

Chapter 7 - TRUST ADMINISTRATION

Article 2 - Proceedings Concerning Trusts

A. The court has exclusive jurisdiction of proceedings initiated by interested parties concerning the internal affairs of trusts. Proceedings which may be maintained under this section are those concerning the administration and distribution of trusts, the declaration of rights and the determination of other matters involving trustees and beneficiaries of trusts. These include, but are not limited to, proceedings to:

1. Appoint or remove a trustee.
2. Review trustees' fees and review and settle interim or final accounts.
3. Ascertain beneficiaries, determine any question arising in the administration or distribution of any trust including questions of construction of trust instruments, instruct trustees and determine the existence or nonexistence of any immunity, power, privilege, duty or right.
4. Order transfer of administration of the trust to another state upon appropriate conditions as may be determined by the court, or accept transfer of administration of a trust from another state to this state upon such conditions as may be imposed by the supervising court of the other state, unless the court in this state determines that such conditions are incompatible with its own rules and procedures.

B. A proceeding under this section does not result in continuing supervision by the court over the administration of the trust. The management and distribution of a trust estate, submission of accounts and reports to beneficiaries, payment of trustee's fees and other obligations of a trust, acceptance and change of trusteeship and other aspects of the administration of a trust shall proceed expeditiously consistent with the terms of the trust, free of judicial intervention and without order, approval or other action of any court, subject to the jurisdiction of the court as invoked by interested parties or as otherwise exercised as provided by law.

A. By accepting the trusteeship of a trust of which the principal place of administration is in this state, or by moving the principal place of administration of a trust to this state, the trustee submits personally to the jurisdiction of the courts of this state in any proceeding under section 14-7201 as to any matter relating to the trust arising while the principal place of administration is located in this state.

B. To the extent of the beneficial interests in a trust of which the principal place of administration is in this state, the beneficiaries of the trust are subject to the jurisdiction of the courts of this state for purposes of proceedings under section 14-7201.

C. Unless otherwise designated in the trust instrument, the principal place of administration of a trust is the trustee's usual place of business where the records pertaining to the trust are kept, or at the trustee's residence if he has no such place of business. In the case of co-trustees, the principal place of administration, if not otherwise designated in the trust instrument, is:

1. The usual place of business of the corporate trustee if there is but one corporate co-trustee.
2. The usual place of business or residence of the individual trustee who is a professional fiduciary if there is but one such person and no corporate co-trustee.
3. The usual place of business or residence of any of the co-trustees as agreed upon by them.

Venue for proceedings under section 14-7201 is in the county where the trust has its principal place of administration of the trust, or as otherwise provided by the rules of civil procedure.

Proceedings under section 14-7201 are initiated by filing a petition in the court and giving notice pursuant to section 14-1401 to interested parties. Notice to the trustee by mail may be addressed to him at the principal place of administration of the trust as defined in section 14-7202, subsection C. The court may order notification of additional persons. A decree is valid as to all who are given notice of the proceeding though fewer than all interested parties are notified.

The court will not, over the objection of a party, entertain proceedings under section 14-7201 involving a trust which is under the continuing supervision of a foreign court, is registered in another state or has its principal place of business in another state, except:

1. If all appropriate parties could not be bound by litigation in the courts of the other state.
2. If the interests of justice would be seriously impaired. The court may condition a stay or dismissal of a proceeding on the consent of any party to the jurisdiction of the courts of another state, or the court may grant a continuance or enter any other appropriate order.

On petition of an interested person, after notice to all interested persons, the court may review the propriety of employment of any person by a trustee including any attorney, auditor, investment advisor or other specialized agent or assistant, and the reasonableness of the compensation of any person so employed, and the reasonableness of the compensation determined by the trustee for his own services. Any person who has received excessive compensation from a trust may be ordered to make appropriate refunds.

The court of the place of principal administration of the trust has concurrent jurisdiction with other courts of this state over actions or proceedings to determine the existence or nonexistence of trusts created other than by will, of actions by or against creditors or debtors of trusts, and of other actions and proceedings involving trustees and third parties. Venue is determined by the rules generally applicable to civil actions.

Article 2.1 - Powers of Trustees

In this article, unless the context otherwise requires:

1. "Prudent man" means a trustee whose exercise of trust powers is reasonable and equitable in view of the interests of income or principal beneficiaries, or both, and in view of the manner in which men of ordinary prudence, diligence, discretion and judgment would act in the management of the property of others.
2. "Trust" means an express trust created by a trust instrument including a will, by which a trustee has the duty to administer a trust asset for the benefit of a named or otherwise described income or principal beneficiary, or both. Trust does not include a resulting or constructive trust, a business trust which provides for certificates to be issued to the beneficiary, an investment trust, a voting trust, a security instrument, a trust created by the judgment or decree of a court, a liquidation trust or a trust for the primary purpose of paying dividends, interest, interest coupons, salaries, wages, pensions or profits, or employee benefits of any kind, an instrument in which a person is nominee or escrowee for another, a trust created in deposits in any financial institution or other trust the nature of which does not admit of general trust administration.
3. "Trustee" means an original, added or successor trustee.
 - A. The trustee has all powers conferred on him by the provisions of this article unless limited in the trust instrument.
 - B. An instrument which is not a trust under section 14-7231, paragraph 3 may incorporate any part of this article by reference.
 - A. From the time of creation of the trust until final distribution of the assets of the trust, a trustee has the power to perform, without court authorization, every act which a prudent man dealing with the property of another would perform for the purposes of the trust including but not limited to the powers specified in subsection C of this section.
 - B. In the exercise of his powers including the powers granted by this article, a trustee is subject to the standards provided in section 14-7302 and has a duty to act with due regard to his obligation as a fiduciary.
 - C. A trustee has the power, subject to subsections A and B of this section, to:
 1. Collect, hold and retain trust assets received from a trustor until, in the judgment of the trustee, disposition of the assets should be made. The assets may be retained even though they include an asset in which the trustee is personally interested.
 2. Receive additions to the assets of the trust.
 3. Continue or participate in the operation of any business or other enterprise and to effect incorporation, dissolution or other change in the form of the organization of the business or enterprise.

4. Acquire an undivided interest in a trust asset in which the trustee, in any trust capacity, holds an undivided interest.
5. Invest and reinvest trust assets in accordance with the provisions of the trust or as provided by law.
6. Deposit trust funds in a bank or savings and loan association, including a bank or savings and loan association operated by the trustee.
7. Acquire or dispose of an asset, for cash or on credit, at public or private sale, to manage, develop, improve, exchange, partition, change the character of or abandon a trust asset or any interest in a trust asset and to encumber, mortgage or pledge a trust asset for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the trustee.
8. Make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements and to raze existing or erect new party walls or buildings.
9. Subdivide, develop or dedicate land to public use, to make or obtain the vacation of plats and adjust boundaries, to adjust differences in valuation on exchange or partition by giving or receiving consideration or to dedicate easements to public use without consideration.
10. Enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the trust.
11. Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement.
12. Grant an option involving disposition of a trust asset or to take an option for the acquisition of any asset.
13. Vote a security in person or by general or limited proxy.
14. Pay assessments and any other amounts chargeable or accruing against or on account of securities.
15. Sell or exercise stock subscription or conversion rights or to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of a corporation or other business enterprise.
16. Hold a security in the name of a nominee or in other form without disclosure of the trust, so that title to the security may pass by delivery, but the trustee is liable for any act of the nominee in connection with the stock so held.
17. Insure the assets of the trust against damage or loss and the trustee against liability with respect to third persons.
18. Borrow money to be repaid from trust assets or otherwise, to advance money for the protection of the trust, and for all expenses, losses and liabilities sustained in the administration of the trust or because of the holding or ownership of any trust assets, for which advances with any interest the trustee has a lien on the trust assets as against the beneficiary.
19. Pay or contest any claim, to settle a claim by or against the trust by compromise, arbitration or otherwise and to release, in whole or in part, any claim belonging to the trust to the extent that the claim is uncollectible.
20. Pay taxes, assessments, compensation of the trustee and other expenses incurred in the collection, care, administration and protection of the trust.
21. Allocate items of income or expense to either trust income or principal, as provided in article 4 of this chapter.
22. Pay any sum distributable to a beneficiary under legal disability, without liability to the trustee, by paying the sum to the beneficiary or by paying the sum for the use of the beneficiary either to a legal representative appointed by the court or, if none, to a relative.
23. Effect distribution of property and money in divided or undivided interests and to adjust resulting differences in valuation.
24. Employ persons, including attorneys, auditors, investment advisors or agents, even if they are associated with the trustee, to advise or assist the trustee in the performance of his administrative duties, to act without independent investigation on their recommendations and, instead of acting

personally, to employ one or more agents to perform any act of administration, whether or not discretionary.

25. Prosecute or defend actions, claims or proceedings for the protection of trust assets and of the trustee in the performance of his duties.

26. Execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the trustee.

D. If a governing instrument or order requires or authorizes investment in United States government obligations, a trustee may invest in these obligations either directly or in the form of securities of or other interests in any open-end or closed-end management type investment company or investment trust registered under the provisions of the investment company act of 1940, as amended, (54 Stat. 789; 15 United States Code sections 80a-1 through 80a-64) if both of the following are true:

1. The portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations.

2. The investment company or investment trust takes delivery of the collateral for any repurchase agreement either directly or through an authorized custodian.

The trustee shall not transfer his office to another or delegate the entire administration of the trust to a cotrustee or another.

A. This article does not affect the power of a court of competent jurisdiction for cause shown, upon petition of the trustee or affected beneficiary and on appropriate notice to the affected parties, to relieve a trustee from any restrictions on his power that would otherwise be placed on him by the trust or by this article.

B. If the duty of the trustee and his individual interest or his interest as trustee of another trust conflict in the exercise of a trust power, the power may be exercised only by court authorization, except as provided in section 14-7233, subsection C, paragraphs 1, 4, 6, 18 and 24, on petition of the trustee. Under this section, personal profit or advantage to an affiliated or subsidiary company or association is personal profit to any corporate trustee.

A. Any power vested in three or more trustees may be exercised by a majority, but a trustee who has not joined in exercising a power is not liable to the beneficiaries or to others for the consequences of the exercise and a dissenting trustee is not liable for the consequences of an act in which he joins at the direction of the majority of the trustees, if he expressed his dissent in writing to any of his cotrustees at or before the time of the joinder.

B. If two or more trustees are appointed to perform a trust and if any of them is unable or refuses to accept the appointment, or, having accepted, ceases to be a trustee, the surviving or remaining trustees shall perform the trust and succeed to all the powers, duties and discretionary authority given to the trustees jointly.

C. This section does not excuse a cotrustee from liability for failure either to participate in the administration of the trust or to attempt to prevent a breach of trust.

With respect to a third person dealing with a trustee or assisting a trustee in the conduct of a transaction, the existence of trust powers and their proper exercise by the trustee may be assumed without inquiry. The third person is not bound to inquire whether the trustee has power to act or is properly exercising the power and a third person, without actual knowledge that the trustee is exceeding his powers or improperly exercising them, is fully protected in dealing with the trustee as if the trustee possessed and properly exercised the powers he purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the trustee.

Article 3 - Duties and Liabilities of Trustees

Except as specifically provided, the general duty of the trustee to administer a trust expeditiously for the benefit of the beneficiaries is not altered by this title.

Except as otherwise provided by the terms of the trust and except as provided by chapter 7, article 6 of this title, the trustee shall observe the standard in dealing with the trust assets that would be observed by a prudent man dealing with the property of another, and if the trustee has special skills or is named trustee on the basis of representations of special skills or expertise, he is under a duty to use those skills.

The trustee shall keep the beneficiaries of the trust reasonably informed of the trust and its administration. In addition:

1. Within thirty days after his acceptance of the trust, the trustee shall inform in writing the beneficiaries currently entitled to receive income, of the trustee's name and address.
2. Upon reasonable request, the trustee shall provide the beneficiary with a copy of the terms of the trust which describe or affect his interest and with relevant information about the assets of the trust and the particulars relating to the administration.
3. Upon reasonable request, a beneficiary is entitled to a statement of the accounts of the trust annually and on termination of the trust or change of the trustee.

A trustee need not provide bond to secure performance of his duties unless required by the terms of the trust, reasonably requested by a beneficiary or found by the court to be necessary to protect the interests of the beneficiaries who are not able to protect themselves and whose interests otherwise are not adequately represented. On petition of the trustee or other interested person the court may excuse a requirement of bond, reduce the amount of the bond, release the surety or permit the substitution of another bond with the same or different sureties. If bond is required, it shall be filed in the court of the county where the trust has its principal place of administration, or other appropriate court, in amounts and with sureties and liabilities as provided in sections 14-3604 and 14-3606 relating to bonds of personal representatives.

A trustee is under a continuing duty to administer the trust at a place appropriate to the purposes of the trust and to its sound, efficient management. If the principal place of administration becomes inappropriate for any reason, the court may enter any order furthering efficient administration and the interests of beneficiaries, including, if appropriate, removal of the trustee and appointment of a trustee in another state. Trust provisions relating to the place of administration and to changes in the place of administration or of trustee control unless compliance would be contrary to efficient administration or the purposes of the trust. Views of adult beneficiaries shall be given weight in determining the suitability of the trustee and the place of administration.

A. Unless otherwise provided in the contract, a trustee is not personally liable on contracts properly entered into in his fiduciary capacity in the course of administration of the trust estate unless he fails to reveal his representative capacity and identify the trust estate in the contract.

B. A trustee is personally liable for obligations arising from ownership or control of property of the trust estate or for torts committed in the course of administration of the trust estate only if he is personally at fault.

C. Claims based on contracts entered into by a trustee in his fiduciary capacity, on obligations arising from ownership or control of the trust estate, or on torts committed in the course of trust administration may be asserted against the trust estate by proceeding against the trustee in his fiduciary capacity, whether or not the trustee is personally liable therefor.

D. The question of liability as between the trust estate and the trustee individually may be determined in a proceeding for accounting, surcharge or indemnification or other appropriate proceeding.

Unless previously barred by adjudication, consent or limitation, any claim against a trustee for breach of trust is barred as to any beneficiary who has received a final account or other statement fully disclosing the matter and showing termination of the trust relationship between the trustee and the beneficiary unless a proceeding to assert the claim is commenced within six months after receipt of the final account or statement. In any event and notwithstanding lack of full disclosure a trustee

who has issued a final account or statement received by the beneficiary and has informed the beneficiary of the location and availability of records for his examination is protected after three years. A beneficiary is deemed to have received a final account or statement if, being an adult, it is received by him personally or if, being a minor or disabled person, it is received by his representative as described in section 14-1403, paragraph 2.

A. Any state or national bank or title insurance company, when acting in this state as a fiduciary or a cofiduciary with others, may with the consent of its cofiduciary or cofiduciaries, if any, who are hereby authorized to give such consent, cause any investment held in any such capacity, to be registered and held in the name of a nominee or nominees of such bank or title insurance company. Such bank or title insurance company shall be liable for the acts of any such nominee with respect to any investment so registered.

B. The records of such bank or title insurance company shall at all times show the ownership of any such investment, which investment shall be in the possession and control of such bank or title insurance company and be kept separate and apart from the assets of such bank or title insurance company, except that a state or national bank or title insurance company may deposit stock or other securities so held in a clearing corporation as defined in section 47-8102.

Article 4 - Revised Uniform Principal and Income Act

In this article, unless the context otherwise requires:

1. "Accounting period" means a calendar year unless another twelve month period is selected by a fiduciary and 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.
2. "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.
3. "Fiduciary" means a personal representative or a trustee and includes an executor, an administrator, a successor personal representative, a special administrator and a person performing substantially the same function.
4. "Income" means money or property that a fiduciary receives as current return from a principal asset and includes a portion of receipts from a sale, exchange or liquidation of a principal asset, to the extent provided in sections 14-7410 through 14-7424.
5. "Income beneficiary" means a person to whom net income of a trust is or may be payable.
6. "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.
7. "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.
8. "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 article to or from income during the period.
9. "Person" means any individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, public corporation or other legal or commercial entity.
10. "Principal" means property held in trust for distribution to a remainder beneficiary when the trust terminates.
11. "Remainder beneficiary" means a person entitled to receive principal when an income interest ends.
12. "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.
13. "Trustee" includes an original, additional or successor trustee, whether or not appointed or confirmed by a court.

A. In allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of sections 14-7405 through 14-7409, 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 article.
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 article.
3. Shall administer a trust or estate in accordance with this article 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.
4. Shall add a receipt or charge a disbursement to principal to the extent that the terms of the trust and this article 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 section 14-7403, subsection A or a discretionary power of administration regarding a matter within the scope of this article, whether granted by the terms of a trust, a will or this article, 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 article is presumed to be fair and reasonable to all of the beneficiaries.

A. A trustee may adjust between principal and income to the extent the trustee considers necessary if the trustee 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 trustee determines, after applying the provisions of section 14-7402, subsection A, that the trustee is unable to comply with section 14-7402, subsection B.

B. In deciding whether and to what extent to exercise the power conferred by subsection A of this section, a trustee 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 need for liquidity, regularity of income and preservation and appreciation of capital.
5. The assets held in the trust and:
 - (a) The extent to which:
 - (i) They consist of financial assets, interests in closely held enterprises, tangible and intangible personal property or real property.
 - (ii) An asset is used by a beneficiary.
 - (b) Whether an asset was purchased by the trustee or received from the settlor.
6. The net amount allocated to income under this article and the increase or decrease in the value of the principal assets, which the trustee 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 trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee 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.
9. The anticipated tax consequences of an adjustment.

C. A trustee 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 trustee 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 trustee 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 trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment.
7. If the trustee is a beneficiary of the trust.
8. If the trustee is not a beneficiary, but the adjustment would benefit the trustee directly or indirectly.

D. If subsection C, paragraph 5, 6, 7 or 8 of this section applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.

E. A trustee may release the entire power conferred by subsection A of this section or may release only the power to adjust from income to principal or the power to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result described in subsection C, paragraph 1, 2, 3, 4, 5, 6 or 8 of this section, or if the trustee 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 of this section. 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 trustee 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 trustee the power of adjustment conferred by subsection A of this section.

A. A court shall not change a fiduciary's decision to exercise or not to exercise a discretionary power conferred by this article unless it determines that the decision was an abuse of the fiduciary's discretion. A court shall not determine that a fiduciary abused its discretion merely because the court would have exercised the discretion in a different manner or would not have exercised the discretion.

B. The decisions to which subsection A of this section applies include:

1. A determination under section 14-7403, subsection A of whether and to what extent an amount should be transferred from principal to income or from income to principal.
2. A determination of the factors that are relevant to the trust and its beneficiaries, the extent to which they are relevant and the weight, if any, to be given to the relevant factors in deciding whether and to what extent to exercise the power conferred by section 14-7403, subsection A.

C. If a court determines that a fiduciary has abused its discretion, the remedy is to restore the income and remainder beneficiaries to the positions they would have occupied if the fiduciary had not abused its discretion as follows:

1. To the extent that the abuse of discretion has not resulted in a distribution to a beneficiary or a distribution that is too small, the court shall require the fiduciary to distribute from the trust to the beneficiary an amount that the court determines will restore the beneficiary, in whole or in part, to that person's appropriate position.

2. To the extent that the abuse of discretion has resulted in a distribution to a beneficiary that is too large, the court shall restore the beneficiaries or the trust, or both, in whole or in part, to their appropriate positions by requiring the fiduciary to withhold an amount from one or more future distributions to the beneficiary who received the distribution that was too large or requiring that beneficiary to return some or all of the distribution to the trust.

3. To the extent that the court is unable, after applying paragraphs 1 and 2 of this subsection, to restore the beneficiaries or the trust, or both, to the positions they would have occupied if the fiduciary had not abused its discretion, the court may require the fiduciary to pay an appropriate amount from its own funds to one or more of the beneficiaries or the trust, or both.

D. On a petition by the fiduciary, the court having jurisdiction over the trust or estate shall determine whether a proposed exercise or nonexercise by the fiduciary of a discretionary power conferred by this article 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 on 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.

After a decedent dies, in the case of an estate, or after an income interest in a trust ends, the following 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 pursuant to the provisions of sections 14-7407 through 14-7430 that apply to trustees and paragraph 5 of this section. 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 pursuant to the provisions of section 14-7407 through 14-7430 that 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.

(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 paragraph 2 of this section 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 paragraph 3 of this section in the manner described in section 14-7406 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 paragraph 1 of this section because of a payment described in section 14-7425 or 14-7426 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.

A. Each beneficiary described in section 14-7405, paragraph 4 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 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 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.

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 on any of the following dates:

1. 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. 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.
3. 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.

A. A trustee shall allocate an income receipt or disbursement other than one to which section 14-7405, paragraph 1 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 article. Distributions to shareholders or other owners from an entity to which section 14-7410 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.

A. 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 per cent 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.

B. 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 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.

C. For the purposes of this section, "undistributed income" means net income received before the date on which an income interest ends and 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.

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

B. 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.
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.

C. Money is received in partial liquidation either:

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

D. Money is not received in partial liquidation, nor may it be taken into account under subsection C, paragraph 2 of this section 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.

E. A trustee may rely on 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 another 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.

F. For the purposes of this section, "entity" means any corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund or other organization in which a trustee has an interest, other than a trust or estate to which section 14-7411 applies, a business or activity to which section 14-7412 applies or an asset-backed security to which section 14-7424 applies.

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, section 14-7410 or 14-7424 applies to a receipt from the trust.

A. If a trustee who conducts a business or other activity determines that it is in the best interest of all of 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 any 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.
7. Activities to which section 14-7423 applies.

A trustee shall allocate to principal:

1. To the extent not allocated to income under this article, 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 section 14-7426, subsection A, paragraph 7 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.

6. Other receipts as provided in sections 14-7417 through 14-7424.

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.

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 section 14-7418, 14-7419, 14-7420, 14-7421, 14-7423 or 14-7424 applies.

A. Except as otherwise provided in subsection B of this section, 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 section 14-7412, loss of profits from a business.

C. This section does not apply to a contract to which section 14-7418 applies.

If a trustee determines that an allocation between principal and income required by section 14-7418, 14-7419, 14-7420, 14-7421 or 14-7424 is insubstantial, the trustee may allocate the entire amount to principal unless one of the circumstances described in section 14-7403, subsection C applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in section 14-7403, subsection D and may be released for the reasons and in the manner described in section 14-7403, subsection E. An allocation is presumed to be insubstantial if either:

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 per cent.

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

A. 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.

B. 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 per cent 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.

C. 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.

D. This section does not apply to payments to which section 14-7419 applies.

E. For the purposes of 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. Payment 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.

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

B. For the purposes of this section, "liquidating asset":

1. Means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration.

2. Includes a leasehold, patent, copyright, royalty right and 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.

3. Does not include:

(a) A payment subject to section 14-7418.

(b) Resources subject to section 14-7420.

(c) Timber subject to section 14-7421.

(d) An activity subject to section 14-7423.

(e) An asset subject to section 14-7424.

(f) Any asset for which the trustee establishes a reserve for depreciation under section 14-7427.

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 per cent 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 paragraph 1, 2 or 3, ninety per cent 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 per cent of the amount must be allocated to principal and the balance to income.

C. This article 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 the effective date of this article, the trustee may allocate receipts from the interest as provided in this article or in the manner used by the trustee before the effective date of this article. If the trust acquires an interest in minerals, water or other natural resources after the effective date of this article, the trustee shall allocate receipts from the interest as provided in this article.

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 paragraphs 1 and 2.

4. To principal to the extent that advance payments, bonuses and other payments are not allocated pursuant to paragraph 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 article 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 the effective date of this article, the trustee may allocate net receipts from the sale of timber and related products as provided in this article or in the manner used by the trustee before the effective date of this article. If the trust acquires an interest in timberland after the effective date of this article, the trustee shall allocate net receipts from the sale of timber and related products as provided in this article.

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 section 14-7403 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 section 14-7403, subsection A. The trustee may decide which action or combination of actions to take.

B. In cases not governed by subsection A of this section, 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.

A. To the extent that a trustee does not account under section 14-7412 for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

B. 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 on the exercise of an option, including an option granted to a settlor of the trust for services rendered, must be allocated to principal.

C. For the purposes of this section, " derivative" means a contract or financial instrument or a combination of contracts and financial instruments that 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.

A. 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 that the payer identifies as being from interest or other current return and shall allocate the balance of the payment to principal.

B. 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 per cent of the payment to income and the balance to principal.

C. For the purposes of this section, "asset-backed security":

1. Means an asset whose value is based on the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security.
2. 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.
3. Does not include an asset to which section 14-7410 or 14-7418 applies.

A trustee shall make the following disbursements from income to the extent that they are not disbursements to which section 14-7405, paragraph 2, subdivision (b) or (c) applies:

1. One-half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee, whether based on a percentage of income or principal, a fixed amount or an hourly charge.
2. One-half of all expenses for accountings, regularly recurring income tax preparation services, 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.
4. Recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

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

1. The remaining one-half of the disbursements described in section 14-7425, paragraphs 1 and 2.
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 section 14-7425, paragraph 4 of which the trust is the owner and beneficiary.
6. Estate, inheritance and other transfer taxes, including penalties, apportioned to the trust.
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.

A. 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.

3. Under this section if the trustee is accounting under section 14-7412 for the business or activity in which the asset is used.

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

C. For the purposes of 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.

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 of this section 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 brokers' 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.
5. Disbursements described in section 14-7426, subsection A, paragraph 7.

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 of this section.

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.
2. From principal to the extent that both:
 - (a) Receipts from the entity are allocated to principal.
 - (b) The trust's share of the entity's taxable income exceeds the total receipts described in paragraph 1 and subdivision (a) of this paragraph.

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.

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 that 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 on the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust.
3. The ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includible in the taxable income of the estate, the 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.

A. A trustee may, but is not required to, give notice of a proposed action regarding a matter governed by this article as provided in this section.

B. The trustee shall mail notice of a proposed action, by certified, registered or ordinary first class mail, to all beneficiaries who are receiving, or are entitled to receive, income from the trust or to receive a distribution of principal if the trust were terminated at the time the notice is given. The trustee must give notice to any beneficiary under any incapacity pursuant to section 14-1403.

C. The trustee is not required to give notice of a proposed action to any person who consents in writing to the proposed action. A person may give consent at any time before or after the proposed action is taken.

D. The notice of the proposed action shall state that it is given pursuant to this article and shall contain all of the following:

1. The name and mailing address of the trustee.

2. The name and telephone number of a person who may be contacted for additional information.

3. A description of the action proposed to be taken and an explanation of the reasons for the action.

4. The time within which objections to the proposed action can be made, which shall be at least thirty days after the mailing of the notice.

5. The date on or after which the proposed action may be taken or is effective.

E. A beneficiary may object to the proposed action by mailing a written objection to the trustee at the address stated in the notice of proposed action within the time period specified in the notice of proposed action.

F. A trustee is not liable to a beneficiary for an action regarding a matter governed by this article if the trustee does not receive a written objection to the proposed action from the beneficiary within the applicable time period and the other requirements of this article are satisfied. If a beneficiary entitled to notice does not object under this section, the trustee is not liable to any current or future beneficiary with respect to the proposed action.

G. If the trustee receives a written objection within the applicable time period, either the trustee or a beneficiary may petition the court to have the proposed action taken as proposed, taken with modifications or not taken at all. An objecting beneficiary has the burden of proving that the trustee's proposed action should not be taken. A beneficiary who has not objected may oppose the proposed action in such a proceeding. If the trustee decides not to implement the proposed action, the trustee shall notify the beneficiaries of the decision not to take the action and the reasons for the decision. The trustee's decision not to implement the proposed action does not give rise to liability to any current or future beneficiary. In such circumstances, a beneficiary may petition the court to have the action taken and has the burden of proving that it should be taken.

H. For the purposes of this section, "proposed action" includes a course of action or a decision not to take a course of action.

Article 5 - Uniform Fiduciaries Act

A. In this article, unless the context otherwise requires:

1. "Bank" includes commercial banks, savings banks, trust companies, and any person or association of persons, whether incorporated or not, carrying on the business of banking.

2. "Fiduciary" includes a trustee under any trust, expressed, implied, resulting or constructive, executor, administrator, guardian, conservator, curator, receiver, trustee in bankruptcy, assignee for the benefit of creditors, partner, agent, officer of a corporation, public or private, public officer, or any other person acting in a fiduciary capacity for any person, trust or estate.

3. "Person" includes a corporation, partnership, or other association, or two or more persons having a joint or common interest.

4. "Principal" includes any person to whom a fiduciary as such owes an obligation.

B. A thing is done "in good faith" within the meaning of this article, when it is in fact done honestly, whether it be done negligently or not.

A person who in good faith pays or transfers to a fiduciary any money or other property which the fiduciary as such is authorized to receive, is not responsible for the proper application thereof by the fiduciary; and any right or title acquired from the fiduciary in consideration of such payment or transfer is not invalid in consequence of a misapplication by the fiduciary.

If any negotiable instrument payable or endorsed to a fiduciary as such is endorsed by the fiduciary, or if any negotiable instrument payable or endorsed to his principal is endorsed by a fiduciary empowered to endorse such instrument on behalf of his principal, the endorsee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in endorsing or delivering the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual knowledge of such breach or with knowledge of such facts that his action in taking the instrument amounts to bad faith. If, however, such instrument is transferred by the fiduciary in payment of or as security for a personal debt of the fiduciary to the actual knowledge of the creditor or is transferred in any transaction known by the transferee to be for the personal benefit of the fiduciary, the creditor or other transferee is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in transferring the instrument.

If a check or other bill of exchange is drawn by a fiduciary as such, or in the name of his principal by a fiduciary empowered to draw such instrument in the name of his principal, the payee is not bound to inquire whether the fiduciary is committing a breach of his obligation as a fiduciary in drawing or delivering the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual knowledge of such breach or with knowledge of such facts that his action in taking the instrument amounts to bad faith. If, however, such instrument is payable to a personal creditor of the fiduciary and delivered to the creditor in payment of or as security for a personal debt of the fiduciary to the actual knowledge of the creditor or is drawn and delivered in any transaction known by the payee to be for the personal benefit of the fiduciary, the creditor or other payee is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the instrument.

If a check or other bill of exchange is drawn by a fiduciary as such or in the name of his principal by a fiduciary empowered to draw such instrument in the name of his principal, payable to the fiduciary personally, or payable to a third person and by him transferred to the fiduciary, and is thereafter transferred by the fiduciary, whether in payment of a personal debt of the fiduciary or otherwise, the transferee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in transferring the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual knowledge of such breach or with knowledge of such facts that his action in taking the instrument amounts to bad faith.

If a deposit is made in a bank to the credit of a fiduciary as such, the bank is authorized to pay the amount of the deposit or any part thereof upon the check of the fiduciary, signed with the name in which such deposit is entered, without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in drawing the check or with knowledge of such facts that its action in paying the check amounts to bad faith. If, however, such a check is payable to the drawee bank and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the check.

If a check is drawn upon the account of his principal in a bank by a fiduciary who is empowered to draw checks upon his principal's account, the bank is authorized to pay such check without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in drawing such check, or with knowledge of such facts that its action in paying the check amounts to bad faith. If, however, such a check is payable to the drawee bank and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the check.

If a fiduciary makes a deposit in a bank to his personal credit of checks drawn by him upon an account in his own name as fiduciary, or of checks payable to him as fiduciary, or of checks drawn by him upon an account in the name of his principal if he is empowered to draw checks thereon, or of checks payable to his principal and endorsed by him, if he is empowered to endorse such checks, or if he otherwise makes a deposit of funds held by him as fiduciary, the bank receiving such deposit is not bound to inquire whether the fiduciary is committing thereby a breach of his obligation as fiduciary; and the bank is authorized to pay the amount of the deposit or any part thereof upon the personal check of the fiduciary without being liable to the principal, unless the bank receives the deposit or pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in making such deposit or in drawing such check, or with knowledge of such facts that its action in receiving the deposit or paying the check amounts to bad faith.

When a deposit is made in a bank in the name of two or more persons as trustees and a check is drawn upon the trust account by any trustee or trustees authorized by the other trustee or trustees to draw checks upon the trust account, neither the payee nor other holder nor the bank is bound to inquire whether it is a breach of trust to authorize such trustee or trustees to draw checks upon the trust account, and is not liable unless the circumstances be such that the action of the payee or other holder or the bank amounts to bad faith.

In any case not provided for in this article the rules of law and equity, including the law merchant and those rules of law and equity relating to trusts, agency, negotiable instruments and banking, shall continue to apply.

This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

This article may be cited as the uniform fiduciaries act.

Article 6 - Revised Arizona Prudent Investor Act

A. Except as provided in subsection B, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule requirements of this article.

B. The prudent investor rule is a default rule, and may be expanded, restricted, eliminated or otherwise altered by the provisions of a trust.

C. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.

A. A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements and other circumstances of the trust. In satisfying this standard the trustee shall exercise reasonable care, skill and caution.

B. A trustee's investment and management decisions respecting individual assets shall not be evaluated in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

C. Among circumstances that a trustee shall consider in investing and managing trust assets are any of the following that are relevant to the trust or its beneficiaries:

1. General economic conditions.
2. The possible effect of inflation or deflation.
3. The expected tax consequences of investment decisions or strategies.

4. The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property and real property.

5. The expected total return from income and the appreciation of capital.

6. Other resources of the beneficiaries.

7. Needs for liquidity, regularity of income and preservation or appreciation of capital.

8. An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

D. A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

E. A trustee may invest in any kind of property or type of investment consistent with the standards of this article.

F. A trustee who has special skills or expertise, or who is named trustee in reliance on the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying. Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements and other circumstances of the trust and with the requirements of this article.

A trustee shall invest and manage the trust assets solely in the interest of the beneficiaries.

If a trust has two or more beneficiaries, the trustee shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.

In investing and managing trust assets, a trustee shall only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust and the skills of the trustee.

Compliance with this article is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

A. A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill and caution in:

1. Selecting an agent.

2. Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust.

3. Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

B. In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

C. A trustee who complies with the requirements of subsection A is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

D. By accepting the delegation of a trust function from the trustee of a trust that is subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state.

The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under this article:

1. Investments permissible by law for investment of trust funds.

2. Legal investments.

3. Authorized investments.

4. Using the judgment and care under the circumstances then prevailing that persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to

speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

5. Prudent man rule.

6. Prudent trustee rule.

7. Prudent person rule.

8. Prudent investor rule.

A. This article applies to trusts existing on and created after the effective date of this article.

B. As applied to trusts existing on the effective date of this article, this article governs only decisions or actions occurring after that date.

Article 7 - Arizona Uniform Transfers to Minors Act

In this article, unless the context otherwise requires:

1. "Adult" means a person who is at least twenty-one years of age.

2. "Benefit plan" means an employer's plan for the benefit of an employee or partner.

3. "Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.

4. "Conservator" means a person appointed or qualified by a court to act as a general, limited or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.

5. "Court" means the superior court.

6. "Custodial property" means an interest in property that is transferred to a custodian pursuant to this article and income from and proceeds of that interest in property.

7. "Custodian" means a person designated pursuant to section 14-7659 or a successor or substitute custodian designated pursuant to section 14-7668.

8. "Financial institution" means a bank, trust company, savings institution or credit union, which is chartered and supervised under state or federal law.

9. "Legal representative" means an individual's personal representative or conservator.

10. "Member of the minor's family" means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle or aunt, whether of the whole or half blood or by adoption.

11. "Minor" means a person under the age of twenty-one years.

12. "Person" means an individual, corporation, organization or other legal entity.

13. "Personal representative" means an executor, administrator, successor personal representative or special administrator of a decedent's estate or a person legally authorized to perform substantially the same functions.

14. "State" includes a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico and a territory or possession subject to the legislative authority of the United States.

15. "Street name or nominee name" means registration used by a broker or financial institution for holding securities if they are not registered in the name of the beneficial owner.

16. "Transfer" means a transaction that creates custodial property pursuant to section 14-7659.

17. "Transferor" means a person who makes a transfer pursuant to this article.

18. "Trust company" means a financial institution, corporation or other legal entity, which is authorized to exercise general trust powers.

A. This article applies to a transfer that refers to this article in the designation made pursuant to section 14-7659 by which the transfer is made, if at the time of the transfer the transferor, the minor or the custodian is a resident of this state or the custodial property is located in this state. The custodianship so created remains subject to this article despite a subsequent change in the residence of a transferor, the minor or the custodian or the removal of custodial property from this state.

B. A person designated as custodian pursuant to this article is subject to personal jurisdiction in this state with respect to any matter relating to the custodianship.

C. A transfer which purports to be made and is valid under the uniform transfers to minors act, the uniform gifts to minors act or a substantially similar act of another state is governed by the law of the designated state and may be executed and is enforceable in this state if at the time of the transfer

the transferor, the minor or the custodian is a resident of the designated state or the custodial property is located in the designated state.

A. A person having the right to designate the recipient of property transferable on the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary on the occurrence of the event by naming the custodian followed in substance by the words, "as custodian for _____ (name of minor) under the Arizona uniform transfers to minors act". The nomination may name one or more persons as substitute custodians to whom the property must be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines or is ineligible to serve. The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment or a writing designating a beneficiary of contractual rights which is registered with or delivered to the payor, issuer or other obligor of the contractual rights.

B. A custodian nominated pursuant to this section must be a person to whom a transfer of property of that kind may be made pursuant to section 14-7659, subsection A.

C. The nomination of a custodian pursuant to this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed pursuant to section 14-7659. Unless the nomination of a custodian has been revoked, on the occurrence of the future event the custodianship becomes effective and the custodian shall enforce a transfer of the custodial property pursuant to section 14-7659.

A person may make a transfer by irrevocable gift to, or the irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor pursuant to section 14-7659.

A. A personal representative or trustee may make an irrevocable transfer pursuant to section 14-7659 to a custodian for the benefit of a minor as authorized in the governing will or trust.

B. If the testator or settlor has nominated a custodian pursuant to section 14-7653 to receive the custodial property, the transfer must be made to that person.

C. If the testator or settlor has not nominated a custodian pursuant to section 14-7653, or all persons so nominated as custodian die before the transfer or are unable, decline or are ineligible to serve, the personal representative or the trustee, as the case may be, shall designate the custodian from among those eligible to serve as custodian for property of that kind pursuant to section 14-7659, subsection A.

A. Pursuant to subsection C of this section, a personal representative or trustee may make an irrevocable transfer to another adult or trust company as custodian for the benefit of a minor pursuant to section 14-7659 in the absence of a will or under a will or trust that does not contain an authorization to do so.

B. Pursuant to subsection C of this section, a conservator may make an irrevocable transfer to another adult or trust company as custodian for the benefit of the minor pursuant to section 14-7659.

C. A transfer pursuant to subsection A or B of this section may be made only if all of the following apply:

1. The personal representative, trustee or conservator considers the transfer to be in the best interest of the minor.

2. The transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement or other governing instrument.

3. The transfer is authorized by the court if it exceeds ten thousand dollars in value.

A. Pursuant to subsections B and C of this section, a person who is not subject to section 14-7655 or 14-7656 and who holds property of or owes a liquidated debt to a minor who does not have a conservator may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to section 14-7659.

B. If a person having the right to do so pursuant to section 14-7653 has nominated a custodian under that section to receive the custodial property, the transfer must be made to that person.

C. If no custodian has been nominated pursuant to section 14-7653 or all persons so nominated as custodian die before the transfer or are unable, decline or are ineligible to serve, a transfer pursuant to this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds ten thousand dollars in value.

A written acknowledgement of delivery by a custodian constitutes a sufficient receipt and discharge for custodial property transferred to the custodian pursuant to this article.

A. Custodial property is created and a transfer is made if:

1. An uncertificated security or a certificated security in registered form is either registered in the name of the transferor, an adult other than the transferor or a trust company, followed in substance by the words, "as custodian for _____ (name of minor) under the Arizona uniform transfers to minors act" or delivered if in certificated form or any document necessary for the transfer of an uncertificated security is delivered, together with any necessary endorsement to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument in substantially the form set forth in subsection B.
2. Money is paid or delivered to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor or a trust company, followed in substance by the words, "as custodian for _____ (name of minor) under the Arizona uniform transfers to minors act".
3. The ownership of a life or endowment insurance policy or annuity contract is either registered with the issuer in the name of the transferor, an adult other than the transferor or a trust company, followed in substance by the words, "as custodian for _____ (name of minor) under the Arizona uniform transfers to minors act" or assigned in a writing delivered to an adult other than the transferor or to a trust company whose name in the assignment is followed in substance by the words, "as custodian for _____ (name of minor) under the Arizona uniform transfers to minors act".
4. An irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract is the subject of a written notification delivered to the payor, issuer or other obligor that the right is transferred to the transferor, an adult other than the transferor or a trust company, whose name in the notification is followed in substance by the words, "as custodian for _____ (name of minor) under the Arizona uniform transfers to minors act".
5. An interest in real property is recorded in the name of the transferor, an adult other than the transferor or a trust company, followed in substance by the words, "as custodian for _____ (name of minor) under the Arizona uniform transfers to minors act".
6. A certificate of title issued by a department or agency of a state or of the United States which evidences title to tangible personal property is either issued in the name of the transferor, an adult other than the transferor or a trust company, followed in substance by the words, "as custodian for _____ (name of minor) under the Arizona uniform transfers to minors act" or delivered to an adult other than the transferor or to a trust company, endorsed to that person followed in substance by the words, "as custodian for _____ (name of minor) under the Arizona uniform transfers to minors act".
7. An interest in any property not described in paragraphs 1 through 6 is transferred to an adult other than the transferor or to a trust company by a written instrument in substantially the form set forth in subsection B.

B. An instrument satisfies the requirements of subsection A, paragraphs 1 and 7 if it is in the following form:

Transfer under the Arizona uniform transfers to minors act

I, _____ (name of transferor or name and representative capacity if a fiduciary) hereby transfer to _____ (name of custodian), as custodian for _____ (name of minor) under the Arizona uniform transfers to minors act, the following: (insert a description of the custodial property sufficient to identify it).

Dated: _____.

(Signature)

_____ (Name of custodian) acknowledges receipt of the property described above as custodian for the minor named above under the Arizona uniform transfers to minors act.

Dated: _____

(Signature of custodian)

C. A transferor shall place the custodian in control of the custodial property as soon as practicable. A transfer may be made only for one minor and only one person may be the custodian. All custodial property held under this article by the same custodian for the benefit of the same minor constitutes a single custodianship.

A. The validity of a transfer made in a manner prescribed in this article is not affected by any of the following:

1. Failure of the transferor to comply with section 14-7659, subsection C concerning possession and control.

2. Designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian pursuant to section 14-7659, subsection A.

3. Death or incapacity of a person nominated pursuant to section 14-7653 or designated under section 14-7659 as custodian or the disclaimer of the office by that person.

B. A transfer made pursuant to section 14-7659 is irrevocable, and the custodial property is indefeasibly vested in the minor. The custodian has all the rights, powers, duties and authority provided in this article, and neither the minor nor the minor's legal representative has any right, power, duty or authority with respect to the custodial property except as provided in this article.

C. By making a transfer, the transferor incorporates in the disposition all the provisions of this article and grants to the custodian and to any third person dealing with a person designated as custodian the respective powers, rights and immunities provided in this article.

A. A custodian shall:

1. Take control of custodial property.

2. Register or record title to custodial property if appropriate.

3. Collect, hold, manage, invest and reinvest custodial property.

B. In dealing with custodial property, a custodian shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other statute restricting investments by fiduciaries. If a custodian has a special skill or expertise or is named custodian on the basis of representations of a special skill or expertise, the custodian shall use that skill or expertise. However, a custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain any custodial property received from a transferor.

C. A custodian may invest in or pay premiums on life insurance or endowment policies on either the life of the minor if the minor or the minor's estate is the sole beneficiary or the life of another person in whom the minor has an insurable interest only to the extent that the minor, the minor's estate or the custodian in the capacity of custodian is the irrevocable beneficiary.

D. A custodian at all times shall keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor. Custodial property consisting of certificated securities may be held on deposit at a stock brokerage firm or a financial institution registered in a street name or nominee name. Custodial property consisting of an undivided interest is so identified if the minor's interest is held as a tenant in common and is fixed. Custodial property subject to recordation is so identified if it is recorded either by registration or in an account designated, in the name of the custodian, followed in substance by the words, "as a custodian for _____ (name of minor) under the Arizona uniform transfers to minors act".

E. A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor if the minor is at least fourteen years of age.

A. A custodian, acting in a custodial capacity, has all the rights, powers and authority over custodial property that unmarried adult owners have over their own property, but a custodian may exercise those rights, powers and authority in that capacity only.

B. This section does not relieve a custodian from liability for a breach of section 14-7662.

A. A custodian may deliver or pay to the minor or expend for the minor's benefit as much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to either the duty or ability of the custodian personally or of any other person to support the minor or any other income or property of the minor which may be applicable or available for that purpose.

B. On petition of an interested person or the minor if the minor is at least fourteen years of age, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit as much of the custodial property as the court considers advisable for the use and benefit of the minor.

C. A delivery, payment or expenditure made pursuant to this section does not affect an obligation of a person to support the minor.

A. A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

B. Except for a person who is a transferor pursuant to section 14-7654, a custodian has a noncumulative election during each calendar year to charge reasonable compensation for services performed during that year.

C. Except as provided in section 14-7668, subsection F, a custodian need not give a bond.

A third person in good faith and without court order may act on the instructions of or otherwise deal with a person purporting to make a transfer or purporting to act in the capacity of a custodian and, in the absence of knowledge, is not responsible for determining:

1. The validity of the purported custodian's designation.
2. The propriety of, or the authority under this article for, any act of the purported custodian.
3. The validity or propriety pursuant to this article of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian.
4. The propriety of the application of any property of the minor delivered to the purported custodian.

A. A claim based on a contract entered into by a custodian acting in a custodial capacity, an obligation arising from the ownership or control of custodial property or a tort committed during the custodianship may be asserted against the custodial property by proceeding against the custodian in the custodial capacity, whether or not the custodian or the minor is personally liable.

B. A custodian is not personally liable for either:

1. A contract properly entered into in the custodial capacity unless the custodian fails to reveal that capacity and to identify the custodianship in the contract.
2. An obligation arising from control of custodial property or for a tort committed during the custodianship unless the custodian is personally at fault.

C. A minor is not personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship unless the minor is personally at fault.

A. A person nominated pursuant to section 14-7653 or designated pursuant to section 14-7659 as custodian may decline to serve by delivering a valid disclaimer to the person who made the nomination or to the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian who is able, willing and eligible to serve was nominated pursuant to section 14-7653, the person who made the nomination may nominate a substitute custodian pursuant to section 14-7653. Otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from

among the persons eligible to serve as custodian for that kind of property pursuant to section 14-7659, subsection A. The custodian so designated has the rights of a successor custodian.

B. A custodian at any time may designate a trust company or an adult other than a transferor pursuant to section 14-7654 as successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated or is removed.

C. A custodian may resign at any time by delivering written notice to the minor if the minor is at least fourteen years of age and to the successor custodian and by delivering the custodial property to the successor custodian.

D. If a custodian is ineligible, dies or becomes incapacitated without having effectively designated a successor and the minor is at least fourteen years of age, the minor may designate as successor custodian, in the manner prescribed in subsection B of this section, an adult member of the minor's family, a conservator of the minor or a trust company. If the minor is under fourteen years of age or fails to act within sixty days after the ineligibility, death or incapacity, the conservator of the minor becomes successor custodian. If the minor has no conservator or the conservator declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family or any other interested person may petition the court to designate a successor custodian.

E. A custodian who declines to serve pursuant to subsection A of this section or resigns pursuant to subsection C of this section or the legal representative of a deceased or incapacitated custodian, as soon as practicable, shall put the custodial property and records in the possession and control of the successor custodian. The successor custodian by action may enforce the obligation to deliver custodial property and records and becomes responsible for each item as received.

F. A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the person of the minor, the conservator of the minor or the minor if the minor is at least fourteen years of age may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor pursuant to section 14-7654 or to require the custodian to give appropriate bond.

A. A minor who is at least fourteen years of age, the minor's guardian of the person or legal representative, an adult member of the minor's family, a transferor or a transferor's legal representative may petition the court for an accounting by the custodian or the custodian's legal representative or for a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action pursuant to section 14-7667 to which the minor or the minor's legal representative was a party.

B. A successor custodian may petition the court for an accounting by the predecessor custodian.

C. The court, in a proceeding under this article or in any other proceeding, may require or permit the custodian or the custodian's legal representative to account.

D. If a custodian is removed pursuant to section 14-7668, subsection F, the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

The custodian shall transfer in an appropriate manner the custodial property to the minor or the minor's estate on the earlier of:

1. The minor's twenty-first birthday with respect to custodial property transferred pursuant to section 14-7654 or 14-7655.

2. The minor's eighteenth birthday with respect to custodial property transferred pursuant to section 14-7656 or 14-7657.

3. The minor's death.

This article applies to a transfer within the scope of section 14-7652 made after its effective date if either of the following is true:

1. The transfer purports to have been made under the Arizona uniform gifts to minors act.
2. The instrument by which the transfer purports to have been made uses in substance the designation "as custodian under the Arizona uniform gifts to minors act" or "as custodian under the uniform transfers to minors act" of any other state and the application of this article is necessary to validate the transfer.

Article 8 - Spendthrift Trusts

A. Except as provided in this article, if a trust instrument provides that a beneficiary's interest in income is not subject to voluntary or involuntary transfer, the beneficiary's interest in income under the trust shall not be transferred and is not subject to enforcement of a money judgment until paid to the beneficiary.

B. After an amount of income becomes immediately due and payable to the beneficiary under the trust instrument and on petition to the court by a judgment creditor, the court may enter an order directing the trustee to satisfy the money judgment out of that income amount. The court in its discretion may issue an order directing the trustee to satisfy all or part of the judgment out of that income amount. If an amount of income is due and payable only at a future date or only on the occurrence of a future event, whether the occurrence of that event is within the control of the beneficiary, the amount of income is not immediately due and payable to the beneficiary.

A. Except as provided in this article, if the trust instrument provides that a beneficiary's interest in principal is not subject to voluntary or involuntary transfer, the beneficiary's interest in principal shall not be transferred and is not subject to enforcement of a money judgment until paid to the beneficiary.

B. After an amount of principal becomes immediately due and payable to the beneficiary under the trust instrument and on petition to the court by a judgment creditor, the court may enter an order directing the trustee to satisfy the money judgment out of that principal amount. The court in its discretion may issue an order directing the trustee to satisfy all or part of the judgment out of that principal amount. If an amount of principal is due and payable only at a future date, or only on the occurrence of a future event, whether the occurrence of that event is within the control of the beneficiary, the amount of the principal is not immediately due and payable to the beneficiary.

Except as provided in this article, if a trust instrument provides that the trustee shall pay income or principal, or both, for the education or support of a beneficiary, the income or principal necessary to do this shall not be transferred and is not subject to the enforcement of a money judgment until it is paid to the beneficiary.

A. If a trust instrument allows the trustee to exercise discretion in the use of income or principal, a transferee or creditor of the beneficiary may not compel the trustee to pay an amount that may be paid only in the exercise of his discretion.

B. If the trustee has knowledge of the transfer of the beneficiary's interest or is served with process in a proceeding by a judgment creditor seeking to reach the beneficiary's interest and the trustee pays to or for the benefit of the beneficiary any part of the income or principal that may be paid only in the exercise of his discretion, the trustee is liable to the transferee or creditor to the extent that the payment to or for the benefit of the beneficiary impairs the right of the transferee or creditor. The provisions of this subsection do not apply if the beneficiary's interest in the trust is subject to a restraint on transfer that is valid pursuant to this article.

A. If the settlor is a beneficiary of a trust created by the settlor and the settlor's interest in the trust is subject to a provision restraining the voluntary or involuntary transfer of the settlor's interest, the restraint is invalid against transferees or creditors of the settlor. The invalidity of the restraint on transfer does not affect the validity of the trust.

B. If the settlor is the beneficiary of a trust created by the settlor and the trust instrument provides that the trustee shall pay income or principal, or both, for the education or support of the beneficiary or gives the trustee discretion to determine the amount of income or principal, or both, to be paid to

or for the benefit of the settlor, a transferee or creditor of the settlor may reach the maximum amount that the trustee could pay to or for the benefit of the settlor under the trust instrument, not exceeding the amount of the settlor's proportionate contribution to the trust.

C. For purposes of this section, a trust settled or established by any corporation, professional corporation, partnership, governmental entity, trust, foundation or other entity is not deemed to be settled or established by its directors, officers, shareholders, partners, employees, beneficiaries or agents.

D. For purposes of this section, amounts contributed to a trust by any corporation, professional corporation, partnership, governmental entity, trust, foundation or other entity are not deemed to have been contributed by its directors, officers, shareholders, partners, employees, beneficiaries or agents. Powers, duties or responsibilities granted to or reserved by the settlor pursuant to the trust and any actions or omissions taken pursuant to the trust are deemed to be the powers, responsibilities, duties, actions or omissions of the settlor and not those of its directors, officers, shareholders, partners, employees, beneficiaries or agents.

E. Subsections C and D do not apply to either:

1. A trust which has no valid business purpose and which has as its principal purpose the evasion of the claims of the creditors of the persons or entities listed in such subsections.

2. A trust which would be treated as a grantor trust pursuant to sections 671 through 679 of the internal revenue code of 1986 or corresponding provisions of subsequent federal income tax laws.

F. Subsection E, paragraph 2 does not apply to a qualified subchapter S trust which is treated as a grantor trust solely by application of section 1361(d) of the internal revenue code of 1986.

G. A beneficiary of the trust is not a settlor merely because of a lapse, waiver or release of the beneficiary's right to withdraw a part of the trust property if the property that could have been withdrawn by exercising the right of withdrawal that lapsed, was waived or was released either:

1. Does not exceed in value at the time of the lapse, waiver or release in any calendar year the greater of the amount specified in section 2041(a)(2), 2514(e) or 2503(b) of the internal revenue code.

2. Was related to an inter vivos trust that was treated as qualified terminable interest property under section 2523(f) of the internal revenue code.

A. A restraint on voluntary or involuntary transfer pursuant to section 14-7701 or 14-7702 is valid even if the beneficiary or one of the multiple beneficiaries of the trust is also one of the multiple trustees of the trust or if one of the multiple beneficiaries is the sole trustee of the trust.

B. A restraint on voluntary or involuntary transfer pursuant to section 14-7701 or 14-7702 is invalid if the sole beneficiary of the trust is also the sole trustee of the trust.

C. A restraint on voluntary or involuntary transfer pursuant to section 14-7701 or 14-7702 is valid even if the beneficiary has the power or right to consult with or direct the trustee concerning the investment of all or part of the assets of the trust.

Notwithstanding any other provision in this title, a court of competent jurisdiction may, in its discretion, allow the interest of the beneficiary to be reached in satisfaction of an enforceable claim against the beneficiary in the following situations:

1. By the spouse or child of the beneficiary for support, or by the spouse for alimony.

2. For necessary services rendered to the beneficiary or necessary supplies furnished to him.

3. For services rendered and materials furnished which preserve or benefit the interest of the beneficiary.

4. By the United States or a state to satisfy a claim against the beneficiary.

Notwithstanding any provision in the trust instrument to the contrary, if a statute of this state makes the beneficiary liable for reimbursement of this state or a political subdivision of this state for public support furnished to the beneficiary or to the beneficiary's spouse or minor child, on petition by the appropriate entity, the court may do the following to the extent it determines is equitable and reasonable under the circumstances:

1. If the beneficiary has the right under the trust to compel the trustee to pay income or principal to or for the benefit of the beneficiary, order the trustee to satisfy all or part of the liability out of all or part of the payments as they become due, presently or in the future.

2. Whether the beneficiary has the right under the trust to compel the trustee to pay income or principal to or for the benefit of the beneficiary, order the trustee to satisfy all or part of the liability out of all or part of the future payments that the trustee, pursuant to the exercise of the trustee's discretion, determines to make to or for the benefit of the beneficiary.

3. If the beneficiary is a settlor or the spouse or minor child of the settlor and the beneficiary does not have the right under the trust to compel the trustee to pay income or principal to or for the benefit of the beneficiary and to the extent that the trustee has the right to make payments of income or principal to or for the beneficiary pursuant to the exercise of the trustee's discretion, order the trustee to satisfy all or part of the liability without regard to whether the trustee has then exercised or may thereafter exercise the discretion in favor of the beneficiary.

Any order entered by a court pursuant to section 14-7707 or 14-7708 is subject to modification on petition of an interested person filed in the court where the order was made.

A disclaimer or renunciation by a beneficiary of all or part of his interest under a trust is not a transfer for the purposes of section 14-7701 or 14-7702.