UNIFORM PRINCIPAL AND INCOME ACT (EXCERPT)
Act 159 of 2004
Article 1

555.501 Short title.

Sec. 101.

This act shall be known and may be cited as the â€œuniform principal and income actâ€.

History: 2004, Act 159, Eff. Sept. 1, 2004

555.502 Definitions.

Sec. 102.

As used in this act:
(a) â€œAccounting periodâ€ means a calendar year unless another 12-month period is selected by a fiduciary. Accounting period includes a portion of a calendar year or other 12-month period that begins when an income interest begins or ends when an income interest ends.
(b) â€œBeneficiaryâ€ means, in the case of a decedent's estate, an heir, legatee, or devisee and, in the case of a trust, an income beneficiary or remainder beneficiary.
(c) â€œFiduciaryâ€ means a personal representative or trustee. Fiduciary includes an executor, administrator, successor personal representative, special personal representative, and a person performing substantially the same function as 1 or more of them.
(d) â€œIncomeâ€ means money or property that a fiduciary receives as current return from a principal asset. Income includes a portion of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in article 4.
(e) â€œIncome beneficiaryâ€ means a person to whom net income of a trust is or may be payable.
(f) â€œIncome interestâ€ 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.
(g) â€œMandatory income interestâ€ means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.
(h) â€œNet incomeâ€ 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 act to or from income during the period.
(i) â€œPersonâ€ means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, or joint venture; governmental subdivision, agency, or instrumentality; public corporation; or another legal or commercial entity.
(j) â€œPrincipalâ€ means property held in trust for distribution to a remainder beneficiary when the trust terminates.
(k) â€œRemainder beneficiaryâ€ means a person entitled to receive principal when an income interest ends.
(l) â€œTerms of a trustâ€ 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.
(m) â€œTrusteeâ€ includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

History: 2004, Act 159, Eff. Sept. 1, 2004

555.503 Duties of fiduciary; allocation of receipts and disbursements to or between principal and income; discretionary power; impartiality.

Sec. 103.

(1) In allocating receipts and disbursements to or between principal and income, and with respect to any matter found within the scope of articles 2 and 3, a fiduciary shall do all of the following:

(a) 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 act.

(b) Administer a trust or estate in accordance with this act 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.

(c) Add a receipt or charge a disbursement to principal to the extent that the terms of the trust and this act do not provide a rule for allocating the receipt or disbursement to or between principal and income.

(2) A fiduciary 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 under this act.

(3) In exercising the power to adjust under section 104 or a discretionary power of administration regarding a matter within the scope of this act, whether granted by the terms of a trust or a will, or as provided in this act, 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 1 or more of the beneficiaries. A determination in accordance with this act is presumed to be fair and reasonable to all of the beneficiaries.

History: 2004, Act 159, Eff. Sept. 1, 2004

555.504 Adjustment between principal and income; factors; policy; circumstances prohibiting adjustment; exercise of power by cofiduciary; release of or limitation on power to adjust.

Sec. 104.

(1) A fiduciary may adjust between principal and income to the extent the fiduciary considers necessary if the fiduciary invests and manages trust or estate assets as a prudent investor, the terms of the trust or will describe the amount that may or must be distributed to a beneficiary by referring to the trust's or estate's income, and the fiduciary determines, after applying the provisions in section 103(1) and (2), that the fiduciary is unable to comply with section 103(3).

(2) In deciding whether and to what extent to exercise the power conferred by subsection (1), a fiduciary shall consider all factors relevant to the trust or estate and its beneficiaries.

(3) In exercising discretion under this section, a professional trustee may adopt a policy that applies to all trusts and estates, or a policy that applies to individual trusts or estates or classes of trusts or estates, stating whether and under what conditions it will use the adjustment power and the method of making adjustments.

(4) A fiduciary shall not make an adjustment that does 1 or more of the following or under 1 or more of the following circumstances:

(a) Diminishes the income interest in a trust or estate 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.

(b) Reduces the actuarial value of the income interest in a trust or estate to which a person transfers property with the intent to qualify for a gift tax exclusion.

(c) Changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust or estate assets.

(d) Diminishes 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.

(e) 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 trustee did not possess the power to make an adjustment.

(f) If possessing or exercising the power to make an adjustment causes all or part of the trust or estate 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.

(g) If the fiduciary is a beneficiary of the trust or estate.

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

(5) If subsection (4)(e), (f), (g), or (h) applies to a fiduciary and there is more than 1 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 or will.

(6) A fiduciary may release the entire power conferred by subsection (1) 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 subsection (4)(a) through (f) or (4)(h) or if the fiduciary determines that possessing or exercising the power will or may deprive the trust or estate of a tax benefit or impose a tax burden not described in subsection (4). The release may be permanent or for a specified period, including a period measured by the life of an individual.

(7) Terms of a trust or will 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 or will that the terms are intended to deny the fiduciary the power of adjustment conferred by subsection (1).

History: 2004, Act 159, Eff. Sept. 1, 2004

555.505 Exercise of discretionary power by fiduciary; limitation on court to order; decision; petition; burden of proof.

Sec. 105.

(1) The court may not order a fiduciary to change a decision to exercise or not to exercise a discretionary power conferred by this act unless it determines that the decision was an abuse of the fiduciary's discretion. A fiduciary's decision is not an abuse of discretion merely because the court would have exercised the power in a different manner or would not have exercised the power.

(2) The decisions to which subsection (1) applies include:

(a) A decision under section 104(1) as to whether and to what extent an amount should be transferred from principal to income or from income to principal.

(b) A decision regarding the factors that are relevant to the trust or estate and its beneficiaries, the extent to which the factors are relevant, and the weight, if any, to be given to those factors, in deciding whether and to what extent to exercise the discretionary power conferred by section 104(1).

(c) A decision under section 104(3) to adopt a policy applicable to individual trusts or estates or to classes of trusts or estates.

(3) If the court determines that a fiduciary has abused the fiduciary's discretion, the court may place the income and remainder beneficiaries in the positions they would have occupied if the discretion had not been abused, according to the following rules:

(a) To the extent that the abuse of discretion has resulted in no distribution to a beneficiary or in a distribution that is too small, the court shall order the fiduciary to distribute from the trust or estate to the beneficiary an amount that the court determines will restore the beneficiary, in whole or in part, to the beneficiary's appropriate position.

(b) To the extent that the abuse of discretion has resulted in a distribution to a beneficiary which is too large, the court shall place the beneficiaries, the trust or estate, or both, in whole or in part, in their appropriate positions by ordering the fiduciary to withhold an amount from 1 or more future distributions to the beneficiary who received the distribution that was too large or ordering that beneficiary to return some or all of the distribution to the trust or estate.

(c) To the extent that the court is unable, after applying subdivisions (a) and (b), to place the beneficiaries, the trust or estate, or both, in the positions they would have occupied if the discretion had not been abused, the court may order the fiduciary to pay an appropriate amount from its own funds to 1 or more of the beneficiaries or the trust or estate or both.

(4) Upon petition by the fiduciary, the court having jurisdiction over a trust or estate shall determine whether a proposed exercise or nonexercise by the fiduciary of a discretionary power conferred by this act will result in an abuse of the fiduciary's discretion. If the petition describes the proposed exercise or nonexercise of the power and contains sufficient information to inform the beneficiaries of the reasons for the proposal, the facts upon which the fiduciary relies, and an explanation of how the income and remainder beneficiaries will be affected by the proposed exercise or nonexercise of the power, a beneficiary who challenges the proposed exercise or nonexercise has the burden of establishing that it will result in an abuse of discretion.

History: 2004, Act 159, Eff. Sept. 1, 2004