

TRUSTS, USES, AND POWERS

CHAPTER 541

S.B. No. 392
(Meschke)

REVISED UNIFORM PRINCIPAL AND INCOME ACT

AN ACT

To adopt the Revised Uniform Principal and Income Act.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

Section 1. Definitions.) As used in this Act:

1. "Income beneficiary" means the person to whom income is presently payable or for whom it is accumulated for distribution as income;
2. "Inventory value" means the cost of property purchased by the trustee and the market value of other property at the time it became subject to the trust, but in the case of a testamentary trust the trustee may use any value finally determined for the purposes of an estate or inheritance tax;
3. "Remainderman" means the person entitled to principal, including income which has been accumulated and added to principal;
4. "Trustee" means an original trustee and any successor or added trustee.

Section 2. Duty of Trustee as to Receipts and Expenditures.)

1. A trust shall be administered with due regard to the respective interests of income beneficiaries and remainder-

men. A trust is so administered with respect to the allocation of receipts and expenditures if a receipt is credited or an expenditure is charged to income or principal or partly to each

- a. In accordance with the terms of the trust instrument, notwithstanding contrary provisions of this Act:
 - b. In the absence of any contrary terms of the trust instrument, in accordance with the provisions of this Act; or
 - c. If neither of the preceding rules of administration is applicable, in accordance with what is reasonable and equitable in view of the interests of those entitled to income as well as of those entitled to principal, and in view of the manner in which men of ordinary prudence, discretion and judgment would act in the management of their own affairs.
2. If the trust instrument gives the trustee discretion in crediting a receipt or charging an expenditure to income or principal or partly to each, no inference of imprudence or partiality arises from the fact that the trustee has made an allocation contrary to a provision of this Act.

Section 3. Income—Principal—Charges.)

1. Income is the return in money or property derived from the use of principal, including return received as
 - a. Rent of real or personal property, including sums received for cancellation or renewal of a lease;
 - b. Interest on money lent, including sums received as consideration for the privilege of prepayment of principal except as provided in section 7 on bond premium and bond discount;
 - c. Income earned during administration of a decedent's estate as provided in section 5;
 - d. Corporate distributions as provided in section 6;
 - e. Accrued increment on bonds or other obligations issued at discount as provided in section 7;

- f. Receipts from business and farming operations as provided in section 8;
 - g. Receipts from disposition of natural resources as provided in sections 9 and 10;
 - h. Receipts from other principal subject to depletion as provided in section 11;
 - i. Receipts from disposition of underproductive property as provided in section 12.
2. Principal is the property which has been set aside by the owner or the person legally empowered so that it is held in trust eventually to be delivered to a remainderman while the return or use of the principal is in the meantime taken or received by or held for accumulation for an income beneficiary.

Principal includes

- a. Consideration received by the trustee on the sale or other transfer of principal or on repayment of a loan or as a refund or replacement or change in the form of principal;
- b. Proceeds of property taken on eminent domain proceedings;
- c. Proceeds of insurance upon property forming part of the principal except proceeds of insurance upon a separate interest of an income beneficiary;
- d. Stock dividends, receipts on liquidations of a corporation, and other corporate distributions as provided in section 6;
- e. Receipts from the disposition of corporate securities as provided in section 7;
- f. Royalties and other receipts from disposition of natural resources as provided in sections 9 and 10;
- g. Receipts from other principal subject to depletion as provided in section 11;

- h. Any profit resulting from any change in the form of principal except as provided in section 12 on underproductive property;
 - i. Receipts from disposition of underproductive property as provided in section 12;
 - j. Any allowance for depreciation established under sections 8 and 13, subsection 1, subdivision "b".
3. After determining income and principal in accordance with the terms of the trust instrument or of this Act, the trustee shall charge to income or principal expenses and other charges as provided in section 13.

Section 4. When Right to Income Arises—Apportionment of Income.)

1. An income beneficiary is entitled to income from the date specified in the trust instrument, or, if none is specified, from the date an asset becomes subject to the trust. In the case of an asset becoming subject to a trust by reason of a will, it becomes subject to the trust as of the date of the death of the testator even though there is an intervening period of administration of the testator's estate.
2. In the administration of a decedent's estate or an asset becoming subject to a trust by reason of a will
 - a. Receipts due but not paid at the date of death of the testator are principal;
 - b. Receipts in the form of periodic payments, other than corporate distributions to stockholders, including rent, interest, or annuities, not due at the date of the death of the testator shall be treated as accruing from day to day. That portion of the receipt accruing before the date of death is principal, and the balance is income.
3. In all other cases, any receipt from an income producing asset is income even though the receipt was earned or accrued in whole or in part before the date when the asset became subject to the trust.

4. On termination of an income interest, the income beneficiary whose interest is terminated, or his estate, is entitled to
 - a. Income undistributed on the date of termination;
 - b. Income due but not paid to the trustee on the date of termination;
 - c. Income in the form of periodic payments, other than corporate distribution to stockholders, including rent, interest, or annuities, not due on the date of termination, accrued from day to day.
5. Corporate distributions to stockholders shall be treated as due on the day fixed by the corporation for determination of stockholders of record entitled to distribution or, if no date is fixed, on the date of declaration of the distribution by the corporation.

Section 5. Income Earned During Administration of a Decedent's Estate.)

1. Unless the will otherwise provides and subject to subsection 2, all expenses incurred in connection with the settlement of a decedent's estate, including debts, funeral expenses, estate taxes, interest and penalties concerning taxes, family allowances, fees of attorneys and personal representatives, and court costs shall be charged against the principal of the estate.
2. Unless the will otherwise provides, income from the assets of a decedent's estate after the death of the testator and before distribution, including income from property used to discharge liabilities, shall be determined in accordance with the rules applicable to a trustee under this Act and distributed as follows:
 - a. To specific legatees and devisees, the income from the property bequeathed or devised to them respectively, less taxes, ordinary repairs, and other expenses of management and operation of the property, and an appropriate portion of interest accrued since the death of the testator and of taxes imposed on income excluding taxes on capi-

tal gains, which accrue during the period of administration;

- b. To all other legatees and devisees, except legatees of pecuniary bequests not in trust, the balance of the income, less the balance of taxes, ordinary repairs, and other expenses of management and operation of all property from which the estate is entitled to income, interest accrued since the death of the testator, and taxes imposed on income, excluding taxes on capital gains, which accrue during the period of administration, in proportion to their respective interests in the undistributed assets of the estate computed at times of distribution on the basis of inventory value.

- (1) Income received by a trustee under subsection 2 shall be treated as income of the trust.

Section 6. Corporate Distribution.)

1. Corporate distributions of shares of the distributing corporation, including distributions in the form of a stock split or stock dividend, are principal. A right to subscribe to shares or other securities issued by the distributing corporation accruing to stockholders on account of their stock ownership and the proceeds of any sale of the right are principal.
2. Except to the extent that the corporation indicates that some part of a corporate distribution is a settlement of preferred or guaranteed dividends accrued since the trustee became a stockholder or is in lieu of an ordinary cash dividend, a corporate distribution is principal if the distribution is pursuant to
 - a. A call of shares;
 - b. A merger, consolidation, reorganization, or other plan by which assets of the corporation are acquired by another corporation; or
 - c. A total or partial liquidation of the corporation, including any distribution which the corporation indicates is a distribution in total or partial liquida-

tion or any distribution of assets, other than cash, pursuant to a court decree or final administrative order by a government agency ordering distribution of the particular assets.

3. Distribution made from ordinary income by a regulated investment company or by a trust qualifying and electing to be taxed under federal law as a real estate investment trust are income. All other distributions made by the company or trust, including distributions from capital gains, depreciation, or depletion, whether in the form of cash or an option to take new stock or cash or an option to purchase additional shares, are principal.
4. Except as provided in subsections 1, 2 and 3, all corporate distributions are income, including cash dividends, distributions of or rights to subscribe to shares or securities or obligations of corporations other than the distributing corporation, and the proceeds of the rights or property distributions. Except as provided in subsections 2 and 3, if the distributing corporation gives a stockholder an option to receive a distribution either in cash or in its own shares, the distribution chosen is income.
5. The trustee may rely upon any statement of the distributing corporation as to any fact relevant under any provision of this Act concerning the source or character of dividends or distributions of corporate assets.

Section 7. Bond Premium and Discount.)

1. Bonds or other obligations for the payment of money are principal at their inventory value, except as provided in subsection 2 for discount bonds. No provision shall be made for amortization of bond premiums or for accumulation for discount. The proceeds of sale, redemption, or other disposition of the bonds or obligations are principal.
2. The increment in value of a bond or other obligation for the payment of money payable at a future time in accordance with a fixed schedule of appreciation in excess of the price at which it was issued is distributable

as income. The increment in value is distributable to the beneficiary who was the income beneficiary at the time of the increment from the first principal cash available or, if none is available, when realized by sale, redemption, or other disposition. Whenever unrealized increment is distributed as income but out of principal, the principal shall be reimbursed for the increment when realized.

Section 8. Business and Farming Operations.)

1. If a trustee uses any part of the principal in the continuance of a business of which the settlor was a sole proprietor or a partner, the net profits of the business, computed in accordance with generally accepted accounting principles for a comparable business, are income. If a loss results in any fiscal or calendar year, the loss falls on principal and shall not be carried into any other fiscal or calendar year for purposes of calculating net income.
2. Generally accepted accounting principles shall be used to determine income from an agricultural or farming operation, including the raising of animals or the operation of a nursery.

Section 9. Disposition of Natural Resources.)

1. If any part of the principal consists of a right to receive royalties, overriding or limited royalties, working interests, production payments, net profit interests, or other interests in minerals or other natural resources in, on or under land, the receipts from taking the natural resources from the land shall be allocated as follows:
 - a. If received as rent on a lease or extension payments on a lease, the receipts are income.
 - b. If received from a production payment, the receipts are income to the extent of any factor for interest or its equivalent provided in the governing instrument. There shall be allocated to principal the fraction of the balance of the receipts which the unrecovered cost of the production payments bears to the balance owed on the production payment, exclusive of any factor

for interest or its equivalent. The receipts not allocated to principal are income.

- c. If received as a royalty, overriding or limited royalty, or bonus, or from a working, net profit, or any other interest in minerals or other natural resources, receipts not provided for in the preceding paragraphs of this section shall be apportioned on a yearly basis in accordance with this paragraph whether or not any natural resource was being taken from the land at the time the trust was established. Twenty-seven and one-half percent of the gross receipts, but not to exceed fifty percent of the net receipts remaining after payment of all expenses, direct and indirect, computed without allowance for depletion, shall be added to principal as an allowance for depletion. The balance of the gross receipts, after payment therefrom of all expenses, direct and indirect, is income.
2. If a trustee, on the effective date of this Act, held an item of depletable property of a type specified in this section he shall allocate receipts from the property in the manner used before the effective date of this Act, but as to all depletable property acquired after the effective date of this Act by an existing or new trust, the method of allocation provided herein shall be used.
3. This section does not apply to timber, water, soil, sod, dirt, turf, or mosses.

Section 10. Timber.) If any part of the principal consists of land from which merchantable timber may be removed, the receipts from taking the timber from the land shall be allocated in accordance with section 2, subsection 1, subdivision c.

Section 11. Other Property Subject to Depletion.) Except as provided in sections 9 and 10, if the principal consists of property subject to depletion, including leaseholds, patents, copyrights, royalty rights, and rights to receive payments on a contract for deferred compensation, receipts from the property, not in excess of five percent per year of its inventory value, are income, and the balance is principal.

Section 12. Underproductive Property.)

1. Except as otherwise provided in this section, a portion of the net proceeds of sale of any part of principal which has not produced an average net income of at least one percent per year of its inventory value for more than a year, including as income the value of any beneficial use of the property by the income beneficiary, shall be treated as delayed income to which the income beneficiary is entitled as provided in this section. The net proceeds of sale are the gross proceeds received, including the value of any property received in substitution for the property disposed of, less the expenses, including capital gains tax, if any, incurred in disposition and less any carrying charge paid while the property was underproductive.
3. The sum allocated as delayed income is the difference between the net proceeds and the amount which, had it been invested at simple interest at four percent per year while the property was underproductive, would have produced the net proceeds. This sum, plus any carrying charges and expenses previously charged against income while the property was underproductive, less any income received by the income beneficiary from the property and less the value of any beneficial use of the property by the income beneficiary, is income, and the balance is principal.
3. An income beneficiary or his estate is entitled to delayed income under this section as if it accrued from day to day during the time he was a beneficiary.
4. If the principal subject to this section is disposed of by conversion into property which cannot be apportioned easily, including land or mortgages, for example, realty acquired by or in lieu of foreclosure, the income beneficiary is entitled to the net income from any property or obligation into which the original principal is converted while the substituted property or obligation is held. If within five years after the conversion the substituted property has not been further converted into easily apportionable property, no allocation as provided in this section shall be made.

Section 13. Charges Against Income and Principal.)

1. The following charges shall be made against income:

- a. Ordinary expenses incurred in connection with the administration, management, or preservation of the trust property, including regularly recurring taxes assessed against any portion of the principal, water rates, premiums on insurance taken upon the interests of the income beneficiary, remainderman, or trustees, interest paid by the trustee, and ordinary repairs;
 - b. A reasonable allowance for depreciation on property subject to depreciation under generally accepted accounting principles, but no allowance shall be made for depreciation of that portion of any real property used by a beneficiary as a residence or for depreciation of any property held by the trustee on the effective date of this Act for which the trustee is not then making an allowance for depreciation;
 - c. One-half of court costs, attorney's fees, and other fees on periodic judicial accounting, unless the court directs otherwise;
 - d. Court costs, attorney's fees, and other fees on other accountings or judicial proceedings if the matter primarily concerns the income interest, unless the court directs otherwise;
 - e. One-half of the trustee's regular compensation, whether based on a percentage of principal or income, and all expenses reasonably incurred for current management of principal and application of income;
 - f. Any tax levied upon receipts defined as income under this Act or the trust instrument and payable by the trustee.
2. If charges against income are of unusual amount, the trustee may by means of reserves or other reasonable means charge them over a reasonable period of time and withhold from distribution sufficient sums to regularize distributions.
 3. The following charges shall be made against principal:

- a. Trustee's compensation not chargeable to income under subsection 1, subdivisions d and e, special compensation of trustees, expenses reasonably incurred in connection with principal, court costs and attorney's fees primarily concerning matters of principal, and trustee's compensation computed on principal as an acceptance, distribution, or termination fee;
 - b. Charges not provided for in subsection 1, including the cost of investing and reinvesting principal, the payments on principal of an indebtedness, including a mortgage amortized by periodic payments of principal, expenses for preparation of property for rental or sale, and unless the court directs otherwise, expenses incurred in maintaining or defending any action to construe the trust or protect it or the property or assure the title of any trust property;
 - c. Extraordinary repairs or expenses incurred in making a capital improvement to principal, including special assessments, but, a trustee may establish an allowance for depreciation out of income to the extent permitted by subsection 1, subdivision b, and by section 8;
 - d. Any tax levied upon profit, gain, or other receipts allocated to principal notwithstanding denomination of the tax as an income tax by the taxing authority;
 - e. If an estate or inheritance tax is levied in respect of a trust in which both an income beneficiary and a remainderman have an interest, any amount apportioned to the trust, including interest and penalties, even though the income beneficiary also has rights in the principal.
4. Regularly recurring charges payable from income shall be apportioned to the same extent and in the same manner that income is apportioned under section 4.

Section 14. Application of Act.) Except as specifically provided in the trust instrument or the will or in this Act, this

Act shall apply to any receipt or expense received or incurred after the effective date of this Act by any trust or decedent's estate whether established before or after the effective date of this Act and whether the asset involved was acquired by the trustee before or after the effective date of this Act.

Section 15. Uniformity of Interpretation.) This Act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Section 16. Short Title.) This Act may be cited as the Revised Uniform Principal and Income Act.

Section 17. Severability.) If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application and to this end the provisions of this Act are severable.

Approved March 25, 1969.