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

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

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

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

16 [(4) Expenses of a] (5) **A payment of an expense of an**
17 **accounting, judicial or nonjudicial** proceeding, or other
18 matter that [concerns] **involves** primarily [an interest in]
19 principal, **including a proceeding to construe the terms of**
20 **the trust or protect property;**

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

25 [(6)] (7) **A payment of an estate[,]** or inheritance
26 [and other transfer taxes] **tax or other tax imposed because**
27 **of the death of a decedent,** including penalties, apportioned
28 to the trust; and

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

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

35 (9) Disbursements] (8) **A payment:**

36 (a) Related to environmental matters, including:

- 37 a. Reclamation[,] ;
38 b. Assessing environmental conditions[,] ;
39 c. Remedying and removing environmental
40 contamination[,] ;
41 d. Monitoring remedial activities and the release of
42 substances[,] ;
43 e. Preventing future releases of substances[,] ;
44 f. Collecting amounts from persons liable or
45 potentially liable for the costs of [those] activities[,]
46 **described in subparagraphs a. to e. of this paragraph;**
47 g. Penalties imposed under environmental laws or
48 regulations [and] ;
49 h. Other [payments made] **actions** to comply with
50 [those] **environmental** laws or regulations[,] ;
51 i. Statutory or common law claims by third parties[,] ;
52 and
53 j. Defending claims based on environmental matters; **and**
54 **(b) For a premium for insurance for matters described**
55 **in paragraph (a) of this subdivision.**

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

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

5 2. A [trustee] **fiduciary** may transfer to principal a
6 reasonable amount of the net cash receipts from a principal

7 asset that is subject to depreciation, but **[may]** **shall** not
8 transfer any amount for depreciation:

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

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

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

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

18 (a) **Under section 469.439 for the asset; or**

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

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

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

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

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

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

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

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

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

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

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

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

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

22 [(3)] (4) A periodic [payments] payment on an
23 obligation secured by a principal asset, to the extent
24 [that] the amount transferred from income to principal for
25 depreciation is less than the periodic [payments] payment;
26 and

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

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

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

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

8 3. **Subject to subsection 4 of this section and**
9 **sections 469.456, 469.457, and 469.462,** a tax required to be
10 paid by a [trustee] **fiduciary** on [the trust's] **a** share of an
11 entity's taxable income **in an accounting period** shall be
12 paid **from:**

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

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

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

469.462. 1. **A fiduciary may make an adjustment**
2 **between income and principal to offset the shifting of**

3 economic interests or tax benefits between current income
4 beneficiaries and successor beneficiaries that arises from:

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

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

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

17 2. If the amount of an estate tax marital or
18 charitable deduction is reduced because a fiduciary deducts
19 an amount paid from principal for income tax purposes
20 instead of deducting it for estate tax purposes and, as a
21 result, estate taxes paid from principal are increased and
22 income taxes paid by the fiduciary or a beneficiary are
23 decreased, the fiduciary shall charge each beneficiary that
24 benefits from the decrease in income tax to reimburse the
25 principal from which the increase in estate tax is paid.
26 The total reimbursement shall equal the increase in the
27 estate tax, to the extent the principal used to pay the
28 increase would have qualified for a marital or charitable
29 deduction but for the payment. The share of the
30 reimbursement for each fiduciary or beneficiary whose income
31 taxes are reduced shall be the same as its share of the
32 total decrease in income tax.

33 3. A fiduciary that charges a beneficiary under
34 subsection 2 of this section may offset the charge by

35 obtaining payment from the beneficiary, withholding an
36 amount from future distributions to the beneficiary, or
37 adopting another method or combination of methods.

469.463. In applying and construing sections [469.401]
2 469.399 to [469.467] 469.487, consideration shall be given
3 to the need to promote uniformity of the law with respect to
4 its subject matter among states that enact it.

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

469.465. If any provision of sections [469.401]
2 469.399 to [469.467] 469.487 or [the] its application [of
3 these sections] to any person or circumstance is held
4 invalid, the invalidity does not affect other provisions or
5 applications of sections [469.401] 469.399 to [469.467]
6 469.487 which can be given effect without the invalid
7 provision or application and to this end, the provisions of
8 sections 469.399 to 469.487 are severable.

469.467. The provisions of sections [469.401] 469.399
2 to [469.467] 469.487 apply to [every] a trust or
3 [decedent's] estate existing or created on or after August
4 28, [2001] 2025, except as otherwise expressly provided in
5 the [will or] terms of the trust or [in] sections [469.401]
6 469.399 to [469.467] 469.487.

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

3 (1) "Applicable value", the amount of the net fair
4 market value of a trust taken into account under section
5 469.483;

6 (2) "Express unitrust", a trust for which, under the
7 terms of the trust without regard to sections 469.471 to
8 469.487, income or net income shall or may be calculated as
9 a unitrust amount;

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

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

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

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

22 (7) "Unitrust policy", a policy described in sections
23 469.479 to 469.487 and adopted under section 469.475;

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

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

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

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

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

13 (b) Prohibit conversion to an income trust; or

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

16 2. Sections 469.471 to 469.487 do not apply to a trust
17 described in 26 U.S.C. Section 170(f)(2)(B), 642(c)(5),
18 664(d), 2702(a)(3)(A)(ii) or (iii), or 2702(b), as amended.

19 3. An income trust to which sections 469.471 to
20 469.487 apply under subdivision (1) of subsection 1 of this
21 section may be converted to a unitrust under sections
22 469.471 to 469.487 regardless of the terms of the trust
23 concerning distributions. Conversion to a unitrust under
24 sections 469.471 to 469.487 does not affect other terms of
25 the trust concerning distributions of income or principal.

26 4. Sections 469.471 to 469.487 apply to an estate only
27 to the extent a trust is a beneficiary of the estate. To
28 the extent of the trust's interest in the estate, the estate
29 may be administered as a unitrust, the administration of the
30 estate as a unitrust may be discontinued, or the percentage
31 or method used to calculate the unitrust amount may be
32 changed, in the same manner as for a trust under sections
33 469.471 to 469.487.

34 5. Sections 469.471 to 469.487 do not create a duty to
35 take or consider action under sections 469.471 to 469.487 or
36 to inform a beneficiary about the applicability of sections
37 469.471 to 469.487.

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

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

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

6 (a) That, in administering the trust, the net income
7 of the trust will be a unitrust amount rather than net
8 income determined without regard to sections 469.471 to
9 469.487; and

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

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

17 (3) Convert a unitrust to an income trust if the
18 fiduciary adopts in a record a determination that, in
19 administering the trust, the net income of the trust will be
20 net income determined without regard to sections 469.471 to
21 469.487 rather than a unitrust amount.

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

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

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

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

32 (a) If an individual, living; or

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

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

37 (a) If an individual, legally competent;

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

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

41 (5) The fiduciary does not receive, by the date
42 specified in the notice under subdivision (5) of subsection
43 4 of section 469.477, an objection in a record to the action
44 proposed under subdivision (2) of this subsection from a
45 person to which the notice under subdivision (2) of this
46 subsection is sent.

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

57 (1) Consented under subsection 3 of section 469.477; or

58 (2) Objected under subdivision (4) of subsection 4 of
59 section 469.477.

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

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

72 6. In deciding whether and how to take an action
73 authorized by subsection 1 of this section, or whether and
74 how to respond to a request by a beneficiary under
75 subsection 5 of this section, a fiduciary shall consider all
76 factors relevant to the trust and the beneficiaries,
77 including relevant factors in subsection 5 of section
78 469.403.

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

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

4 (1) The qualified beneficiaries defined in section
5 456.1-103;

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

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

11 (a) Including a:

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

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

17 (b) Excluding a:

18 a. Power of appointment;

19 b. Power of a beneficiary over the trust, to the
20 extent the exercise or nonexercise of the power affects the
21 beneficial interest of the beneficiary or another
22 beneficiary represented by the beneficiary under sections
23 456.3-301 to 456.3-305 with respect to the exercise or
24 nonexercise of the power; and

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

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

31 3. A person may consent in a record at any time to
32 action proposed under subdivision (2) of subsection 2 of
33 section 469.475. A notice required by subdivision (2) of
34 subsection 2 of section 469.475 need not be sent to a person
35 that consents under this subsection.

36 4. A notice required by subdivision (2) of subsection
37 2 of section 469.475 shall include:

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

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

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

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

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

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

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

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

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

6 2. A unitrust policy shall provide:

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

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

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

14 (a) Mandatory, as provided in subsection 1 of section
15 469.483 and subsection 1 of section 469.485; or

16 (b) Optional, as provided in section 469.481,
17 subsection 2 of section 469.483, subsection 2 of section
18 469.485, and subsection 1 of section 469.487, to the extent
19 the fiduciary elects to adopt such rules.

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

4 (1) A fixed unitrust rate; or

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

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

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

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

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

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

19 (3) A limit on how much the unitrust rate determined
20 under subdivision (2) of subsection 1 of this section may
21 increase over the unitrust rate for the preceding period or
22 a mathematical blend of unitrust rates over a stated number
23 of preceding periods;

24 (4) A limit on how much the unitrust rate determined
25 under subdivision (2) of subsection 1 of this section may
26 decrease below the unitrust rate for the preceding period or

27 a mathematical blend of unitrust rates over a stated number
28 of preceding periods; or

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

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

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

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

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

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

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

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

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

21 (5) Use of:

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

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

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

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

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

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

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

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

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

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

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

5 (1) A calendar year;

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

7 (3) A calendar quarter;

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

10 (5) Another period.

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

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

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

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

20 (2) Using fewer preceding periods under paragraph (a)
21 or (b) of subdivision (5) of subsection 2 of section
22 469.483, paragraph (b) of subdivision (6) of subsection 2 of
23 section 469.483, or paragraph (b) of subdivision (7) of
24 subsection 2 of section 469.483 if:

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

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

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

469.487. 1. A unitrust policy may:

2 (1) Provide methods and standards for:

3 (a) Determining the timing of distributions;

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

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

9 (2) Specify sources and the order of sources,
10 including categories of income for federal income tax
11 purposes, from which distributions of a unitrust amount are
12 paid; or

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

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

17 (1) The unitrust rate established under section
18 469.481 shall not be less than three percent or more than
19 five percent;

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

24 (3) The only period that may be used under section
25 469.485 is a calendar year under subdivision (1) of
26 subsection 1 of section 469.485; and

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

 [469.409. 1. Any claim for breach of a
2 trustee's duty to impartially administer a trust
3 related, directly or indirectly, to an
4 adjustment made by a fiduciary to the allocation
5 between principal and income pursuant to
6 subsection 1 of section 469.405 or any
7 allocation made by the fiduciary pursuant to any
8 authority or discretion specified in subsection
9 1 of section 469.403, unless previously barred
10 by adjudication, consent or other limitation,
11 shall be barred as provided in this section.

12 (1) Any such claim brought by a qualified
13 beneficiary is barred if not asserted in a
14 judicial proceeding commenced within two years
15 after the trustee has sent a report to that
16 qualified beneficiary that adequately discloses
17 the facts constituting the claim.

18 (2) Any such claim brought by a
19 beneficiary (other than a qualified beneficiary)

20 with any interest whatsoever in the trust, no
21 matter how remote or contingent, or whether or
22 not the beneficiary is ascertainable or has the
23 capacity to contract, is barred if not asserted
24 in a judicial proceeding commenced within two
25 years after the first to occur of:

26 (a) The date the trustee sent a report to
27 all qualified beneficiaries that adequately
28 discloses the facts constituting the claim; or

29 (b) The date the trustee sent a report to
30 a person that represents the beneficiary under
31 the provisions of subdivision (2) of subsection
32 2 of this section.

33 2. For purposes of this section the
34 following rules shall apply:

35 (1) A report adequately discloses the
36 facts constituting a claim if it provides
37 sufficient information so that the beneficiary
38 should know of the claim or reasonably should
39 have inquired into its existence;

40 (2) Section 469.402 shall apply in
41 determining whether a beneficiary (including a
42 qualified beneficiary) has received notice for
43 purposes of this section;

44 (3) The determination of the identity of
45 all qualified beneficiaries shall be made on the
46 date the report is deemed to have been sent; and

47 (4) This section does not preclude an
48 action to recover for fraud or misrepresentation
49 related to the report.]

[469.411. 1. (1) If the provisions of
2 this section apply to a trust, the unitrust
3 amount determined for each accounting year of
4 the trust shall be a percentage between three
5 and five percent of the average net fair market
6 value of the trust, as of the first day of the
7 trust's current accounting year. The percentage
8 applicable to a trust shall be that percentage
9 specified by the terms of the governing
10 instrument or by the election made in accordance
11 with subdivision (2) of subsection 5 of this
12 section.]

13 (2) The unitrust amount for the current
14 accounting year computed pursuant to this
15 section shall be proportionately reduced for any
16 distributions, in whole or in part, other than
17 distributions of the unitrust amount, and for
18 any payments of expenses, including debts,
19 disbursements and taxes, from the trust within a
20 current accounting year that the trustee
21 determines to be material and substantial, and
22 shall be proportionately increased for the
23 receipt, other than a receipt that represents a
24 return on investment, of any additional property
25 into the trust within a current accounting year.

26 (3) For purposes of this section, the net
27 fair market values of the assets held in the
28 trust on the first business day of a prior
29 accounting quarter shall be adjusted to reflect
30 any reduction, in the case of a distribution or
31 payment, or increase, in the case of a receipt,
32 for the prior accounting year pursuant to
33 subdivision (1) of this subsection, as if the
34 distribution, payment or receipt had occurred on
35 the first day of the prior accounting year.

36 (4) In the case of a short accounting
37 period, the trustee shall prorate the unitrust
38 amount on a daily basis.

39 (5) In the case where the net fair market
40 value of an asset held in the trust has been
41 incorrectly determined in any quarter, the
42 unitrust amount shall be increased in the case
43 of an undervaluation, or be decreased in the
44 case of an overvaluation, by an amount equal to
45 the difference between the unitrust amount
46 determined based on the correct valuation of the
47 asset and the unitrust amount originally
48 determined.

49 2. As used in this section, the following
50 terms mean:

51 (1) "Average net fair market value", a
52 rolling average of the fair market value of the
53 assets held in the trust on the first business
54 day of the lessor of the number of accounting
55 quarters of the trust from the date of inception
56 of the trust to the determination of the trust's

57 average net fair market value, or twelve
58 accounting quarters of the trust, regardless of
59 whether this section applied to the
60 ascertainment of net income for all valuation
61 quarters;

62 (2) "Current accounting year", the
63 accounting period of the trust for which the
64 unitrust amount is being determined.

65 3. In determining the average net fair
66 market value of the assets held in the trust,
67 there shall not be included the value of:

68 (1) Any residential property or any
69 tangible personal property that, as of the first
70 business day of the current valuation year, one
71 or more income beneficiaries of the trust have
72 or had the right to occupy, or have or had the
73 right to possess or control, other than in a
74 capacity as trustee, and instead the right of
75 occupancy or the right to possession or control
76 shall be deemed to be the unitrust amount with
77 respect to the residential property or the
78 tangible personal property; or

79 (2) Any asset specifically given to a
80 beneficiary under the terms of the trust and the
81 return on investment on that asset, which return
82 on investment shall be distributable to the
83 beneficiary.

84 4. In determining the average net fair
85 market value of the assets held in the trust
86 pursuant to subsection 1 of this section, the
87 trustee shall, not less often than annually,
88 determine the fair market value of each asset of
89 the trust that consists primarily of real
90 property or other property that is not traded on
91 a regular basis in an active market by appraisal
92 or other reasonable method or estimate, and that
93 determination, if made reasonably and in good
94 faith, shall be conclusive as to all persons
95 interested in the trust. Any claim based on a
96 determination made pursuant to this subsection
97 shall be barred if not asserted in a judicial
98 proceeding brought by any beneficiary with any
99 interest whatsoever in the trust within two
100 years after the trustee has sent a report to all

101 qualified beneficiaries that adequately
102 discloses the facts constituting the claim. The
103 rules set forth in subsection 2 of section
104 469.409 shall apply to the barring of claims
105 pursuant to this subsection.

106 5. This section shall apply to the
107 following trusts:

108 (1) Any trust created after August 28,
109 2001, with respect to which the terms of the
110 trust clearly manifest an intent that this
111 section apply;

112 (2) Any trust created under an instrument
113 that became irrevocable on, before, or after
114 August 28, 2001, if the trustee, in the
115 trustee's discretion, elects to have this
116 section apply unless the instrument creating the
117 trust specifically prohibits an election under
118 this subdivision. The trustee shall deliver
119 notice to all qualified beneficiaries and the
120 settlor of the trust, if he or she is then
121 living, of the trustee's intent to make such an
122 election at least sixty days before making that
123 election. The trustee shall have sole authority
124 to make the election. Section 469.402 shall
125 apply for all purposes of this subdivision. An
126 action or order by any court shall not be
127 required. The election shall be made by a
128 signed writing delivered to the settlor of the
129 trust, if he or she is then living, and to all
130 qualified beneficiaries. The election is
131 irrevocable, unless revoked by order of the
132 court having jurisdiction of the trust. The
133 election may specify the percentage used to
134 determine the unitrust amount pursuant to this
135 section, provided that such percentage is
136 between three and five percent, or if no
137 percentage is specified, then that percentage
138 shall be three percent. In making an election
139 pursuant to this subsection, the trustee shall
140 be subject to the same limitations and
141 conditions as apply to an adjustment between
142 income and principal pursuant to subsections 3
143 and 4 of section 469.405; and

144 (3) No action of any kind based on an
145 election made by a trustee pursuant to
146 subdivision (2) of this subsection shall be
147 brought against the trustee by any beneficiary
148 of that trust three years from the effective
149 date of that election.

150 6. (1) Once the provisions of this
151 section become applicable to a trust, the net
152 income of the trust shall be the unitrust amount.

153 (2) Unless otherwise provided by the
154 governing instrument, the unitrust amount
155 distributed each year shall be paid from the
156 following sources for that year up to the full
157 value of the unitrust amount in the following
158 order:

159 (a) Net income as determined if the trust
160 were not a unitrust;

161 (b) Other ordinary income as determined
162 for federal income tax purposes;

163 (c) Assets of the trust principal for
164 which there is a readily available market value;
165 and

166 (d) Other trust principal.

167 (3) Additionally, the trustee may allocate
168 to trust income for each taxable year of the
169 trust, or portion thereof:

170 (a) Net short-term capital gain described
171 in the Internal Revenue Code, 26 U.S.C. Section
172 1222(5), for such year, or portion thereof, but
173 only to the extent that the amount so allocated
174 together with all other amounts to trust income,
175 as determined under the provisions of this
176 chapter without regard to this section, for such
177 year, or portion thereof, does not exceed the
178 unitrust amount for such year, or portion
179 thereof;

180 (b) Net long-term capital gain described
181 in the Internal Revenue Code, 26 U.S.C. Section
182 1222(7), for such year, or portion thereof, but
183 only to the extent that the amount so allocated
184 together with all other amounts, including
185 amounts described in paragraph (a) of this
186 subdivision, allocated to trust income for such
187 year, or portion thereof, does not exceed the

188 unitrust amount for such year, or portion
189 thereof.

190 7. A trust with respect to which this
191 section applies on August 28, 2011, may
192 calculate the unitrust amount in accordance with
193 the provisions of this section, as it existed
194 either before or after such date, as the trustee
195 of such trust shall determine in a writing kept
196 with the records of the trust in the trustee's
197 discretion.]

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

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

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

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

19 2. If the amount of an estate tax marital
20 deduction or charitable contribution deduction
21 is reduced because a fiduciary deducts an amount
22 paid from principal for income tax purposes
23 instead of deducting it for estate tax purposes,
24 and as a result estate taxes paid from principal
25 are increased and income taxes paid by an
26 estate, trust or beneficiary are decreased, each
27 estate, trust or beneficiary that benefits from
28 the decrease in income tax shall reimburse the
29 principal from which the increase in estate tax
30 is paid. The total reimbursement shall equal
31 the increase in the estate tax to the extent
32 that the principal used to pay the increase
33 would have qualified for a marital deduction or

34 charitable contribution deduction but for the
35 payment. The proportionate share of the
36 reimbursement for each estate, trust or
37 beneficiary whose income taxes are reduced shall
38 be the same as its proportionate share of the
39 total decrease in income tax. An estate or
40 trust shall reimburse principal from income.]

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