

SENATE BILL NO. 87

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY SENATOR SEEKINS

Introduced: 2/28/03
Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to principal and income in the administration of trusts and decedents'**
2 **estates and the mental health trust fund; adopting a version of the Uniform Principal**
3 **and Income Act; and providing for an effective date."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** AS 13.36.335 is amended to read:

6 **Sec. 13.36.335. Application of special distribution provisions.** The asset
7 distribution provisions of AS 13.16.540 - 13.16.550, 13.16.560, and **AS 13.38.550(a)**
8 [AS 13.38.030(a)] apply to the administration of a revocable trust following the death
9 of the settlor of the trust, unless the terms of the trust indicate a different intention.

10 * **Sec. 2.** AS 13.38 is amended by adding new sections to read:

11 **Article 1. Preliminary Provisions; Power to Adjust.**

12 **Sec. 13.38.200. Fiduciary duties; general principles.** (a) In allocating
13 receipts and disbursements to or between principal and income and with respect to any
14 matter within the scope of this chapter, a fiduciary

1 (1) shall administer a trust or estate in accordance with the governing
2 instrument, even if there is a different provision in this chapter;

3 (2) may administer a trust or estate by the exercise of a discretionary
4 power of administration regarding a matter within the scope of this chapter given to
5 the fiduciary by the governing instrument, even if the exercise of the power produces a
6 result different from a result required or permitted by this chapter; an inference that
7 the fiduciary has improperly exercised the discretionary power does not arise from the
8 fact that the fiduciary has made an allocation contrary to a provision of this chapter;

9 (3) shall administer a trust or estate in accordance with this chapter if
10 the governing instrument does not contain a different provision or does not give the
11 fiduciary a discretionary power of administration regarding a matter within the scope
12 of this chapter; and

13 (4) shall add a receipt or charge a disbursement to principal to the
14 extent that the governing instrument and this chapter do not provide a rule for
15 allocating the receipt or disbursement to or between principal and income.

16 (b) In exercising a discretionary power of administration regarding a matter
17 within the scope of this chapter, whether granted by the governing instrument or this
18 chapter, including AS 13.38.210 and 13.38.300 - 13.38.410, a fiduciary shall
19 administer a trust or estate impartially based on what is fair and reasonable to all of the
20 beneficiaries, except to the extent that the governing instrument clearly manifests an
21 intention that the fiduciary shall or may favor one or more of the beneficiaries. A
22 determination in accordance with this chapter is presumed to be fair and reasonable to
23 all of the beneficiaries.

24 **Sec. 13.38.210. Trustee's power to adjust.** (a) Subject to (c) and (f) of this
25 section, a trustee may adjust between principal and income by allocating an amount of
26 income to principal or an amount of principal to income to the extent the trustee
27 considers appropriate if

28 (1) the governing instrument describes what may or shall be distributed
29 to a beneficiary by referring to the trust's income;

30 (2) the trustee determines, after applying the rules in AS 13.38.200(a),
31 that the trustee is unable to comply with AS 13.38.200(b); and

1 (3) the trustee determines to follow an investment policy seeking a total return
2 for the investments held by the trust, whether the return is to be derived from

3 (A) appreciation of capital;

4 (B) earnings and distributions from capital; or

5 (C) both (A) and (B) of this paragraph.

6 (b) In deciding whether and to what extent to exercise the power conferred by
7 (a) of this section, a trustee may consider, among other things,

8 (1) the size of the trust;

9 (2) the nature and estimated duration of the trust;

10 (3) the liquidity and distribution requirements of the trust;

11 (4) the need for regular distributions and preservation and appreciation
12 of capital;

13 (5) the expected tax consequences of an adjustment;

14 (6) the net amount allocated to income under the other sections of this
15 chapter and the increase or decrease in the value of the principal assets, which the
16 trustee may estimate as to assets for which market values are not readily available;

17 (7) the assets held in the trust; the extent to which the assets consist of
18 financial assets, interests in closely held enterprises, tangible and intangible personal
19 property, or real property; the extent to which an asset is used by a beneficiary; and
20 whether an asset was purchased by the trustee or received from the settlor or testator;

21 (8) to the extent reasonably known to the trustee, the need of the
22 beneficiaries for present and future distributions authorized or required by the
23 governing instrument;

24 (9) whether and to what extent the governing instrument gives the
25 trustee the power to invade principal or accumulate income or prohibits the trustee
26 from invading principal or accumulating income, and the extent to which the trustee
27 has exercised a power from time to time to invade principal or accumulate income;

28 (10) the intent of the settlor or testator; and

29 (11) the actual and anticipated effect of economic conditions on
30 principal and income and the effects of inflation and deflation.

31 (c) A trustee may not make an adjustment under this section if

1 (1) the adjustment would diminish the income interest in a trust that
2 requires all of the income to be paid at least annually to a spouse and for which a
3 federal estate tax or gift tax marital deduction would be allowed, in whole or in part, if
4 the trustee did not have the power to make the adjustment; the prohibition in this
5 paragraph does not apply to a trust after the trustee determines that the marital
6 deduction has not been claimed or has not been allowed;

7 (2) the adjustment would reduce the actuarial value of the income
8 interest in a trust to which a person transfers property with the intent to qualify for a
9 federal gift tax exclusion;

10 (3) the adjustment would change the amount payable to a beneficiary
11 as a fixed annuity or a fixed fraction of the value of the trust assets;

12 (4) the adjustment is from any amount that is permanently set aside for
13 charitable purposes under the governing instrument and for which a federal estate or
14 gift tax charitable deduction has been taken, unless both income and principal are
15 permanently set aside for charitable purposes under the governing instrument;

16 (5) possessing or exercising the power to make an adjustment would
17 cause an individual to be treated as the owner of all or part of the trust for federal
18 income tax purposes, and the individual would not be treated as the owner if the
19 trustee did not possess the power to make an adjustment;

20 (6) possessing or exercising the power to make an adjustment would
21 cause all or part of the trust assets to be subject to federal estate or gift tax with respect
22 to an individual, and the assets would not be subject to federal estate or gift tax with
23 respect to the individual if the trustee did not possess the power to make an
24 adjustment;

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

26 (8) the trust has been converted to a unitrust under AS 13.38.300 -
27 13.38.410.

28 (d) If (c)(5), (6), or (7) of this section applies to a trustee and there is more
29 than one trustee, a co-trustee to whom the provision does not apply may make the
30 adjustment unless the exercise of the power by the remaining trustee or trustees is
31 prohibited by the governing instrument.

1 (e) A trustee may release the entire power conferred by (a) of this section, the
2 power to adjust from income to principal, or the power to adjust from principal to
3 income if the trustee is uncertain about whether possessing or exercising the power
4 will cause a result described in (c)(1) - (6) of this section, or if the trustee determines
5 that possessing or exercising the power will or may deprive the trust of a tax benefit or
6 impose a tax burden not described in (c) of this section. The release may be
7 permanent or for a specified period, including a period measured by the life of an
8 individual.

9 (f) A governing instrument that limits the power of a trustee to make an
10 adjustment between principal and income does not affect the application of this
11 section unless it is clear from the governing instrument that it is intended to deny the
12 trustee the power of adjustment conferred by (a) of this section.

13 **Sec. 13.38.220. Judicial control of discretionary powers.** (a) A court may
14 not change a fiduciary's decision to exercise or not to exercise a discretionary power
15 conferred by this chapter unless the court determines that the decision was an abuse of
16 the fiduciary's discretion.

17 (b) If a court determines that a fiduciary has abused the fiduciary's discretion
18 regarding a discretionary power conferred by this chapter, the remedy is to restore the
19 income and remainder beneficiaries to the positions they would have occupied if the
20 fiduciary had not abused the fiduciary's discretion, according to the following rules:

21 (1) to the extent that the abuse of discretion has not resulted in a
22 distribution to a beneficiary or has resulted in a distribution that is too small, the court
23 shall require the fiduciary to distribute from the trust an amount to the beneficiary that
24 the court determines will restore the beneficiary, in whole or in part, to the
25 beneficiary's appropriate position;

26 (2) to the extent that the abuse of discretion has resulted in a
27 distribution to a beneficiary that is too large, the court shall restore the beneficiaries,
28 the trust, or both, in whole or in part, to their appropriate positions by requiring the
29 fiduciary to withhold an amount from one or more future distributions to the
30 beneficiary who received the distribution that was too large or by requiring that
31 beneficiary or that beneficiary's estate to return some or all of the distribution to the

1 trust, notwithstanding a spendthrift or similar provision;

2 (3) if the abuse of discretion concerns the power to convert a trust into
3 a unitrust, the court shall require the trustee either to convert into a unitrust or to
4 reconvert from a unitrust;

5 (4) to the extent that the court is unable, after applying (1) - (3) of this
6 subsection, to restore the beneficiaries, the trust, or both to the positions they would
7 have occupied if the fiduciary had not abused the fiduciary's discretion, the court may
8 require the fiduciary to pay an appropriate amount from the fiduciary's own funds to
9 one or more of the beneficiaries, the trust, or both.

10 **Article 2. Conversion to Unitrust.**

11 **Sec. 13.38.300. Power to convert to unitrust.** Unless expressly prohibited
12 by the governing instrument, a trustee may release the power to adjust under
13 AS 13.38.210 and may convert a trust into a unitrust as described in AS 13.38.300 -
14 13.38.410 if

15 (1) the trustee determines that the conversion will enable the trustee to
16 better carry out the intent of the settlor or testator and the purposes of the trust;

17 (2) the trustee gives written notice of the trustee's intention to release
18 the power to adjust, of the trustee's intention to convert the trust into a unitrust, and of
19 how the unitrust will operate, including what initial decisions the trustee will make
20 under this section, to all the sui juris beneficiaries who

21 (A) are currently eligible to receive income from the trust;

22 (B) would be eligible, if a power of appointment were not
23 exercised, to receive income from the trust if the interest of all of the
24 beneficiaries eligible to receive income under (A) of this paragraph were to
25 terminate immediately before the giving of the notice; and

26 (C) would, if a power of appointment were not exercised,
27 receive a distribution of principal if the trust were to terminate immediately
28 before the giving of the notice;

29 (3) there are at least one sui juris beneficiary under (2)(A) of this
30 section and at least one sui juris beneficiary under (2)(B) or (C) of this section; and

31 (4) a sui juris beneficiary does not object to the conversion to a unitrust

1 in a writing delivered to the trustee within 60 days after the mailing of the notice under
2 (2) of this section.

3 **Sec. 13.38.310. Judicially approved conversion.** (a) A trustee may petition
4 the court to approve the conversion to a unitrust if

5 (1) a beneficiary timely objects to the conversion to a unitrust; or

6 (2) there is not a sui juris beneficiary who is eligible under
7 AS 13.38.300(2)(A), and there is not a sui juris beneficiary who is eligible under
8 AS 13.38.300(2)(B) or (C).

9 (b) A beneficiary may request a trustee to convert to a unitrust. If the trustee
10 does not convert, the beneficiary may petition the superior court to order the
11 conversion.

12 (c) The superior court shall approve the conversion or direct the requested
13 conversion if the court concludes that the conversion will enable the trustee to better
14 carry out the intent of the settlor or testator and the purposes of the trust.

15 **Sec. 13.38.320. Factors to be considered.** In deciding whether to exercise
16 the power conferred by AS 13.38.300, a trustee may consider, among other things,

17 (1) the size of the trust;

18 (2) the nature and estimated duration of the trust;

19 (3) the liquidity and distribution requirements of the trust;

20 (4) the need for regular distributions and preservation and appreciation
21 of capital;

22 (5) the expected tax consequences of the conversion;

23 (6) the assets held in the trust; the extent to which they consist of
24 financial assets, interests in closely held enterprises, tangible and intangible personal
25 property, or real property; and the extent to which an asset is used by a beneficiary;

26 (7) to the extent reasonably known to the trustee, the need of the
27 beneficiaries for present and future distributions authorized or required by the
28 governing instrument;

29 (8) whether and to what extent the governing instrument gives the
30 trustee the power to invade principal or accumulate income or prohibits the trustee
31 from invading principal or accumulating income and the extent to which the trustee

1 has exercised a power from time to time to invade principal or accumulate income;

2 (9) the actual and anticipated effect of economic conditions on
3 principal and income and the effects of inflation and deflation.

4 **Sec. 13.38.330. Directions after conversion.** (a) After a trust is converted to
5 a unitrust, the trustee shall

6 (1) follow an investment policy seeking a total return for the
7 investments held by the trust, whether the return is to be derived from

8 (A) appreciation of capital;

9 (B) earnings and distributions from capital; or

10 (C) both (A) and (B) of this paragraph; and

11 (2) make regular distributions in accordance with the governing
12 instrument construed in accordance with the provisions of this section.

13 (b) After a trust has been converted to a unitrust, "income" in the governing
14 instrument means an annual distribution equal to four percent of the net fair market
15 value, as determined annually, of the trust's assets, whether the assets would be
16 considered income or principal under other provisions of this chapter.

17 (c) After a trust has been administered as a unitrust for three years, the four
18 percent amount referred to in (b) of this section shall be averaged over the three
19 preceding years of the trust.

20 **Sec. 13.38.340. Discretion of trustee regarding conversion.** The trustee
21 may in the trustee's discretion, from time to time, determine

22 (1) the effective date of a conversion to a unitrust;

23 (2) the provisions for prorating a unitrust distribution for a short year
24 in which a beneficiary's right to payments commences or ceases;

25 (3) the frequency of unitrust distributions during the year;

26 (4) the effect of other payments from or contributions to the trust on
27 the trust's valuation;

28 (5) whether to value the trust's assets annually or more frequently;

29 (6) what valuation dates to use;

30 (7) how frequently to value nonliquid assets and whether to estimate
31 their value;

1 (8) whether to omit trust property occupied or possessed by a
2 beneficiary from the calculations; and

3 (9) other matters necessary for the proper functioning of the unitrust.

4 **Sec. 13.38.350. Unitrust deductions and distributions.** (a) Expenses that
5 would be deducted from income if the trust were not a unitrust may not be deducted
6 from the unitrust distribution.

7 (b) Unless otherwise provided by the governing instrument, a unitrust
8 distribution shall be considered to have been paid from net income as net income
9 would be determined if the trust were not a unitrust. To the extent net income is
10 insufficient, the unitrust distribution shall be considered to have been paid from net
11 realized short-term capital gains. To the extent income and net realized short-term
12 capital gains are insufficient, the unitrust distribution shall be considered to have been
13 paid from net realized long-term capital gains. To the extent income and net realized
14 short-term and long-term capital gains are insufficient, the unitrust distribution shall
15 be paid from the principal of the trust.

16 **Sec. 13.38.360. Court orders regarding unitrust.** The trustee or, if the
17 trustee declines to petition the court, a beneficiary may petition the court to

18 (1) select a payout percentage different than four percent;

19 (2) provide for a distribution of net income, as would be determined if
20 the trust were not a unitrust, in excess of the unitrust distribution if the distribution is
21 necessary to preserve a tax benefit;

22 (3) average the valuation of the trust's net assets over a period other
23 than three years.

24 **Sec. 13.38.370. Effects of conversion.** A conversion to a unitrust does not
25 affect a provision in the governing instrument directing or authorizing the trustee to
26 distribute principal or authorizing a beneficiary to withdraw a portion or all of the
27 principal.

28 **Sec. 13.38.380. Prohibited conversions; exception.** (a) A trustee may not
29 convert a trust into a unitrust if

30 (1) payment of the unitrust distribution would change the amount
31 payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust

1 assets;

2 (2) the unitrust distribution would be made from an amount that is
3 permanently set aside for charitable purposes under the governing instrument and for
4 which a federal estate or gift tax deduction has been taken;

5 (3) possessing or exercising the power to convert would cause an
6 individual to be treated as the owner of all or part of the trust for federal income tax
7 purposes, and the individual would not be treated as the owner if the trustee did not
8 possess the power to convert;

9 (4) possessing or exercising the power to convert would cause all or
10 part of the trust assets to be subject to federal estate or gift tax with respect to an
11 individual, and the assets would not be subject to federal estate or gift tax with respect
12 to the individual if the trustee did not possess the power to convert;

13 (5) the conversion would result in the disallowance of a federal estate
14 tax or gift tax marital deduction that would be allowed if the trustee did not have the
15 power to convert; or

16 (6) the trustee is a beneficiary of the trust.

17 (b) Notwithstanding (a)(2) of this section, a trustee may elect to convert a trust
18 to a unitrust if both the income and principal of the trust being converted to a unitrust
19 are permanently set aside for charitable purposes and if the provisions of
20 AS 13.38.440 - 13.38.490 are followed.

21 **Sec. 13.38.390. Permissible conversion where otherwise prohibited.** (a) If
22 AS 13.38.380(a)(3), (4), or (6) applies to a trustee and there is more than one trustee, a
23 co-trustee to whom the provision does not apply may convert the trust, unless the
24 exercise of the power by the remaining trustee is prohibited by the governing
25 instrument.

26 (b) If AS 13.38.380(a)(3), (4), or (6) applies to all the trustees, the trustees
27 may petition the court to direct a conversion.

28 **Sec. 13.38.400. Reconversion from a unitrust.** A trustee may reconvert a
29 trust that has been converted into a unitrust under AS 13.38.300 by following the same
30 procedures provided in AS 13.38.300 - 13.38.410 for converting a trust into a unitrust.
31 If a unitrust is reconverted under this section, the trustee's power to adjust under

1 AS 13.38.210 applies to the trustee after the reconversion.

2 **Sec. 13.38.410. Release of power to convert to unitrust.** (a) A trustee may
3 release the power conferred by AS 13.38.300 to convert to a unitrust if the trustee

4 (1) is uncertain about whether possessing or exercising the power will
5 cause a result described in AS 13.38.380(a)(3), (4), or (5); or

6 (2) determines that possessing or exercising the power will or may
7 deprive the trust of a tax benefit or impose a tax burden not described in
8 AS 13.38.380.

9 (b) The release of a power under (a) of this section may be permanent or for a
10 specified period, including a period measured by the life of an individual.

11 **Article 3. Charitable Trust Election.**

12 **Sec. 13.38.440. Charitable trust election.** The trustee of a trust held
13 exclusively for charitable purposes may elect to be governed by AS 13.38.440 -
14 13.38.490 unless the governing instrument expressly provides that the election
15 provided by AS 13.38.440 - 13.38.490 is not available.

16 **Sec. 13.38.450. Eligibility for charitable trust election.** To make an election
17 under AS 13.38.440 - 13.38.490, the trustee shall adopt and follow an investment
18 policy seeking a total return for the investments held by the trust, whether the return is
19 to be derived from appreciation of capital or earnings and distributions with respect to
20 capital or both. The policy constituting the election must be in writing, must be
21 maintained as part of the permanent records of the trust, and must recite that it
22 constitutes an election to be governed by AS 13.38.440 - 13.38.490.

23 **Sec. 13.38.460. Selection of percentage after charitable trust election.** (a)
24 After a trustee has elected under AS 13.38.440 for the trust to be governed by
25 AS 13.38.440 - 13.38.490, the trustee shall, in a writing maintained as part of the
26 permanent records of the trust, select the percentage of the value of the trust that will
27 be considered income and determine that it is consistent with the long-term
28 preservation of the real value of the principal of the trust, but the percentage may not
29 be less than two percent or more than seven percent each year of the principal value of
30 the trust. The trustee may elect to change a percentage previously selected if the
31 trustee determines that the new percentage is consistent with the long-term

1 preservation of the real value of the principal of the trust, but may not change the
2 percentage more frequently than once every 10 years.

3 (b) For a charitable trust required by 26 U.S.C. 4942 (Internal Revenue Code)
4 to distribute a higher amount than the percentage selected under (a) of this section, the
5 amount required by 26 U.S.C. 4942 (Internal Revenue Code) controls over the
6 percentage selected.

7 **Sec. 13.38.470. Revocation of charitable trust election.** The trustee may
8 revoke an election to be governed by AS 13.38.440 - 13.38.490 if the revocation is
9 made as part of an alternative investment policy seeking the long-term preservation of
10 the real value of the principal of the trust. The revocation and alternative investment
11 policy must be in writing and maintained as part of the permanent records of the trust.

12 **Sec. 13.38.480. Value determination.** For the purposes of applying
13 AS 13.38.440 - 13.38.490, the value of the trust is the fair market value of the cash
14 and other assets held by the trustee with respect to the trust, whether these assets
15 would be considered income or principal under the other provisions of this chapter,
16 determined at least annually. In the discretion of the trustee, the value of the trust may
17 be averaged over a period of three or more preceding years when the trust has been
18 administered as a unitrust under this section for at least three years.

19 **Sec. 13.38.490. Definitions.** In AS 13.38.440 - 13.38.490, except as
20 otherwise expressly stated in AS 13.38.440 - 13.38.490,

21 (1) "income" means the percentage of the value of the trust computed
22 under AS 13.38.440 - 13.38.490;

23 (2) "principal" means all assets other than those identified as income in
24 (1) of this section that are held by the trustee with respect to the trust.

25 **Article 4. Decedent's Estate or Terminating Income Interest.**

26 **Sec. 13.38.500. Determination and distribution of net income.** After a
27 decedent dies in the case of an estate, or after an income interest in a trust ends, a
28 fiduciary

29 (1) of an estate or of a terminating income interest shall determine the
30 amount of net income and net principal receipts received from property specifically
31 given to a beneficiary under (5) of this section and the provisions applicable to trustees

1 in AS 13.38.550 - 13.38.860; the fiduciary shall distribute the net income and net
2 principal receipts to the beneficiary who is to receive the specific property;

3 (2) shall distribute to a beneficiary who receives a pecuniary amount
4 outright and shall allocate to a pecuniary amount in trust the interest, other income, or
5 other amount provided by the governing instrument from net income determined under
6 (3) of this section or from principal to the extent that net income is insufficient;

7 (3) shall determine the remaining net income of a decedent's estate or a
8 terminating income interest under the provisions applicable to trustees in
9 AS 13.38.550 - 13.38.860 and by

10 (A) including in net income all income from property used to
11 discharge liabilities; and

12 (B) paying from principal the debts, the funeral expenses, the
13 costs of disposition of remains, the family allowance under AS 13.12.404, fees
14 of personal representatives and their attorneys and accountants, and the taxes,
15 related interest, and penalties described in AS 13.38.810(a)(7) that are
16 apportioned to the estate or terminating income interest by the governing
17 instrument or applicable law;

18 (4) shall distribute the net income remaining after distributions
19 required by (2) of this section in the manner described in AS 13.38.510 to all other
20 beneficiaries;

21 (5) may not reduce principal or income receipts from property
22 described in (1) of this section because of a payment described in AS 13.38.700 or
23 13.38.710 to the extent that the governing instrument or applicable law requires the
24 fiduciary to make the payment from assets other than the property or to the extent that
25 the fiduciary recovers or expects to recover the payment from a third party; the net
26 income and principal receipts from the property are determined by

27 (A) including all of the amounts the fiduciary receives or pays
28 with respect to the property, whether those amounts accrued or became due
29 before, on, or after the date of a decedent's death or an income interest's
30 terminating event; and

31 (B) making a reasonable provision for amounts that the

1 fiduciary believes the estate or terminating income interest may become
2 obligated to pay after the property is distributed.

3 **Sec. 13.38.510. Distribution to residuary and remainder beneficiaries.** (a)

4 Each beneficiary described in AS 13.38.500(4) is entitled to receive a portion of the
5 net income equal to the beneficiary's fractional interest in undistributed principal
6 assets, using values as of the distribution date. If a fiduciary makes more than one
7 distribution of assets to beneficiaries to whom this section applies, each beneficiary,
8 including one who does not receive part of the distribution, is entitled, as of each
9 distribution date, to the net income the fiduciary has received after the date of death or
10 terminating event or earlier distribution date but has not distributed as of the current
11 distribution date.

12 (b) In determining a beneficiary's share of net income, the following rules
13 apply:

14 (1) the beneficiary is entitled to receive a portion of the net income
15 equal to the beneficiary's fractional interest in the undistributed principal assets
16 immediately before the distribution date, including assets that later may be sold or
17 applied to meet principal obligations;

18 (2) the beneficiary's fractional interest in the undistributed principal
19 assets shall be calculated without regard to property specifically given to a beneficiary
20 and property required to pay pecuniary amounts;

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

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

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

31 (e) For the purposes of this section, the distribution date may be the date as of

1 which the fiduciary calculates the value of the assets if that date is reasonably near the
2 date on which assets are actually distributed.

3 **Article 5. Apportionment at Beginning and End of Income Interest.**

4 **Sec. 13.38.550. When right to income begins and ends.** (a) An income
5 beneficiary is entitled to net income from the date on which the income interest
6 begins. An income interest begins

7 (1) on the date specified in the governing instrument; or

8 (2) if a date is not specified, on the date an asset becomes subject to a
9 trust or successive income interest.

10 (b) An asset becomes subject to a trust

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

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

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

18 (c) An asset becomes subject to a successive income interest on the day after
19 the preceding income interest ends, as determined under (d) of this section, even if
20 there is an intervening period of administration to wind up the preceding income
21 interest.

22 (d) An income interest ends on

23 (1) the day before an income beneficiary dies or another terminating
24 event occurs; or

25 (2) the last day of a period during which there is not a beneficiary to
26 whom a trustee may distribute income.

27 **Sec. 13.38.560. Apportionment of receipts and disbursements when**
28 **decendent dies or income interest begins.** (a) Unless AS 13.38.500(1) applies, a
29 trustee shall allocate an income receipt or disbursement to principal if its due date
30 occurs before

31 (1) a decedent dies, in the case of an estate; or

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

3 (b) A trustee shall allocate an income receipt or disbursement to income if its
4 due date occurs on or after the date on which a decedent dies or an income interest
5 begins and its due date is periodic. An income receipt or disbursement shall be treated
6 as accruing from day to day if its due date is not periodic or it does not have a due
7 date. The portion of the receipt or disbursement accruing before the date on which a
8 decedent dies or an income interest begins shall be allocated to principal, and the
9 balance shall be allocated to income.

10 (c) An item of income or an obligation is due on the date the payor is required
11 to make a payment. If a payment date is not stated, there is not a due date for the
12 purposes of this chapter. Distributions to shareholders or other owners from an entity
13 to which AS 13.38.600 applies are considered to be due on the date fixed by the entity
14 for determining who is entitled to receive the distribution or, if a date is not fixed, on
15 the declaration date for the distribution. A due date is periodic for receipts or
16 disbursements that must be paid at regular intervals under a lease or an obligation to
17 pay interest or if an entity customarily makes distributions at regular intervals.

18 **Sec. 13.38.570. Apportionment when income interest ends.** (a) When a
19 mandatory income interest ends, the trustee shall pay to a mandatory income
20 beneficiary who survives that date, or the estate of a deceased mandatory income
21 beneficiary whose death causes the interest to end, the beneficiary's share of the
22 undistributed income that is not disposed of under the governing instrument unless the
23 beneficiary has an unqualified power to revoke more than five percent of the trust
24 immediately before the income interest ends. In the case of the beneficiary who has an
25 unqualified power to revoke more than five percent of the trust immediately before the
26 income interest ends, the undistributed income from the portion of the trust that may
27 be revoked shall be added to principal.

28 (b) When a trustee's obligation to pay a fixed annuity or a fixed fraction of the
29 value of the trust's assets ends, the trustee shall prorate the final payment if and to the
30 extent required by applicable law to accomplish a purpose of the trust or its settlor or
31 testator relating to income, gift, estate, or other tax requirements.

1 (c) In this section, "undistributed income" means net income received before
 2 the date on which an income interest ends, but does not include an item of income or
 3 expense that is due or accrued or net income that has been added or is required to be
 4 added to principal under the governing instrument.

5 **Article 6. Allocation of Receipts during Administration of Trust.**

6 **Sec. 13.38.600. Character of receipts.** (a) Except as otherwise provided in
 7 this section, a trustee shall allocate to income money received from an entity,
 8 including reinvested cash dividends.

9 (b) A trustee shall allocate the following receipts from an entity to principal:

- 10 (1) property other than money excluding reinvested cash dividends;
 11 (2) money received in one distribution or a series of related
 12 distributions in exchange for part or all of a trust's interest in the entity;
 13 (3) money received in total or partial liquidation of the entity;
 14 (4) money received from an entity that is a regulated investment
 15 company or a real estate investment trust if the money distributed is a short-term or
 16 long-term capital gain dividend for federal income tax purposes.

17 (c) Money is received in partial liquidation

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

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

24 (d) Money is not received in partial liquidation, and it may not be taken into
 25 account under (c)(2) of this section, to the extent that it does not exceed the amount of
 26 income tax that a trustee or beneficiary must pay on taxable income of the entity that
 27 distributes the money.

28 (e) A trustee may rely upon a statement made by an entity about the source or
 29 character of a distribution if the statement is made at or near the time of distribution by
 30 the entity's board of directors or other person or group of persons authorized to
 31 exercise powers to pay money or transfer property comparable to those of a

1 corporation's board of directors.

2 (f) In this section, "entity" means a corporation, partnership, limited liability
3 company, regulated investment company, real estate investment trust, common trust
4 fund, or another organization in which a trustee has an interest, but does not include

- 5 (1) a trust or estate to which AS 13.38.610 applies;
- 6 (2) a business or activity to which AS 13.38.620 applies;
- 7 (3) a payment to which AS 13.38.680 applies; or
- 8 (4) an asset-backed security to which AS 13.38.740 applies.

9 **Sec. 13.38.610. Distribution from trust or estate.** (a) A trustee shall
10 allocate to income an amount received as a distribution of income from a trust or an
11 estate in which the trust has an interest other than a purchased interest.

12 (b) A trustee shall allocate to principal an amount received as a distribution of
13 principal from a trust or estate in which the trust has an interest other than a purchased
14 interest.

15 (c) If a trustee purchases an interest in a trust that is an investment entity, or a
16 decedent or donor transfers an interest in a trust that is an investment entity to a
17 trustee, AS 13.38.600 or 13.38.740 applies to a receipt from the trust.

18 **Sec. 13.38.620. Business and other activities conducted by trustee.** (a) If a
19 trustee that conducts a business or other activity determines that it is in the best
20 interest of all the beneficiaries to account separately for the business or other activity
21 instead of accounting for it as part of the trust's general accounting records, the trustee
22 may maintain separate accounting records for the transactions of the business or other
23 activity, whether or not the assets of the business or other activity are segregated from
24 other trust assets.

25 (b) A trustee who accounts separately for a business or other activity may
26 determine the extent to which

- 27 (1) its net cash receipts are retained for working capital, the acquisition
28 or replacement of fixed assets, and other reasonably foreseeable needs of the business
29 or activity; and
- 30 (2) the remaining net cash receipts are accounted for as principal or
31 income in the trust's general accounting records.

1 (c) If a trustee sells assets of the business or other activity, other than in the
 2 ordinary course of the business or activity, the trustee shall account for the net amount
 3 received as principal in the trust's general accounting records to the extent the trustee
 4 determines that the amount received is not required any longer in the conduct of the
 5 business.

6 (d) Activities for which a trustee may maintain separate accounting records
 7 include

8 (1) retail, manufacturing, service, and other traditional business
 9 activities;

10 (2) farming;

11 (3) raising and selling livestock and other animals;

12 (4) management of rental properties;

13 (5) extraction of minerals and other natural resources;

14 (6) timber operations; and

15 (7) activities to which AS 13.38.730 applies.

16 **Sec. 13.38.630. Principal receipts.** A trustee shall allocate to principal any of
 17 the following:

18 (1) to the extent not allocated to income under this chapter, assets
 19 received from

20 (A) a transferor during the transferor's lifetime;

21 (B) a decedent's estate;

22 (C) a trust with a terminating income interest; or

23 (D) a payor under a contract naming the trust or its trustee as
 24 beneficiary;

25 (2) money or other property received from a principal asset's sale,
 26 exchange, liquidation, or change in form, including realized profit subject to
 27 AS 13.38.600 -13.38.740;

28 (3) amounts recovered from third parties to reimburse the trust because
 29 of disbursements described in AS 13.38.810(a)(8) or for other reasons, to the extent
 30 not based on the loss of income, except that a separate award made for the loss of
 31 income with respect to an accounting period during which a current income

1 beneficiary had a mandatory income interest is income;

2 (4) net income received in an accounting period during which there is
3 not a beneficiary to whom a trustee may or must distribute income;

4 (5) other receipts as provided in AS 13.38.670 - 13.38.740.

5 **Sec. 13.38.640. Rental property.** (a) To the extent that a trustee accounts for
6 receipts from rental property under this section, the trustee shall allocate an amount
7 received as rent of real or personal property to income, including an amount received
8 for cancellation or renewal of a lease.

9 (b) An amount received as a refundable deposit, including a security deposit
10 or a deposit that is to be applied as rent for future periods,

11 (1) shall be added to principal;

12 (2) shall be held subject to the terms of the lease; and

13 (3) is not available for distribution to a beneficiary until the trustee's
14 contractual obligations have been satisfied with respect to that amount.

15 **Sec. 13.38.650. Obligation to pay money.** (a) An amount received as
16 interest, whether determined at a fixed, variable, or floating rate, on an obligation to
17 pay money to the trustee, including an amount received as consideration for prepaying
18 principal, shall be allocated to income without any provision for amortization of
19 premium.

20 (b) A trustee shall allocate to principal an amount received from the sale,
21 redemption, or other disposition of an obligation to pay money to the trustee more than
22 one year after it is purchased or acquired by the trustee, including an obligation if the
23 purchase price or value of the obligation when it is acquired is less than its value at
24 maturity. If the obligation matures within one year after it is purchased or acquired by
25 the trustee, an amount received in excess of its purchase price or its value when
26 acquired by the trust shall be allocated to income.

27 (c) This section does not apply to an obligation to which AS 13.38.680,
28 13.38.690, 13.38.700, 13.38.710, 13.38.720, 13.38.730, or 13.38.740 applies.

29 **Sec. 13.38.660. Insurance policies and similar contracts.** (a) Except as
30 otherwise provided in (b) or (c) of this section, a trustee shall allocate to principal the
31 proceeds of a life insurance policy or other contract in which the trust or its trustee is

1 named as beneficiary, including a contract that insures the trust or its trustee against
 2 loss for damage to, destruction of, or loss of title to a trust asset. If the premiums on
 3 the policy or contract are paid from income, the trustee shall allocate dividends on the
 4 policy or contract to income. If the premiums on the policy or contract are paid from
 5 principal, the trustee shall allocate dividends on the policy or contract to principal.

6 (b) Except as provided in (c) of this section, a trustee shall allocate to income
 7 proceeds of a contract that insures the trustee against

8 (1) loss of occupancy or other use by an income beneficiary;

9 (2) loss of income; or

10 (3) subject to AS 13.38.620, loss of profits from a business.

11 (c) This section does not apply to a contract to which AS 13.38.680 applies.

12 **Sec. 13.38.670. Insubstantial allocations not required.** If a trustee
 13 determines that an allocation between principal and income required by AS 13.38.680,
 14 13.38.690, 13.38.700, 13.38.710, or 13.38.740 is insubstantial, the trustee may allocate
 15 the entire amount to principal unless one of the circumstances described in
 16 AS 13.38.210(c) applies to the allocation. This power may be exercised by a co-
 17 trustee in the circumstances described in AS 13.38.210(d) and may be released for the
 18 reasons and in the manner described in AS 13.38.210(e). An allocation is presumed to
 19 be insubstantial if

20 (1) the amount of the allocation would increase or decrease net income
 21 in an accounting period, as determined before the allocation, by less than five percent;
 22 or

23 (2) the value of the asset producing the receipt for which the allocation
 24 would be made is less than five percent of the total value of the trust's assets at the
 25 beginning of the accounting period.

26 **Sec. 13.38.680. Retirement benefits, individual retirement accounts,**
 27 **deferred compensation, annuities, and similar payments.** (a) The trustee shall
 28 allocate to income the greater of the portion of a payment characterized by the payor
 29 as interest or a dividend, as a remittance in place of interest or a dividend, or as
 30 imputed interest for federal income tax purposes. The balance of the payment shall be
 31 allocated to principal.

1 (b) If a part of a payment under a contract calling for equal installments over a
2 fixed period of time is not allocable to income under the provisions of (a) of this
3 section, the difference between the trust's acquisition value of the contract and the total
4 expected return shall be considered to be interest. The trustee shall allocate to income
5 the portion of each payment equivalent to interest on the then unpaid principal balance
6 at the rate specified in the contract or at a rate necessary to amortize the difference
7 between the expected return and the acquisition value, where that rate is readily
8 ascertainable by the trustee.

9 (c) If there is not a portion of a payment from a separate fund held exclusively
10 for the benefit of the trust that is allocable to income under (a) or (b) of this section,
11 but the internal net income of the fund determined as if the fund were a separate trust
12 subject to AS 13.38.500 -13.38.860 is readily ascertainable by the trustee, the portion
13 of the payment equal to the then undistributed net income of the fund realized since
14 the trust acquired its interest in the fund is considered to be a distribution of income
15 and shall be allocated to the trust income account. The balance of the payment
16 described in this subsection shall be allocated to principal.

17 (d) A trustee shall allocate 10 percent of the part of the payment that is
18 required to be made during the accounting period to income and the balance to
19 principal if there is not a part of the payment that is allocable to income under (a) - (c)
20 of this section and all or part of the payment is required to be made. The trustee shall
21 allocate the entire payment to principal if a part of a payment is not required to be
22 made or the payment received is the entire amount to which the trustee is entitled. In
23 this subsection, a payment is not "required to be made" to the extent that it is made
24 because the trustee exercises a right of withdrawal.

25 (e) If, to obtain a federal estate or gift tax marital deduction for a trust, the
26 trustee must allocate more of a payment to income than provided for by this section,
27 the trustee shall allocate the additional amount necessary to obtain the marital
28 deduction to income.

29 (f) This section does not apply to payments to which AS 13.38.690 applies.

30 (g) In this section, "payment" means a payment that a trustee may receive over
31 a fixed period of time or during the life of one or more individuals because of services

1 rendered or property transferred to the payor in exchange for future payments, and
2 includes

3 (1) a payment made in money or property from the payor's general
4 assets or from a separate fund created by the payor or another person;

5 (2) a payment on or from

6 (A) an installment contract or note;

7 (B) a private or commercial annuity;

8 (C) a deferred compensation agreement;

9 (D) an employee death benefit;

10 (E) an individual retirement account; or

11 (F) a pension plan, profit-sharing plan, stock plan, bonus plan,

12 or stock-ownership plan.

13 **Sec. 13.38.690. Liquidating asset.** (a) A trustee shall allocate 10 percent of
14 the receipts from a liquidating asset to income and the balance to principal.

15 (b) In this section, "liquidating asset"

16 (1) means

17 (A) an asset the value of which will diminish or terminate
18 because the asset is expected to produce receipts for a period of limited
19 duration; or

20 (B) a leasehold, patent, copyright, royalty right, and right to
21 receive payments during a period of more than one year under an arrangement
22 that does not provide for the payment of interest on the unpaid balance;

23 (2) does not include

24 (A) a payment subject to AS 13.38.680;

25 (B) resources subject to AS 13.38.700;

26 (C) timber subject to AS 13.38.710;

27 (D) an activity subject to AS 13.38.730;

28 (E) an asset subject to AS 13.38.740; or

29 (F) an asset for which the trustee establishes a reserve for
30 depreciation under AS 13.38.830.

31 **Sec. 13.38.700. Minerals, water, and other natural resources.** (a) To the

1 extent that a trustee accounts for receipts from an interest in minerals or other natural
2 resources under this section, the trustee shall allocate them as follows:

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

5 (2) if received from a production payment, a receipt shall be allocated
6 to income if and to the extent that the agreement creating the production payment
7 provides a factor for interest or its equivalent; the balance shall be allocated to
8 principal;

9 (3) if an amount received as a royalty, shut-in-well payment, take-or-
10 pay payment, bonus, or delay rental is more than nominal, 66 2/3 percent shall be
11 allocated to principal, and the balance shall be allocated to income;

12 (4) if an amount is received from a working interest or any other
13 interest not provided for in (1) - (3) of this subsection, 66 2/3 percent of the net
14 amount received shall be allocated to principal, and the balance shall be allocated to
15 income.

16 (b) An amount received on account of an interest in renewable water shall be
17 allocated to income. An amount received on account of an interest in nonrenewable
18 water shall be allocated as follows:

19 (1) 66 2/3 percent of the amount shall be allocated to principal; and

20 (2) the balance shall be allocated to income.

21 (c) This chapter applies whether or not a decedent or donor was extracting
22 minerals, water, or other natural resources before the interest became subject to the
23 trust.

24 **Sec. 13.38.710. Timber.** (a) To the extent that a trustee accounts for receipts
25 from the sale of timber and related products under this section, the trustee shall
26 allocate the net receipts

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

30 (2) to principal, to the extent that the amount of timber removed from
31 the land exceeds the rate of growth of the timber, or the net receipts are from the sale

1 of standing timber;

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

6 (4) to principal to the extent that advance payments, bonuses, and other
7 payments are not allocated under (1) - (3) of this subsection.

8 (b) In determining net receipts to be allocated under (a) of this section, a
9 trustee shall deduct and transfer to principal a reasonable amount for depletion.

10 (c) This chapter applies whether or not a decedent or transferor was harvesting
11 timber from the property before it became subject to the trust.

12 **Sec. 13.38.720. Property not productive of income.** (a) If a federal estate or
13 gift tax marital deduction is allowed for all or part of a trust whose income is required
14 to be paid to the settlor's or testator's spouse and whose assets consist substantially of
15 property that does not provide the spouse with sufficient income from or use of the
16 trust assets, and if the amounts that the trustee transfers from principal to income
17 under AS 13.38.210 and that the trustee distributes to the spouse from principal under
18 the governing instrument are insufficient to provide the spouse with the beneficial
19 enjoyment required to obtain the marital deduction, the spouse may require the trustee
20 to make property productive of income, convert property within a reasonable time, or
21 exercise the power conferred by AS 13.38.210(a). The trustee may decide which
22 action or combination of actions to take.

23 (b) In cases not governed by (a) of this section, proceeds from the sale or other
24 disposition of an asset are principal without regard to the amount of income the asset
25 produces during any accounting period.

26 **Sec. 13.38.730. Derivatives and options.** (a) To the extent that a trustee
27 does not account under AS 13.38.620 for transactions in derivatives, the trustee shall
28 allocate receipts from and disbursements made in connection with those transactions
29 to principal.

30 (b) If a trustee grants an option to buy property from the trust, whether or not
31 the trust owns the property when the option is granted, grants an option that permits

1 another person to sell property to the trust, or acquires an option to buy property for
 2 the trust or an option to sell an asset owned by the trust, and the trustee or other owner
 3 of the asset is required to deliver the asset if the option is exercised, an amount
 4 received for granting the option shall be allocated to principal. An amount paid to
 5 acquire the option shall be paid from principal. A gain or loss realized upon the
 6 exercise of an option, including an option granted to a settlor or testator of the trust for
 7 services rendered, shall be allocated to principal.

8 (c) In this section, "derivative" means a contract or financial instrument or a
 9 combination of contracts and financial instruments that gives a trust the right or
 10 obligation to participate in some or all changes in the price of a tangible or intangible
 11 asset or group of assets, or changes in a rate, an index of prices or rates, or another
 12 market indicator for an asset or a group of assets.

13 **Sec. 13.38.740. Asset-backed securities.** (a) If a trust receives a payment
 14 from interest or other current return and from other proceeds of the collateral financial
 15 assets, the trustee shall allocate the portion of the payment that the payor identifies as
 16 being from interest or other current return to income, and the trustee shall allocate the
 17 balance of the payment to principal.

18 (b) If a trust receives one or more payments in exchange for the trust's entire
 19 interest in an asset-backed security in one accounting period, the trustee shall allocate
 20 the payments to principal. If a payment is one of a series of payments that will result
 21 in the liquidation of the trust's interest in the security over more than one accounting
 22 period, the trustee shall allocate 10 percent of the payment to income and the balance
 23 to principal.

24 (c) In this section, "asset-backed security"

25 (1) means an asset whose value is based on the right it gives the owner
 26 to receive distributions from the proceeds of financial assets that provide collateral for
 27 the security;

28 (2) includes an asset that gives the owner the right to receive from the
 29 collateral financial assets only the interest or other current return or only the proceeds
 30 other than interest or current return;

31 (3) does not include an asset to which AS 13.38.600 or 13.38.680

1 applies.

2 **Article 7. Allocation of Disbursements During Administration of Trust.**

3 **Sec. 13.38.800. Mandatory disbursements from income.** A trustee shall
4 make the following disbursements from income:

- 5 (1) interest, except interest on taxes described in AS 13.38.810(a)(7);
6 (2) ordinary repairs;
7 (3) real estate and other regularly recurring taxes assessed against
8 principal;
9 (4) recurring premiums on fire or other insurance covering the loss of a
10 principal asset or the loss of income from or use of the asset.

11 **Sec. 13.38.810. Mandatory disbursements from principal.** (a) A trustee
12 shall make the following disbursements from principal:

- 13 (1) extraordinary expenses incurred in connection with the
14 administration, management, or preservation of trust property and the distribution of
15 income;
16 (2) extraordinary repairs;
17 (3) compensation for legal services to the trustee;
18 (4) expenses in connection with accountings and judicial or other
19 proceedings, including proceedings to construe, modify, or reform the trust or to
20 protect the trust or its property;
21 (5) payments on the principal of a trust debt;
22 (6) premiums paid on a policy of insurance not described in
23 AS 13.38.800(4) if the trust is the owner and beneficiary;
24 (7) estate, inheritance, and other transfer taxes, including interest and
25 penalties, apportioned to the trust;
26 (8) disbursements related to environmental matters, including
27 (A) reclamation;
28 (B) assessing environmental conditions;
29 (C) remedying and removing environmental contamination;
30 (D) monitoring remedial activities and the release of
31 substances;

1 (E) preventing future releases of substances;

2 (F) collecting amounts from persons liable or potentially liable
3 for the costs of those activities;

4 (G) penalties imposed under environmental statutes or
5 regulations and other payments made to comply with those statutes or
6 regulations;

7 (H) statutory or common law claims by third parties;

8 (I) defending claims based on environmental matters.

9 (b) If a principal asset is encumbered with an obligation that requires income
10 from that asset to be paid directly to the creditor, the trustee shall transfer from
11 principal to income an amount equal to the income paid to the creditor in reduction of
12 the principal balance of the obligation.

13 **Sec. 13.38.820. Discretionary allocation of disbursements.** Subject to
14 AS 13.38.800 and 13.38.810, a trustee may, in the trustee's discretion, allocate to
15 income or principal or partly to each ordinary expenses incurred in connection with
16 the administration, management, or preservation of trust property and the distribution
17 of income, including the compensation of the trustee and of a person providing
18 investment advisory, custodial, or income tax return preparation services to the trustee.

19 **Sec. 13.38.830. Transfers from income to principal for depreciation.** (a)
20 A trustee may transfer to principal a reasonable amount of the net cash receipts from a
21 principal asset that is subject to depreciation. However, a trustee may not transfer any
22 amount for depreciation

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

26 (2) during the administration of a decedent's estate; or

27 (3) under this section if the trustee is accounting under AS 13.38.620
28 for the business or activity in which the asset is used.

29 (b) An amount transferred to principal is not required to be held as a separate
30 fund.

31 (c) In this section, "depreciation" means a reduction in value due to wear, tear,

1 decay, corrosion, or gradual obsolescence of a fixed asset having a useful life of more
2 than one year.

3 **Sec. 13.38.840. Transfers from income to reimburse principal.** (a) A
4 trustee may transfer an appropriate amount from income to principal in one or more
5 accounting periods to reimburse principal or to provide a reserve for future
6 disbursements if the trustee makes or expects to make a disbursement from principal
7 that is allocable to income under AS 13.38.800 or 13.38.820 and that is paid from
8 principal because it is unusually large, or is made to prepare property for rental,
9 including tenant allowances, leasehold improvements, and broker's commissions.

10 (b) If the asset whose ownership gives rise to the disbursements becomes
11 subject to a successive income interest after an income interest ends, a trustee may
12 continue to transfer amounts from income to principal as provided in (a) of this
13 section.

14 (c) This section does not apply to the extent the trustee has been or expects to
15 be reimbursed by a third party.

16 **Sec. 13.38.850. Income taxes.** (a) A tax required to be paid by a trustee
17 based on receipts allocated to income shall be paid from income.

18 (b) A tax required to be paid by a trustee based on receipts allocated to
19 principal shall be paid from principal, even if the tax is called an income tax by the
20 taxing authority.

21 (c) A tax required to be paid by a trustee on the trust's share of an entity's
22 taxable income shall be paid proportionately from

23 (1) income, to the extent that receipts from the entity are allocated to
24 income; and

25 (2) principal, to the extent that

26 (A) receipts from the entity are allocated to principal; and

27 (B) the trust's share of the entity's taxable income exceeds the
28 total receipts described in (1) of this subsection and (A) of this paragraph.

29 (d) For the purposes of this section, receipts allocated to principal or income
30 shall be reduced by the amount distributed to a beneficiary from principal or income
31 for which the trust receives a deduction in calculating the tax.

1 **Sec. 13.38.860. Adjustments between principal and income because of**
 2 **taxes.** A trustee may make adjustments between principal and income to offset the
 3 shifting of economic interests or tax benefits between income beneficiaries and
 4 remainder beneficiaries that arise from

5 (1) an election or decision that the trustee makes regarding tax matters;

6 (2) an income tax or any other tax that is imposed on the trustee or a
 7 beneficiary as a result of a transaction involving the trust or distribution from the trust;
 8 or

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

12 **Article 8. General Provisions.**

13 **Sec. 13.38.900. Uniformity of application and construction.** In applying
 14 and construing this chapter, consideration shall be given to the need to promote
 15 uniformity of the law with respect to its subject matter among states that enact it.

16 **Sec. 13.38.980. Definitions.** In this chapter, unless the context clearly
 17 indicates otherwise,

18 (1) "accounting period" means a calendar year, unless another 12-
 19 month period is selected by a fiduciary, and includes a portion of a calendar year or
 20 other 12-month period that begins when an income interest begins or ends when an
 21 income interest ends;

22 (2) "beneficiary" includes, in the case of

23 (A) a decedent's estate, an heir, legatee, or devisee; and

24 (B) a trust, an income beneficiary and a remainder beneficiary;

25 (3) "fiduciary" means a personal representative or a trustee;

26 (4) "income" means money or property that a fiduciary receives as
 27 current return from a principal asset, and includes a portion of receipts from a sale,
 28 exchange, or liquidation of a principal asset, to the extent provided in AS 13.38.600 -
 29 13.38.740;

30 (5) "income beneficiary" means a person to whom net income of a
 31 trust is or may be payable;

1 (6) "income interest" means the right of an income beneficiary to
 2 receive all or part of net income, whether the governing instrument requires it to be
 3 distributed or authorizes it to be distributed in the trustee's discretion;

4 (7) "mandatory income interest" means the right of an income
 5 beneficiary to receive net income that the governing instrument requires the fiduciary
 6 to distribute;

7 (8) "net income" means the total receipts allocated to income during an
 8 accounting period, minus disbursements made from income during the period, and
 9 plus or minus transfers under this chapter to or from income during the period;

10 (9) "person" means an individual, a corporation, a business trust, an
 11 estate, a trust, a partnership, a limited liability company, an association, a joint
 12 venture, a government, a governmental subdivision, an agency or instrumentality, a
 13 public corporation, or another legal or commercial entity;

14 (10) "principal" means property held in trust for distribution to a
 15 remainder beneficiary when the trust terminates, or property held in trust in perpetuity;

16 (11) "remainder beneficiary" means a person entitled to receive
 17 principal when an income interest ends;

18 (12) "sui juris beneficiary" includes

19 (A) a court-appointed guardian of an incapacitated beneficiary;

20 (B) an agent for an incompetent beneficiary; and

21 (C) a court-appointed guardian of a minor beneficiary's estate;

22 (13) "trust" includes a legal life estate arrangement;

23 (14) "trustee" includes an original, additional, or successor trustee,
 24 whether or not appointed or confirmed by a court;

25 (15) "unitrust" means a trust from which a fixed percentage of the net
 26 fair market value of the trust's assets, valued annually, is paid not less often than
 27 annually to a beneficiary.

28 **Sec. 13.38.990. Short title.** This chapter may be cited as the Alaska Principal
 29 and Income Act.

30 * **Sec. 3.** AS 13.38.010, 13.38.020, 13.38.030, 13.38.040, 13.38.050, 13.38.060, 13.38.070,
 31 13.38.080, 13.38.090, 13.38.100, 13.38.110, 13.38.120, 13.38.130, and 13.38.140 are

1 repealed.

2 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
3 read:

4 **APPLICABILITY.** AS 13.38.200 - 13.38.990, enacted by sec. 2 of this Act, apply,
5 except as otherwise expressly provided in the governing instrument, to a trust existing on or
6 after the effective date of this Act, and to the estate of a decedent who dies on or after the
7 effective date of this Act.

8 * **Sec. 5.** This Act takes effect September 1, 2003.