

SENATE BILL NO. 234

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Introduced: 2/4/26

Referred: Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act adopting the Uniform Fiduciary Income and Principal Act; repealing the
2 Alaska Principal and Income Act; relating to fiduciary income and principal; relating to
3 the probate jurisdiction of court; relating to trust administration; and relating to
4 transfers of trust interests."

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

6 * **Section 1.** AS 13.06.120 is amended to read:

7 **Sec. 13.06.120. Pleadings; when parties bound by orders; notice.** (a) In any
8 proceedings involving trusts, nonprobate assets, or estates of decedents, minors,
9 protected persons, or incapacitated persons brought under AS 13.06 - AS 13.36 or
10 **AS 13.39** [AS 13.38], the following apply:

11 (1) interests to be affected shall be described in pleadings that give
12 reasonable information to owners by name or class, by reference to the instrument
13 creating the interests, or in other appropriate manner;

14 (2) persons are bound by orders binding others in the following cases:

1 (A) orders binding the sole holder or all co-holders of a power
2 of revocation or a general or nongeneral power of appointment, including one
3 in the form of a power of amendment, bind other persons to the extent their
4 interests, as objects, takers in default, or otherwise, are subject to the power;

5 (B) to the extent there is no conflict of interest between them or
6 among persons represented, orders binding a conservator bind the person
7 whose estate the conservator controls; orders binding a guardian bind the ward
8 if no conservator of the estate has been appointed; orders binding a trustee bind
9 beneficiaries of the trust in proceedings to probate a will establishing or adding
10 to a trust, to review the acts or accounts of a prior fiduciary, and in proceedings
11 involving creditors or other third parties; orders binding a personal
12 representative bind persons interested in the undistributed assets of a
13 decedent's estate in actions or proceedings by or against the estate; and orders
14 binding an agent having authority to act with respect to the particular questions
15 or dispute bind the principal; if there is no conflict of interest and no
16 conservator or guardian has been appointed, a parent may represent the minor
17 child;

18 (C) an unborn person, a minor, an incapacitated person, or a
19 person whose identity or location is unknown or not reasonably ascertainable
20 who is not otherwise represented is bound by an order to the extent the interest
21 is adequately represented by another party having a substantially identical
22 interest in the proceeding;

23 (D) with regard to interests given upon the happening of a
24 certain event to persons who comprise a certain class, orders binding the living
25 persons who would constitute the class, if the event had happened immediately
26 before the commencement of the proceeding, bind all members of the class;

27 (E) with regard to an interest given to a living person when the
28 same interest or a share of the interest is to pass to the surviving spouse or to
29 persons who are or might be the distributees, devisees, heirs, or issue of the
30 living person upon the happening of a future event, orders binding the living
31 person bind the surviving spouse, distributees, devisees, heirs, or issue of the

1 living person;

2 (F) with regard to interests given to a person or a class of
3 persons, or to both, upon the happening of a future event, if the same interest
4 or a share of the interest is to pass to another person or class of persons, or to
5 both, upon the happening of an additional future event, orders binding the
6 living person or class of persons who would take the interest upon the
7 happening of the first event bind the persons and classes of persons who might
8 take on the happening of the additional future event;

9 (G) if a person is designated by a trust instrument to represent
10 and bind a born or unborn beneficiary of the trust and receive a notice,
11 information, accounting, or report for the beneficiary, then the beneficiary is
12 bound by an order binding the designated person; in this subparagraph,

13 (i) the settlor may make the designation in the trust
14 instrument, in a separate document, or by a trust protector authorized in
15 the trust instrument to make the designation;

16 (ii) except as otherwise provided in this subparagraph, a
17 person designated under (i) of this subparagraph may not represent and
18 bind a beneficiary while the designated person is serving as trustee;

19 (iii) except as otherwise provided in this subparagraph,
20 a person designated under (i) of this subparagraph may not represent
21 and bind another beneficiary if the designated person also is a
22 beneficiary, unless the designated person was named by the settlor, is
23 the beneficiary's spouse, or is a grandparent or descendant of a
24 grandparent of the beneficiary or the beneficiary's spouse; in this sub-
25 subparagraph, "spouse" means the individual to whom the beneficiary
26 is married and with whom the beneficiary is living, and a physical
27 separation primarily for education, business, health, and similar reasons
28 does not prevent the individual from being considered to be living with
29 the beneficiary;

30 (3) a person representing another person under (2)(A) - (F) of this
31 **subsection** [SECTION] and a person designated under (2)(G)(i) of this **subsection**

1 [SECTION] are not liable to the beneficiary whose interests are represented, or to a
 2 person claiming through that beneficiary, for an action or omission to act made in
 3 good faith;

4 (4) notice is required as follows:

5 (A) notice as prescribed by AS 13.06.110 shall be given to
 6 every interested person or to one person who can bind an interested person as
 7 described in (2)(A), (B), or (D) - (G) of this **subsection** [SECTION]; notice
 8 may be given both to a person and to another person who may bind the person;

9 (B) notice is given to unborn persons, a minor, an incapacitated
 10 person, or a person whose identity or location is unknown or not reasonably
 11 ascertainable, and persons who are not represented under (2)(A), (B), or (D) -
 12 (G) of this **subsection** [SECTION], by giving notice to all known persons
 13 whose interests in the proceedings are substantially identical to those of the
 14 unborn persons, the minor, the incapacitated person, or the person whose
 15 identity or location is unknown or not reasonably ascertainable;

16 (5) at any point in a proceeding, a court may appoint a guardian ad
 17 litem to represent the interest of an unborn person, a minor, an incapacitated person, or
 18 a person whose identity or address is unknown or not reasonably ascertainable, if the
 19 court determines that representation of the interest otherwise would be inadequate; if
 20 not precluded by conflict of interests, a guardian ad litem may be appointed to
 21 represent several persons or interests; the court shall set out its reasons for appointing
 22 a guardian ad litem as a part of the record of the proceeding.

23 (b) In this section,

24 (1) "order" means a judicial order, a nonjudicial order, the result of the
 25 settlement of an account of a fiduciary under a procedure authorized by AS 13.06 -
 26 AS 13.36 or **AS 13.39** [AS 13.38], and a settlement agreement resulting from a
 27 proceeding;

28 (2) "proceeding" means a judicial proceeding, a nonjudicial
 29 proceeding, the settlement of an account of a fiduciary under a procedure authorized
 30 by AS 13.06 - AS 13.36 or **AS 13.39** [AS 13.38], and a settlement negotiation, even if
 31 the settlement negotiation does not involve a judicial or nonjudicial third party who

1 decides or facilitates a settlement.

2 * **Sec. 2.** AS 13.36.335 is amended to read:

3 **Sec. 13.36.335. Application of special distribution provisions.** The asset
4 distribution provisions of AS 13.16.540 - 13.16.545, 13.16.560, and the provisions of
5 AS 13.39 [AS 13.38] apply to the administration of a revocable trust following the
6 death of the settlor of the trust, unless the terms of the trust indicate a different
7 intention.

8 * **Sec. 3.** AS 13 is amended by adding a new chapter to read:

9 **Chapter 39. Alaska Fiduciary Income and Principal Act.**

10 **Article 1. Preliminary Provisions.**

11 **Sec. 13.39.103. Scope.** Except as otherwise provided in the terms of a trust or
12 this chapter, this chapter applies to

13 (1) a trust or estate; and

14 (2) a life estate or other term interest in which the interest of one or
15 more persons will be succeeded by the interest of one or more other persons.

16 **Sec. 13.39.104. Governing law.** Except as otherwise provided in the terms of a
17 trust or this chapter, this chapter applies when the state is the principal place of
18 administration of a trust or estate or the situs of property that is not held in a trust or
19 estate and is subject to a life estate or other term interest described in AS 13.39.103(2).
20 By accepting the trusteeship of a trust having its principal place of administration in
21 this state or by moving the principal place of administration of a trust to this state, the
22 trustee submits to the application of this chapter to any matter within the scope of this
23 chapter involving the trust. When conflict exists as to which state is the principal place
24 of administration for a trust, this state shall be the principal place of administration if
25 the trust meets the requirements of AS 13.36.035(c).

26 **Article 2. Fiduciary Duties and Judicial Review.**

27 **Sec. 13.39.201. Fiduciary duties; general principles.** (a) In making an
28 allocation or determination or exercising discretion under this chapter, a fiduciary
29 shall

30 (1) act in good faith, based on what is fair and reasonable to all
31 beneficiaries;

1 (2) administer a trust or estate impartially, except to the extent the
2 terms of the trust manifest an intent that the fiduciary shall or may favor one or more
3 beneficiaries;

4 (3) administer the trust or estate in accordance with the terms of the
5 trust, even if there is a different provision in this chapter; and

6 (4) administer the trust or estate in accordance with this chapter, except
7 to the extent the terms of the trust provide otherwise or authorize the fiduciary to
8 determine otherwise.

9 (b) A fiduciary's allocation, determination, or exercise of discretion under this
10 chapter is presumed to be fair and reasonable to all beneficiaries. A fiduciary may
11 exercise a discretionary power of administration given to the fiduciary by the terms of
12 the trust, and an exercise of the power which produces a result different from a result
13 required or permitted by this chapter does not create an inference that the fiduciary
14 abused the fiduciary's discretion.

15 (c) A fiduciary shall

16 (1) add a receipt to principal, to the extent neither the terms of the trust
17 nor this chapter allocates the receipt between income and principal; and

18 (2) charge a disbursement to principal, to the extent neither the terms
19 of the trust nor this chapter allocates the disbursement between income and principal.

20 (d) A fiduciary may exercise the power to adjust under AS 13.39.203, convert
21 an income trust to a unitrust under AS 13.39.303(a)(1), change the percentage or
22 method used to calculate a unitrust amount under AS 13.39.303(a)(2), or convert a
23 unitrust to an income trust under AS 13.39.303(a)(3), if the fiduciary determines the
24 exercise of the power will assist the fiduciary to administer the trust or estate
25 impartially.

26 (e) Factors a fiduciary must consider in making a determination under (d) of
27 this section include

28 (1) the terms of the trust;

29 (2) the nature, distribution standards, and expected duration of the
30 trust;

31 (3) the effect of the allocation rules, including specific adjustments

1 between income and principal, applicable under AS 13.39.401 - 13.39.703;

2 (4) the desirability of liquidity and regularity of income;

3 (5) the desirability of the preservation and appreciation of principal;

4 (6) the extent to which an asset is used or may be used by a
5 beneficiary;

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

8 (8) whether and to what extent the terms of the trust give the fiduciary
9 power to accumulate income or invade principal or prohibit the fiduciary from
10 accumulating income or invading principal;

11 (9) the extent to which the fiduciary has accumulated income or
12 invaded principal in preceding accounting periods;

13 (10) the effect of current and reasonably expected economic
14 conditions; and

15 (11) the reasonably expected tax consequences of the exercise of the
16 power.

17 **Sec. 13.39.202. Judicial review of exercise of discretionary power.** (a) A
18 court may not order a fiduciary to change a fiduciary decision unless the court
19 determines that the fiduciary decision was an abuse of the fiduciary's discretion.

20 (b) If a court determines that a fiduciary decision was an abuse of the
21 fiduciary's discretion, the court may order a remedy authorized by law. To place the
22 beneficiaries in the positions the beneficiaries would have occupied if there had not
23 been an abuse of the fiduciary's discretion, a court may order

24 (1) the fiduciary to exercise or refrain from exercising the power to
25 adjust under AS 13.39.203;

26 (2) the fiduciary to exercise or refrain from exercising the power to
27 convert an income trust to a unitrust under AS 13.39.303(a)(1), change the percentage
28 or method used to calculate a unitrust amount under AS 13.39.303(a)(2), or convert a
29 unitrust to an income trust under AS 13.39.303(a)(3);

30 (3) the fiduciary to distribute an amount to a beneficiary;

31 (4) a beneficiary to return some or all of a distribution; or

1 (5) the fiduciary to withhold an amount from one or more future
2 distributions to a beneficiary.

3 (c) On petition by a fiduciary for instruction, the court may determine whether
4 a proposed fiduciary decision will result in an abuse of the fiduciary's discretion. If the
5 petition describes the proposed decision, contains sufficient information to inform the
6 beneficiary of the reasons for making the proposed decision and the facts on which the
7 fiduciary relies, and explains how the beneficiary will be affected by the proposed
8 decision, a beneficiary that opposes the proposed decision has the burden to establish
9 that it will result in an abuse of the fiduciary's discretion.

10 (d) In this section, "fiduciary decision" means a fiduciary's

11 (1) allocation between income and principal or other determination
12 regarding income and principal required or authorized by the terms of the trust or this
13 chapter;

14 (2) exercise or nonexercise of a discretionary power regarding income
15 and principal granted by the terms of the trust or this chapter, including the power to
16 adjust under AS 13.39.203, convert an income trust to a unitrust under
17 AS 13.39.303(a)(1), change the percentage or method used to calculate a unitrust
18 amount under AS 13.39.303(a)(2), or convert a unitrust to an income trust under
19 AS 13.39.303(a)(3); or

20 (3) implementation of a decision described in (1) or (2) of this
21 subsection.

22 **Sec. 13.39.203. Fiduciary's power to adjust.** (a) Except as otherwise
23 provided in the terms of a trust or this section, a fiduciary, in a record, without court
24 approval, may adjust between income and principal if the fiduciary determines the
25 exercise of the power to adjust will assist the fiduciary to administer the trust or estate
26 impartially.

27 (b) This section does not create a duty to exercise or consider the power to
28 adjust under (a) of this section or to inform a beneficiary about the applicability of this
29 section.

30 (c) A fiduciary that in good faith exercises or fails to exercise the power to
31 adjust under (a) of this section is not liable to a person affected by the exercise or

1 failure to exercise.

2 (d) In deciding whether and to what extent to exercise the power to adjust
3 under (a) of this section, a fiduciary shall consider all factors the fiduciary considers
4 relevant, including relevant factors in AS 13.39.201(e) and the application of
5 AS 13.39.401(h), 13.39.408, and 13.39.413.

6 (e) A fiduciary may not exercise the power under (a) of this section to make
7 an adjustment or under AS 13.39.408 to make a determination that an allocation is
8 insubstantial if

9 (1) the adjustment or determination would reduce the amount payable
10 to a current income beneficiary from a trust that qualifies for a special tax benefit,
11 except to the extent the adjustment is made to provide for a reasonable apportionment
12 of the total return of the trust between the current income beneficiary and successor
13 beneficiaries;

14 (2) the adjustment or determination would change the amount payable
15 to a beneficiary, as a fixed annuity or a fixed fraction of the value of the trust assets,
16 under the terms of the trust;

17 (3) the adjustment or determination would reduce an amount that is
18 permanently set aside for a charitable purpose under the terms of the trust, unless both
19 income and principal are set aside for the charitable purpose;

20 (4) possessing or exercising the power would cause a person to be
21 treated as the owner of all or part of the trust for federal income tax purposes;

22 (5) possessing or exercising the power would cause all or part of the
23 value of the trust assets to be included in the gross estate of an individual for federal
24 estate tax purposes;

25 (6) possessing or exercising the power would cause an individual to be
26 treated as making a gift for federal gift tax purposes;

27 (7) the fiduciary is not an independent person;

28 (8) the trust is irrevocable and provides for income to be paid to the
29 settlor and possessing or exercising the power would cause the adjusted principal or
30 income to be considered an available resource or available income under a public
31 benefit program;

1 (9) the trust is a unitrust under AS 13.39.302 - 13.39.390; or

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

5 (f) If (e)(4), (5), (6), or (7) of this section applies to a fiduciary,

6 (1) a co-fiduciary to which (e)(4) - (7) of this section do not apply may
7 exercise the power to adjust, unless the exercise of the power by the remaining co-
8 fiduciary or co-fiduciaries is not permitted by the terms of the trust or law other than
9 this chapter; or

10 (2) if there is no co-fiduciary to which (e)(4) - (7) of this section do not
11 apply, the fiduciary may appoint a co-fiduciary to which (e)(4) - (7) of this section do
12 not apply, which may be a special fiduciary with limited powers, and the appointed
13 co-fiduciary may exercise the power to adjust under (a) of this section, unless the
14 appointment of a co-fiduciary or the exercise of the power by a co-fiduciary is not
15 permitted by the terms of the trust or law other than this chapter.

16 (g) A fiduciary may release or delegate to a co-fiduciary the power to adjust
17 under (a) of this section if the fiduciary determines that the fiduciary's possession or
18 exercise of the power will or may

19 (1) cause a result described in (e)(1) - (6) or (8) of this section; or

20 (2) deprive the trust of a tax benefit or impose a tax burden not
21 described in (e)(1) - (6) of this section.

22 (h) A fiduciary's release or delegation to a co-fiduciary under (g) of this
23 section of the power to adjust under (a) of this section

24 (1) must be in a record;

25 (2) applies to the entire power, unless the release or delegation
26 provides a limitation, which may be a limitation to the power to adjust

27 (A) from income to principal;

28 (B) from principal to income;

29 (C) for specified property; or

30 (D) in specified circumstances;

31 (3) for a delegation, may be modified by a re-delegation under this

1 subsection by the co-fiduciary to which the delegation is made; and

2 (4) subject to (3) of this subsection, is permanent, unless the release or
3 delegation provides a specified period, including a period measured by the life of an
4 individual or the lives of more than one individual.

5 (i) Terms of a trust which deny or limit the power to adjust between income
6 and principal do not affect the application of this section, unless the terms of the trust
7 expressly deny or limit the power to adjust under (a) of this section.

8 (j) The exercise of the power to adjust under (a) of this section in any
9 accounting period may apply to the current period, the immediately preceding period,
10 and one or more subsequent periods.

11 (k) Unless waived by the beneficiaries, or the settlor under AS 13.36.080(b), a
12 description of the exercise of the power to adjust under (a) of this section must be

13 (1) included in a report, if any, sent to beneficiaries under
14 AS 13.36.100; or

15 (2) communicated at least annually to the qualified beneficiaries.

16 **Sec. 13.39.204. Discretionary allocation of capital gains to income.** Unless
17 the governing instrument specifically prohibits a fiduciary from doing so, a fiduciary
18 may deem and allocate capital gains to fiduciary income. If the fiduciary is also a
19 beneficiary, then to the extent the fiduciary's exercise of this power results in an
20 additional distribution to the fiduciary as a beneficiary, the fiduciary may exercise this
21 power to accomplish a distribution to oneself as beneficiary only for purposes of
22 health, education, maintenance, or support of the beneficiary.

23 **Sec. 13.39.205. Discretionary treatment of capital gains as included in**
24 **distribution of principal.** Unless the governing instrument specifically prohibits a
25 fiduciary from doing so, a fiduciary may treat some or all of a distribution from
26 principal as coming from capital gains realized by the trust or estate.

27 **Article 3. Unitrust.**

28 **Sec. 13.39.302. Application; duties and remedies.** (a) Except as otherwise
29 provided in (b) of this section, AS 13.39.302 - 13.39.390 apply to

30 (1) an income trust, unless the terms of the trust expressly prohibit use
31 of AS 13.39.302 - 13.39.390 by a specific reference to AS 13.39.302 - 13.39.390 or an

1 explicit expression of intent that net income not be calculated as a unitrust amount;
2 and

3 (2) an express unitrust, except to the extent the terms of the trust
4 explicitly

5 (A) prohibit use of AS 13.39.302 - 13.39.390 by a specific
6 reference to AS 13.39.302 - 13.39.390;

7 (B) prohibit conversion to an income trust; or

8 (C) limit changes to the method of calculating the unitrust
9 amount.

10 (b) The provisions of AS 13.39.302 - 13.39.390 do not apply to a trust
11 described in AS 13.39.203(e)(8), 26 U.S.C. 170(f)(2)(B), 26 U.S.C. 642(c)(5), 26
12 U.S.C. 664(d), 26 U.S.C. 2702(a)(3)(A)(ii) or (iii), or 26 U.S.C. 2702(b).

13 (c) An income trust to which AS 13.39.302 - 13.39.390 apply under (a)(1) of
14 this section may be converted to a unitrust under AS 13.39.302 - 13.39.390 regardless
15 of the terms of the trust concerning distributions. Conversion to a unitrust under
16 AS 13.39.302 - 13.39.390 does not affect other terms of the trust concerning
17 distributions of income or principal.

18 (d) The provisions of AS 13.39.302 - 13.39.390 apply to an estate only to the
19 extent a trust is a beneficiary of the estate. To the extent of the trust's interest in the
20 estate, the estate may be administered as a unitrust, the administration of the estate as a
21 unitrust may be discontinued, or the percentage or method used to calculate the
22 unitrust amount may be changed, in the same manner as described for a trust under
23 AS 13.39.302 - 13.39.390.

24 (e) The provisions of AS 13.39.302 - 13.39.390 do not create a duty to take or
25 consider action under AS 13.39.302 - 13.39.390 or to inform a beneficiary about the
26 applicability of AS 13.39.302 - 13.39.390.

27 (f) A fiduciary that in good faith takes or fails to take an action under
28 AS 13.39.302 - 13.39.390 is not liable to a person affected by the action or inaction.

29 **Sec. 13.39.303. Authority of fiduciary.** (a) A fiduciary, without court
30 approval, by complying with (b) and (f) of this section, may

31 (1) convert an income trust to a unitrust if the fiduciary adopts in a

1 record a unitrust policy for the trust providing

2 (A) that in administering the trust the net income of the trust
3 will be a unitrust amount rather than net income determined without regard to
4 AS 13.39.302 - 13.39.390; and

5 (B) the percentage and method used to calculate the unitrust
6 amount;

7 (2) change the percentage or method used to calculate a unitrust
8 amount for a unitrust if the fiduciary adopts in a record a unitrust policy or an
9 amendment or replacement of a unitrust policy providing changes in the percentage or
10 method used to calculate the unitrust amount; or

11 (3) convert a unitrust to an income trust if the fiduciary adopts in a
12 record a determination that, in administering the trust, the net income of the trust will
13 be net income determined without regard to AS 13.39.302 - 13.39.390 rather than a
14 unitrust amount.

15 (b) A fiduciary may take an action under (a) of this section if

16 (1) the fiduciary determines that the action will assist the fiduciary to
17 administer a trust impartially;

18 (2) the fiduciary sends a notice in a record, in the manner required by
19 AS 13.39.304, describing and proposing to take the action;

20 (3) the fiduciary sends a copy of the notice under (2) of this subsection
21 to each settlor of the trust which is,

22 (A) if an individual, living; or

23 (B) if not an individual, in existence;

24 (4) at least one member of each class of the qualified beneficiaries
25 receiving the notice under (2) of this subsection is,

26 (A) if an individual, legally competent; or

27 (B) if not an individual, in existence; and

28 (5) the fiduciary does not receive, by the date specified in the notice
29 under AS 13.39.304(c)(5), an objection in a record to the action proposed under (2) of
30 this subsection from a person to which the notice under (2) of this subsection is sent.

31 (c) If a fiduciary receives, not later than the date stated in the notice under

1 AS 13.39.304(c)(5), an objection in a record described in AS 13.39.304(c)(4) to a
 2 proposed action, the fiduciary or a beneficiary may request the court to have the
 3 proposed action taken as proposed, taken with modifications, or prevented. A person
 4 described in AS 13.39.304(a) may oppose the proposed action in the proceeding under
 5 this subsection, whether or not the person

6 (1) consented under AS 13.39.304(b); or

7 (2) objected under AS 13.39.304(c)(4).

8 (d) If, after sending a notice under (b)(2) of this section, a fiduciary decides
 9 not to take the action proposed in the notice, the fiduciary shall notify in a record each
 10 person described in AS 13.39.304(a) of the decision not to take the action and the
 11 reasons for the decision.

12 (e) If a beneficiary requests in a record that a fiduciary take an action
 13 described in (a) of this section and the fiduciary declines to act or does not act within
 14 90 days after receiving the request, the beneficiary may request the court to direct the
 15 fiduciary to take the action requested.

16 (f) In deciding whether and how to take an action authorized by (a) of this
 17 section, or whether and how to respond to a request by a beneficiary under (e) of this
 18 section, a fiduciary shall consider all factors relevant to the trust and the beneficiaries,
 19 including relevant factors described in AS 13.39.201(e).

20 (g) A fiduciary may release or delegate the power to convert an income trust
 21 to a unitrust under (a)(1) of this section, change the percentage or method used to
 22 calculate a unitrust amount under (a)(2) of this section, or convert a unitrust to an
 23 income trust under (a)(3) of this section, for a reason described in AS 13.39.203(g)
 24 and in the manner described in AS 13.39.203(h).

25 (h) Notwithstanding any other provision of this section, a fiduciary may not
 26 convert an irrevocable income trust to a unitrust if the action results in a unitrust
 27 distribution to a settlor who is a beneficiary of the trust and there is no existing
 28 requirement in the trust to distribute income or principal to the settlor as a beneficiary.

29 **Sec. 13.39.304. Notice.** (a) A notice required by AS 13.39.303(b)(2) must be
 30 sent to

31 (1) all beneficiaries that receive or are entitled to receive income from

1 the trust or would be entitled to receive a distribution of principal if the trust were
 2 terminated at the time the notice is sent, assuming no power of appointment is
 3 exercised;

4 (2) each person that is granted a power over the trust by the terms of
 5 the trust, to the extent the power is exercisable when the person is not then serving as a
 6 trustee,

7 (A) including a

8 (i) power over the investment, management, or
 9 distribution of trust property or other matters of trust administration;
 10 and

11 (ii) power to appoint or remove a trustee or person
 12 described in this paragraph; and

13 (B) excluding a

14 (i) power of appointment;

15 (ii) power of a beneficiary over the trust, to the extent
 16 the exercise or nonexercise of the power affects the beneficial interest
 17 of the beneficiary; and

18 (iii) power over the trust if the terms of the trust provide
 19 that the power is held in a nonfiduciary capacity and the power must be
 20 held in a nonfiduciary capacity to achieve a tax objective under 26
 21 U.S.C. (Internal Revenue Code); and

22 (3) each person that is granted a power by the terms of the trust to
 23 appoint or remove a trustee or person described in (2) of this subsection, to the extent
 24 the power is exercisable when the person that exercises the power is not then serving
 25 as a trustee or person described in (2) of this subsection.

26 (b) A person may consent in a record at any time to an action proposed under
 27 AS 13.39.303(b)(2). A notice required by AS 13.39.303(b)(2) need not be sent to a
 28 person that consents under this subsection.

29 (c) A notice required by AS 13.39.303(b)(2) must include

30 (1) the action proposed under AS 13.39.303(b)(2);

31 (2) for a conversion of an income trust to a unitrust, a copy of the

1 unitrust policy adopted under AS 13.39.303(a)(1);

2 (3) for a change in the percentage or method used to calculate the
3 unitrust amount, a copy of the unitrust policy or amendment or replacement of the
4 unitrust policy adopted under AS 13.39.303(a)(2);

5 (4) a statement that the person to which the notice is sent may object to
6 the proposed action by stating in a record the basis for the objection and sending or
7 delivering the record to the fiduciary;

8 (5) the date by which an objection made under (4) of this subsection
9 must be received by the fiduciary, which must be at least 30 days after the date the
10 notice is sent;

11 (6) the date on which the action is proposed to be taken and the date on
12 which the action is proposed to take effect;

13 (7) the name and contact information of the fiduciary; and

14 (8) the name and contact information of a person that may be contacted
15 for additional information.

16 **Sec. 13.39.305. Unitrust policy.** (a) In administering a unitrust under
17 AS 13.39.302 - 13.39.390, a fiduciary shall follow a unitrust policy adopted under
18 AS 13.39.303(a)(1) or (2) or amended or replaced under AS 13.39.303(a)(2).

19 (b) A unitrust policy must provide

20 (1) the unitrust rate or the method for determining the unitrust rate
21 under AS 13.39.306;

22 (2) the method for determining the applicable value under
23 AS 13.39.307; and

24 (3) the rules described in AS 13.39.306 - 13.39.309 which apply in the
25 administration of the unitrust, whether the rules are

26 (A) mandatory, as provided in AS 13.39.307(a) and
27 13.39.308(a); or

28 (B) optional, as provided in AS 13.39.306, 13.39.307(b),
29 13.39.308(b), and 13.39.309(a), to the extent the fiduciary elects to adopt those
30 rules.

31 **Sec. 13.39.306. Unitrust rate.** (a) Except as otherwise provided in

1 AS 13.39.309(b)(1), a unitrust rate may be

2 (1) a fixed unitrust rate; or

3 (2) a unitrust rate that is determined for each period using

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

5 (B) a mathematical blend of market indices or other published
6 data over a stated number of preceding periods.

7 (b) Except as otherwise provided in AS 13.39.309(b)(1), a unitrust policy may
8 provide

9 (1) a limit on how high the unitrust rate determined under (a)(2) of this
10 section may rise;

11 (2) a limit on how low the unitrust rate determined under (a)(2) of this
12 section may fall;

13 (3) a limit on how much the unitrust rate determined under (a)(2) of
14 this section may increase over the unitrust rate for the preceding period or a
15 mathematical blend of unitrust rates over a stated number of preceding periods;

16 (4) a limit on how much the unitrust rate determined under (a)(2) of
17 this section may decrease below the unitrust rate for the preceding period or a
18 mathematical blend of unitrust rates over a stated number of preceding periods; or

19 (5) a mathematical blend of any of the unitrust rates determined under
20 (a)(2) of this section and (1) - (4) of this subsection.

21 **Sec. 13.39.307. Applicable value.** (a) A unitrust policy must provide the
22 method for determining the fair market value of an asset for the purpose of
23 determining the unitrust amount, including

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

26 (2) the date for valuing the asset in each period in which the asset is
27 valued.

28 (b) Except as otherwise provided in AS 13.39.309(b)(2), a unitrust policy may
29 provide methods for determining the amount of the net fair market value of the trust to
30 take into account in determining the applicable value, including

31 (1) obtaining an appraisal of an asset for which fair market value is not

1 readily available;

2 (2) exclusion of specific assets or groups or types of assets;

3 (3) other exceptions or modifications of the treatment of specific assets
4 or groups or types of assets;

5 (4) identification and treatment of cash or property held for
6 distribution;

7 (5) use of

8 (A) an average of fair market values over a stated number of
9 preceding periods; or

10 (B) another mathematical blend of fair market values over a
11 stated number of preceding periods;

12 (6) a limit on how much the applicable value of all assets, groups of
13 assets, or individual assets may increase over

14 (A) the corresponding applicable value for the preceding
15 period; or

16 (B) a mathematical blend of applicable values over a stated
17 number of preceding periods;

18 (7) a limit on how much the applicable value of all assets, groups of
19 assets, or individual assets may decrease below

20 (A) the corresponding applicable value for the preceding
21 period; or

22 (B) a mathematical blend of applicable values over a stated
23 number of preceding periods;

24 (8) the treatment of accrued income and other features of an asset
25 which affect value; and

26 (9) determining the liabilities of the trust, including treatment of
27 liabilities to conform with the treatment of assets described under (1) - (8) of this
28 subsection.

29 **Sec. 13.39.308. Period.** (a) A unitrust policy must provide the period used
30 under AS 13.39.306 and 13.39.307. Except as otherwise provided in
31 AS 13.39.309(b)(3), the period may be,

- 1 (1) a calendar year;
- 2 (2) a 12-month period other than a calendar year;
- 3 (3) a calendar quarter;
- 4 (4) a three-month period other than a calendar quarter; or
- 5 (5) another period.

6 (b) Except as otherwise provided in AS 13.39.309(b), a unitrust policy may
7 provide standards for

8 (1) using fewer preceding periods under AS 13.39.306(a)(2)(B) or
9 (b)(3) or (4) if

10 (A) the trust was not in existence in a preceding period; or

11 (B) market indices or other published data are not available for
12 a preceding period;

13 (2) using fewer preceding periods under AS 13.39.307(b)(5)(A) or (B),
14 (6)(B), or (7)(B) if

15 (A) the trust was not in existence in a preceding period; or

16 (B) fair market values are not available for a preceding period;

17 and

18 (3) prorating the unitrust amount on a daily basis for a part of a period
19 in which the trust or the administration of the trust as a unitrust or the interest of any
20 beneficiary commences or terminates.

21 **Sec. 13.39.309. Special tax benefits; other rules.** (a) A unitrust policy may

22 (1) provide methods and standards for

23 (A) determining the timing of distributions;

24 (B) making distributions in cash or in kind or partly in cash and
25 partly in kind; or

26 (C) correcting an underpayment or overpayment to a
27 beneficiary based on the unitrust amount if there is an error in calculating the
28 unitrust amount;

29 (2) specify sources and the order of sources, including categories of
30 income for federal income tax purposes, from which distributions of a unitrust amount
31 are paid; or

1 (3) provide other standards and rules the fiduciary determines serve the
2 interests of the beneficiaries.

3 (b) If a trust qualifies for a special tax benefit or a fiduciary is not an
4 independent person,

5 (1) the unitrust rate established under AS 13.39.306 may not be less
6 than three percent or more than five percent;

7 (2) the only provisions of AS 13.39.307 which apply are
8 AS 13.39.307(a) and (b)(1), (4), (5)(A), and (9);

9 (3) the only period that may be used under AS 13.39.308 is a calendar
10 year as provided under AS 13.39.308(a)(1); and

11 (4) the only other provisions of AS 13.39.308 which apply are
12 AS 13.39.308(b)(2)(A) and (3).

13 **Sec. 13.39.390. Definitions.** In AS 13.39.302 - 13.39.390,

14 (1) "applicable value" means the amount of the net fair market value of
15 a trust taken into account under AS 13.39.307;

16 (2) "express unitrust" means a trust for which, under the terms of the
17 trust without regard to AS 13.39.302 - 13.39.390, income or net income must or may
18 be calculated as a unitrust amount;

19 (3) "income trust" means a trust that is not a unitrust;

20 (4) "net fair market value of a trust" means the fair market value of the
21 assets of the trust, less the noncontingent liabilities of the trust;

22 (5) "unitrust" means a trust for which net income is a unitrust amount;
23 the term includes an express unitrust;

24 (6) "unitrust amount" means an amount computed by multiplying a
25 determined value of a trust by a determined percentage; for a unitrust administered
26 under a unitrust policy, the term means the applicable value, multiplied by the unitrust
27 rate;

28 (7) "unitrust policy" means a policy described in AS 13.39.305 -
29 13.39.309 and adopted under AS 13.39.303;

30 (8) "unitrust rate" means the rate used to compute the unitrust amount
31 under (6) of this section for a unitrust administered under a unitrust policy.

1 **Article 4. Allocation of Receipts.**

2 **Sec. 13.39.401. Character of receipts from entity.** (a) In this section, an
3 attribute or action of an entity includes an attribute or action of any other entity in
4 which the entity owns or holds an interest, including an interest owned or held
5 indirectly through another entity.

6 (b) Except as otherwise provided in (c)(2) - (4) of this section, a fiduciary
7 shall allocate to income

8 (1) money received in an entity distribution; and

9 (2) tangible personal property of nominal value received from the
10 entity.

11 (c) A fiduciary shall allocate to principal

12 (1) property received in an entity distribution which is not

13 (A) money;

14 (B) tangible personal property of nominal value; or

15 (C) capital gains allocated to fiduciary income under
16 AS 13.39.204;

17 (2) money received in an entity distribution in an exchange for part or
18 all of the fiduciary's interest in the entity, to the extent the entity distribution reduces
19 the fiduciary's interest in the entity relative to the interests of other persons that own or
20 hold interests in the entity;

21 (3) money received in an entity distribution that the fiduciary
22 determines or estimates is a capital distribution; and

23 (4) money received in an entity distribution from an entity that is

24 (A) a regulated investment company or real estate investment
25 trust if the money received is a capital gain dividend for federal income tax
26 purposes; or

27 (B) treated for federal income tax purposes comparably to the
28 treatment described in (A) of this paragraph.

29 (d) A fiduciary may determine or estimate that money received in an entity
30 distribution is a capital distribution

31 (1) by relying without inquiry or investigation on a characterization of

1 the entity distribution provided by or on behalf of the entity, unless the fiduciary

2 (A) determines, on the basis of information known to the
3 fiduciary, that the characterization is or may be incorrect; or

4 (B) owns or holds more than 50 percent of the voting interest in
5 the entity;

6 (2) by determining or estimating, on the basis of information known to
7 the fiduciary or provided to the fiduciary by or on behalf of the entity, that the total
8 amount of money and property received by the fiduciary in the entity distribution or a
9 series of related entity distributions is or will be greater than 20 percent of the fair
10 market value of the fiduciary's interest in the entity; or

11 (3) if neither (1) nor (2) of this subsection applies, by considering the
12 factors in (e) of this section and the information known to the fiduciary or provided to
13 the fiduciary by or on behalf of the entity.

14 (e) In making a determination or estimate under (d)(3) of this section, a
15 fiduciary may consider

16 (1) a characterization of an entity distribution provided by or on behalf
17 of the entity;

18 (2) the amount of money or property received in

19 (A) the entity distribution; or

20 (B) what the fiduciary determines is or will be a series of
21 related entity distributions;

22 (3) the amount described in (2) of this subsection compared to the
23 amount the fiduciary determines or estimates is, during the current or preceding
24 accounting periods,

25 (A) the entity's operating income;

26 (B) the proceeds of the entity's sale or other disposition of

27 (i) all or part of the business or other activity conducted
28 by the entity;

29 (ii) one or more business assets that are not sold to
30 customers in the ordinary course of the business or other activity
31 conducted by the entity; or

1 (iii) one or more assets other than business assets,
 2 unless the entity's primary activity is to invest in assets to realize gain
 3 on the disposition of all or some of the assets;

4 (C) if the entity's primary activity is to invest in assets to
 5 realize gain on the disposition of all or some of the assets, the gain realized on
 6 the disposition;

7 (D) the entity's regular, periodic entity distributions;

8 (E) the amount of money the entity has accumulated;

9 (F) the amount of money the entity has borrowed;

10 (G) the amount of money the entity has received from the
 11 sources described in AS 13.39.407 and 13.39.410 - 13.39.412; and

12 (H) the amount of money the entity has received from a source
 13 not otherwise described in this paragraph; and

14 (4) any other factor the fiduciary determines is relevant.

15 (f) If, after applying (b) - (e) of this section, a fiduciary determines that a part
 16 of an entity distribution is a capital distribution but is in doubt about the amount of the
 17 entity distribution which is a capital distribution, the fiduciary shall allocate to
 18 principal the amount of the entity distribution which is in doubt.

19 (g) If a fiduciary receives additional information about the application of this
 20 section to an entity distribution before the fiduciary has paid part of the entity
 21 distribution to a beneficiary, the fiduciary may consider the additional information
 22 before making the payment to the beneficiary and may change a decision to make the
 23 payment to the beneficiary.

24 (h) If a fiduciary receives additional information about the application of this
 25 section to an entity distribution after the fiduciary has paid part of the entity
 26 distribution to a beneficiary, the fiduciary is not required to change or recover the
 27 payment to the beneficiary but may consider that information in determining whether
 28 to exercise the power to adjust under AS 13.39.203.

29 (i) In this section,

30 (1) "capital distribution" means an entity distribution of money which
 31 is a

- 1 (A) return of capital; or
- 2 (B) distribution in total or partial liquidation of the entity;
- 3 (2) "entity"
- 4 (A) means a corporation, partnership, limited liability
- 5 company, regulated investment company, real estate investment trust, common
- 6 trust fund, or any other organization or arrangement in which a fiduciary owns
- 7 or holds an interest, whether or not the entity is a taxpayer for federal income
- 8 tax purposes;
- 9 (B) does not include
- 10 (i) a trust or estate to which AS 13.39.402 applies;
- 11 (ii) a business or other activity to which AS 13.39.403
- 12 applies which is not conducted by an entity described in (A) of this
- 13 paragraph;
- 14 (iii) an asset-backed security; or
- 15 (iv) an instrument or arrangement to which
- 16 AS 13.39.416 applies;
- 17 (3) "entity distribution" means a payment or transfer by an entity made
- 18 to a person in the person's capacity as an owner or holder of an interest in the entity.
- 19 **Sec. 13.39.402. Distribution from trust or estate.** A fiduciary shall allocate
- 20 to income an amount received as a distribution of income, including a unitrust
- 21 distribution made under AS 13.39.302 - 13.39.390, from a trust or estate in which the
- 22 fiduciary has an interest, other than an interest the fiduciary purchased in a trust that is
- 23 an investment entity, and shall allocate to principal an amount received as a
- 24 distribution of principal from the trust or estate. If a fiduciary purchases, or receives
- 25 from a settlor, an interest in a trust that is an investment entity, AS 13.39.401,
- 26 13.39.415, or 13.39.416 applies to a receipt from the trust.
- 27 **Sec. 13.39.403. Business or other activity conducted by fiduciary.** (a) This
- 28 section applies to a business or other activity conducted by a fiduciary if the fiduciary
- 29 determines that it is in the interests of the beneficiaries to account separately for the
- 30 business or other activity instead of
- 31 (1) accounting for the business or other activity as part of the

1 fiduciary's general accounting records; or

2 (2) conducting the business or other activity through an entity
3 described in AS 13.39.401(i)(2)(A).

4 (b) A fiduciary may account separately under this section for the transactions
5 of a business or other activity, whether or not assets of the business or other activity
6 are segregated from other assets held by the fiduciary.

7 (c) A fiduciary that accounts separately under this section for a business or
8 other activity

9 (1) may determine the extent to which

10 (A) the net cash receipts of the business or other activity must
11 be retained for

12 (i) working capital;

13 (ii) the acquisition or replacement of fixed assets; and

14 (iii) other reasonably foreseeable needs of the business
15 or other activity; and

16 (B) the remaining net cash receipts are accounted for as
17 principal or income in the fiduciary's general accounting records for the trust;

18 (2) may make a determination under (1) of this subsection separately
19 and differently from the fiduciary's decisions concerning distributions of income or
20 principal; and

21 (3) shall account for the net amount received from the sale of an asset
22 of the business or other activity, other than a sale in the ordinary course of the business
23 or other activity, as principal in the fiduciary's general accounting records for the trust,
24 to the extent the fiduciary determines that the net amount received is no longer
25 required in the conduct of the business or other activity.

26 (d) Activities for which a fiduciary may account separately under this section
27 include

28 (1) retail, manufacturing, service, and other traditional business
29 activities;

30 (2) farming;

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

- 1 (4) managing rental properties;
 2 (5) extracting minerals, water, and other natural resources;
 3 (6) growing and cutting timber;
 4 (7) an activity to which AS 13.39.414, 13.39.415, or 13.39.416
 5 applies; and
 6 (8) any other business conducted by the fiduciary.

7 **Sec. 13.39.404. Principal receipts.** A fiduciary shall allocate to principal

8 (1) to the extent not allocated to income under this chapter, an asset
 9 received from

- 10 (A) an individual during the individual's lifetime;
 11 (B) an estate;
 12 (C) a trust on termination of an income interest;
 13 (D) a payor under a contract naming the fiduciary as
 14 beneficiary;
 15 (E) a payor under a contract naming the trust for which the
 16 fiduciary serves as a trustee as beneficiary; or
 17 (F) a corporation organized under the laws of the state under 43
 18 U.S.C. 1601 et seq. (Alaska Native Claims Settlement Act);

19 (2) except as otherwise provided in AS 13.39.401 - 13.39.417, money
 20 or other property received from the sale, exchange, liquidation, or change in form of a
 21 principal asset;

22 (3) an amount recovered from a third party to reimburse the fiduciary
 23 because of a disbursement described in AS 13.39.502(a) or for another reason to the
 24 extent not based on loss of income;

25 (4) proceeds of property taken by eminent domain, except that
 26 proceeds awarded for loss of income in an accounting period are income if a current
 27 income beneficiary had a mandatory income interest during the period;

28 (5) net income received in an accounting period during which there is
 29 no beneficiary to which a fiduciary may or must distribute income; and

30 (6) other receipts as provided in AS 13.39.408 - 13.39.416.

31 **Sec. 13.39.405. Rental property.** To the extent a fiduciary does not account

1 for the management of rental property as a business under AS 13.39.403, the fiduciary
 2 shall allocate to income an amount received as rent of real or personal property,
 3 including an amount received for cancellation or renewal of a lease. An amount
 4 received as a refundable deposit, including a security deposit or a deposit that is to be
 5 applied as rent for future periods,

6 (1) must be added to principal and held subject to the terms of the
 7 lease, except as otherwise provided by law other than this chapter; and

8 (2) is not allocated to income or available for distribution to a
 9 beneficiary until the fiduciary's contractual obligations have been satisfied with
 10 respect to that amount.

11 **Sec. 13.39.406. Receipt on obligation to be paid in money.** (a) This section
 12 does not apply to an obligation to which AS 13.39.409, 13.39.410, 13.39.411,
 13 13.39.412, 13.39.414, 13.39.415, or 13.39.416 applies.

14 (b) A fiduciary shall allocate to income, without provision for amortization of
 15 premium, an amount received as interest on an obligation to pay money to the
 16 fiduciary, including an amount received as consideration for prepaying principal.

17 (c) A fiduciary shall allocate to principal an amount received from the sale,
 18 redemption, or other disposition of an obligation to pay money to the fiduciary. A
 19 fiduciary shall allocate to income the increment in value of a bond or other obligation
 20 for the payment of money bearing no stated interest but payable or redeemable, at
 21 maturity or another future time, in an amount that exceeds the amount in consideration
 22 of which it was issued.

23 **Sec. 13.39.407. Insurance policy or contract.** (a) This section does not apply
 24 to a contract to which AS 13.39.409 applies.

25 (b) Except as otherwise provided in (c) of this section, a fiduciary shall
 26 allocate to principal the proceeds of a life insurance policy or other contract received
 27 by the fiduciary as beneficiary, including a contract that insures against damage to,
 28 destruction of, or loss of title to an asset. The fiduciary shall allocate dividends on an
 29 insurance policy to income to the extent premiums on the policy are paid from income
 30 and to principal to the extent premiums on the policy are paid from principal.

31 (c) A fiduciary shall allocate to income proceeds of a contract that insures the

1 fiduciary against loss of

2 (1) occupancy or other use by a current income beneficiary;

3 (2) income; or

4 (3) subject to AS 13.39.403, profits from a business.

5 **Sec. 13.39.408. Insubstantial allocation not required.** (a) If a fiduciary
6 determines that an allocation between income and principal required by AS 13.39.409,
7 13.39.410, 13.39.411, 13.39.412, or 13.39.415 is insubstantial, the fiduciary may
8 allocate the entire amount to principal, unless AS 13.39.203(e) applies to the
9 allocation.

10 (b) A fiduciary may presume an allocation is insubstantial under (a) of this
11 section if

12 (1) the amount of the allocation would increase or decrease net income
13 in an accounting period, as determined before the allocation, by less than 10 percent;
14 and

15 (2) the asset producing the receipt to be allocated has a fair market
16 value less than 10 percent of the total fair market value of the assets owned or held by
17 the fiduciary at the beginning of the accounting period.

18 (c) The power to make a determination under (a) of this section may be

19 (1) exercised by a co-fiduciary in the manner described in
20 AS 13.39.203(f); or

21 (2) released or delegated for a reason described in AS 13.39.203(g)
22 and in the manner described in AS 13.39.203(h).

23 **Sec. 13.39.409. Deferred compensation, annuity, or similar payment.** (a)
24 For each accounting period, the following rules apply to a separate fund:

25 (1) the fiduciary shall determine the internal income of the separate
26 fund as if the separate fund were a trust subject to this chapter;

27 (2) if the fiduciary cannot determine the internal income of the
28 separate fund under (1) of this subsection, the internal income of the separate fund is
29 deemed to equal four percent of the value of the separate fund, according to the most
30 recent statement of value preceding the beginning of the accounting period;

31 (3) if the fiduciary cannot determine the value of the separate fund

1 under (2) of this subsection, the value of the separate fund is deemed to equal the
2 present value of the expected future payments, as determined under 26 U.S.C. 7520,
3 for the month preceding the beginning of the accounting period for which the
4 computation is made.

5 (b) A fiduciary shall allocate a payment received from a separate fund during
6 an accounting period to income, to the extent of the internal income of the separate
7 fund during the period, and the balance to principal.

8 (c) The fiduciary of a marital trust shall

9 (1) withdraw from a separate fund the amount the current income
10 beneficiary of the trust requests the fiduciary to withdraw, not greater than the amount
11 by which the internal income of the separate fund during the accounting period
12 exceeds the amount the fiduciary otherwise receives from the separate fund during the
13 period;

14 (2) transfer from principal to income the amount the current income
15 beneficiary requests the fiduciary to transfer, not greater than the amount by which the
16 internal income of the separate fund during the period exceeds the amount the
17 fiduciary receives from the separate fund during the period after the application of (1)
18 of this subsection; and

19 (3) distribute to the current income beneficiary as income

20 (A) the amount of the internal income of the separate fund
21 received or withdrawn during the period; and

22 (B) the amount transferred from principal to income under (2)
23 of this subsection.

24 (d) For a trust, other than a marital trust, of which one or more current income
25 beneficiaries are entitled to a distribution of all the current net income, the fiduciary
26 shall transfer from principal to income the amount by which the internal income of a
27 separate fund during the accounting period exceeds the amount the fiduciary receives
28 from the separate fund during the period.

29 (e) In this section,

30 (1) "internal income of a separate fund" means the amount determined
31 under (a) of this section;

1 (2) "marital trust" means a trust

2 (A) of which the settlor's surviving spouse is the only current
3 income beneficiary and is entitled to a distribution of all the current net income
4 of the trust; and

5 (B) that qualifies for a marital deduction with respect to the
6 settlor's estate under 26 U.S.C. 2056 because

7 (i) an election to qualify for a marital deduction under
8 26 U.S.C. 2056(b)(7) has been made; or

9 (ii) the trust qualifies for a marital deduction under 26
10 U.S.C. 2056(b)(5);

11 (3) "payment" means an amount a fiduciary may receive over a fixed
12 number of years or during the life of one or more individuals because of services
13 rendered or property transferred to the payor in exchange for future amounts the
14 fiduciary may receive; the term includes an amount received in money or property
15 from the payor's general assets or from a separate fund created by the payor;

16 (4) "separate fund" includes a private or commercial annuity, an
17 individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-
18 ownership plan.

19 **Sec. 13.39.410. Liquidating asset.** (a) This section does not apply to a receipt
20 subject to AS 13.39.401, 13.39.409, 13.39.411, 13.39.412, 13.39.414, 13.39.415,
21 13.39.416, or 13.39.503.

22 (b) A fiduciary shall allocate

23 (1) to income

24 (A) a receipt produced by a liquidating asset, to the extent the
25 receipt does not exceed four percent of the value of the asset; or

26 (B) if the fiduciary cannot determine the value of the asset, 10
27 percent of the receipt; and

28 (2) to principal the balance of the receipt.

29 (c) In this section, "liquidating asset" means an asset whose value will
30 diminish or terminate because the asset is expected to produce receipts for a limited
31 time. The term includes a leasehold, patent, copyright, royalty right, and right to

1 receive payments during a period of more than one year under an arrangement that
2 does not provide for the payment of interest on the unpaid balance.

3 **Sec. 13.39.411. Minerals, water, and other natural resources.** (a) To the
4 extent a fiduciary does not account for a receipt from an interest in minerals, water, or
5 other natural resources as a business under AS 13.39.403, the fiduciary shall allocate
6 the receipt

7 (1) to income, to the extent received

8 (A) as delay rental or annual rent on a lease;

9 (B) as a factor for interest or the equivalent of interest under an
10 agreement creating a production payment; or

11 (C) on account of an interest in renewable water;

12 (2) to principal, if received from a production payment, to the extent
13 (1)(B) of this subsection does not apply; or

14 (3) between income and principal equitably, to the extent received

15 (A) on account of an interest in nonrenewable water;

16 (B) as a royalty, shut-in-well payment, take-or-pay payment, or
17 bonus; or

18 (C) from a working interest or any other interest not provided
19 for in this subsection.

20 (b) This section applies to an interest owned or held by a fiduciary, whether or
21 not a settlor was extracting minerals, water, or other natural resources before the
22 fiduciary owned or held the interest.

23 (c) An allocation of a receipt made under (a)(3) of this section is presumed to
24 be equitable if the amount allocated to principal is equal to the amount allowed by 26
25 U.S.C. (Internal Revenue Code) as a deduction for depletion of the interest.

26 **Sec. 13.39.412. Timber.** (a) To the extent a fiduciary does not account for
27 receipts from the sale of timber and related products as a business under
28 AS 13.39.403, the fiduciary shall allocate the net receipts

29 (1) to income, to the extent the amount of timber cut from the land
30 does not exceed the rate of growth of the timber;

31 (2) to principal, to the extent the amount of timber cut from the land

1 exceeds the rate of growth of the timber or the net receipts are from the sale of
2 standing timber;

3 (3) between income and principal if the net receipts are from the lease
4 of land used for growing and cutting timber or from a contract to cut timber from land,
5 by determining the amount of timber cut from the land under the lease or contract and
6 applying the rules provided in (1) and (2) of this subsection; or

7 (4) to principal, to the extent advance payments, bonuses, and other
8 payments are not allocated under (1), (2), or (3) of this subsection.

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

11 (c) This section applies to land owned or held by a fiduciary, whether or not a
12 settlor was cutting timber from the land before the fiduciary owned or held the
13 property.

14 **Sec. 13.39.413. Marital deduction property not productive of income.** (a) If
15 a trust received property for which a gift or estate tax marital deduction was allowed
16 and the settlor's spouse holds a mandatory income interest in the trust, the spouse may
17 require the trustee, to the extent the trust assets otherwise do not provide the spouse
18 with sufficient income from or use of the trust assets to qualify for the deduction, to

19 (1) make property productive of income;

20 (2) convert property to property productive of income within a
21 reasonable time; or

22 (3) exercise the power to adjust under AS 13.39.203.

23 (b) The trustee may decide which action or combination of actions in (a) of
24 this section to take.

25 (c) Unless otherwise provided by the trust instrument, a power or authority
26 granted to a trustee, except for the authority to refrain from electing qualified terminal
27 interest property treatment under 26 U.S.C. 2056 or 2523 (Internal Revenue Code),
28 does not prevent a qualifying trust from being eligible for the marital deduction. All
29 powers granted to a trustee shall be construed consistently with this subsection. In this
30 subsection, "qualifying trust" means a trust

31 (1) that is designated in the trust instrument as a trust eligible for the

1 federal estate or gift tax marital deduction; or

2 (2) if it can be inferred from the trust instrument that the grantor
3 intended the trust to be eligible for the federal estate or gift tax marital deduction.

4 **Sec. 13.39.414. Derivative or option.** (a) To the extent a fiduciary does not
5 account for a transaction in derivatives as a business under AS 13.39.403, the
6 fiduciary shall allocate 10 percent of receipts from the transaction and 10 percent of
7 disbursements made in connection with the transaction to income and the balance to
8 principal.

9 (b) Subsection (c) of this section applies if

10 (1) a fiduciary

11 (A) grants an option to buy property from a trust, whether or
12 not the trust owns the property when the option is granted;

13 (B) grants an option that permits another person to sell property
14 to the trust; or

15 (C) acquires an option to buy property for the trust or an option
16 to sell an asset owned by the trust; and

17 (2) the fiduciary or other owner of the asset is required to deliver the
18 asset if the option is exercised.

19 (c) If this subsection applies, the fiduciary shall allocate 10 percent to income
20 and the balance to principal of the following amounts:

21 (1) an amount received for granting the option;

22 (2) an amount paid to acquire the option; and

23 (3) gain or loss realized on the exercise, exchange, settlement, offset,
24 closing, or expiration of the option.

25 (d) In this section, "derivative" means a contract, instrument, other
26 arrangement, or combination of contracts, instruments, or other arrangements, the
27 value, rights, and obligations of which are, in whole or in part, dependent on or
28 derived from an underlying tangible or intangible asset, group of tangible or intangible
29 assets, index, or occurrence of an event. The term includes stocks, fixed income
30 securities, and financial instruments and arrangements based on indices, commodities,
31 interest rates, weather-related events, and credit-default events.

1 **Sec. 13.39.415. Asset-backed security.** (a) Except as otherwise provided in
 2 (b) of this section, a fiduciary shall allocate to income a receipt from or related to an
 3 asset-backed security, to the extent the payor identifies the payment as being from
 4 interest or other current return, and to principal the balance of the receipt.

5 (b) If a fiduciary receives one or more payments in exchange for part or all of
 6 the fiduciary's interest in an asset-backed security, including a liquidation or
 7 redemption of the fiduciary's interest in the security, the fiduciary shall allocate to
 8 income 10 percent of receipts from the transaction and 10 percent of disbursements
 9 made in connection with the transaction, and to principal the balance of the receipts
 10 and disbursements.

11 **Sec. 13.39.416. Other financial instrument or arrangement.** A fiduciary
 12 shall allocate receipts from or related to a financial instrument or arrangement not
 13 otherwise addressed by this chapter. The allocation must be consistent with
 14 AS 13.39.414 and 13.39.415.

15 **Sec. 13.39.417. Income in respect of decedent.** Notwithstanding any other
 16 provision of this chapter, a fiduciary, including a fiduciary that is a beneficiary, may
 17 allocate to fiduciary income property that is payable to a trust or an estate that
 18 constitutes income in respect of a decedent under 26 U.S.C. 691

19 (1) if the fiduciary reasonably determines that the allocation would
 20 substantially further the purposes of the will or trust; or

21 (2) in the case of an intestate decedent, if the fiduciary reasonably
 22 determines that the allocation is in the best interests of the decedent's heirs.

23 **Article 5. Allocation of Disbursements.**

24 **Sec. 13.39.501. Disbursement from income.** Subject to AS 13.39.504, and
 25 except as otherwise provided in AS 13.39.601(c)(2) or (3), a fiduciary shall disburse
 26 from income

27 (1) one-half of

28 (A) the regular compensation of the fiduciary and any person
 29 providing investment advisory, custodial, or other services to the fiduciary, to
 30 the extent income is sufficient; and

31 (B) an expense for an accounting, judicial or nonjudicial

1 proceeding, or other matter that involves both income and successive interests,
2 to the extent income is sufficient;

3 (2) the balance of the disbursements described in (1) of this section, to
4 the extent a fiduciary that is an independent person determines that making those
5 disbursements from income would be in the interests of the beneficiaries;

6 (3) another ordinary expense incurred in connection with
7 administration, management, or preservation of property and distribution of income,
8 including interest, an ordinary repair, regularly recurring tax assessed against
9 principal, and an expense of an accounting, judicial or nonjudicial proceeding, or other
10 matter that involves primarily an income interest, to the extent income is sufficient;
11 and

12 (4) a premium on insurance covering loss of a principal asset or
13 income from or use of the asset.

14 **Sec. 13.39.502. Disbursement from principal.** (a) Subject to AS 13.39.505,
15 and except as otherwise provided in AS 13.39.601(c)(2), a fiduciary shall disburse
16 from principal

17 (1) the balance of the disbursements described in AS 13.39.501(1) and
18 (3), after application of AS 13.39.501(2);

19 (2) the fiduciary's compensation calculated on principal as a fee for
20 acceptance, distribution, or termination;

21 (3) a payment of an expense to prepare for or execute a sale or other
22 disposition of property;

23 (4) a payment on the principal of a trust debt;

24 (5) a payment of an expense of an accounting, judicial or nonjudicial
25 proceeding, or other matter that involves primarily principal, including a proceeding to
26 construe the terms of the trust or protect property;

27 (6) a payment of a premium for insurance, including title insurance,
28 not described in AS 13.39.501(4), of which the fiduciary is the owner and beneficiary;

29 (7) a payment of an estate or inheritance tax or other tax imposed
30 because of the death of a decedent, including penalties, apportioned to the trust; and

31 (8) a payment

1 (A) related to environmental matters, including

2 (i) reclamation;

3 (ii) assessing environmental conditions;

4 (iii) remedying and removing environmental
5 contamination;

6 (iv) monitoring remedial activities and the release of
7 substances;

8 (v) preventing future releases of substances;

9 (vi) collecting amounts from persons liable or
10 potentially liable for the costs of activities described in (i) - (v) of this
11 subparagraph;

12 (vii) penalties imposed under environmental laws or
13 regulations;

14 (viii) other actions to comply with environmental laws
15 or regulations;

16 (ix) statutory or common law claims by third parties;

17 and

18 (x) defending claims based on environmental matters;

19 and

20 (B) for a premium for insurance for matters described in (A) of
21 this paragraph.

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

26 **Sec. 13.39.503. Transfer from income to principal for depreciation.** (a) A
27 fiduciary may transfer to principal a reasonable amount of the net cash receipts from a
28 principal asset that is subject to depreciation, but may not transfer any amount for
29 depreciation

30 (1) of the part of real property used or available for use by a
31 beneficiary as a residence;

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

3 (3) under this section, to the extent the fiduciary accounts

4 (A) under AS 13.39.410 for the asset; or

5 (B) under AS 13.39.403 for the business or other activity in
6 which the asset is used.

7 (b) An amount transferred to principal under this section need not be
8 separately held.

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

12 **Sec. 13.39.504. Reimbursement of income from principal.** (a) If a fiduciary
13 makes or expects to make an income disbursement described in (b) of this section, the
14 fiduciary may transfer an appropriate amount from principal to income in one or more
15 accounting periods to reimburse income.

16 (b) To the extent the fiduciary has not been and does not expect to be
17 reimbursed by a third party, income disbursements to which (a) of this section applies
18 include

19 (1) an amount chargeable to principal but paid from income because
20 principal is illiquid;

21 (2) a disbursement made to prepare property for sale, including
22 improvements and commissions; and

23 (3) a disbursement described in AS 13.39.502(a).

24 (c) If an asset whose ownership gives rise to an income disbursement becomes
25 subject to a successive interest after an income interest ends, the fiduciary may
26 continue to make transfers under (a) of this section.

27 **Sec. 13.39.505. Reimbursement of principal from income.** (a) If a fiduciary
28 makes or expects to make a principal disbursement described in (b) of this section, the
29 fiduciary may transfer an appropriate amount from income to principal in one or more
30 accounting periods to reimburse principal or provide a reserve for future principal
31 disbursements.

1 (b) To the extent a fiduciary has not been and does not expect to be
2 reimbursed by a third party, principal disbursements to which (a) of this section
3 applies include

4 (1) an amount chargeable to income but paid from principal because
5 income is not sufficient;

6 (2) the cost of an improvement to principal, whether a change to an
7 existing asset or the construction of a new asset, including a special assessment;

8 (3) a disbursement made to prepare property for rental, including
9 tenant allowances, leasehold improvements, and commissions;

10 (4) a periodic payment on an obligation secured by a principal asset, to
11 the extent the amount transferred from income to principal for depreciation is less than
12 the periodic payment; and

13 (5) a disbursement described in AS 13.39.502(a).

14 (c) If an asset whose ownership gives rise to a principal disbursement becomes
15 subject to a successive interest after an income interest ends, the fiduciary may
16 continue to make transfers under (a) of this section.

17 **Sec. 13.39.506. Income taxes.** (a) A tax required to be paid by a fiduciary
18 which is based on receipts allocated to income must be paid from income.

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

22 (c) Subject to (d) of this section and AS 13.39.504, 13.39.505, and 13.39.507,
23 a tax required to be paid by a fiduciary on a share of an entity's taxable income in an
24 accounting period must be paid from

25 (1) income and principal proportionately to the allocation between
26 income and principal of receipts from the entity in the period; and

27 (2) principal to the extent the tax exceeds the receipts from the entity
28 in the period.

29 (d) After applying (a) - (c) of this section, a fiduciary shall adjust income or
30 principal receipts, to the extent the taxes the fiduciary pays are reduced because of a
31 deduction for a payment made to a beneficiary.

1 **Sec. 13.39.507. Adjustment between income and principal because of**
 2 **taxes.** (a) A fiduciary may make an adjustment between income and principal to offset
 3 the shifting of economic interests or tax benefits between current income beneficiaries
 4 and successor beneficiaries which arises from

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

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

11 (3) ownership by the fiduciary of an interest in an entity a part of
 12 whose taxable income, whether or not distributed, is includable in the taxable income
 13 of the fiduciary or a beneficiary.

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

25 (c) A fiduciary that charges a beneficiary under (b) of this section may offset
 26 the charge by obtaining payment from the beneficiary, withholding an amount from
 27 future distributions to the beneficiary, or adopting another method or combination of
 28 methods.

29 **Article 6. Death of Individual or Termination of Income Interest.**

30 **Sec. 13.39.601. Determination and distribution of net income.** (a) This
 31 section applies when

1 (1) the death of an individual results in the creation of an estate or
2 trust; or

3 (2) an income interest in a trust terminates, whether the trust continues
4 or is distributed.

5 (b) A fiduciary of an estate or trust with an income interest that terminates
6 shall determine, under (g) of this section, AS 13.39.401 - 13.39.507, and 13.39.701 -
7 13.39.703, the amount of net income and net principal receipts received from property
8 specifically given to a beneficiary. The fiduciary shall distribute the net income and
9 net principal receipts to the beneficiary that is to receive the specific property.

10 (c) A fiduciary shall determine the income and net income of an estate or
11 income interest in a trust which terminates, other than the amount of net income
12 determined under (b) of this section, under AS 13.39.401 - 13.39.507 and 13.39.701 -
13 13.39.703 and by

14 (1) including in net income all income from property used or sold to
15 discharge liabilities;

16 (2) paying from income or principal, in the fiduciary's discretion, fees
17 of attorneys, accountants, and fiduciaries, court costs and other expenses of
18 administration, and interest on estate and inheritance taxes and other taxes imposed
19 because of the decedent's death, but the fiduciary may pay the expenses from income
20 of property passing to a trust for which the fiduciary claims a federal estate tax marital
21 or charitable deduction only to the extent

22 (A) the payment of the expenses from income will not cause
23 the reduction or loss of the deduction; or

24 (B) the fiduciary makes an adjustment under AS 13.39.507(b);
25 and

26 (3) paying from principal other disbursements made or incurred in
27 connection with the settlement of the estate or the winding up of an income interest
28 that terminates, including

29 (A) to the extent authorized by the decedent's will, the terms of
30 the trust, or applicable law, debts, funeral expenses, disposition of remains,
31 family allowances, estate and inheritance taxes, and other taxes imposed

1 because of the decedent's death; and

2 (B) related penalties that are apportioned, by the decedent's
3 will, the terms of the trust, or applicable law, to the estate or income interest
4 that terminates.

5 (d) If a decedent's will, the terms of a trust, or applicable law provides for the
6 payment of interest or the equivalent of interest to a beneficiary that receives a
7 pecuniary amount outright, the fiduciary shall make the payment from net income
8 determined under (c) of this section or from principal to the extent net income is
9 insufficient.

10 (e) If a beneficiary is to receive a pecuniary amount outright from a trust after
11 an income interest ends because of an income beneficiary's death, and no payment of
12 interest or the equivalent of interest is provided for by the terms of the trust or
13 applicable law, the fiduciary shall pay the interest or the equivalent of interest to
14 which the beneficiary would be entitled under applicable law if the pecuniary amount
15 were required to be paid under a will.

16 (f) A fiduciary shall distribute net income remaining after payments required
17 by (d) and (e) of this section in the manner described in AS 13.39.602 to all other
18 beneficiaries, including a beneficiary that receives a pecuniary amount in trust, even if
19 the beneficiary holds an unqualified power to withdraw assets from the trust or other
20 presently exercisable general power of appointment over the trust.

21 (g) A fiduciary may not reduce principal or income receipts from property
22 described in (b) of this section because of a payment described in AS 13.39.501 or
23 13.39.502, to the extent the decedent's will, the terms of the trust, or applicable law
24 requires the fiduciary to make the payment from assets other than the property or to
25 the extent the fiduciary recovers or expects to recover the payment from a third party.
26 The net income and principal receipts from the property must be determined by
27 including the amount the fiduciary receives or pays regarding the property, whether
28 the amount accrued or became due before, on, or after the date of the decedent's death
29 or an income interest's terminating event, and making a reasonable provision for an
30 amount the estate or income interest may become obligated to pay after the property is
31 distributed.

1 **Sec. 13.39.602. Distribution to successor beneficiary.** (a) Except to the
2 extent AS 13.39.302 - 13.39.390 apply for a beneficiary that is a trust, each
3 beneficiary described in AS 13.39.601(f) is entitled to receive a share of the net
4 income equal to the beneficiary's fractional interest in undistributed principal assets,
5 using values as of the distribution date. If a fiduciary makes more than one distribution
6 of assets to beneficiaries to which this section applies, each beneficiary, including a
7 beneficiary that does not receive part of the distribution, is entitled, as of each
8 distribution date, to a share of the net income the fiduciary received after the
9 decedent's death, an income interest's other terminating event, or the preceding
10 distribution by the fiduciary.

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

13 (1) the beneficiary is entitled to receive a share of the net income equal
14 to the beneficiary's fractional interest in the undistributed principal assets immediately
15 before the distribution date;

16 (2) the beneficiary's fractional interest determined under (1) of this
17 subsection must be calculated

18 (A) on the aggregate value of the assets as of the distribution
19 date without reducing the value by any unpaid principal obligation; and

20 (B) without regard to property

21 (i) specifically given to a beneficiary under the
22 decedent's will or the terms of the trust; and

23 (ii) required to pay pecuniary amounts not in trust;

24 (3) the distribution date applicable under (1) of this subsection may be
25 the date as of which the fiduciary calculates the value of the assets if that date is
26 reasonably near the date on which the assets are distributed.

27 (c) To the extent a fiduciary does not distribute under this section all the
28 collected but undistributed net income to each beneficiary as of a distribution date, the
29 fiduciary shall maintain records showing the interest of each beneficiary in the net
30 income.

31 (d) If this section applies to income from an asset, a fiduciary may apply the

1 rules in this section to net gain or loss realized from the disposition of the asset after
 2 the decedent's death, an income interest's terminating event, or the preceding
 3 distribution by the fiduciary.

4 **Article 7. Apportionment at Beginning and End of Income Interest.**

5 **Sec. 13.39.701. When right to income begins and ends.** (a) An income
 6 beneficiary is entitled to net income in accordance with the terms of the trust from the
 7 date an income interest begins. The income interest begins on the date specified in the
 8 terms of the trust or, if no date is specified, on the date an asset becomes subject to

9 (1) the trust for the current income beneficiary; or

10 (2) a successive interest for a successor beneficiary.

11 (b) An asset becomes subject to a trust under (a)(1) of this section, for an asset
 12 that

13 (1) is transferred to the trust during the settlor's life, on the date the
 14 asset is transferred;

15 (2) becomes subject to the trust because of a decedent's death, on the
 16 date of the decedent's death, even if there is an intervening period of administration of
 17 the decedent's estate; or

18 (3) is transferred to a fiduciary by a third party because of a decedent's
 19 death, on the date of the decedent's death.

20 (c) An asset becomes subject to a successive interest under (a)(2) of this
 21 section on the day after the preceding income interest ends, as determined under (d) of
 22 this section, even if there is an intervening period of administration to wind up the
 23 preceding income interest.

24 (d) An income interest ends on the day before an income beneficiary dies or
 25 another terminating event occurs or on the last day of a period during which there is
 26 no beneficiary to which a fiduciary may or must distribute income.

27 **Sec. 13.39.702. Apportionment of receipts and disbursements when**
 28 **decedent dies or income interest begins.** (a) A fiduciary shall allocate an income
 29 receipt or disbursement, other than a receipt to which AS 13.39.601(b) applies, to
 30 principal if its due date occurs before the date on which,

31 (1) for an estate, the decedent died; or

1 (2) for a trust or successive interest, an income interest begins.

2 (b) If the due date of a periodic income receipt or disbursement occurs on or
3 after the date on which a decedent died or an income interest begins, a fiduciary shall
4 allocate the receipt or disbursement to income.

5 (c) If an income receipt or disbursement is not periodic or has no due date, a
6 fiduciary shall treat the receipt or disbursement under this section as accruing from
7 day to day. The fiduciary shall allocate to principal the portion of the receipt or
8 disbursement accruing before the date on which a decedent died or an income interest
9 begins, and to income the balance.

10 (d) A receipt or disbursement is periodic under (b) and (c) of this section if

11 (1) the receipt or disbursement must be paid at regular intervals under
12 an obligation to make payments; or

13 (2) the payor customarily makes payments at regular intervals.

14 (e) An item of income or obligation is due under this section on the date the
15 payor is required to make a payment. If a payment date is not stated, there is no due
16 date.

17 (f) Distributions to shareholders or other owners from an entity to which
18 AS 13.39.401 applies are due

19 (1) on the date fixed by or on behalf of the entity for determining the
20 persons entitled to receive the distribution;

21 (2) if no date is fixed, on the date of the decision by or on behalf of the
22 entity to make the distribution; or

23 (3) if no date is fixed and the fiduciary does not know the date of the
24 decision by or on behalf of the entity to make the distribution, on the date the fiduciary
25 learns of the decision.

26 **Sec. 13.39.703. Apportionment when income interest ends.** (a) Except as
27 otherwise provided in (b) of this section, when a mandatory income interest of a
28 beneficiary ends, the fiduciary shall pay the beneficiary's share of the undistributed
29 income that is not disposed of under the terms of the trust to the beneficiary or, if the
30 beneficiary does not survive the date the interest ends, to the beneficiary's estate.

31 (b) If a beneficiary has an unqualified power to withdraw more than five

1 percent of the value of a trust immediately before an income interest ends,

2 (1) the fiduciary shall allocate to principal the undistributed income
3 from the portion of the trust which may be withdrawn; and

4 (2) the provisions of (a) of this section apply only to the balance of the
5 undistributed income.

6 (c) When a fiduciary's obligation to pay a fixed annuity or a fixed fraction of
7 the value of assets ends, the fiduciary shall prorate the final payment as required to
8 preserve an income tax, gift tax, estate tax, or other tax benefit.

9 (d) In this section, "undistributed income" means net income received on or
10 before the date on which an income interest ends. The term does not include an item of
11 income or expense which is due or accrued or net income that has been added or is
12 required to be added to principal under the terms of the trust.

13 **Article 8. Miscellaneous Provisions.**

14 **Sec. 13.39.801. Uniformity of application and construction.** In applying and
15 construing this chapter, consideration must be given to the need to promote uniformity
16 of the law with respect to its subject matter among states that enact it.

17 **Sec. 13.39.802. Relation to Electronic Signatures in Global and National
18 Commerce Act.** This chapter modifies, limits, or supersedes the Electronic Signatures
19 in Global and National Commerce Act, 15 U.S.C. 7001 - 7031, but does not modify,
20 limit, or supersede 15 U.S.C. 7001(c), or authorize electronic delivery of any of the
21 notices described in 15 U.S.C. 7003(b).

22 **Article 9. General Provisions.**

23 **Sec. 13.39.980. Definitions.** In this chapter,

24 (1) "accounting period" means a calendar year, unless a fiduciary
25 selects another period of 12 calendar months or approximately 12 calendar months;
26 the term includes a part of a calendar year or another period of 12 calendar months or
27 approximately 12 calendar months which begins when an income interest begins or
28 ends when an income interest ends;

29 (2) "asset-backed security" means a security that is serviced primarily
30 by the cash flows of a discrete pool of fixed or revolving receivables or other financial
31 assets that by their terms convert into cash within a finite time; the term includes rights

1 or other assets that ensure the servicing or timely distribution of proceeds to the holder
2 of the asset-backed security; the term does not include an asset to which
3 AS 13.39.401, 13.39.409, or 13.39.414 applies;

4 (3) "beneficiary" includes,

5 (A) for a trust,

6 (i) a current beneficiary, including a current income
7 beneficiary and a beneficiary that may receive only principal;

8 (ii) a person entitled to receive income or principal or to
9 use property when an income interest or other current interest ends; and

10 (iii) any other successor beneficiary;

11 (B) for an estate, an heir, legatee, and devisee; and

12 (C) for a life estate or term interest, a person that holds a life
13 estate, term interest, or remainder or other interest following a life estate or
14 term interest;

15 (4) "court" means the court having jurisdiction;

16 (5) "current income beneficiary" means a beneficiary to which a
17 fiduciary may distribute net income, whether or not the fiduciary also may distribute
18 principal to the beneficiary;

19 (6) "distribution" means a payment or transfer by a fiduciary to a
20 beneficiary in the beneficiary's capacity as a beneficiary, made under the terms of the
21 trust, without consideration other than the beneficiary's right to receive the payment or
22 transfer under the terms of the trust; "distribute," "distributed," and "distributee" have
23 corresponding meanings;

24 (7) "estate" means a decedent's estate; the term includes the property of
25 the decedent as the estate is originally constituted and the property of the estate as it
26 exists at any time during administration;

27 (8) "fiduciary" includes a trustee and personal representative; if there
28 are two or more co-fiduciaries, the term includes all co-fiduciaries acting under the
29 terms of the trust and applicable law;

30 (9) "income" means money or other property a fiduciary receives as
31 current return from principal; the term includes a part of receipts from a sale,

1 exchange, or liquidation of a principal asset, to the extent provided in AS 13.39.401 -
2 13.39.417;

3 (10) "income interest" means the right of a current income beneficiary
4 to receive all or part of net income, whether the terms of the trust require the net
5 income to be distributed or authorize the net income to be distributed in the fiduciary's
6 discretion; the term includes the right of a current beneficiary to use property held by a
7 fiduciary;

8 (11) "independent person" means a person that is not

9 (A) for a trust,

10 (i) a beneficiary that is a distributee or permissible
11 distributee of trust income or principal or would be a distributee or
12 permissible distributee of trust income or principal if either the trust or
13 the interests of the distributees or permissible distributees of trust
14 income or principal were terminated, assuming no power of
15 appointment is exercised;

16 (ii) a settlor of the trust; or

17 (iii) an individual whose legal obligation to support a
18 beneficiary may be satisfied by a distribution from the trust;

19 (B) for an estate, a beneficiary;

20 (C) a spouse, parent, brother, sister, or issue of an individual
21 described in (A) or (B) of this paragraph;

22 (D) a corporation, partnership, limited liability company, or
23 other entity in which persons described in (A) - (C) of this paragraph, in the
24 aggregate, have voting control; or

25 (E) an employee of a person described in (A), (B), (C), or (D)
26 of this paragraph;

27 (12) "mandatory income interest" means the right of a current income
28 beneficiary to receive net income that the terms of the trust require the fiduciary to
29 distribute;

30 (13) "net income" means the total allocations during an accounting
31 period to income under the terms of a trust and this chapter minus the disbursements

1 during the period, other than distributions, allocated to income under the terms of the
 2 trust and this chapter; to the extent the trust is a unitrust under AS 13.39.302 -
 3 13.39.390, the term means the unitrust amount determined under AS 13.39.302 -
 4 13.39.390; the term includes an adjustment from principal to income under
 5 AS 13.39.203; the term does not include an adjustment from income to principal under
 6 AS 13.39.203;

7 (14) "person" means an individual, estate, trust, business or nonprofit
 8 entity, public corporation, government or governmental subdivision, agency, or
 9 instrumentality, or other legal entity;

10 (15) "personal representative" means an executor, administrator,
 11 successor personal representative, special administrator, or person that performs
 12 substantially the same function with respect to an estate under the law governing the
 13 person's status;

14 (16) "principal" means property held in trust for distribution to,
 15 production of income for, or use by a current or successor beneficiary;

16 (17) "qualified beneficiary" has the meaning given in AS 13.36.390;

17 (18) "record" means information that is inscribed on a tangible
 18 medium or that is stored in an electronic or other medium and is retrievable in
 19 perceivable form;

20 (19) "settlor" means a person, including a testator, that creates or
 21 contributes property to a trust; if more than one person creates or contributes property
 22 to a trust, the term includes each person, to the extent of the trust property attributable
 23 to that person's contribution, except to the extent another person has the power to
 24 revoke or withdraw that portion;

25 (20) "special tax benefit" means

26 (A) exclusion of a transfer to a trust from gifts described in 26
 27 U.S.C. 2503(b) (Internal Revenue Code) because of the qualification of an
 28 income interest in the trust as a present interest in property;

29 (B) status as a qualified subchapter S trust described in 26
 30 U.S.C. 1361(d)(3) (Internal Revenue Code) at a time the trust holds stock of an
 31 S corporation described in 26 U.S.C. 1361(a)(1) (Internal Revenue Code);

1 (C) an estate or gift tax marital deduction for a transfer to a
 2 trust under 26 U.S.C. 2056 or 2523 (Internal Revenue Code) which depends or
 3 depended in whole or in part on the right of the settlor's spouse to receive the
 4 net income of the trust;

5 (D) exemption in whole or in part of a trust from the federal
 6 generation-skipping transfer tax imposed by 26 U.S.C. 2601 (Internal Revenue
 7 Code) because the trust was irrevocable on September 25, 1985, if there is any
 8 possibility that

9 (i) a taxable distribution, as defined in 26 U.S.C.
 10 2612(b) (Internal Revenue Code), could be made from the trust; or

11 (ii) a taxable termination, as defined in 26 U.S.C.
 12 2612(a) (Internal Revenue Code), could occur with respect to the trust;

13 or

14 (E) an inclusion ratio, as defined in 26 U.S.C. 2642(a) (Internal
 15 Revenue Code), of the trust which is less than one, if there is any possibility
 16 that

17 (i) a taxable distribution, as defined in 26 U.S.C.
 18 2612(b) (Internal Revenue Code), could be made from the trust; or

19 (ii) a taxable termination, as defined in 26 U.S.C.
 20 2612(a) (Internal Revenue Code), could occur with respect to the trust;

21 (21) "successive interest" means the interest of a successor beneficiary;

22 (22) "successor beneficiary" means a person entitled to receive income
 23 or principal or to use property when an income interest or other current interest ends;

24 (23) "trust"

25 (A) includes

26 (i) an express trust, private or charitable, with additions
 27 to the trust, wherever and however created; and

28 (ii) a trust created or determined by judgment or decree
 29 under which the trust is to be administered in the manner of an express
 30 trust; and

31 (B) does not include

1 (i) a constructive trust;

2 (ii) a resulting trust, conservatorship, guardianship,
3 multi-party account, custodial arrangement for a minor, business trust,
4 voting trust, security arrangement, liquidation trust, or trust for the
5 primary purpose of paying debts, dividends, interest, salaries, wages,
6 profits, pensions, retirement benefits, or employee benefits of any kind;
7 or

8 (iii) an arrangement under which a person is a nominee,
9 escrowee, or agent for another;

10 (24) "trustee" means a person, other than a personal representative, that
11 owns or holds property for the benefit of a beneficiary; the term includes an original,
12 additional, or successor trustee, whether or not appointed or confirmed by a court;

13 (25) "will" means any testamentary instrument recognized by
14 applicable law which makes a legally effective disposition of an individual's property,
15 effective at the individual's death; the term includes a codicil or other amendment to a
16 testamentary instrument.

17 **Sec. 13.39.990. Short title.** This chapter may be cited as the Alaska Uniform
18 Fiduciary Income and Principal Act.

19 * **Sec. 4.** AS 34.40.110(b) is amended to read:

20 (b) If a trust contains a transfer restriction allowed under (a) of this section,
21 the transfer restriction prevents a creditor existing when the trust is created or a person
22 who subsequently becomes a creditor from satisfying a claim out of the beneficiary's
23 interest in the trust, unless the creditor is a creditor of the settlor and

24 (1) the creditor establishes by clear and convincing evidence that the
25 settlor's transfer of property in trust was made with the intent to defraud that creditor,
26 and a cause of action or claim for relief with respect to the fraudulent transfer
27 complies with the requirements of (d) of this section; however, a settlor's expressed
28 intention to protect trust assets from a beneficiary's potential future creditors is not
29 evidence of an intent to defraud;

30 (2) the trust, except for an eligible individual retirement account trust,
31 provides that the settlor may revoke or terminate all or part of the trust without the

1 consent of a person who has a substantial beneficial interest in the trust and the interest
 2 would be adversely affected by the exercise of the power held by the settlor to revoke
 3 or terminate all or part of the trust; in this paragraph, "revoke or terminate" does not
 4 include a power to veto a distribution from the trust, a testamentary or lifetime
 5 nongeneral power of appointment or similar power, or a right to receive a distribution
 6 of income or principal under (3)(A), (B), (C), or (D) of this subsection;

7 (3) the trust, except for an eligible individual retirement account trust,
 8 requires that all or a part of the trust's income or principal, or both, must be distributed
 9 to the settlor; however, this paragraph does not apply to a settlor's right to receive the
 10 following types of distributions, which remain subject to the restriction provided by
 11 (a) of this section until the distributions occur:

12 (A) income or principal from a charitable remainder annuity
 13 trust or charitable remainder unitrust; in this subparagraph, "charitable
 14 remainder annuity trust" and "charitable remainder unitrust" have the meanings
 15 given in 26 U.S.C. 664 (Internal Revenue Code) and as it may be amended;

16 (B) a percentage of the value of the trust each year as
 17 determined from time to time under the trust instrument, but not exceeding the
 18 amount that may be defined as income under AS 13.39 [AS 13.38] or under 26
 19 U.S.C. 643(b) (Internal Revenue Code) and as it may be amended;

20 (C) the transferor's potential or actual use of real property held
 21 under a qualified personal residence trust within the meaning of 26 U.S.C.
 22 2702(c) (Internal Revenue Code) or as it may be amended in the future; or

23 (D) income or principal from a grantor retained annuity trust or
 24 grantor retained unitrust that is allowed under 26 U.S.C. 2702 (Internal
 25 Revenue Code) or as it may be amended in the future; or

26 (4) at the time of the transfer, the settlor is in default by 30 or more
 27 days of making a payment due under a child support judgment or order.

28 * **Sec. 5.** AS 13.38.200, 13.38.210, 13.38.220, 13.38.300, 13.38.310, 13.38.320, 13.38.330,
 29 13.38.340, 13.38.350, 13.38.360, 13.38.370, 13.38.380, 13.38.390, 13.38.400, 13.38.410,
 30 13.38.420, 13.38.430, 13.38.435, 13.38.440, 13.38.450, 13.38.460, 13.38.470, 13.38.480,
 31 13.38.490, 13.38.500, 13.38.510, 13.38.550, 13.38.560, 13.38.570, 13.38.600, 13.38.610,

1 13.38.620, 13.38.630, 13.38.640, 13.38.650, 13.38.660, 13.38.670, 13.38.680, 13.38.690,
2 13.38.700, 13.38.710, 13.38.720, 13.38.730, 13.38.740, 13.38.750, 13.38.800, 13.38.810,
3 13.38.820, 13.38.830, 13.38.840, 13.38.850, 13.38.860, 13.38.900, 13.38.910, 13.38.980, and
4 13.38.990 are repealed.

5 * **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to
6 read:

7 **APPLICABILITY.** (a) This Act applies to a trust or estate existing or created on or
8 after the effective date of this Act, except as otherwise expressly provided in the terms of the
9 trust or this Act.

10 (b) Notwithstanding (a) of this section, a fiduciary that owns or holds an interest in
11 minerals, water, or other natural resources before the effective date of this Act may allocate
12 receipts from the interest as provided in AS 13.39.411, enacted by sec. 3 of this Act, or in the
13 manner used by the fiduciary before the effective date of this Act. If a fiduciary acquires an
14 interest in minerals, water, or other natural resources on or after the effective date of this Act,
15 the fiduciary shall allocate receipts from the interest as provided in AS 13.39.411, enacted by
16 sec. 3 of this Act.

17 (c) Notwithstanding (a) of this section, a fiduciary that owns or holds an interest in
18 land used for growing and cutting timber before the effective date of this Act may allocate net
19 receipts from the sale of timber and related products as provided in AS 13.39.412, enacted by
20 sec. 3 of this Act, or in the manner used by the fiduciary before the effective date of this Act.
21 If a fiduciary acquires an interest in land used for growing and cutting timber on or after the
22 effective date of this Act, the fiduciary shall allocate net receipts from the sale of timber and
23 related products as provided in AS 13.39.412, enacted by sec. 3 of this Act.