

SENATE BILL NO. 2169

Introduced by

Judiciary Committee

(At the request of the Commission on Uniform State Laws)

1 A BILL for an Act to create and enact chapter 59-04.2 of the North Dakota Century Code,
2 relating to the Uniform Principal and Income Act (1997); and to repeal chapter 59-04.1 of the
3 North Dakota Century Code, relating to the Uniform Principal and Income Act.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** Chapter 59-04.2 of the North Dakota Century Code is created and
6 enacted as follows:

7 **59-04.2-01. (102) Definitions.** In this chapter:

- 8 1. "Accounting period" means a calendar year unless another twelve-month period is
9 selected by a fiduciary. The term includes a portion of a calendar year or other
10 twelve-month period that begins when an income interest begins or ends when an
11 income interest ends.
- 12 2. "Beneficiary" includes, in the case of a decedent's estate, an heir, legatee, and
13 devisee and, in the case of a trust, an income beneficiary and a remainder
14 beneficiary.
- 15 3. "Fiduciary" means a personal representative or a trustee. The term includes an
16 executor, administrator, successor personal representative, special administrator,
17 and a person performing substantially the same function.
- 18 4. "Income" means money or property that a fiduciary receives as current return from
19 a principal asset. The term includes a portion of receipts from a sale, exchange, or
20 liquidation of a principal asset, to the extent provided in sections 59-04.2-09
21 through 59-04.2-23.
- 22 5. "Income beneficiary" means a person to whom net income of a trust is or may be
23 payable.

- 1 6. "Income interest" means the right of an income beneficiary to receive all or part of
2 net income, whether the terms of the trust require it to be distributed or authorize it
3 to be distributed in the trustee's discretion.
- 4 7. "Mandatory income interest" means the right of an income beneficiary to receive
5 net income that the terms of the trust require the fiduciary to distribute.
- 6 8. "Net income" means the total receipts allocated to income during an accounting
7 period minus the disbursements made from income during the period, plus or
8 minus transfers under this chapter to or from income during the period.
- 9 9. "Principal" means property held in trust for distribution to a remainder beneficiary
10 when the trust terminates.
- 11 10. "Remainder beneficiary" means a person entitled to receive principal when an
12 income interest ends.
- 13 11. "Terms of a trust" means the manifestation of the intent of a settlor or decedent
14 with respect to the trust, expressed in a manner that admits of its proof in a judicial
15 proceeding, whether by written or spoken words or by conduct.
- 16 12. "Trustee" includes an original, additional, or successor trustee, whether or not
17 appointed or confirmed by a court.

18 **59-04.2-02. (103) Fiduciary duties - General principles.**

- 19 1. In allocating receipts and disbursements to or between principal and income, and
20 with respect to any matter within the scope of sections 59-04.2-04 through
21 59-04.2-08, a fiduciary:
- 22 a. Shall administer a trust or estate in accordance with the terms of the trust or
23 the will, even if there is a different provision in this chapter.
- 24 b. May administer a trust or estate by the exercise of a discretionary power of
25 administration given to the fiduciary by the terms of the trust or the will, even if
26 the exercise of the power produces a result different from a result required or
27 permitted by this chapter.
- 28 c. Shall administer a trust or estate in accordance with this chapter if the terms
29 of the trust or the will do not contain a different provision or do not give the
30 fiduciary a discretionary power of administration.

1 d. Shall add a receipt or charge a disbursement to principal to the extent that the
2 terms of the trust and this chapter do not provide a rule for allocating the
3 receipt or disbursement to or between principal and income.

4 2. In exercising the power to adjust under subsection 1 of section 59-04.2-03 or a
5 discretionary power of administration regarding a matter within the scope of this
6 chapter, whether granted by the terms of a trust, a will, or this chapter, a fiduciary
7 shall administer a trust or estate impartially, based on what is fair and reasonable
8 to all of the beneficiaries, except to the extent that the terms of the trust or the will
9 clearly manifest an intention that the fiduciary shall or may favor one or more of the
10 beneficiaries. A determination in accordance with this chapter is presumed to be
11 fair and reasonable to all of the beneficiaries.

12 **59-04.2-03. (104) Trustee's power to adjust.**

13 1. A trustee may adjust between principal and income to the extent the trustee
14 considers necessary if the trustee invests and manages trust assets as a prudent
15 investor, the terms of the trust describe the amount that may or must be distributed
16 to a beneficiary by referring to the trust's income, and the trustee determines, after
17 applying the rules in subsection 1 of section 59-04.2-02, that the trustee is unable
18 to comply with subsection 2 of section 59-04.2-02.

19 2. In deciding whether and to what extent to exercise the power conferred by
20 subsection 1, a trustee shall consider all factors relevant to the trust and its
21 beneficiaries, including the following factors to the extent they are relevant:

- 22 a. The nature, purpose, and expected duration of the trust;
- 23 b. The intent of the settlor;
- 24 c. The identity and circumstances of the beneficiaries;
- 25 d. The needs for liquidity, regularity of income, and preservation and
26 appreciation of capital;
- 27 e. The assets held in the trust; the extent to which they consist of financial
28 assets, interests in closely held enterprises, tangible and intangible personal
29 property, or real property; the extent to which an asset is used by a
30 beneficiary; and whether an asset was purchased by the trustee or received
31 from the settlor;

- 1 f. The net amount allocated to income under the other sections of this chapter
2 and the increase or decrease in the value of the principal assets, which the
3 trustee may estimate as to assets for which market values are not readily
4 available;
- 5 g. Whether and to what extent the terms of the trust give the trustee the power to
6 invade principal or accumulate income or prohibit the trustee from invading
7 principal or accumulating income, and the extent to which the trustee has
8 exercised a power from time to time to invade principal or accumulate income;
- 9 h. The actual and anticipated effect of economic conditions on principal and
10 income and effects of inflation and deflation; and
- 11 i. The anticipated tax consequences of an adjustment.
- 12 3. A trustee may not make an adjustment:
- 13 a. That diminishes the income interest in a trust that requires all of the income to
14 be paid at least annually to a spouse and for which an estate tax or gift tax
15 marital deduction would be allowed, in whole or in part, if the trustee did not
16 have the power to make the adjustment.
- 17 b. That reduces the actuarial value of the income interest in a trust to which a
18 person transfers property with the intent to qualify for a gift tax exclusion.
- 19 c. That changes the amount payable to a beneficiary as a fixed annuity or a
20 fixed fraction of the value of the trust assets.
- 21 d. From any amount that is permanently set aside for charitable purposes under
22 a will or the terms of a trust unless both income and principal are so set aside.
- 23 e. If possessing or exercising the power to make an adjustment causes an
24 individual to be treated as the owner of all or part of the trust for income tax
25 purposes, and the individual would not be treated as the owner if the trustee
26 did not possess the power to make an adjustment.
- 27 f. If possessing or exercising the power to make an adjustment causes all or
28 part of the trust assets to be included for estate tax purposes in the estate of
29 an individual who has the power to remove a trustee or appoint a trustee, or
30 both, and the assets would not be included in the estate of the individual if the
31 trustee did not possess the power to make an adjustment.

- 1 g. If the trustee is a beneficiary of the trust.
- 2 h. If the trustee is not a beneficiary, but the adjustment would benefit the trustee
- 3 directly or indirectly.
- 4 4. If subdivision e, f, g, or h of subsection 3 applies to a trustee and there is more
- 5 than one trustee, a cotrustee to whom the provision does not apply may make the
- 6 adjustment unless the exercise of the power by the remaining trustee or trustees is
- 7 not permitted by the terms of the trust.
- 8 5. A trustee may release the entire power conferred by subsection 1 or may release
- 9 only the power to adjust from income to principal or the power to adjust from
- 10 principal to income if the trustee is uncertain about whether possessing or
- 11 exercising the power will cause a result described in subdivisions a through f or
- 12 subdivision h of subsection 3 or if the trustee determines that possessing or
- 13 exercising the power will or may deprive the trust of a tax benefit or impose a tax
- 14 burden not described in subsection 3. The release may be permanent or for a
- 15 specified period, including a period measured by the life of an individual.
- 16 6. Terms of a trust that limit the power of a trustee to make an adjustment between
- 17 principal and income do not affect the application of this section unless it is clear
- 18 from the terms of the trust that the terms are intended to deny the trustee the
- 19 power of adjustment conferred by subsection 1.

20 **59-04.2-04. (201) Determination and distribution of net income.** After a decedent

21 dies, in the case of an estate, or after an income interest in a trust ends, the following rules

22 apply:

- 23 1. A fiduciary of an estate or of a terminating income interest shall determine the
- 24 amount of net income and net principal receipts received from property specifically
- 25 given to a beneficiary under the rules in sections 59-04.2-06 through 59-04.2-29
- 26 which apply to trustees and the rules in subsection 5. The fiduciary shall distribute
- 27 the net income and net principal receipts to the beneficiary who is to receive the
- 28 specific property.
- 29 2. A fiduciary shall determine the remaining net income of a decedent's estate or a
- 30 terminating income interest under the rules in sections 59-04.2-06 through
- 31 59-04.2-29 which apply to trustees and by:

- 1 a. Including in net income all income from property used to discharge liabilities.
- 2 b. Paying from income or principal, in the fiduciary's discretion, fees of attorneys,
- 3 accountants, and fiduciaries; court costs and other expenses of
- 4 administration; and interest on death taxes, but the fiduciary may pay those
- 5 expenses from income of property passing to a trust for which the fiduciary
- 6 claims an estate tax marital or charitable deduction only to the extent that the
- 7 payment of those expenses from income will not cause the reduction or loss
- 8 of the deduction.
- 9 c. Paying from principal all other disbursements made or incurred in connection
- 10 with the settlement of a decedent's estate or the winding up of a terminating
- 11 income interest, including debts, funeral expenses, disposition of remains,
- 12 family allowances, and death taxes and related penalties that are apportioned
- 13 to the estate or terminating income interest by the will, the terms of the trust,
- 14 or applicable law.
- 15 3. A fiduciary shall distribute to a beneficiary who receives a pecuniary amount
- 16 outright the interest or any other amount provided by the will, the terms of the trust,
- 17 or applicable law from net income determined under subsection 2 or from principal
- 18 to the extent that net income is insufficient. If a beneficiary is to receive a
- 19 pecuniary amount outright from a trust after an income interest ends and no
- 20 interest or other amount is provided for by the terms of the trust or applicable law,
- 21 the fiduciary shall distribute the interest or other amount to which the beneficiary
- 22 would be entitled under applicable law if the pecuniary amount were required to be
- 23 paid under a will.
- 24 4. A fiduciary shall distribute the net income remaining after distributions required by
- 25 subsection 3 in the manner described in section 59-04.2-05 to all other
- 26 beneficiaries, including a beneficiary who receives a pecuniary amount in trust,
- 27 even if the beneficiary holds an unqualified power to withdraw assets from the trust
- 28 or other presently exercisable general power of appointment over the trust.
- 29 5. A fiduciary may not reduce principal or income receipts from property described in
- 30 subsection 1 because of a payment described in section 59-04.2-24 or 59-04.2-25
- 31 to the extent that the will, the terms of the trust, or applicable law requires the

1 fiduciary to make the payment from assets other than the property or to the extent
2 that the fiduciary recovers or expects to recover the payment from a third party.
3 The net income and principal receipts from the property are determined by
4 including all of the amounts the fiduciary receives or pays with respect to the
5 property, whether those amounts accrued or became due before, on, or after the
6 date of a decedent's death or an income interest's terminating event, and by
7 making a reasonable provision for amounts that the fiduciary believes the estate or
8 terminating income interest may become obligated to pay after the property is
9 distributed.

10 **59-04.2-05. (202) Distribution to residuary and remainder beneficiaries.**

- 11 1. Each beneficiary described in subsection 4 of section 59-04.2-04 is entitled to
12 receive a portion of the net income equal to the beneficiary's fractional interest in
13 undistributed principal assets, using values as of the distribution date. If a fiduciary
14 makes more than one distribution of assets to beneficiaries to whom this section
15 applies, each beneficiary, including one who does not receive part of the
16 distribution, is entitled, as of each distribution date, to the net income the fiduciary
17 has received after the date of death or terminating event or earlier distribution date
18 but has not distributed as of the current distribution date.
- 19 2. In determining a beneficiary's share of net income, the following rules apply:
- 20 a. The beneficiary is entitled to receive a portion of the net income equal to the
21 beneficiary's fractional interest in the undistributed principal assets
22 immediately before the distribution date, including assets that later may be
23 sold to meet principal obligations.
- 24 b. The beneficiary's fractional interest in the undistributed principal assets must
25 be calculated without regard to property specifically given to a beneficiary and
26 property required to pay pecuniary amounts not in trust.
- 27 c. The beneficiary's fractional interest in the undistributed principal assets must
28 be calculated on the basis of the aggregate value of those assets as of the
29 distribution date without reducing the value by any unpaid principal obligation.

- 1 d. The distribution date for purposes of this section may be the date as of which
2 the fiduciary calculates the value of the assets if that date is reasonably near
3 the date on which assets are actually distributed.
- 4 3. If a fiduciary does not distribute all of the collected but undistributed net income to
5 each person as of a distribution date, the fiduciary shall maintain appropriate
6 records showing the interest of each beneficiary in that net income.
- 7 4. A fiduciary may apply the rules in this section, to the extent that the fiduciary
8 considers it appropriate, to net gain or loss realized after the date of death or
9 terminating event or earlier distribution date from the disposition of a principal asset
10 if this section applies to the income from the asset.

11 **59-04.2-06. (301) When right to income begins and ends.**

- 12 1. An income beneficiary is entitled to net income from the date on which the income
13 interest begins. An income interest begins on the date specified in the terms of the
14 trust or, if no date is specified, on the date an asset becomes subject to a trust
15 or successive income interest.
- 16 2. An asset becomes subject to a trust:
- 17 a. On the date it is transferred to the trust in the case of an asset that is
18 transferred to a trust during the transferor's life;
- 19 b. On the date of a testator's death in the case of an asset that becomes subject
20 to a trust by reason of a will, even if there is an intervening period of
21 administration of the testator's estate; or
- 22 c. On the date of an individual's death in the case of an asset that is transferred
23 to a fiduciary by a third party because of the individual's death.
- 24 3. An asset becomes subject to a successive income interest on the day after the
25 preceding income interest ends, as determined under subsection 4, even if there is
26 an intervening period of administration to wind up the preceding income interest.
- 27 4. An income interest ends on the day before an income beneficiary dies or another
28 terminating event occurs, or on the last day of a period during which there is no
29 beneficiary to whom a trustee may distribute income.

30 **59-04.2-07. (302) Apportionment of receipts and disbursements when decedent**
31 **dies or income interest begins.**

- 1 1. A trustee shall allocate an income receipt or disbursement other than one to which
2 subsection 1 of section 59-04.2-04 applies to principal if its due date occurs before
3 a decedent dies in the case of an estate or before an income interest begins in the
4 case of a trust or successive income interest.
- 5 2. A trustee shall allocate an income receipt or disbursement to income if its due date
6 occurs on or after the date on which a decedent dies or an income interest begins
7 and it is a periodic due date. An income receipt or disbursement must be treated
8 as accruing from day to day if its due date is not periodic or it has no due date.
9 The portion of the receipt or disbursement accruing before the date on which a
10 decedent dies or an income interest begins must be allocated to principal and the
11 balance must be allocated to income.
- 12 3. An item of income or an obligation is due on the date the payer is required to make
13 a payment. If a payment date is not stated, there is no due date for the purposes
14 of this chapter. Distributions to shareholders or other owners from an entity to
15 which section 59-04.2-09 applies are deemed to be due on the date fixed by the
16 entity for determining who is entitled to receive the distribution or, if no date is
17 fixed, on the declaration date for the distribution. A due date is periodic for receipts
18 or disbursements that must be paid at regular intervals under a lease or an
19 obligation to pay interest or if an entity customarily makes distributions at regular
20 intervals.

21 **59-04.2-08. (303) Apportionment when income interest ends.**

- 22 1. In this section, "undistributed income" means net income received before the date
23 on which an income interest ends. The term does not include an item of income or
24 expense that is due or accrued or net income that has been added or is required to
25 be added to principal under the terms of the trust.
- 26 2. When a mandatory income interest ends, the trustee shall pay to a mandatory
27 income beneficiary who survives that date, or the estate of a deceased mandatory
28 income beneficiary whose death causes the interest to end, the beneficiary's share
29 of the undistributed income that is not disposed of under the terms of the trust
30 unless the beneficiary has an unqualified power to revoke more than five percent of
31 the trust immediately before the income interest ends. In the latter case, the

1 undistributed income from the portion of the trust that may be revoked must be
2 added to principal.

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

7 **59-04.2-09. (401) Character of receipts.**

8 1. In this section, "entity" means a corporation, partnership, limited liability company,
9 regulated investment company, real estate investment trust, common trust fund, or
10 any other organization in which a trustee has an interest other than a trust or estate
11 to which section 59-04.2-10 applies, a business or activity to which section
12 59-04.2-11 applies, or an asset-backed security to which section 59-04.2-23
13 applies.

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

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

17 a. Property other than money.

18 b. Money received in one distribution or a series of related distributions in
19 exchange for part or all of a trust's interest in the entity.

20 c. Money received in total or partial liquidation of the entity.

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

24 4. Money is received in partial liquidation:

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

27 b. If the total amount of money and property received in a distribution or series of
28 related distributions is greater than twenty percent of the entity's gross assets,
29 as shown by the entity's yearend financial statements immediately preceding
30 the initial receipt.

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

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

10 **59-04.2-10. (402) Distribution from trust or estate.** A trustee shall allocate to income
11 an amount received as a distribution of income from a trust or an estate in which the trust has
12 an interest other than a purchased interest and shall allocate to principal an amount received as
13 a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust
14 that is an investment entity, or a decedent or donor transfers an interest in such a trust to a
15 trustee, section 59-04.2-09 or 59-04.2-23 applies to a receipt from the trust.

16 **59-04.2-11. (403) Business and other activities conducted by trustee.**

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

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

1 3. Activities for which a trustee may maintain separate accounting records include
2 retail, manufacturing, service, and other traditional business activities; farming;
3 raising and selling livestock and other animals; management of rental properties;
4 extraction of minerals and other natural resources; timber operations; and activities
5 to which section 59-04.2-22 applies.

6 **59-04.2-12. (404) Principal receipts.** A trustee shall allocate to principal:

- 7 1. To the extent not allocated to income under this chapter, assets received from a
8 transferor during the transferor's lifetime, a decedent's estate, a trust with a
9 terminating income interest, or a payer under a contract naming the trust or its
10 trustee as beneficiary.
- 11 2. Money or other property received from the sale, exchange, liquidation, or change in
12 form of a principal asset, including realized profit, subject to sections 59-04.2-09
13 through 59-04.2-23.
- 14 3. Amounts recovered from third parties to reimburse the trust because of
15 disbursements described in subdivision g of subsection 1 of section 59-04.2-25 or
16 for other reasons to the extent not based on the loss of income.
- 17 4. Proceeds of property taken by eminent domain, but a separate award made for the
18 loss of income with respect to an accounting period during which a current income
19 beneficiary had a mandatory income interest is income.
- 20 5. Net income received in an accounting period during which there is no beneficiary to
21 whom a trustee may or must distribute income.
- 22 6. Other receipts as provided in sections 59-04.2-16 through 59-04.2-23.

23 **59-04.2-13. (405) Rental property.** To the extent that a trustee accounts for receipts
24 from rental property pursuant to this section, the trustee shall allocate to income an amount
25 received as rent of real or personal property, including an amount received for cancellation or
26 renewal of a lease. An amount received as a refundable deposit, including a security deposit or
27 a deposit that is to be applied as rent for future periods, must be added to principal and held
28 subject to the terms of the lease and is not available for distribution to a beneficiary until the
29 trustee's contractual obligations have been satisfied with respect to that amount.

30 **59-04.2-14. (406) Obligation to pay money.**

- 1 1. An amount received as interest, whether determined at a fixed, variable, or floating
2 rate, on an obligation to pay money to the trustee, including an amount received as
3 consideration for prepaying principal, must be allocated to income without any
4 provision for amortization of premium.
- 5 2. A trustee shall allocate to principal an amount received from the sale, redemption,
6 or other disposition of an obligation to pay money to the trustee more than one
7 year after it is purchased or acquired by the trustee, including an obligation whose
8 purchase price or value when it is acquired is less than its value at maturity. If the
9 obligation matures within one year after it is purchased or acquired by the trustee,
10 an amount received in excess of its purchase price or its value when acquired by
11 the trust must be allocated to income.
- 12 3. This section does not apply to an obligation to which section 59-04.2-17,
13 59-04.2-18, 59-04.2-19, 59-04.2-20, 59-04.2-22, or 59-04.2-23 applies.

14 **59-04.2-15. (407) Insurance policies and similar contracts.**

- 15 1. Except as otherwise provided in subsection 2, a trustee shall allocate to principal
16 the proceeds of a life insurance policy or other contract in which the trust or its
17 trustee is named as beneficiary, including a contract that insures the trust or its
18 trustee against loss for damage to, destruction of, or loss of title to a trust asset.
19 The trustee shall allocate dividends on an insurance policy to income if the
20 premiums on the policy are paid from income, and to principal if the premiums are
21 paid from principal.
- 22 2. A trustee shall allocate to income proceeds of a contract that insures the trustee
23 against loss of occupancy or other use by an income beneficiary, loss of income,
24 or, subject to section 59-04.2-11, loss of profits from a business.
- 25 3. This section does not apply to a contract to which section 59-04.2-17 applies.

26 **59-04.2-16. (408) Insubstantial allocations not required.** If a trustee determines that
27 an allocation between principal and income required by section 59-04.2-17, 59-04.2-18,
28 59-04.2-19, 59-04.2-20, or 59-04.2-23 is insubstantial, the trustee may allocate the entire
29 amount to principal unless one of the circumstances described in subsection 3 of section
30 59-04.2-03 applies to the allocation. This power may be exercised by a cotrustee in the
31 circumstances described in subsection 4 of section 59-04.2-03 and may be released for the

1 reasons and in the manner described in subsection 5 of section 59-04.2-03. An allocation is
2 presumed to be insubstantial if the amount of the allocation would increase or decrease net
3 income in an accounting period, as determined before the allocation, by less than ten percent,
4 or the value of the asset producing the receipt for which the allocation would be made is less
5 than ten percent of the total value of the trust's assets at the beginning of the accounting period.

6 **59-04.2-17. (409) Deferred compensation, annuities, and similar payments.**

7 1. In this section, "payment" means a payment that a trustee may receive over a fixed
8 number of years or during the life of one or more individuals because of services
9 rendered or property transferred to the payer in exchange for future payments.

10 The term includes a payment made in money or property from the payer's general
11 assets or from a separate fund created by the payer, including a private or
12 commercial annuity, an individual retirement account, and a pension, profit-sharing,
13 stock-bonus, or stock-ownership plan.

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

19 3. If no part of a payment is characterized as interest, a dividend, or an equivalent
20 payment, and all or part of the payment is required to be made, a trustee shall
21 allocate to income ten percent of the part that is required to be made during the
22 accounting period and the balance to principal. If no part of a payment is required
23 to be made or the payment received is the entire amount to which the trustee is
24 entitled, the trustee shall allocate the entire payment to principal. For purposes of
25 this subsection, a payment is not "required to be made" to the extent that it is made
26 because the trustee exercises a right of withdrawal.

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

30 5. This section does not apply to payments to which section 59-04.2-18 applies.

31 **59-04.2-18. (410) Liquidating asset.**

- 1 1. In this section, "liquidating asset" means an asset whose value will diminish or
2 terminate because the asset is expected to produce receipts for a period of limited
3 duration. The term includes a leasehold, patent, copyright, royalty right, and right
4 to receive payments during a period of more than one year under an arrangement
5 that does not provide for the payment of interest on the unpaid balance. The term
6 does not include a payment subject to section 59-04.2-17, resources subject to
7 section 59-04.2-19, timber subject to section 59-04.2-20, an activity subject to
8 section 59-04.2-22, an asset subject to section 59-04.2-23, or any asset for which
9 the trustee establishes a reserve for depreciation under section 59-04.2-26.
- 10 2. A trustee shall allocate to income ten percent of the receipts from a liquidating
11 asset and the balance to principal.

12 **59-04.2-19. (411) Minerals, water, and other natural resources.**

- 13 1. To the extent that a trustee accounts for receipts from an interest in minerals or
14 other natural resources pursuant to this section, the trustee shall allocate them as
15 follows:
- 16 a. If received as nominal delay rental or nominal annual rent on a lease, a
17 receipt must be allocated to income.
- 18 b. If received from a production payment, a receipt must be allocated to income
19 if and to the extent that the agreement creating the production payment
20 provides a factor for interest or its equivalent. The balance must be allocated
21 to principal.
- 22 c. If an amount received as a royalty, shut-in-well payment, take-or-pay
23 payment, bonus, or delay rental is more than nominal, ninety percent must be
24 allocated to principal and the balance to income.
- 25 d. If an amount is received from a working interest or any other interest not
26 provided for in subdivision a, b, or c, ninety percent of the net amount
27 received must be allocated to principal and the balance to income.
- 28 2. An amount received on account of an interest in water that is renewable must be
29 allocated to income. If the water is not renewable, ninety percent of the amount
30 must be allocated to principal and the balance to income.

- 1 3. This chapter applies whether or not a decedent or donor was extracting minerals,
2 water, or other natural resources before the interest became subject to the trust.
- 3 4. If a trust owns an interest in minerals, water, or other natural resources on
4 August 1, 1999, the trustee may allocate receipts from the interest as provided in
5 this chapter or in the manner used by the trustee before August 1, 1999. If the
6 trust acquires an interest in minerals, water, or other natural resources after
7 August 1, 1999, the trustee shall allocate receipts from the interest as provided in
8 this chapter.

9 **59-04.2-20. (412) Timber.**

- 10 1. To the extent that a trustee accounts for receipts from the sale of timber and
11 related products pursuant to this section, the trustee shall allocate the net receipts:
- 12 a. To income to the extent that the amount of timber removed from the land does
13 not exceed the rate of growth of the timber during the accounting periods in
14 which a beneficiary has a mandatory income interest;
- 15 b. To principal to the extent that the amount of timber removed from the land
16 exceeds the rate of growth of the timber or the net receipts are from the sale
17 of standing timber;
- 18 c. To or between income and principal if the net receipts are from the lease of
19 timberland or from a contract to cut timber from land owned by a trust, by
20 determining the amount of timber removed from the land under the lease or
21 contract and applying the rules in subdivisions a and b; or
- 22 d. To principal to the extent that advance payments, bonuses, and other
23 payments are not allocated pursuant to subdivision a, b, or c.
- 24 2. In determining net receipts to be allocated pursuant to subsection 1, a trustee shall
25 deduct and transfer to principal a reasonable amount for depletion.
- 26 3. This chapter applies whether or not a decedent or transferor was harvesting timber
27 from the property before it became subject to the trust.
- 28 4. If a trust owns an interest in timberland on August 1, 1999, the trustee may allocate
29 net receipts from the sale of timber and related products as provided in this chapter
30 or in the manner used by the trustee before August 1, 1999. If the trust acquires

1 an interest in timberland after August 1, 1999, the trustee shall allocate net receipts
2 from the sale of timber and related products as provided in this chapter.

3 **59-04.2-21. (413) Property not productive of income.**

4 1. If a marital deduction is allowed for all or part of a trust whose assets consist
5 substantially of property that does not provide the spouse with sufficient income
6 from or use of the trust assets, and if the amounts that the trustee transfers from
7 principal to income under section 59-04.2-03 and distributes to the spouse from
8 principal pursuant to the terms of the trust are insufficient to provide the spouse
9 with the beneficial enjoyment required to obtain the marital deduction, the spouse
10 may require the trustee to make property productive of income, convert property
11 within a reasonable time, or exercise the power conferred by subsection 1 of
12 section 59-04.2-03. The trustee may decide which action or combination of actions
13 to take.

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

17 **59-04.2-22. (414) Derivatives and options.**

18 1. In this section, "derivative" means a contract or financial instrument or a
19 combination of contracts and financial instruments which gives a trust the right or
20 obligation to participate in some or all changes in the price of a tangible or
21 intangible asset or group of assets, or changes in a rate, an index of prices or
22 rates, or other market indicator for an asset or a group of assets.

23 2. To the extent that a trustee does not account under section 59-04.2-11 for
24 transactions in derivatives, the trustee shall allocate to principal receipts from and
25 disbursements made in connection with those transactions.

26 3. If a trustee grants an option to buy property from the trust, whether or not the trust
27 owns the property when the option is granted, grants an option that permits
28 another person to sell property to the trust, or acquires an option to buy property
29 for the trust or an option to sell an asset owned by the trust, and the trustee or
30 other owner of the asset is required to deliver the asset if the option is exercised,
31 an amount received for granting the option must be allocated to principal. An

1 amount paid to acquire the option must be paid from principal. A gain or loss
2 realized upon the exercise of an option, including an option granted to a settlor of
3 the trust for services rendered, must be allocated to principal.

4 **59-04.2-23. (415) Asset-backed securities.**

- 5 1. In this section, "asset-backed security" means an asset whose value is based upon
6 the right it gives the owner to receive distributions from the proceeds of financial
7 assets that provide collateral for the security. The term includes an asset that
8 gives the owner the right to receive from the collateral financial assets only the
9 interest or other current return or only the proceeds other than interest or current
10 return. The term does not include an asset to which section 59-04.2-09 or
11 59-04.2-17 applies.
- 12 2. If a trust receives a payment from interest or other current return and from other
13 proceeds of the collateral financial assets, the trustee shall allocate to income the
14 portion of the payment which the payer identifies as being from interest or other
15 current return and shall allocate the balance of the payment to principal.
- 16 3. If a trust receives one or more payments in exchange for the trust's entire interest
17 in an asset-backed security in one accounting period, the trustee shall allocate the
18 payments to principal. If a payment is one of a series of payments that will result in
19 the liquidation of the trust's interest in the security over more than one accounting
20 period, the trustee shall allocate ten percent of the payment to income and the
21 balance to principal.

22 **59-04.2-24. (501) Disbursements from income.** A trustee shall make the following
23 disbursements from income to the extent that they are not disbursements to which subdivision b
24 or c of subsection 2 of section 59-04.2-04 applies:

- 25 1. One-half of the regular compensation of the trustee and of any person providing
26 investment advisory or custodial services to the trustee.
- 27 2. One-half of all expenses for accountings, judicial proceedings, or other matters that
28 involve both the income and remainder interests.
- 29 3. All of the other ordinary expenses incurred in connection with the administration,
30 management, or preservation of trust property and the distribution of income,
31 including interest, ordinary repairs, regularly recurring taxes assessed against

1 principal, and expenses of a proceeding or other matter that concerns primarily the
2 income interest.

3 4. Recurring premiums on insurance covering the loss of a principal asset or the loss
4 of income from or use of the asset.

5 **59-04.2-25. (502) Disbursements from principal.**

6 1. A trustee shall make the following disbursements from principal:

7 a. The remaining one-half of the disbursements described in subsections 1 and
8 2 of section 59-04.2-24;

9 b. All of the trustee's compensation calculated on principal as a fee for
10 acceptance, distribution, or termination, and disbursements made to prepare
11 property for sale;

12 c. Payments on the principal of a trust debt;

13 d. Expenses of a proceeding that concerns primarily principal, including a
14 proceeding to construe the trust or to protect the trust or its property;

15 e. Premiums paid on a policy of insurance not described in subsection 4 of
16 section 59-04.2-24 of which the trust is the owner and beneficiary;

17 f. Estate, inheritance, and other transfer taxes, including penalties, apportioned
18 to the trust; and

19 g. Disbursements related to environmental matters, including reclamation,
20 assessing environmental conditions, remedying and removing environmental
21 contamination, monitoring remedial activities and the release of substances,
22 preventing future releases of substances, collecting amounts from persons
23 liable or potentially liable for the costs of those activities, penalties imposed
24 under environmental laws or regulations and other payments made to comply
25 with those laws or regulations, statutory or common law claims by third
26 parties, and defending claims based on environmental matters.

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

31 **59-04.2-26. (503) Transfers from income to principal for depreciation.**

- 1 1. In this section, "depreciation" means a reduction in value due to wear, tear, decay,
2 corrosion, or gradual obsolescence of a fixed asset having a useful life of more
3 than one year.
- 4 2. A trustee may transfer to principal a reasonable amount of the net cash receipts
5 from a principal asset that is subject to depreciation, but may not transfer any
6 amount for depreciation:
 - 7 a. Of that portion of real property used or available for use by a beneficiary as a
8 residence or of tangible personal property held or made available for the
9 personal use or enjoyment of a beneficiary;
 - 10 b. During the administration of a decedent's estate; or
 - 11 c. Under this section if the trustee is accounting under section 59-04.2-11 for the
12 business or activity in which the asset is used.
- 13 3. An amount transferred to principal need not be held as a separate fund.

14 **59-04.2-27. (504) Transfers from income to reimburse principal.**

- 15 1. If a trustee makes or expects to make a principal disbursement described in this
16 section, the trustee may transfer an appropriate amount from income to principal in
17 one or more accounting periods to reimburse principal or to provide a reserve for
18 future principal disbursements.
- 19 2. Principal disbursements to which subsection 1 applies include the following, but
20 only to the extent that the trustee has not been and does not expect to be
21 reimbursed by a third party:
 - 22 a. An amount chargeable to income but paid from principal because it is
23 unusually large, including extraordinary repairs;
 - 24 b. A capital improvement to a principal asset, whether in the form of changes to
25 an existing asset or the construction of a new asset, including special
26 assessments;
 - 27 c. Disbursements made to prepare property for rental, including tenant
28 allowances, leasehold improvements, and broker's commissions;
 - 29 d. Periodic payments on an obligation secured by a principal asset to the extent
30 that the amount transferred from income to principal for depreciation is less
31 than the periodic payments; and

- 1 e. Disbursements described in subdivision g of subsection 1 of section
2 59-04.2-25.
- 3 3. If the asset whose ownership gives rise to the disbursements becomes subject to a
4 successive income interest after an income interest ends, a trustee may continue
5 to transfer amounts from income to principal as provided in subsection 1.

6 **59-04.2-28. (505) Income taxes.**

- 7 1. A tax required to be paid by a trustee based on receipts allocated to income must
8 be paid from income.
- 9 2. A tax required to be paid by a trustee based on receipts allocated to principal must
10 be paid from principal, even if the tax is called an income tax by the taxing
11 authority.
- 12 3. A tax required to be paid by a trustee on the trust's share of an entity's taxable
13 income must be paid proportionately:
- 14 a. From income to the extent that receipts from the entity are allocated to
15 income.
- 16 b. From principal to the extent that:
- 17 (1) Receipts from the entity are allocated to principal; and
- 18 (2) The trust's share of the entity's taxable income exceeds the total
19 receipts described in subdivision a and paragraph 1 of subdivision b.
- 20 4. For purposes of this section, receipts allocated to principal or income must be
21 reduced by the amount distributed to a beneficiary from principal or income for
22 which the trust receives a deduction in calculating the tax.

23 **59-04.2-29. (506) Adjustments between principal and income because of taxes.**

- 24 1. A fiduciary may make adjustments between principal and income to offset the
25 shifting of economic interests or tax benefits between income beneficiaries and
26 remainder beneficiaries which arise from:
- 27 a. Elections and decisions, other than those described in subsection 2, that the
28 fiduciary makes from time to time regarding tax matters;
- 29 b. An income tax or any other tax that is imposed upon the fiduciary or a
30 beneficiary as a result of a transaction involving or a distribution from the
31 estate or trust; or

- 1 c. The ownership by an estate or trust of an interest in an entity whose taxable
2 income, whether or not distributed, is includable in the taxable income of the
3 estate, trust, or a beneficiary.
- 4 2. If the amount of an estate tax marital deduction or charitable contribution deduction
5 is reduced because a fiduciary deducts an amount paid from principal for income
6 tax purposes instead of deducting it for estate tax purposes, and as a result estate
7 taxes paid from principal are increased and income taxes paid by an estate, trust,
8 or beneficiary are decreased, each estate, trust, or beneficiary that benefits from
9 the decrease in income tax shall reimburse the principal from which the increase in
10 estate tax is paid. The total reimbursement must equal the increase in the estate
11 tax to the extent that the principal used to pay the increase would have qualified for
12 a marital deduction or charitable contribution deduction but for the payment. The
13 proportionate share of the reimbursement for each estate, trust, or beneficiary
14 whose income taxes are reduced must be the same as its proportionate share of
15 the total decrease in income tax. An estate or trust shall reimburse principal from
16 income.

17 **59-04.2-30. Certain charitable remainder unitrusts.**

- 18 1. Notwithstanding any other provision of this chapter, unless the trust instrument
19 directs otherwise, an increase in the value of the obligations described in this
20 subsection owned by a charitable remainder unitrust of the type authorized in
21 section 664(d)(3) of the Internal Revenue Code [26 U.S.C. 664(d)(3)] or its
22 successor provisions is distributable as income when it becomes available for
23 distribution:
- 24 a. A zero coupon bond;
- 25 b. An annuity contract before annuitization;
- 26 c. A life insurance contract before the death of the insured;
- 27 d. An interest in a common trust fund as defined in section 584 of the Internal
28 Revenue Code [26 U.S.C. 584] or its successor provisions;
- 29 e. An interest in a partnership as defined in section 7701 of the Internal Revenue
30 Code [26 U.S.C. 7701] or its successor provisions; and

- 1 f. Any other obligation for the payment of money that is payable at a future time
2 in accordance with a fixed, variable, or discretionary schedule of appreciation
3 in excess of the price at which it was issued.
- 4 2. The increase in value of the obligations described in subsection 1 is distributable to
5 the beneficiary who was the income beneficiary at the time of the increase.
- 6 3. For purposes of this section, the increase in value of an obligation described in
7 subsection 1 is available for distribution only when the trustee receives cash on
8 account of the obligation. If the obligation is surrendered or liquidated partially, the
9 cash available must be attributed first to the increase.

10 **SECTION 2. REPEAL.** Chapter 59-04.1 of the North Dakota Century Code is
11 repealed.