

HOUSE CS FOR SENATE BILL NO. 87(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 5/6/03
Referred: Rules

Sponsor(s): SENATOR SEEKINS

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 - 13.16.545 [AS 13.16.540 - 13.16.550],
8 13.16.560, and the provisions of AS 13.38 [AS 13.38.030(a)] apply to the
9 administration of a revocable trust following the death of the settlor of the trust, unless
10 the terms of the trust indicate a different intention.

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

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

13 **Sec. 13.38.200. Fiduciary duties; general principles.** (a) In allocating
14 receipts and disbursements to or between principal and income and with respect to any

1 matter within the scope of this chapter, a fiduciary

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

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

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

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

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

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

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

31 (2) the trustee determines, after applying the rules in AS 13.38.200(a),

1 that the trustee is unable to comply with AS 13.38.200(b); and

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

5 (A) appreciation of capital;

6 (B) earnings and distributions from capital; or

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

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

10 (1) the size of the trust;

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

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

13 (4) the need for regular distributions and preservation and appreciation
14 of capital;

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

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

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

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

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

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

31 (11) the actual and anticipated effect of economic conditions on

1 principal and income and the effects of inflation and deflation.

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

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

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

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

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

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

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

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

28 (8) the trust has been converted to a unitrust under AS 13.38.300 -
29 13.38.410.

30 (d) If (c)(5), (6), or (7) of this section applies to a trustee and there is more
31 than one trustee, a co-trustee to whom the provision does not apply may make the

1 adjustment unless the exercise of the power by the remaining trustee or trustees is
2 prohibited by the governing instrument.

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

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

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

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

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

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

1 beneficiary who received the distribution that was too large or by requiring that
 2 beneficiary or that beneficiary's estate to return some or all of the distribution to the
 3 trust, notwithstanding a spendthrift or similar provision;

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

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

12 **Article 2. Conversion to Unitrust.**

13 **Sec. 13.38.300. Power to convert to unitrust.** Unless expressly prohibited
 14 by the governing instrument, a trustee may release the power to adjust under
 15 AS 13.38.210 and may convert a trust into a unitrust as described in AS 13.38.300 -
 16 13.38.410 if

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

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

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

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

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

31 (3) there are at least one sui juris beneficiary under (2)(A) of this

1 section and at least one sui juris beneficiary under (2)(B) or (C) of this section; and

2 (4) a sui juris beneficiary does not object to the conversion to a unitrust
3 in a writing delivered to the trustee within 60 days after the mailing of the notice under
4 (2) of this section.

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

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

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

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

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

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

19 (1) the size of the trust;

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

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

22 (4) the need for regular distributions and preservation and appreciation
23 of capital;

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

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

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

31 (8) whether and to what extent the governing instrument gives the

1 trustee the power to invade principal or accumulate income or prohibits the trustee
 2 from invading principal or accumulating income and the extent to which the trustee
 3 has exercised a power from time to time to invade principal or accumulate income;

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

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

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

10 (A) appreciation of capital;

11 (B) earnings and distributions from capital; or

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

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

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

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

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

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

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

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

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

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

31 (6) what valuation dates to use;

1 (7) how frequently to value nonliquid assets and whether to estimate
2 their value;

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

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

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

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

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

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

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

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

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

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

1 (1) payment of the unitrust distribution would change the amount
2 payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust
3 assets;

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

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

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

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

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

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

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

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

30 **Sec. 13.38.400. Reconversion from a unitrust.** A trustee may reconvert a
31 trust that has been converted into a unitrust under AS 13.38.300 by following the same

1 procedures provided in AS 13.38.300 - 13.38.410 for converting a trust into a unitrust.
 2 If a unitrust is reconverted under this section, the trustee's power to adjust under
 3 AS 13.38.210 applies to the trustee after the reconversion.

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

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

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

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

13 **Article 3. Charitable Trust Election.**

14 **Sec. 13.38.440. Charitable trust election.** The trustee of a trust held
 15 exclusively for charitable purposes may elect to be governed by AS 13.38.440 -
 16 13.38.490 unless the governing instrument expressly provides that the election
 17 provided by AS 13.38.440 - 13.38.490 is not available.

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

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

1 the trust. The trustee may elect to change a percentage previously selected if the
 2 trustee determines that the new percentage is consistent with the long-term
 3 preservation of the real value of the principal of the trust, but may not change the
 4 percentage more frequently than once every 10 years.

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

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

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

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

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

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

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

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

31 (1) of an estate or of a terminating income interest shall determine the

1 amount of net income and net principal receipts received from property specifically
 2 given to a beneficiary under (5) of this section and the provisions applicable to trustees
 3 in AS 13.38.550 - 13.38.860; the fiduciary shall distribute the net income and net
 4 principal receipts to the beneficiary who is to receive the specific property;

5 (2) shall distribute to a beneficiary or trust that receives a pecuniary
 6 amount a share of net income equal to the beneficiary's or trust's fractional interest in
 7 undistributed principal assets as determined under AS 13.38.510; the share accrues
 8 from the date of death of a decedent, in the case of an estate, or the date of death of a
 9 settlor or specified event, in the case of a revocable or irrevocable trust;

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

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

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

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

24 (5) may not reduce principal or income receipts from property
 25 described in (1) of this section because of a payment described in AS 13.38.710 or
 26 13.38.720 to the extent that the governing instrument or applicable law requires the
 27 fiduciary to make the payment from assets other than the property or to the extent that
 28 the fiduciary recovers or expects to recover the payment from a third party; the net
 29 income and principal receipts from the property are determined by

30 (A) including all of the amounts the fiduciary receives or pays
 31 with respect to the property, whether those amounts accrued or became due

1 before, on, or after the date of a decedent's death or an income interest's
2 terminating event; and

3 (B) making a reasonable provision for amounts that the
4 fiduciary believes the estate or terminating income interest may become
5 obligated to pay after the property is distributed.

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

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

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

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

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

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

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

30 (d) To the extent that the fiduciary considers it appropriate, if this section
31 applies to the income from an asset, the fiduciary may apply the rules in this section to

1 net gain or loss from the disposition of a principal asset realized after the date of death
2 or terminating event or an earlier distribution date.

3 (e) For the purposes of this section, the distribution date may be the date as of
4 which the fiduciary calculates the value of the assets if that date is reasonably near the
5 date on which assets are actually distributed.

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

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

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

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

13 (b) An asset becomes subject to a trust

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

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

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

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

25 (d) An income interest ends on

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

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

30 **Sec. 13.38.560. Apportionment of receipts and disbursements when**
31 **decedent dies or income interest begins.** (a) Unless AS 13.38.500(1) applies, a

1 trustee shall allocate an income receipt or disbursement to principal if its due date
2 occurs before

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

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

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

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

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

31 (b) When a trustee's obligation to pay a fixed annuity or a fixed fraction of the

1 value of the trust's assets ends, the trustee shall prorate the final payment if and to the
 2 extent required by applicable law to accomplish a purpose of the trust or its settlor or
 3 testator relating to income, gift, estate, or other tax requirements.

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

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

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

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

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

20 (c) Money is received in partial liquidation

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

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

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

31 (e) A trustee may rely upon a statement made by an entity about the source or

1 character of a distribution if the statement is made at or near the time of distribution by
 2 the entity's board of directors or other person or group of persons authorized to
 3 exercise powers to pay money or transfer property comparable to those of a
 4 corporation's board of directors.

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

8 (1) a trust or estate to which AS 13.38.610 applies;

9 (2) a business or activity to which AS 13.38.620 applies;

10 (3) a payment to which AS 13.38.690 applies; or

11 (4) an asset-backed security to which AS 13.38.750 applies.

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

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

18 (c) If a trustee purchases an interest in a trust that is an investment entity, or a
 19 decedent or donor transfers an interest in a trust that is an investment entity to a
 20 trustee, AS 13.38.600 or 13.38.750 applies to a receipt from the trust.

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

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

30 (1) its net cash receipts are retained for working capital, the acquisition
 31 or replacement of fixed assets, and other reasonably foreseeable needs of the business

1 or activity; and

2 (2) the remaining net cash receipts are accounted for as principal or
3 income in the trust's general accounting records.

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

9 (d) Activities for which a trustee may maintain separate accounting records
10 include

11 (1) retail, manufacturing, service, and other traditional business
12 activities;

13 (2) farming;

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

15 (4) management of rental properties;

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

17 (6) timber operations; and

18 (7) activities to which AS 13.38.740 applies.

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

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

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

24 (B) a decedent's estate;

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

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

28 (2) money or other property received from a principal asset's sale,
29 exchange, liquidation, or change in form, including realized profit subject to
30 AS 13.38.600 -13.38.750;

31 (3) amounts recovered from third parties to reimburse the trust because

1 of disbursements described in AS 13.38.810(a)(8) or for other reasons, to the extent
 2 not based on the loss of income, except that a separate award made for the loss of
 3 income with respect to an accounting period during which a current income
 4 beneficiary had a mandatory income interest is income;

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

7 (5) other receipts as provided in AS 13.38.680 - 13.38.750.

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

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

14 (1) shall be added to principal;

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

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

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

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

30 (c) This section does not apply to an obligation to which AS 13.38.690,
 31 13.38.700, 13.38.710, 13.38.720, 13.38.730, 13.38.740, or 13.38.750 applies.

1 **Sec. 13.38.660. Insurance policies and similar contracts.** (a) Except as
 2 otherwise provided in (b) or (c) of this section, a trustee shall allocate to principal the
 3 proceeds of a life insurance policy or other contract in which the trust or its trustee is
 4 named as beneficiary, including a contract that insures the trust or its trustee against
 5 loss for damage to, destruction of, or loss of title to a trust asset. If the premiums on
 6 the policy or contract are paid from income, the trustee shall allocate dividends on the
 7 policy or contract to income. If the premiums on the policy or contract are paid from
 8 principal, the trustee shall allocate dividends on the policy or contract to principal.

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

- 11 (1) loss of occupancy or other use by an income beneficiary;
- 12 (2) loss of income; or
- 13 (3) subject to AS 13.38.620, loss of profits from a business.

14 (c) This section does not apply to a contract to which AS 13.38.690 applies.

15 **Sec. 13.38.670. Special rules for charitable remainder unitrusts.**
 16 Notwithstanding the other provisions of this chapter, if a charitable remainder unitrust,
 17 as defined in 26 U.S.C. 664 (Internal Revenue Code), owns an obligation described in
 18 (2) of this section, the following rules apply, unless varied by the governing
 19 instrument:

20 (1) an obligation for the payment of money is principal at its inventory
 21 value except as provided in (2) of this section; the trustee may not make a provision
 22 for amortization of a premium or for accumulation for discount;

23 (2) except to the extent otherwise provided in the governing
 24 instrument, an increase in the value of the following above inventory value is
 25 distributable as income:

- 26 (A) a zero coupon bond;
- 27 (B) an annuity contract before annuitization;
- 28 (C) a life insurance contract before the death of the insured;
- 29 (D) an interest in a common trust fund; in this subparagraph,
 30 "common trust fund" has the meaning given in 26 U.S.C. 584 (Internal
 31 Revenue Code);

1 (E) an interest in a limited liability company, limited liability
2 partnership, or limited partnership; and

3 (F) another obligation for the payment of money if the money
4 is payable at a future time under a fixed, variable, or discretionary schedule of
5 appreciation and if the payment exceeds the price at which the obligation was
6 issued;

7 (3) the increase in value of the obligations described in (2) of this
8 section is distributable to the beneficiary who was the income beneficiary at the time
9 of the increase; the increase is distributable from the first cash available from the
10 principal or, if cash is not available from the principal, when cash is first available
11 from the principal due to a sale, a redemption, or another disposition; when an
12 unrealized increase is distributed as income from principal, the principal shall be
13 reimbursed when the increase is realized;

14 (4) the increase in value of an obligation described in (2) of this
15 section is not available for distribution unless the trustee receives cash on account of
16 the obligation;

17 (5) notwithstanding a provision in this section to the contrary, a
18 distribution from a partnership or limited liability company attributable to the cash
19 flow or income derived from operations regularly carried on by the partnership or
20 limited liability company is income, except to the extent otherwise provided in the
21 governing instrument.

22 **Sec. 13.38.680. Insubstantial allocations not required.** If a trustee
23 determines that an allocation between principal and income required by AS 13.38.690,
24 13.38.700, 13.38.710, 13.38.720, or 13.38.750 is insubstantial, the trustee may allocate
25 the entire amount to principal unless one of the circumstances described in
26 AS 13.38.210(c) applies to the allocation. This power may be exercised by a co-
27 trustee in the circumstances described in AS 13.38.210(d) and may be released for the
28 reasons and in the manner described in AS 13.38.210(e). An allocation is presumed to
29 be insubstantial if

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

1 or

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

5 **Sec. 13.38.690. Retirement benefits, individual retirement accounts,**
6 **deferred compensation, annuities, and similar payments.** (a) The trustee shall
7 allocate to income the greater of the portion of a payment characterized by the payor
8 as interest or a dividend, as a remittance in place of interest or a dividend, or as
9 imputed interest for federal income tax purposes. The balance of the payment shall be
10 allocated to principal.

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

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

27 (d) A trustee shall allocate 10 percent of the part of the payment that is
28 required to be made during the accounting period to income and the balance to
29 principal if there is not a part of the payment that is allocable to income under (a) - (c)
30 of this section and all or part of the payment is required to be made. The trustee shall
31 allocate the entire payment to principal if a part of a payment is not required to be

1 made or the payment received is the entire amount to which the trustee is entitled. In
 2 this subsection, a payment is not "required to be made" to the extent that it is made
 3 because the trustee exercises a right of withdrawal.

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

8 (f) This section does not apply to payments to which AS 13.38.700 applies.

9 (g) In this section, "payment" means a payment that a trustee may receive over
 10 a fixed period of time or during the life of one or more individuals because of services
 11 rendered or property transferred to the payor in exchange for future payments, and
 12 includes

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

15 (2) a payment on or from

16 (A) an installment contract or note;

17 (B) a private or commercial annuity;

18 (C) a deferred compensation agreement;

19 (D) an employee death benefit;

20 (E) an individual retirement account; or

21 (F) a pension plan, profit-sharing plan, stock plan, bonus plan,
 22 or stock-ownership plan.

23 **Sec. 13.38.700. Liquidating asset.** (a) A trustee shall allocate 10 percent of
 24 the receipts from a liquidating asset to income and the balance to principal.

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

26 (1) means

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

30 (B) a leasehold, patent, copyright, royalty right, and right to
 31 receive payments during a period of more than one year under an arrangement

1 that does not provide for the payment of interest on the unpaid balance;

2 (2) does not include

3 (A) an obligation subject to AS 13.38.670;

4 (B) a payment subject to AS 13.38.690;

5 (C) resources subject to AS 13.38.710;

6 (D) timber subject to AS 13.38.720;

7 (E) an activity subject to AS 13.38.740;

8 (F) an asset subject to AS 13.38.750; or

9 (G) an asset for which the trustee establishes a reserve for
10 depreciation under AS 13.38.830.

11 **Sec. 13.38.710. Minerals, water, and other natural resources.** (a) To the
12 extent that a trustee accounts for receipts from an interest in minerals or other natural
13 resources under this section, the trustee shall allocate them as follows:

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

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

20 (3) if an amount received as a royalty, shut-in-well payment, take-or-
21 pay payment, bonus, or delay rental is more than nominal, 90 percent shall be
22 allocated to principal, and the balance shall be allocated to income;

23 (4) if an amount is received from a working interest or any other
24 interest not provided for in (1) - (3) of this subsection, 90 percent of the net amount
25 received shall be allocated to principal, and the balance shall be allocated to income.

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

29 (1) 90 percent of the amount shall be allocated to principal; and

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

31 (c) This chapter applies whether or not a decedent or donor was extracting

1 minerals, water, or other natural resources before the interest became subject to the
2 trust.

3 **Sec. 13.38.720. Timber.** (a) To the extent that a trustee accounts for receipts
4 from the sale of timber and related products under this section, the trustee shall
5 allocate the net receipts

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

9 (2) to principal, to the extent that the amount of timber removed from
10 the land exceeds the rate of growth of the timber, or the net receipts are from the sale
11 of standing timber;

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

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

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

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

22 **Sec. 13.38.730. Property not productive of income.** (a) If a federal estate or
23 gift tax marital deduction is allowed for all or part of a trust whose income is required
24 to be paid to the settlor's or testator's spouse and whose assets consist substantially of
25 property that does not provide the spouse with sufficient income from or use of the
26 trust assets, and if the amounts that the trustee transfers from principal to income
27 under AS 13.38.210 and that the trustee distributes to the spouse from principal under
28 the governing instrument are insufficient to provide the spouse with the beneficial
29 enjoyment required to obtain the marital deduction, the spouse may require the trustee
30 to make property productive of income, convert property within a reasonable time, or
31 exercise the power conferred by AS 13.38.210(a). The trustee may decide which

1 action or combination of actions to take.

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

5 **Sec. 13.38.740. Derivatives and options.** (a) To the extent that a trustee
6 does not account under AS 13.38.620 for transactions in derivatives, the trustee shall
7 allocate receipts from and disbursements made in connection with those transactions
8 to principal.

9 (b) If a trustee grants an option to buy property from the trust, whether or not
10 the trust owns the property when the option is granted, grants an option that permits
11 another person to sell property to the trust, or acquires an option to buy property for
12 the trust or an option to sell an asset owned by the trust, and the trustee or other owner
13 of the asset is required to deliver the asset if the option is exercised, an amount
14 received for granting the option shall be allocated to principal. An amount paid to
15 acquire the option shall be paid from principal. A gain or loss realized upon the
16 exercise of an option, including an option granted to a settlor or testator of the trust for
17 services rendered, shall be allocated to principal.

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

23 **Sec. 13.38.750. Asset-backed securities.** (a) If a trust receives a payment
24 from interest or other current return and from other proceeds of the collateral financial
25 assets, the trustee shall allocate the portion of the payment that the payor identifies as
26 being from interest or other current return to income, and the trustee shall allocate the
27 balance of the payment to principal.

28 (b) If a trust receives one or more payments in exchange for the trust's entire
29 interest in an asset-backed security in one accounting period, the trustee shall allocate
30 the payments to principal. If a payment is one of a series of payments that will result
31 in the liquidation of the trust's interest in the security over more than one accounting

1 period, the trustee shall allocate 10 percent of the payment to income and the balance
2 to principal.

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

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

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

10 (3) does not include an asset to which AS 13.38.600 or 13.38.690
11 applies.

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

13 **Sec. 13.38.800. Mandatory disbursements from income.** A trustee shall
14 make the following disbursements from income:

15 (1) interest, except interest on taxes described in AS 13.38.810(a)(7);

16 (2) ordinary repairs;

17 (3) real estate and other regularly recurring taxes assessed against
18 principal;

19 (4) recurring premiums on fire or other insurance covering the loss of a
20 principal asset or the loss of income from or use of the asset.

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

23 (1) extraordinary expenses incurred in connection with the
24 administration, management, or preservation of trust property and the distribution of
25 income;

26 (2) extraordinary repairs;

27 (3) compensation for legal services to the trustee;

28 (4) expenses in connection with accountings and judicial or other
29 proceedings, including proceedings to construe, modify, or reform the trust or to
30 protect the trust or its property;

31 (5) payments on the principal of a trust debt;

1 (6) premiums paid on a policy of insurance not described in
2 AS 13.38.800(4) if the trust is the owner and beneficiary;

3 (7) estate, inheritance, and other transfer taxes, including interest and
4 penalties, apportioned to the trust;

5 (8) disbursements related to environmental matters, including

6 (A) reclamation;

7 (B) assessing environmental conditions;

8 (C) remedying and removing environmental contamination;

9 (D) monitoring remedial activities and the release of
10 substances;

11 (E) preventing future releases of substances;

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

14 (G) penalties imposed under environmental statutes or
15 regulations and other payments made to comply with those statutes or
16 regulations;

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

18 (I) defending claims based on environmental matters.

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

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

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

1 amount for depreciation

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

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

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

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

10 (c) In this section, "depreciation" means a reduction in value due to wear, tear,
11 decay, corrosion, or gradual obsolescence of a fixed asset having a useful life of more
12 than one year.

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

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

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

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

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

31 (c) A tax required to be paid by a trustee on the trust's share of an entity's

1 taxable income shall be paid proportionately from

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

4 (2) principal, to the extent that

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

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

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

11 **Sec. 13.38.860. Adjustments between principal and income because of**
12 **taxes.** A trustee may make adjustments between principal and income to offset the
13 shifting of economic interests or tax benefits between income beneficiaries and
14 remainder beneficiaries that arise from

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

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

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

22 **Article 8. General Provisions.**

23 **Sec. 13.38.900. Not applicable to mental health trust.** This chapter does not
24 apply to the trust established under the Alaska Mental Health Enabling Act of 1956,
25 P.L. 84-830, 70 Stat. 709.

26 **Sec. 13.38.910. Uniformity of application and construction.** In applying
27 and construing this chapter, consideration shall be given to the need to promote
28 uniformity of the law with respect to its subject matter among states that enact it.

29 **Sec. 13.38.980. Definitions.** In this chapter, unless the context clearly
30 indicates otherwise,

31 (1) "accounting period" means a calendar year, unless another 12-

1 month period is selected by a fiduciary, and includes a portion of a calendar year or
 2 other 12-month period that begins when an income interest begins or ends when an
 3 income interest ends;

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

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

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

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

8 (4) "income" means money or property that a fiduciary receives as
 9 current return from a principal asset, and includes a portion of receipts from a sale,
 10 exchange, or liquidation of a principal asset, to the extent provided in AS 13.38.600 -
 11 13.38.750;

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

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

17 (7) "mandatory income interest" means the right of an income
 18 beneficiary to receive net income that the governing instrument requires the fiduciary
 19 to distribute;

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

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

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

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

31 (12) "sui juris beneficiary" includes

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

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

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

4 (13) "trust" includes a revocable trust, an irrevocable trust, and a legal
5 life estate arrangement;

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

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

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

13 * **Sec. 3.** AS 37.14.031(d) is amended to read:

14 (d) The **authority shall adopt regulations providing for the determination**
15 **of [PROVISIONS OF AS 13.38 APPLY TO DETERMINE] amounts attributable to**
16 **[THE] principal under (b)(2) of this section. The regulations must provide for the**
17 **allocation between principal and income of money received from the**
18 **management of mental health trust land, and the manner of allocation must be in**
19 **the long-term best interest of the trust and its beneficiaries.**

20 * **Sec. 4.** AS 13.16.550; AS 13.38.010, 13.38.020, 13.38.030, 13.38.040, 13.38.050,
21 13.38.060, 13.38.070, 13.38.080, 13.38.090, 13.38.100, 13.38.110, 13.38.120, 13.38.130, and
22 13.38.140 are repealed.

23 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
24 read:

25 APPLICABILITY. AS 13.38.200 - 13.38.990, enacted by sec. 2 of this Act, apply,
26 except as otherwise expressly provided in the governing instrument, and except as provided
27 by AS 13.38.900, enacted by sec. 2 of this Act, to a trust existing on or after the effective date
28 of this Act, and to the estate of a decedent who dies on or after the effective date of this Act.

29 * **Sec. 6.** This Act takes effect September 1, 2003.