

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 241
91ST GENERAL ASSEMBLY

Reported from the Committee on Judiciary, May 1, 2001, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

0639S.04C

AN ACT

To repeal sections 456.012, 456.013, 456.183, 456.700, 456.710, 456.720, 456.730, 456.740, 456.750, 456.760, 456.770, 456.780, 456.790, 456.800, 456.810 and 456.820, RSMo 2000, relating to trusts and estates, and to enact in lieu thereof thirty-six new sections relating to the same subject.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 456.012, 456.013, 456.183, 456.700, 456.710, 456.720, 456.730, 456.740, 456.750, 456.760, 456.770, 456.780, 456.790, 456.800, 456.810 and 456.820, RSMo 2000, are repealed and thirty-six new sections enacted in lieu thereof, to be known as sections 456.183, 456.236, 469.401, 469.403, 469.405, 469.409, 469.411, 469.413, 469.415, 469.417, 469.419, 469.421, 469.423, 469.425, 469.427, 469.429, 469.431, 469.432, 469.433, 469.435, 469.437, 469.439, 469.441, 469.443, 469.445, 469.447, 469.449, 469.451, 469.453, 469.455, 469.457, 469.459, 469.461, 469.463, 469.465 and 469.467, to read as follows:

456.183. 1. A trustee may resign at any time by written notice of the resignation to the settlor, if living, to a cotrustee, if any, and to the beneficiaries **who then have the capacity to contract and who are** then entitled to receive or eligible to have the benefit of the income from the trust estate.

2. The settlor, a cotrustee, or any beneficiary may petition the court at any time to remove a trustee. Removal of a trustee shall be commenced and shall proceed either pursuant to sections 456.190 to 456.200, or pursuant to the provisions of this section, at the petitioner's discretion.

3. Upon a petition for removal filed pursuant to this section, the court shall

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

10 **conduct an evidentiary hearing and may remove a trustee based upon any of the**
11 **following findings:**

12 **(1) The trustee has committed a breach of trust;**

13 **(2) The trustee is unfit, unwilling, or unable to administer the trust in a**
14 **manner which effectively promotes or achieves the material purposes and intent**
15 **of the trust; or**

16 **(3) There is a substantial and continuing change in circumstances that**
17 **supports a finding that the best interests of the beneficiaries would be served by**
18 **removal of the trustee.**

19 **4. Removal of a trustee pursuant to subdivision (3) of subsection 3 of this**
20 **section shall not be ordered if the court finds any of the following:**

21 **(1) That such removal would be inconsistent with the material purposes and**
22 **intent of the trust;**

23 **(2) That such removal would be inconsistent with the provisions of sections**
24 **456.900 to 456.913; or**

25 **(3) That the trust instrument contains a provision which explicitly prohibits**
26 **removal of the trustee and said provision of the trust is not illegal and does not**
27 **violate public policy.**

28 **5. Upon request of any party, or upon its own motion, the court may enter**
29 **a temporary order of relief, pending final resolution on the petition for removal,**
30 **based upon a finding that such relief is necessary to protect the trust property, the**
31 **interests of any beneficiary, or the material purposes and intent of the trust. Any**
32 **such temporary order of relief may, among other forms of relief, include the**
33 **temporary suspension of the trustee's duties, powers and authority along with the**
34 **commensurate appointment of a temporary trustee who shall assume the trustee's**
35 **duties, powers and authority until discharged by further order of the court or until**
36 **resignation pursuant to this section. In the event a temporary trustee resigns, he**
37 **or she shall provide written notice to the court in addition to those who are**
38 **entitled to such notice pursuant to subsection 1 of this section.**

39 **6. Upon a petition for removal filed pursuant to this section, and in lieu of**
40 **an order of removal, the court may order any appropriate relief necessary to**
41 **effectively promote or achieve the material purposes and intent of the trust. Such**
42 **relief may not be inconsistent with any section in this chapter and may include, but**
43 **is not limited to:**

44 **(1) Compelling the trustee to perform the trustee's duties, or certain of them,**
45 **in a manner which effectively promotes or achieves the material purposes and**
46 **intent of the trust. In the court's discretion, such an order may specify the manner**

47 in which the trustee must perform the identified duty or duties;

48 (2) Prohibiting the trustee from committing an act or omission which would
49 constitute a breach of trust, or which would be inconsistent with the material
50 purposes and intent of the trust, or which would be inconsistent with the
51 provisions of sections 456.900 to 456.913;

52 (3) Compelling the trustee to redress a breach of trust by paying money, by
53 restoring property, or by any other means specified by the court;

54 (4) Compelling the trustee to disclose certain information related to the
55 trust or to any activity of the trustee which may be in conflict with his or her duties
56 as trustee of the trust;

57 (5) Compelling the trustee to prepare and distribute an accounting of the
58 trust;

59 (6) Restricting the powers and authority of the trustee; or

60 (7) Reducing the compensation of the trustee.

61 7. In the event the court orders the removal of a trustee pursuant to this
62 section, the court shall appoint a successor trustee who shall assume the trustee's
63 duties, powers and authority until discharged by further order of the court or until
64 resignation pursuant to this section. In the event a successor trustee resigns, he
65 or she shall provide written notice to the court in addition to those who are
66 entitled to such notice pursuant to subsection 1 of this section.

67 8. In the event a petition for removal of trustee is filed pursuant to this
68 section and the final judgment in the case does not include an order of removal, the
69 reasonable attorney fees incurred by the defendant trustee and the court costs of
70 the removal suit shall be ordered paid from the assets of the trust.

71 9. The resignation, suspension or removal of a trustee, pursuant to this
72 section, shall not be deemed to constitute a termination of the trust or a
73 distribution with respect to the trust estate.

456.236. 1. The rule against perpetuities shall not apply to and any rule
2 prohibiting unreasonable restraints on or suspension of the power of alienation
3 shall not be violated by a trust if a trustee, or other person or persons to whom the
4 power is properly granted or delegated, has the power pursuant to the terms of the
5 trust or applicable law to sell the trust property during the period of time the trust
6 continues beyond the period of the rule against perpetuities that would apply to
7 the trust but for this subsection.

8 2. No rule against accumulations shall apply to a trust described in
9 subsection 1 of this section unless the terms of the trust require that the income be
10 accumulated during a period of time the trust continues beyond the period of the

11 rule against perpetuities that would apply to the trust but for subsection 1 of this
12 section. If the terms of the trust require that the income be accumulated during
13 any period of time the trust continues beyond the period of the rule against
14 perpetuities that would apply to the trust but for subsection 1 of this section, then
15 during that period of time the trustee shall have the power to make discretionary
16 distributions of net income to such recipients and in such shares and in such
17 manner as most closely effectuates the settlor's or testator's manifested plan of
18 distribution.

19 3. The provisions of this section apply to:

20 (1) Any trust created by a will or inter vivos agreement, or pursuant to the
21 exercise of a power of appointment other than a general power of appointment
22 granted under a will or inter vivos agreement, executed or amended on or after
23 August 28, 2001;

24 (2) Any trust created pursuant to the exercise of a general power of
25 appointment exercised in an instrument executed or amended on or after August
26 28, 2001; or

27 (3) Any trust created by a will or inter vivos agreement, or pursuant to the
28 exercise of a power of appointment granted under a will or inter vivos agreement,
29 executed or amended before August 28, 2001, if the laws of this state become
30 applicable to the trust after such date, the laws of any other state applied to the
31 trust before such date, and the rule against perpetuities did not apply to the trust
32 pursuant to the laws of the other state.

33 4. As used in this section, the term "trust" shall have the same meaning as in
34 subdivision (2) of section 456.500, except that the term shall not include a trust that
35 is not subject to the rule against perpetuities by reason of any other law of this
36 state.

2 469.401. As used in sections 469.401 to 469.467, the following terms mean:

3 (1) "Accounting period", a calendar year unless another twelve-month period
4 is selected by a fiduciary. The term includes a portion of a calendar year or other
5 twelve-month period that begins when an income interest begins or ends when an
6 income interest ends;

7 (2) "Beneficiary", an heir, legatee, and devisee of a decedent's estate, and an
8 income beneficiary and a remainder beneficiary of a trust, including any type of
9 entity that has a beneficial interest in either an estate or a trust;

10 (3) "Fiduciary", a personal representative, trustee, executor, administrator,
11 successor personal representative, special administrator, and any other person
12 performing substantially the same function;

13 (4) "Income", money or property that a fiduciary receives as current return
14 from a principal asset, including a portion of receipts from a sale, exchange, or
15 liquidation of a principal asset, as provided in sections 469.423 to 469.449;

16 (5) "Income beneficiary", a person to whom net income of a trust is or may
17 be payable;

18 (6) "Income interest", the right of an income beneficiary to receive all or part
19 of net income, whether the terms of the trust require it to be distributed or
20 authorize it to be distributed in the trustee's discretion;

21 (7) "Mandatory income interest", the right of an income beneficiary to
22 receive net income that the terms of the trust require the fiduciary to distribute;

23 (8) "Net income", if section 469.411 applies to the trust, the unitrust amount,
24 or if section 469.411 does not apply to the trust, the total receipts allocated to
25 income during an accounting period minus the disbursements made from income
26 during the same period, plus or minus transfers pursuant to sections 469.401 to
27 469.467 to or from income during the same period;

28 (9) "Person", an individual, corporation, business trust, estate, trust,
29 partnership, limited liability company, association, joint venture, government,
30 governmental subdivision, agency, or instrumentality, public corporation, or any
31 other legal or commercial entity;

32 (10) "Principal", property held in trust for distribution to a remainder
33 beneficiary when the trust terminates;

34 (11) "Qualified beneficiary", a beneficiary who, on the date qualification is
35 determined either is entitled or eligible to receive a distribution of trust income or
36 principal, or would be entitled to receive a distribution if the event causing the
37 trust to terminate occurred on that date;

38 (12) "Remainder beneficiary", a person entitled to receive principal when an
39 income interest ends;

40 (13) "Terms of a trust", the manifestation of the settlor's or decedent's intent
41 expressed in a manner which is admissible as proof in a judicial proceeding,
42 whether by written or spoken words or by conduct;

43 (14) "Trustee", an original, additional, or successor trustee, whether or not
44 appointed or confirmed by a court;

45 (15) "Unitrust Amount", net income as defined by section 469.411.

 469.403. 1. In allocating receipts and disbursements to or between principal
2 and income, and with respect to any matter within the scope of sections 469.413 to
3 469.421, a fiduciary:

4 (1) Shall administer a trust or estate under the terms of the trust or the will,

5 even if there is a different provision in sections 469.401 to 469.467;

6 (2) May administer a trust or estate by exercising a discretionary power of
7 administration given to the fiduciary by the terms of the trust or the will, even if
8 the exercise of the power produces a result different from a result required or
9 permitted by sections 469.401 to 469.467;

10 (3) Shall administer a trust or estate pursuant to sections 469.401 to 469.467
11 if the terms of the trust or the will do not contain a different provision or do not
12 give the fiduciary a discretionary power of administration; and

13 (4) Shall add a receipt or charge a disbursement to principal to the extent
14 that the terms of the trust and sections 469.401 to 469.467 do not provide a rule for
15 allocating the receipt or disbursement to or between principal and income.

16 2. In exercising the power to adjust pursuant to section 469.405 or a
17 discretionary power of administration regarding a matter within the scope of
18 sections 469.401 to 469.467, whether granted by the terms of a trust, a will, or
19 sections 469.401 to 469.467, a fiduciary shall administer a trust or estate impartially,
20 based on what is fair and reasonable to all of the beneficiaries, except to the extent
21 that the terms of the trust or the will clearly manifest an intent that the fiduciary
22 shall or may favor one or more of the beneficiaries. A determination in accordance
23 with sections 469.401 to 469.467 is presumed to be fair and reasonable to all of the
24 beneficiaries.

469.405. 1. A trustee may adjust between principal and income to the extent
2 the trustee considers necessary if the trustee invests and manages trust assets as
3 a prudent investor, the terms of the trust describe the amount that may or shall be
4 distributed to a beneficiary by referring to the trust's income, and the trustee
5 determines, after applying subsection 1 of section 469.403, that the trustee is unable
6 to comply with subsection 2 of section 469.403.

7 2. In deciding whether and to what extent to exercise the power conferred
8 by subsection 1 of this section, a trustee shall consider all factors relevant to the
9 trust and its beneficiaries, including the following factors to the extent relevant:

10 (1) The nature, purpose, and expected duration of the trust;

11 (2) The intent of the settlor;

12 (3) The identity and circumstances of the beneficiaries;

13 (4) The needs for liquidity, regularity of income, and preservation and
14 appreciation of capital;

15 (5) The assets held in the trust, including the extent to which such assets
16 consist of financial assets, interests in closely held enterprises, tangible and
17 intangible personal property, or real property, and the extent to which such assets

18 are used by a beneficiary, and whether such assets were purchased by the trustee
19 or received from the settlor;

20 (6) The net amount allocated to income pursuant to sections 469.401 to
21 469.467, other than this section, and the increase or decrease in the value of the
22 principal assets, which the trustee may estimate as to assets for which market
23 values are not readily available;

24 (7) Whether and to what extent the terms of the trust give the trustee the
25 power to invade principal or accumulate income, or prohibit the trustee from
26 invading principal or accumulating income, and the extent to which the trustee has
27 exercised a power from time to time to invade principal or accumulate income;

28 (8) The actual and anticipated effect of economic conditions on principal
29 and income and effects of inflation and deflation; and

30 (9) The anticipated tax consequences of an adjustment.

31 3. A trustee may not make an adjustment:

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

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

38 (3) That changes the amount payable to a beneficiary as a fixed annuity or
39 a fixed fraction of the value of the trust assets;

40 (4) From any amount that is permanently set aside for charitable purposes
41 under a will or the terms of a trust to the extent that the existence of the power to
42 adjust would change the character of the amount set aside for federal income, gift,
43 or estate tax purposes;

44 (5) If possessing or exercising the power to make an adjustment causes an
45 individual to be treated as the owner of all or part of the trust for income tax
46 purposes, and the individual would not be treated as the owner if the trustee did
47 not possess the power to make an adjustment;

48 (6) If possessing or exercising the power to make an adjustment causes all
49 or part of the trust assets to be included for estate tax purposes in the estate of an
50 individual who has the power to remove or appoint a trustee, or both, and the
51 assets would not be included in the estate of the individual if the trustee did not
52 possess the power to make an adjustment;

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

54 (8) If the trustee is not a beneficiary, but the adjustment would benefit the

55 trustee directly or indirectly.

56 4. If subdivision (5), (6), (7), or (8) of subsection 3 of this section applies to
57 a trustee and there is more than one trustee, a co-trustee to whom the provision
58 does not apply may make the adjustment unless the exercise of the power by the
59 remaining trustee or trustees is not permitted by the terms of the trust.

60 5. A trustee may release the entire power conferred by subsection 1 of this
61 section, or may release only the power to adjust from income to principal or the
62 power to adjust from principal to income if the trustee is uncertain about whether
63 possessing or exercising the power will cause a result described in subdivisions (1)
64 to (6) or subdivision (8) of subsection 3 of this section, or if the trustee determines
65 that possessing or exercising the power will or may deprive the trust of a tax
66 benefit or impose a tax burden not described in subsection 3 of this section. The
67 release may be permanent or for a specified period, including a period measured
68 by the life of an individual.

69 6. Terms of a trust that limit the power of a trustee to make an adjustment
70 between principal and income do not affect the application of this section unless
71 it is clear from the terms of the trust that the terms are intended to deny the
72 trustee the power of adjustment conferred by subsection 1 of this section.

469.409. 1. Any claim for breach of a trustee's duty to impartially administer
2 a trust related, directly or indirectly, to an adjustment made by a fiduciary to the
3 allocation between principal and income pursuant to subsection 1 of section 469.405
4 or any allocation made by the fiduciary pursuant to any authority or discretion
5 specified in subsection 1 of section 469.403, unless previously barred by
6 adjudication, consent, or other limitation, shall be barred as provided in this
7 section. Any such claim is barred if not asserted in a judicial proceeding brought
8 by any beneficiary with any interest whatsoever in the trust, no matter how remote
9 or contingent, or whether or not the beneficiary is ascertainable or has the
10 capacity to contract, within two years after the trustee has sent a report to all
11 qualified beneficiaries that adequately discloses the facts constituting the claim.

12 2. For purposes of this section the following rules shall apply:

13 (1) A report adequately discloses the facts constituting a claim if it provides
14 sufficient information so that the beneficiary should know of the claim or
15 reasonably should have inquired into its existence;

16 (2) A qualified beneficiary is deemed to have been sent a report if:

17 (a) In the case of a qualified beneficiary who has the capacity to contract,
18 the report is either delivered personally to the beneficiary or sent to the
19 beneficiary at the beneficiary's last known address;

20 **(b) In the case of a qualified beneficiary who lacks the capacity to contract,**
21 **the report is either hand delivered to a person with respect to whom pursuant to**
22 **subdivision (2) of section 472.300, RSMo, an order would bind that beneficiary with**
23 **respect to the subject of the claim or sent to the person at that person's last known**
24 **address;**

25 **(3) The determination of the identity of all qualified beneficiaries shall be**
26 **made on the date the report is deemed to have been sent; and**

27 **(4) This section does not preclude an action to recover for fraud or**
28 **misrepresentation related to the report.**

469.411. 1. If the provisions of this section apply to a trust, the unitrust
2 **amount shall be determined as follows:**

3 **(1) For the first three accounting periods of the trust, the unitrust amount**
4 **for a current valuation year of the trust shall be three percent, or any higher**
5 **percentage specified by the terms of the governing instrument or by the election**
6 **made in accordance with subdivision (2) of subsection 5 of this section, of the net**
7 **fair market values of the assets held in the trust on the first business day of the**
8 **current valuation year;**

9 **(2) Beginning with the fourth accounting period of the trust, the unitrust**
10 **amount for a current valuation year of the trust shall be three percent, or any**
11 **higher percentage specified by the terms of the governing instrument or by the**
12 **election made in accordance with subdivision (2) of subsection 5 of this section, of**
13 **the average of the net fair market values of the assets held in the trust on the first**
14 **business day of the current valuation year and the net fair market values of the**
15 **assets held in the trust on the first business day of each prior valuation year;**

16 **(3) The unitrust amount for the current valuation year computed pursuant**
17 **to subdivision (1) or (2) of this subsection shall be proportionately reduced for any**
18 **distributions, in whole or in part, other than distributions of the unitrust amount,**
19 **and for any payments of expenses, including debts, disbursements and taxes, from**
20 **the trust within a current valuation year that the trustee determines to be material**
21 **and substantial, and shall be proportionately increased for the receipt, other than**
22 **a receipt that represents a return on investment, of any additional property into**
23 **the trust within a current valuation year;**

24 **(4) For purposes of subdivision (2) of this subsection, the net fair market**
25 **values of the assets held in the trust on the first business day of a prior valuation**
26 **year shall be adjusted to reflect any reduction, in the case of a distribution or**
27 **payment, or increase, in the case of a receipt, for the prior valuation year pursuant**
28 **to subdivision (3) of this subsection, as if the distribution, payment or receipt had**

29 occurred on the first day of the prior valuation year;

30 (5) In the case of a short accounting period, the trustee shall prorate the
31 unitrust amount on a daily basis;

32 (6) In the case where the net fair market value of an asset held in the trust
33 has been incorrectly determined either in a current valuation year or in a prior
34 valuation year, the unitrust amount shall be increased, in the case of an
35 undervaluation, or be decreased, in the case of an overvaluation, by an amount
36 equal to the difference between the unitrust amount determined based on the
37 correct valuation of the asset and the unitrust amount originally determined.

38 2. As used in this section, the following terms mean:

39 (1) "Current valuation year", the accounting period of the trust for which the
40 unitrust amount is being determined;

41 (2) "Prior valuation year", each of the two accounting periods of the trust
42 immediately preceding the current valuation year;

43 3. In determining the sum of the net fair market values of the assets held in
44 the trust for purposes of subdivisions (1) and (2) of subsection 1 of this section,
45 there shall not be included the value of:

46 (1) Any residential property or any tangible personal property that, as of the
47 first business day of the current valuation year, one or more income beneficiaries
48 of the trust have or had the right to occupy, or have or had the right to possess or
49 control, other than in a capacity as trustee, and instead the right of occupancy or
50 the right to possession or control shall be deemed to be the unitrust amount with
51 respect to the residential property or the tangible personal property; or

52 (2) Any asset specifically given to a beneficiary under the terms of the trust
53 and the return on investment on that asset, which return on investment shall be
54 distributable to the beneficiary.

55 4. In determining the net fair market value of each asset held in the trust
56 pursuant to subdivisions (1) and (2) of subsection 1 of this section, the trustee shall,
57 not less often than annually, determine the fair market value of each asset of the
58 trust that consists primarily of real property or other property that is not traded
59 on a regular basis in an active market by appraisal or other reasonable method or
60 estimate, and that determination, if made reasonably and in good faith, shall be
61 conclusive as to all persons interested in the trust. Any claim based on a
62 determination made pursuant to this subsection shall be barred if not asserted in
63 a judicial proceeding brought by any beneficiary with any interest whatsoever in
64 the trust within two years after the trustee has sent a report to all qualified
65 beneficiaries that adequately discloses the facts constituting the claim. The rules

66 set forth in subsection 2 of section 469.409 shall apply to the barring of claims
67 pursuant to this subsection.

68 5. This section shall apply to the following trusts:

69 (1) Any trust created after August 28, 2001, with respect to which the terms
70 of the trust clearly manifest an intent that this section apply;

71 (2) Any trust created under an instrument that became irrevocable on or
72 before August 28, 2001, if the trustee, in the trustee's discretion, elects to have this
73 section apply two years from August 28, 2001, unless the instrument creating the
74 trust provides otherwise. The trustee shall deliver notice to all qualified
75 beneficiaries and the settlor of the trust, if he or she is then living, of the trustee's
76 intent to make such an election at least sixty days before making that election. The
77 trustee shall have sole authority to make the election. Delivery of the notice to a
78 person with respect to whom, pursuant to subdivision (2) of section 472.300, RSMo,
79 an order would bind a beneficiary of the trust is delivery of notice to that
80 beneficiary for all purposes of this subsection. An action or order by any court
81 shall not be required. The election shall be made by a signed writing delivered to
82 the settlor of the trust, if he or she is then living, and to all qualified
83 beneficiaries. The election is irrevocable, unless revoked by order of the court
84 having jurisdiction of the trust. The election may specify the percentage used to
85 determine the unitrust amount pursuant to this section, provided that such
86 percentage is three percent or greater, or if no percentage is specified, then that
87 percentage shall be three percent. In making an election pursuant to this
88 subsection, the trustee shall be subject to the same limitations and conditions as
89 apply to an adjustment between income and principal pursuant to subsections 3
90 and 4 of section 469.409;

91 (3) No action of any kind based on an election made or not made by a trustee
92 pursuant to subdivision (2) of this subsection shall be brought against the trustee
93 by any beneficiary of that trust three years from August 28, 2001.

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

3 (1) A fiduciary of an estate or of a terminating income interest shall
4 determine the amount of net income and net principal receipts received from
5 property specifically given to a beneficiary pursuant to the rules in sections 469.417
6 to 469.461 which apply to trustees and the rules in subdivision (5) of this
7 section. The fiduciary shall distribute the net income and net principal receipts to
8 the beneficiary who is to receive the specific property;

9 (2) A fiduciary shall determine the remaining net income of a decedent's

10 estate or a terminating income interest pursuant to the rules in sections 469.417 to
11 469.461 which apply to trustees and by:

12 (a) Including in net income all income from property used to discharge
13 liabilities;

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

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

27 (3) A fiduciary shall distribute to a beneficiary who receives a pecuniary
28 amount outright the interest or any other amount provided by the will, the terms
29 of the trust, or in the absence of any such provisions, the provisions of section
30 473.633, RSMo, from net income determined pursuant to subdivision (2) of this
31 section or from principal to the extent that net income is insufficient. If a
32 beneficiary is to receive a pecuniary amount outright from a trust after an income
33 interest ends and no interest or other amount is provided for by the terms of the
34 trust or applicable law, the fiduciary shall distribute the interest or other amount
35 to which the beneficiary would be entitled under applicable law if the pecuniary
36 amount were required to be paid under a will;

37 (4) A fiduciary shall distribute the net income remaining after distributions
38 required by subdivision (3) of this section in the manner described in section
39 469.415 to all other beneficiaries, including a beneficiary who receives a pecuniary
40 amount in trust, even if the beneficiary holds an unqualified power to withdraw
41 assets from the trust or other presently exercisable general power of appointment
42 over the trust;

43 (5) A fiduciary may not reduce principal or income receipts from property
44 described in subdivision (1) of this section because of a payment described in
45 sections 469.451 and 469.453 to the extent that the will, the terms of the trust, or
46 applicable law requires the fiduciary to make the payment from assets other than

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

469.415. 1. Each beneficiary described in subdivision (4) of section 469.413
2 is entitled to receive a portion of the net income equal to the beneficiary's
3 fractional interest in undistributed principal assets, using values as of the
4 distribution date. If a fiduciary makes more than one distribution of assets to
5 beneficiaries to whom this section applies, each beneficiary, including one who
6 does not receive part of the distribution, is entitled, as of each distribution date, to
7 the net income the fiduciary has received after the date of death or terminating
8 event or earlier distribution date but has not distributed as of the current
9 distribution date.

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

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

16 (2) The beneficiary's fractional interest in the undistributed principal assets
17 shall be calculated without regard to property specifically given to a beneficiary
18 and property required to pay pecuniary amounts not in trust;

19 (3) The beneficiary's fractional interest in the undistributed principal assets
20 shall be calculated on the basis of the aggregate value of those assets as of the
21 distribution date without reducing the value by any unpaid principal obligation;

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

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

28 4. A fiduciary may apply the rules in this section, to the extent that the
29 fiduciary considers it appropriate, to net gain or loss realized after the date of

30 death or terminating event or earlier distribution date from the disposition of a
31 principal asset if this section applies to the income from the asset.

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

5 2. An asset becomes subject to a trust:

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

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

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

13 3. An asset becomes subject to a successive income interest on the day after
14 the preceding income interest ends, as determined pursuant to subsection 4 of this
15 section, even if there is an intervening period of administration to wind up the
16 preceding income interest.

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

469.419. 1. A trustee shall allocate an income receipt or disbursement other
2 than one to which section 469.413 applies to principal if its due date occurs before
3 a decedent dies in the case of an estate or before an income interest begins in the
4 case of a trust or successive income interest.

5 2. A trustee shall allocate an income receipt or disbursement to income if its
6 due date occurs on or after the date on which a decedent dies or an income interest
7 begins and it is a periodic due date. An income receipt or disbursement shall be
8 treated as accruing from day to day if its due date is not periodic or it has no due
9 date. The portion of the receipt or disbursement accruing before the date on which
10 a decedent dies or an income interest begins shall be allocated to principal and the
11 balance shall be allocated to income.

12 3. An item of income or an obligation is due on the date a payment is
13 required. If a payment date is not stated, there is no due date for the purposes of
14 sections 469.401 to 469.467. Distributions to shareholders or other owners from an
15 entity to which section 469.423 applies are deemed to be due on the date fixed by
16 the entity for determining who is entitled to receive the distribution or, if no date

17 is fixed, on the declaration date for the distribution. A due date is periodic for
18 receipts or disbursements that shall be paid at regular intervals under a lease or
19 an obligation to pay interest or if an entity customarily makes distributions at
20 regular intervals.

469.421. 1. For purposes of this section, the phrase "undistributed income"
2 means net income received before the date on which an income interest ends. The
3 phrase does not include an item of income or expense that is due or accrued, or net
4 income that has been added or is required to be added to principal under the terms
5 of the trust.

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

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

469.423. 1. For purposes of this section, the term "entity" means a
2 corporation, partnership, limited liability company, regulated investment company,
3 real estate investment trust, common trust fund, or any other organization in which
4 a trustee has an interest, other than a trust or estate to which section 469.425
5 applies, a business or activity to which section 469.427 applies, or an asset-backed
6 security to which section 469.447 applies.

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

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

10 (1) Property other than money;

11 (2) Money received in one distribution or a series of related distributions in
12 exchange for part or all of a trust's interest in the entity;

13 (3) Money received in total or partial liquidation of the entity; and

14 (4) Money received from an entity that is a regulated investment company
15 or a real estate investment trust if the money distributed is a capital gain dividend
16 for federal income tax purposes.

17 **4. Money is received in partial liquidation:**

18 **(1) To the extent that the entity, at or near the time of a distribution,**
19 **indicates that such money is a distribution in partial liquidation; or**

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

24 **5. Money is not received in partial liquidation, nor may it be taken into**
25 **account pursuant to subdivision (2) of subsection 4 of this section, to the extent that**
26 **such money does not exceed the amount of income tax that a trustee or beneficiary**
27 **shall pay on taxable income of the entity that distributes the money.**

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

469.425. A trustee shall allocate to income an amount received as a
2 **distribution of income from a trust or an estate in which the trust has an interest**
3 **other than a purchased interest, and shall allocate to principal an amount received**
4 **as a distribution of principal from such a trust or estate. If a trustee purchases an**
5 **interest in a trust that is an investment entity, or a decedent or donor transfers an**
6 **interest in such a trust to a trustee, section 469.423 or 469.449 shall apply to a**
7 **receipt from the trust.**

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

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

15 in the conduct of the business.

16 3. Activities for which a trustee may maintain separate accounting records
17 include:

- 18 (1) Retail, manufacturing, service, and other traditional business activities;
- 19 (2) Farming;
- 20 (3) Raising and selling livestock and other animals;
- 21 (4) Management of rental properties;
- 22 (5) Extraction of minerals and other natural resources;
- 23 (6) Timber operations; and
- 24 (7) Activities to which section 469.447 applies.

469.429. A trustee shall allocate to principal:

- 2 (1) To the extent not allocated to income pursuant to sections 469.401 to
3 469.467, assets received from a transferor during the transferor's lifetime, a
4 decedent's estate, a trust with a terminating income interest, or a payer under a
5 contract naming the trust or its trustee as beneficiary;
- 6 (2) Money or other property received from the sale, exchange, liquidation,
7 or change in form of a principal asset, including realized profit, subject to sections
8 469.423 to 469.467;
- 9 (3) Amounts recovered from third parties to reimburse the trust because of
10 disbursements described in subdivision (7) of subsection 1 of section 469.453 or for
11 other reasons to the extent not based on the loss of income;
- 12 (4) Proceeds of property taken by eminent domain, but a separate award
13 made for the loss of income with respect to an accounting period during which a
14 current income beneficiary had a mandatory income interest is income;
- 15 (5) Net income received in an accounting period during which there is no
16 beneficiary to whom a trustee may or shall distribute income; and
- 17 (6) Other receipts as provided in sections 469.435 to 469.449.

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

469.432. 1. An amount received as interest, whether determined at a fixed,
2 variable, or floating rate, on an obligation to pay money to the trustee, including

3 an amount received as consideration for prepaying principal, shall be allocated to
4 income without any provision for amortization of premium.

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

12 3. This section does not apply to an obligation to which section 469.437,
13 469.439, 469.441, 469.443, 469.447, or 469.449 applies.

469.433. 1. Except as otherwise provided in subsection 2 of this section, a
2 trustee shall allocate to principal the proceeds of a life insurance policy or other
3 contract in which the trust or its trustee is named as beneficiary, including a
4 contract that insures the trust or its trustee against loss for damage to, destruction
5 of, or loss of title to a trust asset. The trustee shall allocate dividends on an
6 insurance policy to income if the premiums on the policy are paid from income, and
7 to principal if the premiums are paid from principal.

8 2. A trustee shall allocate to income proceeds of a contract that insures the
9 trustee against loss of occupancy or other use by an income beneficiary, loss of
10 income, or, subject to section 469.427, loss of profits from a business.

11 3. This section does not apply to a contract to which section 469.437 applies.

469.435. If a trustee determines that an allocation between principal and
2 income required by section 469.437, 469.439, 469.441, 469.443, or 469.447, is
3 insubstantial, the trustee may allocate the entire amount to principal unless one
4 of the circumstances described in subsection 3 of section 469.405 applies to the
5 allocation. This power may be exercised by a co-trustee in the circumstances
6 described in subsection 4 of section 469.405 and may be released for the reasons
7 and in the manner described in subsection 5 of section 469.405. An allocation is
8 presumed to be insubstantial if:

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

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

469.437. 1. As used in this section, the following terms mean:

2 **(1) "Plan", a contractual, custodial, trust, or other arrangement that provides**
3 **for distributions to the trust, including, but not limited to, qualified retirement**
4 **plans, Individual Retirement Accounts, Roth Individual Retirement Accounts,**
5 **public and private annuities, and deferred compensation, including payments**
6 **received directly from an entity as defined in section 469.423 regardless of whether**
7 **or not such distributions are made from a specific fund or account;**

8 **(2) "Payment", an amount that is:**

9 **(a) Received or withdrawn from a plan; or**

10 **(b) One of a series of distributions that have been or will be received over**
11 **a fixed number of years or during the life of one or more individuals under any**
12 **contractual or other arrangement, or is a single payment from a plan that the**
13 **trustee could have received over a fixed number of years or during the life of one**
14 **or more individuals.**

15 **2. If any portion of a payment is characterized as a distribution to the**
16 **trustee of interest, dividends, or a dividend equivalent, the trustee shall allocate**
17 **the portion so characterized to income. The trustee shall allocate the balance of**
18 **that payment to principal.**

19 **3. If no part of a payment is allocated to income pursuant to subsection 2 of**
20 **this section, then for each accounting period of the trust that any payment is**
21 **received by the trust with respect to the trust's interest in a plan, the trustee shall**
22 **allocate to income that portion of the aggregate value of all payments received by**
23 **the trustee in that accounting period equal to the amount of plan income**
24 **attributable to the trust's interest in the plan for that calendar year. The trustee**
25 **shall allocate the balance of that payment to principal.**

26 **4. For purposes of this section, if a payment is received from a plan that**
27 **maintains a separate account or fund for its participants or account holders,**
28 **including, but not limited to, defined contribution retirement plans, Individual**
29 **Retirement Accounts, Roth Individual Retirement Accounts, and some types of**
30 **deferred compensation plans, the phrase "plan income" shall mean either the**
31 **amount of the plan account or fund held for the benefit of the trust that, if the plan**
32 **account or fund were a trust, would be allocated to income pursuant to sections**
33 **469.401 to 469.467 for that accounting period, or four percent of the value of the**
34 **plan account or fund on the first day of that accounting period. The method of**
35 **determining plan income pursuant to this subsection shall be chosen by the trustee**
36 **in the trustee's discretion. The trustees may change the method of determining**
37 **plan income pursuant to this subsection for any future accounting period.**

38 **5. For purposes of this section if the payment is received from a plan that**

39 does not maintain a separate account or fund for its participants or account
40 holders, including by way of example and not limitation defined benefit retirement
41 plans and some types of deferred compensation plans, the term "plan income" shall
42 mean four percent of the total present value of the trust's interest in the plan as of
43 the first day of the accounting period, based on reasonable actuarial assumptions
44 as determined by the trustee.

45 6. If, to obtain an estate or gift tax marital deduction for a trust, a trustee
46 shall allocate more of a payment to income than provided for by this section, the
47 trustee shall allocate to income the additional amount necessary to obtain the
48 marital deduction.

469.439. 1. As used in this section, the phrase "liquidating asset" means an
2 asset whose value will diminish or terminate because the asset is expected to
3 produce receipts for a period of limited duration. The term includes a leasehold,
4 patent, copyright, royalty right, and right to receive payments during a period of
5 more than one year under an arrangement that does not provide for the payment
6 of interest on the unpaid balance. The term does not include a payment subject to
7 section 469.437, resources subject to section 469.441, timber subject to section
8 469.443, an activity subject to section 469.447, an asset subject to section 469.449, or
9 any asset for which the trustee establishes a reserve for depreciation pursuant to
10 section 469.455.

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

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

4 (1) If received as nominal delay rental or nominal annual rent on a lease, a
5 receipt shall be allocated to income;

6 (2) If received from a production payment, a receipt shall be allocated to
7 income if and to the extent that the agreement creating the production payment
8 provides a factor for interest or its equivalent. The balance shall be allocated to
9 principal;

10 (3) If an amount received as a royalty, shut-in-well payment, take-or-pay
11 payment, bonus, or delay rental is more than nominal, ninety percent shall be
12 allocated to principal and the balance to income;

13 (4) If an amount is received from a working interest or any other interest
14 not provided for in subdivision (1), (2), or (3) of this subsection, ninety percent of
15 the net amount received shall be allocated to principal and the balance to income.

16 **2. An amount received on account of an interest in water that is renewable**
17 **shall be allocated to income. If the water is not renewable, ninety percent of the**
18 **amount shall be allocated to principal and the balance to income.**

19 **3. Sections 469.401 to 469.467 apply whether or not a decedent or donor was**
20 **extracting minerals, water, or other natural resources before the interest became**
21 **subject to the trust.**

22 **4. If a trust owns an interest in minerals, water, or other natural resources**
23 **on August 28, 2001, the trustee may allocate receipts from the interest as provided**
24 **in sections 469.401 to 469.467 or in the manner used by the trustee before August**
25 **28, 2001. If the trust acquires an interest in minerals, water, or other natural**
26 **resources after August 28, 2001, the trustee shall allocate receipts from the interest**
27 **as provided in sections 469.401 to 469.467.**

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

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

7 **(2) To principal to the extent that the amount of timber removed from the**
8 **land exceeds the rate of growth of the timber or the net receipts are from the sale**
9 **of standing timber;**

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

14 **(4) To principal to the extent that advance payments, bonuses, and other**
15 **payments are not allocated pursuant to either subdivision (1), (2), or (3) of this**
16 **subsection.**

17 **2. In determining net receipts to be allocated pursuant to subsection 1 of**
18 **this section, a trustee shall deduct and transfer to principal a reasonable amount**
19 **for depletion.**

20 **3. Sections 469.401 to 469.467 apply whether or not a decedent or transferor**
21 **was harvesting timber from the property before it became subject to the trust.**

22 **4. If a trust owns an interest in timberland on August 28, 2001, the trustee**
23 **may allocate net receipts from the sale of timber and related products as provided**
24 **in sections 469.401 to 469.467 or in the manner used by the trustee before August**
25 **28, 2001. If the trust acquires an interest in timberland after August 28, 2001, the**

26 trustee shall allocate net receipts from the sale of timber and related products as
27 provided in sections 469.401 to 469.467.

469.445. 1. If a marital deduction is allowed for all or part of a trust whose
2 assets consist substantially of property that does not provide the spouse with
3 sufficient income from or use of the trust assets, and if the amounts that the trustee
4 transfers from principal to income pursuant to section 469.405 and distributes to
5 the spouse from principal pursuant to the terms of the trust are insufficient to
6 provide the spouse with the beneficial enjoyment required to obtain the marital
7 deduction, the spouse may require the trustee to make property productive of
8 income, convert property within a reasonable time, or exercise the power conferred
9 by subsection 1 of section 469.405. The trustee may decide which action or
10 combination of actions to take.

11 2. In cases not governed by subsection 1 of this section, proceeds from the
12 sale or other disposition of an asset are principal without regard to the amount of
13 income the asset produces during any accounting period.

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

6 2. To the extent that a trustee does not account pursuant to section 469.427
7 for transactions in derivatives, the trustee shall allocate to principal receipts from
8 and disbursements made in connection with those transactions.

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

469.449. 1. As used in this section, the phrase "asset-backed security" means
2 an asset whose value is based upon the right it gives the owner to receive
3 distributions from the proceeds of financial assets that provide collateral for the
4 security. The term includes an asset that gives the owner the right to receive from
5 the collateral financial assets only the interest or other current return or only the

6 proceeds other than interest or current return. The term does not include an asset
7 to which section 469.423 or 469.435 applies.

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

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

469.451. A trustee shall make the following disbursements from income to
2 the extent that they are not disbursements to which paragraph (b) or (c) of
3 subdivision (2) of section 469.413 applies:

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

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

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

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

2 469.453. 1. A trustee shall make the following disbursements from principal:

3 (1) The remaining one-half of the disbursements described in subdivisions
4 (1) and (2) of section 469.451;

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

8 (3) Payments on the principal of a trust debt;

9 (4) Expenses of a proceeding or other matter that concerns primarily an
10 interest in principal;

11 (5) Premiums paid on a policy of insurance not described in subdivision (4)

12 of section 469.451 of which the trust is the owner and beneficiary;

13 (6) Estate, inheritance, and other transfer taxes, including penalties,
14 apportioned to the trust; and

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

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

469.455. 1. As used in this section, the term "depreciation" means a reduction
2 in value due to wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset
3 having a useful life of more than one year.

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

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

10 (2) During the administration of a decedent's estate; or

11 (3) Pursuant to this section if the trustee is accounting pursuant to section
12 469.427 for the business or activity in which the asset is used.

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

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

5 2. Principal disbursements to which subsection 1 of this section applies
6 include the following, but only to the extent that the trustee has not been and does
7 not expect to be reimbursed by a third party:

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

10 **(2) Disbursements made to prepare property for rental, including tenant**
11 **allowances, leasehold improvements, and broker's commissions;**

12 **(3) Periodic payments on an obligation secured by a principal asset to the**
13 **extent that the amount transferred from income to principal for depreciation is less**
14 **than the periodic payments; and**

15 **(4) Disbursements described in subdivision (7) of subsection 1 of section**
16 **469.453.**

17 **3. If the asset whose ownership gives rise to the disbursements becomes**
18 **subject to a successive income interest after an income interest ends, a trustee may**
19 **continue to transfer amounts from income to principal as provided in subsection**
20 **1 of this section.**

469.459. 1. A tax required to be paid by a trustee based on receipts allocated
2 **to income shall be paid from income.**

3 **2. A tax required to be paid by a trustee based on receipts allocated to**
4 **principal shall be paid from principal, even if the tax is called an income tax by the**
5 **taxing authority.**

6 **3. A tax required to be paid by a trustee on the trust's share of an entity's**
7 **taxable income shall be paid proportionately:**

8 **(1) From income to the extent that receipts from the entity are allocated to**
9 **income; and**

10 **(2) From principal to the extent that:**

11 **(a) Receipts from the entity are allocated to principal; and**

12 **(b) The trust's share of the entity's taxable income exceeds the total receipts**
13 **described in subdivision (1) of this subsection and paragraph (a) of subdivision (2)**
14 **of this subsection.**

15 **4. For purposes of this section, receipts allocated to principal or income**
16 **shall be reduced by the amount distributed to a beneficiary from principal or**
17 **income for which the trust receives a deduction in calculating the tax.**

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

4 **(1) Elections and decisions, other than those described in subsection 2 of**
5 **this section, that the fiduciary makes from time to time regarding tax matters;**

6 **(2) An income tax or any other tax that is imposed upon the fiduciary or a**
7 **beneficiary as a result of a transaction involving or a distribution from the estate**
8 **or trust; or**

9 **(3) The ownership by an estate or trust of an interest in an entity whose**

10 **taxable income, whether or not distributed, is includable in the taxable income of**
11 **the estate, trust, or a beneficiary.**

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

469.463. In applying and construing sections 469.401 to 469.467,
2 **consideration shall be given to the need to promote uniformity of the law with**
3 **respect to its subject matter among states that enact it.**

469.465. If any provision of sections 469.401 to 469.467 or the application of
2 **these sections to any person or circumstance is held invalid, the invalidity does not**
3 **affect other provisions or applications of sections 469.401 to 469.467 which can be**
4 **given effect without the invalid provision or application.**

469.467. 1. Sections 469.401 to 469.467 shall become effective on August 28,
2 **2001.**

3 **2. Sections 469.401 to 469.467 apply to every trust or decedent's estate**
4 **existing on August 28, 2001, except as otherwise expressly provided in the will or**
5 **terms of the trust or in sections 469.401 to 469.467.**

[456.012. Trustees, executors, administrators, and conservators of the
2 estates of minors and disabled persons, unless the terms of the instruments,
3 if any, under which they are acting otherwise provide, shall allocate receipts
4 from sources described in section 456.013 in accordance with that section.]

[456.013. 1. Distributions made from ordinary income by a regulated
2 investment company or by a trust qualifying and electing to be taxed under
3 federal law as a real estate investment trust are income. All other
4 distributions made by the company or trust, including distributions from
5 capital gains, depreciation, or depletion, whether in the form of cash or an
6 option to take new stock or cash or an option to purchase additional shares,

7 are principal.

8 2. The provisions of sections 456.012 and 456.013 shall apply to any
9 receipts received after October 13, 1969, by any trust, guardianship or
10 decedent's estate whether established before or after October 13, 1969, and
11 whether the asset involved was acquired before or after October 13, 1969.]

[456.700. As used in this chapter:

2 (1) "Income beneficiary" means the person to whom income is presently
3 payable or for whom it is accumulated for distribution as income;

4 (2) "Inventory value" means the cost of property purchased by the
5 trustee and the market value of other property at the time it became subject
6 to the trust, but the trustee may use any value finally determined for the
7 purposes of an estate or other transfer tax;

8 (3) "Remainderman" means the person entitled to principal, including
9 income which has been accumulated and added to principal;

10 (4) "Trustee" means an original trustee and any successor or added
11 trustee.]

[456.710. 1. A trust shall be administered with due regard to the
2 respective interests of income beneficiaries and remaindermen. A trust is so
3 administered with respect to the allocation of receipts and expenditures if a
4 receipt is credited or an expenditure is charged to income or principal or partly
5 to each:

6 (1) In accordance with the terms of the trust instrument,
7 notwithstanding contrary provisions of this chapter;

8 (2) In the absence of any contrary terms of the trust instrument, in
9 accordance with the provisions of this chapter; or

10 (3) If neither of the preceding rules of administration is applicable, in
11 accordance with what is reasonable and equitable in view of the interests of
12 those entitled to income as well as of those entitled to principal, and in view
13 of the manner in which men of ordinary prudence, discretion and judgment
14 would act in the management of the affairs of others.

15 2. If the trust instrument gives the trustee discretion in crediting a
16 receipt or charging an expenditure to income or principal or partly to each, no
17 inference of imprudence or partiality arises from the fact that the trustee has
18 made an allocation contrary to a provision of this chapter.]

[456.720. 1. Income is the return in money or property derived from
2 the use of principal or income, including return received as:

- 3 (1) Rent of real or personal property, including sums received for
4 cancellation or renewal of a lease;
- 5 (2) Interest on money lent, including sums received as consideration
6 for the privilege of prepayment of principal except as provided in section
7 456.760 on bond premium and bond discount;
- 8 (3) Income earned during administration of a decedent's estate as
9 provided in section 456.740;
- 10 (4) Corporate distributions as provided in section 456.750;
- 11 (5) Accrued increment on bonds or other obligations issued at discount
12 as provided in section 456.760;
- 13 (6) Receipts from business and farming operations as provided in
14 section 456.770;
- 15 (7) Receipts from disposition of natural resources as provided in
16 sections 456.780 and 456.790;
- 17 (8) Receipts from other principal subject to depletion as provided in
18 section 456.800.
- 19 2. Principal is the property which has been set aside by the owner or
20 the person legally empowered so that it is held in trust eventually to be
21 delivered to a remainderman while the return or use of the principal is in the
22 meantime taken or received by or held for accumulation for an income
23 beneficiary. Principal includes:
- 24 (1) Consideration received by the trustee on the sale or other transfer
25 of principal or on repayment of a loan or as a refund or replacement of a
26 change in the form of principal;
- 27 (2) Proceeds of property taken on eminent domain proceedings;
- 28 (3) Proceeds of insurance upon property forming part of the principal
29 except proceeds of insurance upon a separate interest of an income beneficiary;
- 30 (4) Stock dividends, receipts on liquidation of a corporation, and other
31 corporate distributions as provided in section 456.750;
- 32 (5) Receipts from the disposition of corporate securities as provided in
33 section 456.760;
- 34 (6) Royalties and other receipts from disposition of natural resources
35 as provided in sections 456.780 and 456.790;
- 36 (7) Receipts from other principal subject to depletion as provided in
37 section 456.800;
- 38 (8) Any profit resulting from any change in the form of principal;

39 (9) Any allowances for depreciation established under section 456.770
40 and subdivision (2) of subsection 1 of section 456.810.

41 3. After determining income and principal in accordance with the
42 terms of the trust instrument or of this chapter, the trustee shall charge to
43 income or principal expenses and other charges as provided in section
44 456.810.]

[456.730. 1. An income beneficiary is entitled to income from the date
2 specified in the trust instrument, or, if none is specified, from the date an asset
3 becomes subject to the trust. In the case of an asset becoming subject to a
4 trust by reason of a will, it becomes subject to the trust as of the date of the
5 death of the testator even though there is an intervening period of
6 administration of the testator's estate; but, during such period of
7 administration the personal representative of the testator's estate shall have
8 no duty to distribute income currently to any such income beneficiary, unless
9 otherwise provided by the governing instrument.

10 2. In the administration of a decedent's estate or an asset becoming
11 subject to a trust by reason of a will:

12 (1) Receipts due but not paid at the date of death of the testator are
13 principal;

14 (2) Receipts in the form of periodic payments, other than corporate
15 distributions to stockholders, including rent, interest, or annuities, not due at
16 the date of the death of the testator shall be treated as accruing from day to
17 day. That portion of the receipt accruing before the date of death is principal,
18 and the balance is income.

19 3. In all other cases, any receipt from an income-producing asset is
20 income even though the receipt was earned or accrued in whole or in part
21 before the date when the asset became subject to the trust.

22 4. On termination of an income interest, the income beneficiary whose
23 interest is terminated, or his estate, is entitled to:

24 (1) Income undistributed on the date of termination;

25 (2) Income due but not paid to the trustee on the date of termination;

26 (3) Income in the form of periodic payments, other than corporate
27 distributions to stockholders, including rent, interest, or annuities, not due on
28 the date of termination, accrued from day to day.

29 5. Corporate distributions to stockholders shall be treated as due on
30 the day fixed by the corporation for determination of stockholders of record

entitled to distribution or, if no date is fixed, on the date of declaration of the distribution by the corporation.

6. Unless the terms of the trust refer to this subsection and provide otherwise, upon the death of an income beneficiary who was the spouse of the settlor at the time any property was considered transferred to the trust by the settlor for federal gift tax purposes or was the surviving spouse of a decedent in whose gross estate for federal estate tax purposes was included property which was considered transferred to the trust for federal estate tax purposes as a result of the decedent's death, any item of income described in subsection 4 of this section which is not payable to the estate of the income beneficiary pursuant to that subsection or pursuant to the terms of the trust shall be distributed to those persons, associations, corporations, trusts or governmental agencies, including the estate of the income beneficiary, who shall be appointed to receive such items of income by the income beneficiary by a provision in such beneficiary's will or an inter vivos deed or other instrument signed by such beneficiary. Such power of appointment shall be exercisable by the income beneficiary alone and in all events. If the income beneficiary shall fail so to provide for the appointment of all of such items of income, or if any such provisions shall, for any reason, not effectively appoint all of such items of income, all of such items of income not so effectively appointed shall be distributed pursuant to the terms of the trust. This subsection shall be effective with respect to all wills and revocable inter vivos trusts executed or created by persons who die or have died after December 31, 1981, and to irrevocable inter vivos trusts which are or have been created after December 31, 1981.]

[456.740. 1. Unless the will otherwise provides, and subject to subsection 2 of this section, all expenses incurred in connection with the settlement of a decedent's estate, including debts, funeral expenses, estate taxes, penalties concerning taxes, family allowances, fees of attorneys and personal representatives, and court costs shall be charged against the principal of the estate.

2. Unless the will otherwise provides, income from the assets of a decedent's estate after the death of the testator and before distribution, including income from property used to discharge liabilities, shall be determined in accordance with the rules applicable to a trustee under this chapter and distributed as follows:

(1) To specific legatees and devisees, the income from the property bequeathed or devised to them respectively, less taxes, ordinary repairs, and other expenses of management and operation of the property, and an appropriate portion of interest accrued since the death of the testator on indebtedness secured by such property and of taxes imposed on income, excluding taxes on capital gains, which accrue during the period of administration;

(2) To the legatee of a pecuniary bequest not in trust to the extent the same remains unsatisfied twelve months after the date of the death of the testator, interest, which shall be paid from the balance of the income, at a rate equal to that allowed by law on money due upon order of the court, except that if the court finds that any such bequest cannot be paid without jeopardizing the rights of interested parties because of litigation or other circumstances, the court shall determine what rate of interest, if any, shall be allowed, after taking into consideration the income of the estate; and

(3) To all other legatees and devisees, except legatees of pecuniary bequests not in trust, the remaining balance of the income, less the balance of taxes, ordinary repairs, and other expenses of management and operation of all property from which the estate is entitled to income, interest accrued since the death of the testator, interest paid by the estate with respect to estate taxes and taxes imposed on income, excluding taxes on capital gains, which accrue during the period of administration, in proportion to their respective interests in the undistributed assets of the estate computed at times of distribution on the basis of inventory value; but the amount of income earned during the further administration of the estate from and after the date or dates of payment of any estate tax shall be distributed to such beneficiaries in proportion to their respective interests in the undistributed assets of the estate after the making of such payments on the basis of the fair market value of such assets immediately after the making of such payment.

3. Income received by a trustee under subsection 2 of this section shall be treated as income of the trust.]

[456.750. 1. Corporate distributions of shares of the distributing corporation, including distributions in the form of a stock split or stock dividend, are principal. A right to subscribe to shares or other securities issued by the distributing corporation accruing to stockholders on account of their ownership and the proceeds of any sale of the right are principal.

2. Except to the extent that the corporation indicates that some part of a corporate distribution is a settlement of preferred or guaranteed dividends accrued since the trustee became a stockholder or is in lieu of an ordinary cash dividend, a corporate distribution is principal if the distribution is pursuant to:

(1) A call of shares;

(2) A merger, consolidation, reorganization, or other plan by which assets of the corporation are acquired by another corporation; or

(3) A total or partial liquidation of the corporation, including any distribution which the corporation indicates is a distribution in total or partial liquidation or any distribution of assets, other than cash, pursuant to a court decree or final administrative order by a government agency ordering distribution of the particular assets.

3. Distributions made from ordinary income by a regulated investment company or by a trust qualifying and electing to be taxed under federal law as a real estate investment trust are income. All other distributions made by the company or trust, including distributions from capital gains, depreciation, or depletion, whether in the form of cash or an option to take new stock or cash or an option to purchase additional shares, are principal.

4. Except as provided in subsections 1, 2, and 3 of this section, or unless the trustee determines otherwise, as provided in subsection 5 of this section, all corporate distributions are income, including cash dividends, distributions of or rights to subscribe to shares or securities or obligations of corporations other than the distributing corporation, and the proceeds of the rights or property distributions. Except as provided in subsections 2 and 3 of this section, or otherwise determined by the trustee pursuant to subsection 5 of this section, if the distributing corporation gives a stockholder an option to receive a distribution either in cash or in its own shares, the distribution chosen is income.

5. The trustee may rely upon any statement of the distributing corporation as to any fact relevant under any provision of this chapter concerning the source or character of dividends or distributions of corporate assets.]

[456.760. 1. Bonds or other obligations for the payment of money are principal at their inventory value, except as provided in subsection 2 for discount bonds. No provision shall be made for amortization of bond

premiums or for accumulation for discount. The proceeds of sale, redemption, or other disposition of the bonds or obligations are principal.

2. The increment in value of a bond or other obligation for the payment of money payable at a future time in accordance with a fixed schedule of appreciation in excess of the price at which it was issued is distributable as income. The increment in value is distributable to the beneficiary who was the income beneficiary at the time of increment from the first principal cash available or, if none is available, when realized by sale, redemption, or other disposition. Whenever unrealized increment is distributed as income but out of principal, the principal shall be reimbursed for the increment when realized.]

[456.770. 1. If a trustee uses any part of the principal in the continuance of a business of which the settlor was a sole proprietor or a partner, the net profits and losses of the business shall be computed in accordance with generally accepted accounting principles for a comparable business. Net profits are income; and if a loss results in any fiscal year, the loss shall be carried into a subsequent fiscal year for purposes of computing income of the business.

2. Generally accepted accounting principles shall be used to determine income from an agricultural or farming operation, including the raising of animals or the operation of a nursery.]

[456.780. 1. Unless the governing instrument provides otherwise or the decedent prior to death or the settlor treated the receipts otherwise, if any part of the principal consists of a right to receive royalties, overriding or limited royalties, working interests, production payments, net profit interests, or other interests in minerals or other natural resources in, on or under land, the receipts from taking the natural resources from the land shall be allocated as follows:

(1) If received as rent on a lease or extension payments on a lease, the receipts are income;

(2) If received from a production payment, the receipts are income to the extent of any factor for interest or its equivalent provided in the governing instrument. There shall be allocated to principal the fraction of the balance of the receipts which the unrecovered cost of the production payments bears to the balance owed on the production payment, exclusive of any factor for interest or its equivalent. The receipts not allocated to principal are income;

(3) If received as a royalty, overriding or limited royalty, or bonus, or from a working, net profit, or any other interest in minerals or other natural resources, receipts not provided for in the preceding subdivisions of this subsection shall be apportioned on a yearly basis in accordance with this subdivision whether or not any natural resource was being taken from the land at the time the trust was established. Fifteen percent of the gross receipts, but not to exceed fifty percent of the net receipts remaining after payment of all expenses, direct and indirect, computed without allowance for depletion, shall be added to principal as an allowance for depletion. The balance of the gross receipts, after payment therefrom of all expenses, direct and indirect, is income.

2. If a trustee, on September 28, 1983, held an item of depletable property of a type specified in this section, he shall allocate receipts from the property in the manner used before September 28, 1983, but as to all depletable property acquired on or after September 28, 1983, by an existing or new trust, the method of allocation provided herein shall be used.

3. This section does not apply to timber, water, soil, sod, turf, or mosses.]

[456.790. If any part of the principal consists of land from which merchantable timber may be removed, the receipts from taking the timber from the land shall be allocated in accordance with subdivision (3) of subsection 1 of section 456.710.]

[456.800. Except as provided in sections 456.780 and 456.790, if the principal consists of property subject to depletion, including leaseholds, patents, copyrights, royalty rights, rights to receive payments from a benefit plan including, without limitations, any pension, retirement, individual retirement, death benefit, stock bonus or profit sharing plan, or system of trust, and rights to receive payments on a contract for deferred compensation, in no event shall the trust be deemed to have received income with respect to such property until the trust receives a distribution with respect to such property, and, in any event, only ten percent of the receipts from such property on a noncumulative basis is income, and the balance is principal.]

[456.810. 1. The following charges shall be made against income:

(1) Ordinary expenses incurred in connection with the administration, management, or preservation of the trust property, including regularly recurring taxes assessed against any portion of the principal, water rates,

6 premiums on insurance taken upon the interests of the income beneficiary,
7 remainderman, or trustee, interest paid by the trustee, and ordinary repairs;

8 (2) A reasonable allowance for depreciation on property subject to
9 depreciation under generally accepted accounting principles, but no allowance
10 shall be made for depreciation of that portion of any real property used by a
11 beneficiary as a residence or for depreciation of any property held by the
12 trustee on September 28, 1983, for which the trustee is not then making an
13 allowance for depreciation;

14 (3) Court costs, attorney's fees, and other fees on accountings or
15 judicial proceedings if the matter primarily concerns the income interest,
16 unless the court directs otherwise;

17 (4) One-half of the trustee's regular compensation, whether based on
18 a percentage of principal or income, and all expenses reasonably incurred for
19 current management of principal and application of income;

20 (5) Any tax levied upon receipts defined as income under the
21 provisions of this chapter or the trust instrument and payable by the trustee.

22 2. If charges against income are of unusual amount, the trustee may
23 by means of reserves or other reasonable means charge them over a reasonable
24 period of time and withhold from distribution sufficient sums to regularize
25 distributions.

26 3. The following charges shall be made against principal:

27 (1) Trustee's compensation not chargeable to income under
28 subdivisions (3) and (4) of subsection 1, special compensation of trustees,
29 expenses reasonably incurred in connection with principal, court costs and
30 attorney's fees primarily concerning matters of principal, and trustee's
31 compensation computed on principal as an acceptance, distribution, or
32 termination fee;

33 (2) Charges not provided for in subsection 1, including the cost of
34 investing and reinvesting principal, the payments on principal of an
35 indebtedness, including a mortgage amortized by periodic payments of
36 principal, expenses for preparation of property for rental or sale, and, unless
37 the court directs otherwise, expenses incurred in maintaining or defending any
38 action to construe the trust or protect it or the property or assure the title of
39 any trust property;

40 (3) Extraordinary repairs or expenses incurred in making a capital
41 improvement to principal, including special assessments, but, a trustee may

42 establish an allowance for depreciation out of income to the extent permitted
43 by subdivision (2) of subsection 1 and by section 456.770;

44 (4) Any tax levied upon profit, gain, or other receipts allocated to
45 principal notwithstanding denomination of the tax as an income tax by the
46 taxing authority;

47 (5) If an estate tax is levied in respect of a trust in which both an
48 income beneficiary and a remainderman have an interest, any amount
49 apportioned to the trust, including interest and penalties, even though the
50 income beneficiary also has rights in the principal.

51 4. Regularly recurring charges payable from income shall be
52 apportioned to the same extent and in the same manner that income is
53 apportioned under section 456.730.]

2 [456.820. Except as specifically provided in the trust instrument or the
3 will or in sections 456.700 to 456.820, these sections shall apply to any receipt
4 or expense received or incurred on or after September 28, 1983, by any trust
5 or decedent's estate whether established before or on or after September 28,
6 1983, and whether the asset involved was acquired by the trustee before or on
or after September 28, 1983.]

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