

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 64.1-57 and 64.1-68 of the Code of Virginia, to amend the Code of Virginia by adding in Title 55 a chapter numbered 15.1, containing articles numbered 1 through 6, consisting of sections numbered 55-277.1 through 55-277.33, and to repeal Article 1 (§§ 55-253 through 55-268) of Chapter 15 of Title 55 of the Code of Virginia, relating to the Uniform Principal and Income Act.

[H 842]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 64.1-57 and 64.1-68 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 55 a chapter numbered 15.1, containing articles numbered 1 through 6, consisting of sections numbered 55-277.1 through 55-277.33, as follows:

CHAPTER 15.1.

UNIFORM PRINCIPAL AND INCOME ACT.

Article 1.

Definitions and Fiduciary Duties.

§ 55-277.1. Short title.

This chapter may be cited as the Uniform Principal and Income Act.

§ 55-277.2. Definitions.

In this chapter:

"Accounting period" means a calendar year unless another twelve-month period is selected by a fiduciary. The term includes a portion of a calendar year or other twelve-month period that begins when an income interest begins or ends when an income interest ends.

"Beneficiary" includes, in the case of a decedent's estate, an heir, legatee, and devisee and, in the case of a trust, an income beneficiary and a remainder beneficiary.

"Fiduciary" means a personal representative or a trustee. The term includes an executor, administrator, successor personal representative, special administrator, and a person performing substantially the same function.

"Income" means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in Article 4 (§ 55-277.10 et seq.).

"Income beneficiary" means a person to whom net income of a trust is or may be payable.

"Income interest" means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee's discretion.

"Mandatory income interest" means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.

"Net income" means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under this chapter to or from income during the period.

"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, or joint venture; government or governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

"Principal" means property held in trust for distribution to a remainder beneficiary when the trust terminates.

"Remainder beneficiary" means a person entitled to receive principal when an income interest ends.

"Terms of a trust" means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.

"Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

§ 55-277.3. Fiduciary duties; general principles.

A. In allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of Articles 2 (§ 55-277.5 et seq.) and 3 (§ 55-277.7 et seq.), a fiduciary:

1. Shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this chapter;

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2. May administer a trust or estate by the exercise of a discretionary power of administration given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by this chapter;

3. Shall administer a trust or estate in accordance with this chapter if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration; and

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

B. In exercising the power to adjust under subsection A of § 55-277.4 or a discretionary power of administration regarding a matter within the scope of this chapter, whether granted by the terms of a trust, a will, or this chapter, a fiduciary shall administer a trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an intention that the fiduciary shall or may favor one or more of the beneficiaries. A determination in accordance with this chapter is presumed to be fair and reasonable to all of the beneficiaries.

C. The power of a fiduciary to allocate receipts and expenses between income and principal, whether incorporated by reference, expressly conferred by the terms of a will or trust, or granted by a court pursuant to § 64.1-57.1, does not alone constitute a discretionary power of administration for purposes of this section.

§ 55-277.4. Fiduciary's power to adjust.

A. A fiduciary may adjust between principal and income to the extent the fiduciary considers necessary if the fiduciary invests and manages trust assets as a prudent investor, the terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust's income, and the fiduciary determines, after applying the rules in subsection A of § 55-277.3, that the fiduciary is unable to comply with subsection B of § 55-277.3.

B. In deciding whether and to what extent to exercise the power conferred by subsection A, a fiduciary shall consider all factors relevant to the trust and its beneficiaries, including the following factors to the extent they are relevant:

1. The nature, purpose, and expected duration of the trust;

2. The intent of the settlor;

3. The identity and circumstances of the beneficiaries;

4. The needs for liquidity, regularity of income, and preservation and appreciation of capital;

5. The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the fiduciary or received from the settlor;

6. The net amount allocated to income under the other sections of this chapter and the increase or decrease in the value of the principal assets, which the fiduciary may estimate as to assets for which market values are not readily available;

7. Whether and to what extent the terms of the trust give the fiduciary the power to invade principal or accumulate income or prohibit the fiduciary from invading principal or accumulating income, and the extent to which the fiduciary has exercised a power from time to time to invade principal or accumulate income;

8. The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and

9. The anticipated tax consequences of an adjustment.

C. A fiduciary may not make an adjustment:

1. That diminishes the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the fiduciary did not have the power to make the adjustment;

2. That reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;

3. That changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

4. From any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside;

5. If possessing or exercising the power to make an adjustment causes an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the fiduciary did not possess the power to make an adjustment;

6. If possessing or exercising the power to make an adjustment causes all or part of the trust assets

to be included for estate tax purposes in the estate of an individual who has the power to remove a fiduciary or appoint a fiduciary, or both, and the assets would not be included in the estate of the individual if the fiduciary did not possess the power to make an adjustment;

7. If the fiduciary is a beneficiary of the trust; or

8. If the fiduciary is not a beneficiary, but the adjustment would benefit the fiduciary directly or indirectly.

D. If subdivision C 5, 6, 7, or 8 applies to a fiduciary and there is more than one fiduciary, a cofiduciary to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining fiduciary or fiduciaries is not permitted by the terms of the trust. Any beneficiary or fiduciary may petition the circuit court pursuant to § 26-54 for appointment of a cofiduciary who would be permitted to make an adjustment not permitted by the other fiduciary or fiduciaries.

E. A fiduciary may release the entire power conferred by subsection A or may release only the power to adjust from income to principal or the power to adjust from principal to income if the fiduciary is uncertain about whether possessing or exercising the power will cause a result described in subdivisions C 1 through 6 or C 8 or if the fiduciary determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection C. The release may be permanent or for a specified period, including a period measured by the life of an individual.

F. Terms of a trust that limit the power of a fiduciary to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the fiduciary the power of adjustment conferred by subsection A.

G. As used in this section and the application of this section elsewhere in this chapter, the term "trust" includes the assets under the control or management of a personal representative.

Article 2.

Decedent's Estate or Terminating Income Interest.

§ 55-277.5. Determination and distribution of net income.

After a decedent dies, in the case of an estate, or after an income interest in a trust ends, the following rules apply:

1. A fiduciary of an estate or of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under the rules in Articles 3 through 5 (§ 55-277 et seq.) which apply to trustees and the rules in subdivision 5. The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.

2. A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the rules in Articles 3 through 5 which apply to trustees and by:

a. Including in net income all income from property used to discharge liabilities;

b. Paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants, and fiduciaries; court costs and other expenses of administration; and interest on death taxes, but the fiduciary may pay those expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction only to the extent that the payment of those expenses from income will not cause the reduction or loss of the deduction; and

c. Paying from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, including debts, funeral expenses, disposition of remains, family allowances, and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the terms of the trust, or applicable law.

3. A fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright the interest or any other amount provided by the will, the terms of the trust, or applicable law from net income determined under subdivision 2 or from principal to the extent that net income is insufficient. If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends and no interest or other amount is provided for by the terms of the trust or applicable law, the fiduciary shall distribute the interest or other amount to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will.

4. A fiduciary shall distribute the net income remaining after distributions required by subdivision 3 in the manner described in § 55-277.6 to all other beneficiaries, including a beneficiary who receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

5. A fiduciary may not reduce principal or income receipts from property described in subdivision 1 because of a payment described in § 55-277.25 or § 55-277.26 to the extent that the will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the

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

§ 55-277.6. Distribution to residuary and remainder beneficiaries.

A. Each beneficiary described in subdivision 4 of § 55-277.5 is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

B. In determining a beneficiary's share of net income, the following rules apply:

1. The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date, including assets that later may be sold to meet principal obligations.

2. The beneficiary's fractional interest in the undistributed principal assets must be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust.

3. The beneficiary's fractional interest in the undistributed principal assets must be calculated on the basis of the aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation.

4. The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.

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

D. A fiduciary may apply the rules in this section, to the extent that the fiduciary considers it appropriate, to net gain or loss realized after the date of death or terminating event or earlier distribution date from the disposition of a principal asset if this section applies to the income from the asset.

Article 3.

Apportionment at Beginning and End of Income Interest.

§ 55-277.7. When right to income begins and ends.

A. An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

B. An asset becomes subject to a trust:

1. On the date it is transferred to the trust in the case of an asset that is transferred to a trust during the transferor's life;

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

3. On the date of an individual's death in the case of an asset that is transferred to a fiduciary by a third party because of the individual's death.

C. An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under subsection D, even if there is an intervening period of administration to wind up the preceding income interest.

D. An income interest ends on the day before an income beneficiary dies or another terminating event occurs, or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

§ 55-277.8. Apportionment of receipts and disbursements when decedent dies or income interest begins.

A. A trustee shall allocate an income receipt or disbursement other than one to which subdivision 1 of § 55-277.5 applies to principal if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

B. A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement must be treated as accruing from day to day if its due date is not

periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins must be allocated to principal and the balance must be allocated to income.

C. An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of this chapter. Distributions to shareholders or other owners from an entity to which § 55-277.10 applies are deemed to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

§ 55-277.9. Apportionment when income interest ends.

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

B. When a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust unless the beneficiary has an unqualified power to revoke more than five percent of the trust immediately before the income interest ends. In the latter case, the undistributed income from the portion of the trust that may be revoked must be added to principal.

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

Article 4.

Allocation of Receipts During Administration of Trust.

PART 1.

RECEIPTS FROM ENTITIES.

§ 55-277.10. Character of receipts.

A. In this section, "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization in which a trustee has an interest other than a trust or estate to which § 55-277.11 applies, a business or activity to which § 55-277.12 applies, or an asset-backed security to which § 55-277.24 applies.

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

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

1. Property other than money;
2. Money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity;
3. Money received in total or partial liquidation of the entity; and
4. Money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.

D. Money is received in partial liquidation:

1. To the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or
2. If the total amount of money and property received in a distribution or series of related distributions is greater than twenty percent of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt.

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

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

§ 55-277.11. Distribution from trust or estate.

A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest, and shall allocate to principal an amount received as a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, § 55-277.10 or § 55-277.24 applies to a receipt from the trust.

§ 55-277.12. Business and other activities conducted by trustee.

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

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

C. Activities for which a trustee may maintain separate accounting records include:

1. Retail, manufacturing, service, and other traditional business activities;
2. Farming;
3. Raising and selling livestock and other animals;
4. Management of rental properties;
5. Extraction of minerals and other natural resources;
6. Timber operations; and
7. Activities to which § 55-277.23 applies.

PART 2.

RECEIPTS NOT NORMALLY APPORTIONED.

§ 55-277.13. Principal receipts.

A trustee shall allocate to principal:

1. To the extent not allocated to income under this chapter, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest, or a payer under a contract naming the trust or its trustee as beneficiary;

2. Money or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit, subject to this article;

3. Amounts recovered from third parties to reimburse the trust because of disbursements described in subdivision A 7 of § 55-277.26 or for other reasons to the extent not based on the loss of income;

4. Proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income;

5. Net income received in an accounting period during which there is no beneficiary to whom a trustee may or must distribute income; and

6. Other receipts as provided in §§ 55-277.17 through 55-277.24.

§ 55-277.14. Rental property.

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

§ 55-277.15. Obligation to pay money.

A. An amount received as interest, whether determined at a fixed, variable, or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, must be allocated to income without any provision for amortization of premium.

B. A trustee shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the trustee more than one year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity. If the obligation matures within one year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust must be allocated to income.

C. This section does not apply to an obligation to which §§ 55-277.18, 55-277.19, 55-277.20, 55-277.21, 55-277.23, or § 55-277.24 applies.

§ 55-277.16. Insurance policies and similar.

A. Except as otherwise provided in subsection B, a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of, or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the

premiums on the policy are paid from income, and to principal if the premiums are paid from principal.
 B. A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income, or, subject to § 55-277.12, loss of profits from a business.

C. This section does not apply to a contract to which § 55-277.18 applies.

PART 3.

RECEIPTS NORMALLY APPORTIONED.

§ 55-277.17. Insubstantial allocations not required.

If a trustee determines that an allocation between principal and income required by §§ 55-277.18, 55-277.19, 55-277.20, 55-277.21, or § 55-277.24 is insubstantial, the trustee may allocate the entire amount to principal unless one of the circumstances described in subsection C of § 55-277.4 applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in subsection D of § 55-277.4 and may be released for the reasons and in the manner described in subsection E of § 55-277.4. An allocation is presumed to be insubstantial if:

1. The amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than ten percent; or

2. The value of the asset producing the receipt for which the allocation would be made is less than ten percent of the total value of the trust's assets at the beginning of the accounting period.

§ 55-277.18. Deferred compensation, annuities, and similar payments.

A. In this section, "payment" means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer, including a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

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

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

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

E. This section does not apply to payments to which § 55-277.19 applies.

§ 55-277.19. Liquidating asset.

A. In this section, "liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, or royalty right, and a right to receive payments during a period of more than one year under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include a payment subject to § 55-277.18, resources subject to § 55-277.20, timber subject to § 55-277.21, an activity subject to § 55-277.23, an asset subject to § 55-277.24, or any asset for which the trustee establishes a reserve for depreciation under § 55-277.27.

B. A trustee shall allocate to income ten percent of the receipts from a liquidating asset and the balance to principal.

§ 55-277.20. Minerals, water, and other natural resources.

A. To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them as follows:

1. If received as nominal delay rental or nominal annual rent on a lease, a receipt must be allocated to income.

2. If received from a production payment, a receipt must be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance must be allocated to principal.

3. If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, ninety percent must be allocated to principal and the balance to income.

4. If an amount is received from a working interest or any other interest not provided for in

subdivision 1, 2, or 3, ninety percent of the net amount received must be allocated to principal and the balance to income.

B. An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, ninety percent of the amount must be allocated to principal and the balance to income.

C. This chapter applies whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

D. If a trust owns an interest in minerals, water, or other natural resources on January 1, 2000, the trustee may allocate receipts from the interest as provided in this chapter or in the manner used by the trustee before January 1, 2000. If the trust acquires an interest in minerals, water, or other natural resources after January 1, 2000, the trustee shall allocate receipts from the interest as provided in this chapter.

§ 55-277.21. Timber.

A. To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts:

1. To income to the extent that the amount of timber removed from the land does not exceed the rate of growth of the timber during the accounting periods in which a beneficiary has a mandatory income interest;

2. To principal to the extent that the amount of timber removed from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;

3. To or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying the rules in subdivision 1 or 2; or

4. To principal to the extent that advance payments, bonuses, and other payments are not allocated pursuant to subdivision 1, 2 or 3.

B. In determining net receipts to be allocated pursuant to subsection A, a trustee shall deduct and transfer to principal a reasonable amount for depletion.

C. This chapter applies whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.

D. If a trust owns an interest in timberland on January 1, 2000, the trustee may allocate net receipts from the sale of timber and related products as provided in this chapter or in the manner used by the trustee before January 1, 2000. If the trust acquires an interest in timberland after January 1, 2000, the trustee shall allocate net receipts from the sale of timber and related products as provided in this chapter.

§ 55-277.22. Property not productive of income.

A. If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the spouse with sufficient income from or use of the trust assets, and if the amounts that the trustee transfers from principal to income under § 55-277.4 and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee to make property productive of income, convert property within a reasonable time, or exercise the power conferred by subsection A of § 55-277.4. The trustee may decide which action or combination of actions to take.

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

§ 55-277.23. Derivatives and options.

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

B. To the extent that a trustee does not account under § 55-277.12 for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

C. If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust, or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option must be allocated to principal. An amount paid to acquire the option must be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, must be allocated to principal.

§ 55-277.24. Asset-backed securities.

A. In this section, "asset-backed security" means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not include an asset to which § 55-277.10 or § 55-277.18 applies.

B. If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the trustee shall allocate to income the portion of the payment which the payer identifies as being from interest or other current return and shall allocate the balance of the payment to principal.

C. If a trust receives one or more payments in exchange for the trust's entire interest in an asset-backed security in one accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust's interest in the security over more than one accounting period, the trustee shall allocate ten percent of the payment to income and the balance to principal.

Article 5.

Allocation of Disbursements During Administration of Trust.

§ 55-277.25. Disbursements from income.

A trustee shall make the following disbursements from income to the extent that they are not disbursements to which subdivision 2 b or 2 c of § 55-277.5 applies:

1. One-half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee;

2. One-half of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests;

3. All of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a proceeding or other matter that concerns primarily the income interest; and

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

§ 55-277.26. Disbursements from principal.

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

1. The remaining one-half of the disbursements described in subdivisions 1 and 2 of § 55-277.25;

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

3. Payments on the principal of a trust debt;

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

5. Premiums paid on a policy of insurance not described in subdivision 4 of § 55-277.25 of which the trust is the owner and beneficiary;

6. Estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust; and

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

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

§ 55-277.27. Transfers from income to principal for depreciation.

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

B. A trustee may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but may not transfer any amount for depreciation:

1. Of that portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary;

2. During the administration of a decedent's estate; or

3. Under this section if the trustee is accounting under § 55-277.12 for the business or activity in which the asset is used.

C. An amount transferred to principal need not be held as a separate fund.

§ 55-277.28. Transfers from income to reimburse principal.

A. If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

B. Principal disbursements to which subsection A applies include the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:

1. An amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs;

2. A capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments;

3. Disbursements made to prepare property for rental, including tenant allowances, leasehold improvements, and broker's commissions;

4. Periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments; and

5. Disbursements described in subdivision A 7 of § 55-277.26.

C. If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in subsection A.

§ 55-277.29. Income taxes.

A. A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.

B. A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

C. A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid proportionately:

1. From income to the extent that receipts from the entity are allocated to income; and

2. From principal to the extent that:

a. Receipts from the entity are allocated to principal; and

b. The trust's share of the entity's taxable income exceeds the total receipts described in subdivisions 1 and 2 a of this section.

D. For purposes of this section, receipts allocated to principal or income must be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax.

§ 55-277.30. Adjustments between principal and income because of taxes.

A. A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries which arise from:

1. Elections and decisions, other than those described in subsection B, that the fiduciary makes from time to time regarding tax matters;

2. An income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust; or

3. The ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust, or a beneficiary.

B. If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal are increased and income taxes paid by an estate, trust, or beneficiary are decreased, each estate, trust, or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement must equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust, or beneficiary whose income taxes are reduced must be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.

Article 6.

Miscellaneous Provisions.

§ 55-277.31 Expenses and receipts; nontrust estates.

A. The provisions of this chapter concerning the allocation and apportionment of receipts and expenses to principal and income shall govern the allocation and apportionment of receipts and expenses between a tenant and a remainderman where no trust has been created, except as otherwise provided in subsection B or C, and except for any provision that requires the exercise of a discretionary power by a trustee.

B. The cost of, or special taxes or assessments for, an improvement representing an addition of value

to property forming part of the principal shall be paid by the tenant, when such improvement cannot reasonably be expected to outlast the estate of the tenant. In all other cases a portion thereof only shall be paid by the tenant, while the remainder shall be paid by the remainderman. Such portion shall be ascertained by taking that percentage of the total which is found by dividing the present value of the tenant's estate by the present value of an estate corresponding to the reasonably expected duration of the improvement. The computation of present values of the estate shall be made on the expectancy basis set forth in § 55-269.1 and no other evidence of duration or expectancy shall be considered. When either tenant or remainderman has incurred an expense for the benefit of his own estate and without the consent or agreement of the other, he shall pay such expense in full.

C. The rules of this section are subject to any agreement of the parties.

§ 55-277.32. Uniformity of application and construction.

In applying and construing this Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.

§ 55-277.33. Application of chapter to existing trusts decedent's estates and nontrust estates.

This chapter applies to every trust, decedent's estate or nontrust estate existing on January 1, 2000, except as otherwise expressly provided in the will or the terms of the trust, any other governing document, or in this chapter.

§ 64.1-57. Incorporation by reference of certain powers of fiduciaries into will or trust instrument.

(1) The following powers, in addition to all other powers granted by law, may be incorporated in whole or in part in any will or trust instrument by reference to this section:

(a) To keep and retain any or all investments and property, real, personal or mixed, including stock in the fiduciary institution, if the same be a corporation, as they may be at the time they come into the custody of said fiduciary, regardless of the character of same or whether they are such as then would be authorized by law for investment by fiduciaries or whether a disproportionately large part of the trust or estate remains invested in one or more types of property, for such time as the fiduciary shall deem best, and to dispose of such property by sale, exchange, or otherwise as and when such fiduciary shall deem advisable.

(a1) At the discretion of the fiduciary, to receive additions to the estate from any source, in cash or in kind, and to hold, administer and distribute such additions as a part of and under the same terms and conditions as the estate then currently held.

(b) To sell, assign, exchange, transfer and convey or otherwise dispose of, any or all of the investments and property, either real, personal or mixed, which may be included in, or may at any time become part of the trust or estate upon such terms and conditions as the fiduciary, in his absolute discretion, may deem advisable, at either public or private sale, either for cash or deferred payments or other consideration, as such fiduciary may determine; and for the purpose of selling, assigning, exchanging, transferring or conveying the same, to make, execute, acknowledge and deliver any and all instruments of conveyance, deeds of trust, or assignments in such form and with warranties and covenants as such fiduciary may deem expedient and proper; and in the event of any sale, conveyance, exchange, or other disposition of any of the trust or estate, the purchaser shall not be obligated in any way to see to the application of the purchase money or other consideration passing in connection therewith.

(b1) To grant, sell, transfer, exchange, purchase or acquire options of any kind on property held by such trust or estate or acquired or to be acquired by such trust or estate or held or owned by any other person.

(c) To invest and reinvest all of the funds of the estate as said fiduciary, in his sole discretion, may deem best, including investment in stocks, common and preferred, and common trust funds, without being restricted to those investments expressly approved by statute for investment by fiduciaries; and to change investments from realty to personalty, and vice versa.

(c1) To invest and reinvest all of the funds of the estate as said fiduciary, in his sole discretion, may deem best, including investment in interests in investment trusts and mutual funds, without being restricted to those investments expressly approved by statute for investment by fiduciaries; and to change investments from realty to personalty, and vice versa.

(d) To lease any or all of the real estate, which may be included in or at any time become a part of the trust or estate, upon such terms and conditions as said fiduciary, in his sole judgment and discretion, may deem advisable, and any lease or leases made by such fiduciary may extend beyond the term of the trust or administration of the estate and for the purpose of leasing said real estate, to make, execute, acknowledge and deliver any and all instruments, in such form and with such covenants and warranties as such fiduciary may deem expedient and proper.

(e) To vote any stocks, bonds, or other securities held by such fiduciary at any meeting of stockholders, bondholders, or other security holders, and to delegate the power to so vote to attorneys-in-fact or proxies under power of attorney, restricted or unrestricted.

(f) To borrow money for such periods of time and upon such terms and conditions as to rates, maturities, renewals and security as to such fiduciary shall seem advisable, including the power to borrow from the fiduciary, if the fiduciary be a bank, for the purpose of paying debts, taxes or other charges against the trust or estate or any part thereof, and with prior approval of the court for any proper purpose of the trust or estate, and to mortgage or pledge such portion of the trust or estate as may be required to secure such loan or loans; and as maker or endorser to renew existing loans.

(f1) To make loans or advancements to the executor or other representative of the grantor's estate in case such executor or other representative is in need of cash with which to pay taxes, claims or other indebtedness of the grantor's estate; but no assets acquired from a qualified retirement benefit plan under § 2039 (c) of the Internal Revenue Code shall be so used, and such assets shall be segregated and held separately until all claims against the estate for debts of the decedent or claims of administration have been satisfied. Such loans or advancements may be secured or unsecured, and the trustee shall not be liable in any way for any loss resulting to the trust or estate by reason of the exercise of this authority.

(g) To compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims, in favor of or against the trust or estate as the fiduciary shall deem best, and his decision shall be conclusive.

(h) To make distributions in cash or in kind or partly in each at valuations to be determined by the fiduciary, whose decision as to values shall be conclusive.

(i) [Repealed.]

~~(i1) To determine whether any part of the trust or estate or any addition or increment thereto be income or principal, or whether any cost, charge, expense, tax or assessment shall be charged against income or principal, or partially against income and partially against principal, provided that this determination be made so as to balance fairly the interests of the income beneficiary and the remainderman.~~

(j) To repair, alter, improve, renovate, reconstruct and demolish any of the buildings on the real estate held by such fiduciary and to construct such buildings and improvements thereon as such fiduciary may, in his discretion, deem advisable.

(k) To employ and compensate, out of the principal or the income or both as to the fiduciary shall seem proper, agents, accountants, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, licensed real estate brokers, licensed salesmen and other assistants and advisors deemed by the fiduciary needful for the proper administration of the trust or estate, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative provided he was selected and retained with reasonable care.

(l) To rely upon any affidavit, certificate, letter, notice, telegram, or other paper or upon any telephone conversation believed by such fiduciary to be genuine and upon any other evidence believed by such fiduciary to be sufficient, and to be protected and saved harmless in all payments or distributions required to be made hereunder if made in good faith and without actual notice or knowledge of the changed condition or status of any person receiving payments or other distributions upon a condition.

(m) To retain any interest held by such fiduciary in any business, whether as a stockholder or security holder of a corporation, a partner, a sole proprietor, or otherwise, for any length of time, without limitations, solely at the risk of the trust or estate and without liability on the part of the fiduciary for any losses resulting therefrom; to participate in the conduct of such business and take or delegate to others discretionary power to take any action with respect to its management and affairs which an individual could take as the owner of such business, including the voting of stock, and the determination of any or all questions of policy; to participate in any incorporation, reorganization, merger, consolidation, recapitalization or liquidation thereof; to invest additional capital in, subscribe to additional stock or securities of, and loan money or credit with or without security to, such business out of the trust or estate property; to elect or employ as directors, officers, employees or agents of such business, and compensate, any persons, including the fiduciary or a director, officer, or agent of the fiduciary; to accept as correct financial or other statements rendered by the business from time to time as to his conditions and operations except when having actual notice to the contrary; to regard the business as an entity separate from the trust or estate with no duty to account to any court as to his operations; to deal with and act for the business in any capacity, including any banking or trust capacity and the loaning of money out of the fiduciary's own funds, and to be compensated therefor; and to sell or liquidate such interest or any part thereof at any time. If any business shall be unincorporated, contractual and tort liabilities arising out of such business shall be satisfied, first, out of the business, and second, out of the trust or estate; but it is intended that in no event shall there be a liability of the fiduciary, and if the fiduciary shall be held liable, such fiduciary shall be entitled to indemnification from the business and the trust or estate in the order named. Such fiduciary shall be entitled to such additional compensation as is commensurate with the time, effort, and responsibility involved in his

performance of services with respect to such business. Such compensation for services rendered to the business may be paid by such fiduciary from the business or from other assets or from both as the fiduciary, in his discretion, may determine to be advisable; the amount of such additional compensation, however, shall be subject to the final approval of the court.

(n) To do all other acts and things not inconsistent with the provisions of the will or trust in which these powers are incorporated which such fiduciary may deem necessary or desirable for the proper management of the trusts herein created, in the same manner and to the same extent as an individual might or could do with respect to his own property.

(o) To hold property in his name or in the name of nominees.

(p) During the minority, incapacity or the disability of any beneficiary, the fiduciary may, in his sole discretion, distribute income and principal to such beneficiary in any one of the following ways: (1) directly to said beneficiary; (2) to a relative, friend, guardian, conservator or committee, to be expended by such person for the education, maintenance, support or benefit of said beneficiary; (3) by himself expending the same for the education, maintenance, support or benefit of said beneficiary; (4) to an adult person or bank authorized to exercise trust powers as custodian for a minor beneficiary under the Uniform Transfers to Minors Act (§ 31-37 et seq.) to be held by such custodian under the terms of such act; or (5) to an adult person or bank authorized to exercise trust powers as custodial trustee for an incapacitated beneficiary under the Uniform Custodial Trust Act (§ 55-34.1 et seq.) to be held as custodial trustee under the terms of such act.

(q) To continue and carry on any farming operation transferred to him and to operate such farms and any other farm which may be acquired and, in so doing, by way of illustration and not in limitation of his powers, to operate the farm with hired labor, tenants or sharecroppers; to hire a farm manager or a professional farm management service to supervise the farming operations; to lease or rent the farm for cash or for a share of the crops; to purchase or otherwise acquire farm machinery and equipment and livestock; to construct, repair and improve farm buildings of all sorts needed, in its judgment, for the operation of the farm; to make loans or advances or to obtain such from any source, including the fiduciary at the prevailing rate or rates of interest for farm purposes such as for production, harvesting, or marketing, or for the construction, repair, or improvement of farm buildings or for the purchase of farm machinery or equipment or livestock; to employ approved soil conservation practices in order to conserve, improve and maintain the fertility and productivity of the soil; to protect, manage and improve the timber and forest on the farm and sell the timber and forest products when it is to the best interest of the estate or trust; to ditch and drain damp or wet fields and areas of the farm when and where needed; to engage in livestock production, if it is deemed advisable, and to construct such fences and buildings and plant such pastures and crops as may be necessary to carry on such a livestock program; to execute contracts, notes and chattel mortgages relating to agriculture with the Commodity Credit Corporation, the United States Secretary of Agriculture or any other officer or agency of the federal or state governments, to enter into acreage reduction agreements, to make soil conservation commitments, and to do all acts necessary to cooperate with any governmental agricultural program; and in general, to employ the methods of carrying on the farming operation that are in common use by the community in which the farm is located, inasmuch as the duties the fiduciary is requested to assume with respect to farming operations may considerably enlarge and increase his usual responsibility and work as fiduciary, it is agreed that the fiduciary shall be entitled to such additional reasonable compensation as is commensurate with the time, effort and responsibility involved in his performance of such services.

(r) To purchase and hold policies of life insurance on the life of any beneficiary, or any person in whom the beneficiary has an insurable interest, and pay the premiums thereon out of income or principal as he deems appropriate; provided, however, that the decision of the beneficiary of any trust otherwise meeting the requirements of § 2056 (b) (5) of the Internal Revenue Code of 1954, as amended, shall control in respect to the purchase or holding of a policy of life insurance by the trustee of such trust.

(s) To make any election authorized under any law requiring, or relating to the requirement for, payment of any taxes or assessments on assets or income of the estate or in connection with any fiduciary capacity, regardless of whether any property or income is received by or is under the control of the fiduciary, including, but not limited to, elections concerning the timing of payment of any such tax or assessment, the valuation of any property subject to any such tax or assessment, the alternative use of items of deduction in computing any tax or assessment and including specifically elections permitted by statutes enacted after the date of execution of the will or trust instrument.

(t) To comply with environmental law:

1. To inspect property held by the fiduciary, including interests in sole proprietorships, partnerships, or corporations and any assets owned by any such business enterprise, for the purpose of determining compliance with environmental law affecting such property and to respond to a change in, or any actual or threatened violation of, any environmental law affecting property held by the fiduciary;

2. To take, on behalf of the estate or trust, any action necessary to respond to a change in, or prevent, abate, or otherwise remedy any actual or threatened violation of, any environmental law affecting property held by the fiduciary, either before or after the initiation of an enforcement action by any governmental body;

3. To refuse to accept property in trust if the fiduciary determines that any property to be transferred to the trust either is contaminated by any hazardous substance or is being used or has been used for any activity directly or indirectly involving any hazardous substance which could result in liability to the trust or otherwise impair the value of the assets held therein;

4. To disclaim any power granted by any document, statute, or rule of law which, in the sole discretion of the fiduciary, may cause the fiduciary to incur personal liability under any environmental law;

5. To charge the cost of any inspection, review, abatement, response, cleanup or remedial action authorized herein against the income or principal of the trust or estate;

6. For purposes of this subdivision, "environmental law" means any federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment or human health and "hazardous substances" means any substances defined as hazardous or toxic or otherwise regulated by any environmental law.

(u) To resign as a fiduciary if the fiduciary reasonably believes that there is or may be a conflict of interest between it in its fiduciary capacity and in its individual capacity because of potential claims or liabilities which may be asserted against it on behalf of the trust or estate because of the type or condition of assets held therein.

(2) As used in the section, the term "fiduciary" shall mean and include one or more individuals or corporations having trust powers and the use of the male gender shall include the female; and any substitute, added or successor fiduciary shall have all of the powers hereby provided for the fiduciary named in the will or trust instrument. The provisions of this section may by reference hereto be made applicable to a fiduciary of the estate of a decedent as well as to the trustee of an inter vivos or testamentary trust.

(3) Any fiduciary upon whom a document confers any or all of the powers set forth in subsection (1) may irrevocably disclaim the right to exercise any or all of the powers conferred by filing a suitable written disclaimer with the clerk of court where the document is recorded or probated or, if the document is not recorded, by sending a written disclaimer by registered or certified mail to the last known address of all persons then living entitled to receive the principal or income. Such disclaimer shall relate back to the time when the disclaiming fiduciary originally assumed such fiduciary capacity and shall be binding upon any successor fiduciary. For the purpose of this subsection, a fiduciary shall not be deemed to have assumed a fiduciary capacity under a revocable document until the same becomes irrevocable.

(4) For the purposes of this section, unless the will or trust instrument expresses a contrary intention, the incorporation by reference of powers enumerated by this statute shall refer to those powers existing at the time of death and reference to powers under the Uniform Gifts to Minors Act in an instrument executed prior to July 1, 1989, shall be construed to refer to the Uniform Transfers to Minors Act (§ 31-37 et seq.).

(5) This section is not intended and shall not be construed to affect the application of the standard of judgment and care as set forth in subdivision (a) of § 26-45.1.

(6) In the event that the will or trust instrument shall contain a provision in favor of a surviving spouse of the testator or grantor, the powers above enumerated shall in no way be construed or interpreted in any fashion which might cause the bequest to fail to qualify for the marital deduction permitted under the federal estate tax law, unless the will or trust instrument shall specifically provide to the contrary. A fiduciary acting under a construction or interpretation of a power, which action is otherwise reasonable under the circumstances, shall incur no responsibility for acts taken in good faith which are otherwise thereafter contended to be in a fashion which might cause disqualification for the marital deduction. The provision of this subsection shall apply without regard to the time the will or trust was executed or probated or the testator died in relation to the effective date of this section or amendments thereto.

§ 64.1-68. Interest on pecuniary legacies.

Unless a contrary intent is expressed in or to be implied from a will, interest on pecuniary legacies shall begin to run at the expiration of one year after the date of the death of the testator.

For the purposes of this section, a marital formula pecuniary bequest either outright to the testator's spouse or in trust for the benefit of such spouse, designed in either case to qualify for the benefit of the marital deduction allowed by the Federal Internal Revenue Code, shall not be considered a pecuniary legacy entitled to interest at the expiration of one year after the death of the testator but, instead, shall share ratably with the residue of the estate in the income earned by the estate during the period of

850 administration, unless a contrary intent is expressed in the will.

851 *The provisions of this section shall also apply to the distribution of interest to a beneficiary entitled*
852 *to receive a pecuniary amount from a trust, in accordance with § 55-277.5.*

853 **2. That Article 1 (§§ 55-253 through 55-268) of Chapter 15 of Title 55 of the Code of Virginia is**
854 **repealed.**

855 **3. That the provisions of this act shall become effective January 1, 2000.**

REENROLLED

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