

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1725
102ND GENERAL ASSEMBLY

3643H.04C

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 108.170, 214.330, 362.245, 469.401, 469.402, 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, RSMo, and to enact in lieu thereof fifty-one new sections relating to financial investments, with penalty provisions.

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

Section A. Sections 108.170, 214.330, 362.245, 469.401, 469.402, 469.403, 469.405, 2 469.409, 469.411, 469.413, 469.415, 469.417, 469.419, 469.421, 469.423, 469.425, 469.427, 3 469.429, 469.431, 469.432, 469.433, 469.435, 469.437, 469.439, 469.441, 469.443, 469.445, 4 469.447, 469.449, 469.451, 469.453, 469.455, 469.457, 469.459, 469.461, 469.463, 469.465, 5 and 469.467, RSMo, are repealed and fifty-one new sections enacted in lieu thereof, to be 6 known as sections 108.170, 108.371, 214.330, 362.245, 469.399, 469.401, 469.402, 469.403, 7 469.404, 469.405, 469.413, 469.415, 469.417, 469.419, 469.421, 469.423, 469.425, 469.427, 8 469.429, 469.431, 469.432, 469.433, 469.435, 469.437, 469.439, 469.441, 469.443, 469.445, 9 469.447, 469.449, 469.450, 469.451, 469.453, 469.455, 469.456, 469.457, 469.459, 469.462, 10 469.463, 469.464, 469.465, 469.467, 469.471, 469.473, 469.475, 469.477, 469.479, 469.481, 11 469.483, 469.485, and 469.487, to read as follows:

108.170. 1. Notwithstanding any other provisions of any law or charter to the 2 contrary, any issue of bonds, notes, or other evidences of indebtedness, including bonds, 3 notes, or other evidences of indebtedness payable solely from revenues derived from any 4 revenue-producing facility, hereafter issued under any law of this state by any county, city, 5 town, village, school district, educational institution, drainage district, levee district, nursing

EXPLANATION — Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

6 home district, hospital district, library district, road district, fire protection district, water
7 supply district, sewer district, housing authority, land clearance for redevelopment authority,
8 special authority created under section 64.920, authority created pursuant to the provisions of
9 chapter 238, or other municipality, political subdivision, or district of this state shall be
10 negotiable~~[-]~~; may be issued in ~~[bearer]~~ **book-entry** form or registered form with or without
11 coupons to evidence interest payable thereon~~[-]~~; may be issued in any denomination~~[-and]~~;
12 may bear interest at a rate not exceeding ten percent per annum **or at a rate that is up to two**
13 **hundred fifty basis points above the longest maturity United States Treasury bond,**
14 **whichever is greater**~~[-]~~; and may be sold, at any sale, at ~~[the best price obtainable,]~~ **a**
15 **competitive market yield as evidenced by a signed statement or memorandum from the**
16 **underwriter, bond purchaser, or the issuer's municipal advisor, at a price** not less than
17 ~~[ninety-five]~~ **fifty** percent of the par value thereof, anything in any proceedings heretofore had
18 authorizing such bonds, notes, or other evidence of indebtedness, or in any law of this state or
19 charter provision to the contrary notwithstanding. Such issue of bonds, notes, or other
20 evidence of indebtedness may bear interest at a rate not exceeding fourteen percent per annum
21 **or at a rate that is up to two hundred fifty basis points above the longest maturity**
22 **United States Treasury bond, whichever is greater,** if sold at public sale after giving
23 reasonable notice of such sale, at the ~~[best price obtainable,]~~ **lowest true interest cost bid**
24 **received, at a price** not less than ~~[ninety-five]~~ **fifty** percent of the par value thereof; provided
25 ~~[-]~~ that such bonds, notes, or other evidence of indebtedness may be sold to any agency or
26 corporate or other instrumentality of the state of Missouri or of the federal government at
27 private sale at a rate not exceeding fourteen percent per annum **or at a rate that is up to two**
28 **hundred fifty basis points above the longest maturity United States Treasury bond,**
29 **whichever is greater.** If a political subdivision has an unenhanced bond rating ~~[of AA+ or~~
30 ~~higher, or comparable rating,]~~ **that is one of the two highest long-term ratings or the**
31 **highest short-term rating issued by a nationally recognized rating agency** on its
32 outstanding general obligation bonds or is proposing to issue general obligation bonds with an
33 unenhanced bond rating ~~[of AA+ or higher, or comparable rating]~~ **that is one of the two**
34 **highest long-term ratings or the highest short-term rating issued by a nationally**
35 **recognized rating agency,** the new issue of general obligation bonds shall be issued through
36 a competitive process unless the political subdivision employs the services of a municipal
37 advisor, in which case the political subdivision may use a negotiated or competitive process,
38 except that such requirements shall not apply to any general obligation bonds:

39 (1) Sold, pursuant to written agreement, to the government of the United States of
40 America or of the state of Missouri or to any bureau, department, body corporate,
41 instrumentality, or agency of the United ~~[State]~~ **States** of America or the state of Missouri;

42 (2) Where the principal amount of the bonds issued does not exceed ~~[twelve]~~ **twenty**
43 million ~~[five hundred thousand]~~ dollars; or

44 (3) That are issued or are part of an issue issued to refinance a prior issue of general
45 obligation indebtedness or which are issued contemporaneously with any such issue of
46 refunding bonds; provided, the refunding bonds shall not exceed the principal of the
47 outstanding indebtedness to be refunded and the accrued interest to the date of such refunding
48 bonds.

49

50 A municipal advisor shall not be allowed to profit financially or otherwise, either directly or
51 indirectly, from the underwriter of a negotiated bond issuance.

52 2. Notwithstanding the provisions of subsection 1 of this section to the contrary, the
53 sale of bonds, notes, or other evidence of indebtedness issued by the state board of public
54 buildings created under section 8.010, the state board of fund commissioners created under
55 section 33.300, any port authority created under section 68.010, the bi-state metropolitan
56 development district authorized under section 70.370, any special business district created
57 under section 71.790, any county, as defined in section 108.465, exercising the powers
58 granted by sections 108.450 to 108.470, the ~~[industrial development]~~ **Missouri development**
59 **finance** board created under section 100.265, any planned industrial expansion authority
60 created under section 100.320, the higher education loan authority created under section
61 173.360, the Missouri housing development commission created under section 215.020, the
62 state environmental improvement and energy resources authority created under section
63 260.010, the agricultural and small business development authority created under section
64 348.020, any industrial development corporation created under section 349.035, or the health
65 and educational facilities authority created under section 360.020 shall, with respect to the
66 sales price, manner of sale and interest rate, be governed by the specific sections applicable to
67 each of these entities.

68 3. Any person who is engaged as a municipal advisor by a political corporation or
69 subdivision with respect to a particular issue of securities shall be independent of the
70 underwriter of that issue of securities. For the purposes of this section, "municipal advisor"
71 shall be either:

72 (1) A person registered as a municipal advisor under the rules of the United States
73 Securities and Exchange Commission; or

74 (2) A person who is a chief financial officer of a school district and either:

75 (a) Is a certified public accountant; or

76 (b) Has a masters of business administration and is certified as an administrator of
77 school finance and operations by the Association of School Business Officials International.

78

79 For the purposes of this subsection, "independent" shall have the same meaning as defined by
80 the rules of the United States Securities and Exchange Commission. In determining the
81 individuals or entities that may serve as a municipal advisor, nothing in this section shall be
82 construed to be more restrictive than the definition of a municipal advisor as established by
83 the United States Securities and Exchange Commission.

84 4. Notwithstanding other provisions of this section or other law, the sale of bonds,
85 notes, or other evidence of indebtedness issued by any housing authority created under
86 section 99.040 may be sold at any sale, at the ~~[best-price]~~ **lowest true interest cost**
87 obtainable, not less than ~~[ninety-five]~~ **fifty** percent of the par value thereof, and may bear
88 interest at a rate not exceeding fourteen percent per annum **or at a rate that is up to two**
89 **hundred fifty basis points above the longest maturity United States Treasury bond,**
90 **whichever is greater.** The sale shall be a public sale unless the issuing jurisdiction adopts a
91 resolution setting forth clear justification why the sale should be a private sale except that
92 private activity bonds may be sold either at public or private sale.

93 5. Notwithstanding other provisions of this section or law, industrial development
94 revenue bonds may be sold at private sale and bear interest at a rate not exceeding fourteen
95 percent per annum **or at a rate that is up to two hundred fifty basis points above the**
96 **longest maturity United States Treasury bond, whichever is greater,** at the ~~[best-price]~~
97 **lowest true interest cost** obtainable, not less than ~~[ninety-five]~~ **fifty** percent of the par value
98 thereof.

99 6. Notwithstanding other provisions in subsection 1 of this section to the contrary,
100 revenue bonds issued for airport purposes by any constitutional charter city in this state which
101 now has or may hereafter acquire a population of more than three hundred thousand but less
102 than six hundred thousand inhabitants, according to the last federal decennial census, may
103 bear interest at a rate not exceeding fourteen percent per annum **or at a rate that is up to two**
104 **hundred fifty basis points above the longest maturity United States Treasury bond,**
105 **whichever is greater,** if sold at public sale after giving reasonable notice, at the ~~[best-price]~~
106 **lowest true interest cost** obtainable, not less than ~~[ninety-five]~~ **fifty** percent of the par value
107 thereof.

108 7. For purposes of the interest rate limitations set forth in this section, the interest rate
109 on bonds, notes or other evidence of indebtedness described in this section means the rate at
110 which the present value of the debt service payments on an issue of bonds, notes or other
111 evidence of indebtedness, discounted to the date of issuance, equals the original price at
112 which such bonds, notes or other evidence of indebtedness are sold by the issuer. Interest on
113 bonds, notes or other evidence of indebtedness may be paid periodically at such times as shall
114 be determined by the governing body of the issuer and may be compounded in accordance
115 with section 408.080.

116 8. Notwithstanding any provision of law or charter to the contrary:

117 (1) Any entity referenced in subsection 1 or 2 of this section and any other political
118 corporation of the state which entity or political corporation has an annual operating budget
119 for the current year exceeding twenty-five million dollars may, in connection with managing
120 the cost to such entity or political corporation of purchasing fuel, electricity, natural gas, and
121 other commodities used in the ordinary course of its lawful operations, enter into agreements
122 providing for fixing the cost of such commodity, including without limitation agreements
123 commonly referred to as hedges, futures, and options; provided that as of the date of such
124 agreement, such entity or political corporation shall have complied with subdivision (3) of
125 this subsection; and further provided that no eligible school **entity**, as defined in section
126 393.310, shall be authorized by this subsection to enter into such agreements in connection
127 with the purchase of natural gas while the tariffs required under section 393.310 are in effect;

128 (2) Any entity referenced in subsection 1 or 2 of this section and any other political
129 corporation of the state may, in connection with its bonds, notes, or other obligations then
130 outstanding or to be issued and bearing interest at a fixed or variable rate, enter into
131 agreements providing for payments based on levels of or changes in interest rates, including
132 without limitation certain derivative agreements commonly referred to as interest rate swaps,
133 hedges, caps, floors, and collars, provided that:

134 (a) As of the date of issuance of the bonds, notes, or other obligations to which such
135 agreement relates, such entity or political corporation will have bonds, notes, or other
136 obligations outstanding in an aggregate principal amount of at least fifty million dollars; and

137 (b) As of the date of such agreement, such entity's or political corporation's bonds,
138 notes, or other obligations then outstanding or to be issued have received a stand-alone credit
139 rating in one of the ~~[two highest categories, without regard to any gradation within such~~
140 ~~categories, from at least one]~~ **four highest long-term ratings or the highest short-term**
141 **rating issued by a** nationally recognized credit rating agency, or such entity or political
142 corporation has an issuer or general credit rating, in one of the ~~[two highest categories,~~
143 ~~without regard to any gradation within such categories, from at least one]~~ **four highest long-**
144 **term ratings or the highest short-term rating issued by a** nationally recognized credit
145 rating agency; and

146 (c) As of the date of such agreement, such entity or political corporation shall have
147 complied with subdivision (3) of this subsection;

148 (3) Prior to entering into any agreements pursuant to subdivision (1) or (2) of this
149 subsection, the governing body of the entity or political corporations entering into such
150 agreements shall have adopted a written policy governing such agreements. Such policy shall
151 be prepared by integrating the recommended practices published by the Government Finance
152 Officers Association or comparable nationally recognized professional organization and shall

153 provide guidance with respect to the permitted purposes, authorization process, mitigation of
154 risk factors, ongoing oversight responsibilities, market disclosure, financial strategy, and any
155 other factors in connection with such agreements determined to be relevant by the governing
156 body of such entity or political corporation. Such entity or political corporation may enter
157 into such agreements at such times and such agreements may contain such payment, security,
158 default, remedy, and other terms and conditions as shall be consistent with the written policy
159 adopted under this subdivision and as may be approved by the governing body of such entity
160 or other obligated party, including any rating by any nationally recognized rating agency and
161 any other criteria as may be appropriate;

162 (4) Nothing in this subsection shall be applied or interpreted to authorize any such
163 entity or political corporation to enter into any such agreement for investment purposes or to
164 diminish or alter the special or general power any such entity or political corporation may
165 otherwise have under any other provisions of law including the special or general power of
166 any interstate transportation authority.

167 9. The state treasurer shall make available to municipalities, political subdivisions, or
168 districts listed under subsection 1 of this section relevant information regarding debt issuance
169 and bidding processes, including best practices resources published by a national association
170 of government finance officers on debt issuance, to aid such entities with the process of
171 issuing debt and awarding bonds to the best bidder.

**108.371. 1. As used in this section, "eligible green project" means a project or
2 activity that relates to and supports a positive environmental impact including, but not
3 limited to, assets, investments, and other related and supporting expenditures that relate
4 to any of the following or other similar categories:**

5 (1) **Renewable energy including, but not limited to, production, transmission,
6 and appliances and products;**

7 (2) **Energy efficiency, such as in new and refurbished buildings, energy storage,
8 district heating, smart grids, and appliances and products;**

9 (3) **Pollution prevention and control including, but not limited to, reduction of
10 air emissions, greenhouse gas control, soil remediation, waste prevention, waste
11 reduction, waste recycling, and energy or emission-efficient waste to energy;**

12 (4) **Environmentally sustainable management of living natural resources and
13 land use including, but not limited to, environmentally sustainable agriculture,
14 environmentally sustainable animal husbandry, climate-smart farm inputs such as
15 biological crop protection or drip-irrigation, environmentally sustainable fishery and
16 aquaculture, environmentally sustainable forestry including, but not limited to,
17 afforestation or reforestation, and preservation or restoration of natural landscapes;**

18 **(5) Terrestrial and aquatic biodiversity conservation including, but not limited**
19 **to, the protection of coastal, marine, and watershed environments;**

20 **(6) Clean transportation, such as electric, hybrid, public, rail, nonmotorized,**
21 **and multimodal transportation; infrastructure for clean energy vehicles; and reduction**
22 **of harmful emissions;**

23 **(7) Sustainable water and wastewater management including, but not limited to,**
24 **sustainable infrastructure for clean or drinking water, wastewater treatment,**
25 **sustainable urban drainage systems, and river training and other forms of flooding**
26 **mitigation;**

27 **(8) Climate change adaptation including, but not limited to, efforts to make**
28 **infrastructure more resilient to impacts of climate change, as well as information**
29 **support systems, such as climate observation and early warning systems;**

30 **(9) Circular-economy adapted products, production technologies, and processes,**
31 **such as the design and introduction of reusable, recyclable, and refurbished materials,**
32 **components, and products; circular tools and services; and certified eco-efficient**
33 **products; and**

34 **(10) Green buildings that meet regional, national, or internationally recognized**
35 **standards or certifications for environmental performance.**

36 **2. For a municipal bond issued in this state to be rated or validated as a green**
37 **bond, at least eighty-five percent of the bond proceeds shall be used for eligible green**
38 **projects.**

39 **3. (1) Except as provided in subdivision (2) of this subsection, notwithstanding**
40 **any other provision of law to the contrary, the interest on and income from a municipal**
41 **bond that is rated or validated as a green bond shall be exempt from income taxation by**
42 **this state. Capital gains taxes on bonds issued under this section are not exempt from**
43 **income taxation by this state.**

44 **(2) The exemption from income taxation provided under subdivision (1) of this**
45 **subsection shall not apply to a municipal bond that is rated or validated as a green bond**
46 **and that is issued to finance a project by a private entity.**

47 **4. (1) The state auditor may conduct an audit of municipal green bonds issued**
48 **by a municipality to review whether such bonds comply with the requirements of this**
49 **section for being rated or validated as a green bond. The state auditor may conduct**
50 **such audit at the state auditor's discretion and shall conduct such audit in the same**
51 **manner as the state auditor conducts other similar audits under chapter 29.**

52 **(2) If a review of a municipal green bond determines that less than eighty-five**
53 **percent of the bond proceeds were or are being used for eligible green projects, the**
54 **green bond rating or validation on such municipal bond shall be void, the exemption**

55 **from state income taxation provided under subsection 3 of this section for the interest on**
56 **and income from such municipal bond shall be void, and the bond holder may recoup**
57 **the amount of such taxes from the issuer of the bond. Notwithstanding any statute of**
58 **limitation to the contrary, the bond holder shall pay, and the department of revenue**
59 **may assess and collect, state income tax on the interest on and income from such**
60 **municipal bond.**

61 **5. To protect municipal green bond holders and provide moneys for such bond**
62 **holders to recoup the amount of taxes as provided in subsection 4 of this section, a**
63 **municipality that issues a municipal green bond shall establish a green bond holder**
64 **protection fund separate from the municipality's debt service reserve fund or equivalent**
65 **fund upon a finding by the state auditor that a bond issued by the municipality does not**
66 **meet the percentage required by subsection 2 of this section to be used for eligible green**
67 **projects. The amount maintained in the green bond holder protection fund shall be**
68 **equal to at least the amount of interest to be paid each year on such municipal green**
69 **bond multiplied by the top state income tax rate applicable to individuals under section**
70 **143.011.**

214.330. 1. (1) The endowed care trust fund required by sections 214.270 to 214.410
2 shall be permanently set aside in trust or in accordance with the provisions of subsection 2 of
3 this section. The trustee of the endowed care trust shall be a state or federally chartered
4 financial institution authorized to exercise trust powers in Missouri. The contact information
5 for a trust officer or duly appointed representative of the trustee with knowledge and access to
6 the trust fund accounting and trust fund records must be disclosed to the office or its duly
7 authorized representative upon request.

8 (2) The trust fund records, including all trust fund accounting records, shall be
9 maintained in the state of Missouri at all times or shall be electronically stored so that the
10 records may be made available in the state of Missouri within fifteen business days of receipt
11 of a written request. The operator of an endowed care cemetery shall maintain a current name
12 and address of the trustee and the records custodian for the endowed care trust fund and shall
13 supply such information to the office, or its representative, upon request.

14 (3) Missouri law shall control all endowed care trust funds and the Missouri courts
15 shall have jurisdiction over endowed care trusts regardless of where records may be kept or
16 various administrative tasks may be performed.

17 2. An endowed care trust fund shall be administered in accordance with Missouri law
18 governing trusts, including but not limited to the applicable provisions of chapters 456 and
19 469, except as specifically provided in this subsection or where the provisions of sections
20 214.270 to 214.410 provide differently, provided that a cemetery operator shall not in any

21 circumstances be authorized to restrict, enlarge, change, or modify the requirements of this
22 section or the provisions of chapters 456 and 469 by agreement or otherwise.

23 (1) Income and principal of an endowed care trust fund shall be determined under the
24 provisions of law applicable to trusts, except that the ~~[provisions of section 469.405 shall not~~
25 ~~apply]~~ **trustee shall have:**

26 (a) **No power of adjustment under section 469.405;**

27 (b) **No power of conversion either from an income trust to a unitrust or from a**
28 **unitrust to an income trust under section 469.475;**

29 (c) **No power or discretion to determine or modify the unitrust rate, as**
30 **established in the terms of the endowed care trust agreement; and**

31 (d) **No discretion to determine applicable value for purposes of computing the**
32 **unitrust amount beyond that granted by law and exercised solely for reasons of**
33 **administrative convenience and not to affect the size of distributions.**

34

35 **In determining applicable value under section 469.473, values over a three-year period**
36 **if available, or the duration of the trust if shorter, shall be used.**

37 (2) No principal shall be distributed from an endowed care trust fund except to the
38 extent that a unitrust ~~[election is in effect with respect to such trust under the provisions of~~
39 ~~section 469.411]~~ **amount is required by the terms of the endowed care trust fund**
40 **agreement under subdivision (6) of this subsection.**

41 (3) No right to transfer jurisdiction from Missouri under section 456.1-108 shall exist
42 for endowed care trusts.

43 (4) All endowed care trusts shall be irrevocable.

44 (5) No trustee shall have the power to terminate an endowed care trust fund under the
45 provisions of section 456.4-414.

46 (6) A unitrust ~~[election made in accordance with the provisions of chapter 469 shall~~
47 ~~be made by the cemetery operator in the terms of the endowed care trust fund agreement~~
48 ~~itself, not by the trustee]~~ **definition of income under sections 469.471 to 469.487 shall be**
49 **established by the cemetery operator in the terms of the endowed care trust fund**
50 **agreement itself, not by the trustee, and shall not provide for a unitrust rate exceeding**
51 **five percent per annum. The unitrust rate shall be changed only by amendment to the**
52 **agreement as provided in this section.**

53 (7) No contract of insurance shall be deemed a suitable investment for an endowed
54 care trust fund.

55 (8) The income from the endowed care fund may be distributed to the cemetery
56 operator at least annually on a date designated by the cemetery operator **by record**, but no
57 later than sixty days following the end of the ~~[trust fund]~~ **trust's fiscal** year. Any income not

58 distributed within sixty days following the end of the trust's fiscal year shall be added to and
59 held as part of the principal of the trust fund. **The cemetery operator may instruct by**
60 **record the trustee to distribute less than all the income distributable for the year if the**
61 **cemetery operator determines that the money is not needed.**

62 3. The cemetery operator shall have the duty and responsibility to apply the income
63 distributed to provide care and maintenance only for that part of the cemetery designated as
64 an endowed care section and not for any other purpose.

65 4. In addition to any other duty, obligation, or requirement imposed by sections
66 214.270 to 214.410 or the endowed care trust agreement, the trustee's duties shall be the
67 maintenance of records related to the trust and the accounting for and investment of moneys
68 deposited by the operator to the endowed care trust fund.

69 (1) For the purposes of sections 214.270 to 214.410, the trustee shall not be deemed
70 responsible for the care, the maintenance, or the operation of the cemetery, or for any other
71 matter relating to the cemetery, or the proper expenditure of funds distributed by the trustee to
72 the cemetery operator, including, but not limited to, compliance with environmental laws and
73 regulations.

74 (2) With respect to cemetery property maintained by endowed care funds, the
75 cemetery operator shall be responsible for the performance of the care and maintenance of the
76 cemetery property.

77 5. If the endowed care cemetery fund is not permanently set aside in a trust fund as
78 required by subsection 1 of this section, then the funds shall be permanently set aside in an
79 escrow account in the state of Missouri. Funds in an escrow account shall be placed in an
80 endowed care trust fund under subsection 1 if the funds in the escrow account exceed three
81 hundred fifty thousand dollars, unless otherwise approved by the division for good cause.
82 The account shall be insured by the Federal Deposit Insurance Corporation or comparable
83 deposit insurance and held in a state or federally chartered financial institution authorized to
84 do business in Missouri and located in this state.

85 (1) The interest from the escrow account may be distributed to the cemetery operator
86 at least in annual or semiannual installments, but not later than six months following the
87 calendar year. Any interest not distributed within six months following the end of the
88 calendar year shall be added to and held as part of the principal of the account.

89 (2) The cemetery operator shall have the duty and responsibility to apply the interest
90 to provide care and maintenance only for that part of the cemetery in which burial space shall
91 have been sold and with respect to which sales the escrow account shall have been established
92 and not for any other purpose. The principal of such funds shall be kept intact. The cemetery
93 operator's duties shall be the maintenance of records and the accounting for an investment of
94 moneys deposited by the operator to the escrow account. For purposes of sections 214.270 to

95 214.410, the administrator of the office of endowed care cemeteries shall not be deemed to be
96 responsible for the care, maintenance, or operation of the cemetery. With respect to cemetery
97 property maintained by cemetery care funds, the cemetery operator shall be responsible for
98 the performance of the care and maintenance of the cemetery property owned by the cemetery
99 operator.

100 (3) The division may approve an escrow agent if the escrow agent demonstrates the
101 knowledge, skill, and ability to handle escrow funds and financial transactions and is of good
102 moral character.

103 6. The cemetery operator shall be accountable to the owners of burial space in the
104 cemetery for compliance with sections 214.270 to 214.410.

105 7. Excluding funds held in an escrow account, all endowed care trust funds shall be
106 administered in accordance with an endowed care trust fund agreement, which shall be
107 submitted to the office by the cemetery operator for review and approval. The endowed care
108 cemetery shall be notified in writing by the office of endowed care cemeteries regarding the
109 approval or disapproval of the endowed care trust fund agreement and regarding any changes
110 required to be made for compliance with sections 214.270 to 214.410 and the rules and
111 regulations promulgated thereunder.

112 8. All endowed care cemeteries shall be under a continuing duty to file with the office
113 of endowed care cemeteries and to submit for prior approval any and all changes,
114 amendments, or revisions of the endowed care trust fund agreement at least thirty days before
115 the effective date of such change, amendment, or revision.

116 9. If the endowed care trust fund agreement, or any changes, amendments, or
117 revisions filed with the office, are not disapproved by the office within thirty days after
118 submission by the cemetery operator, the endowed care trust fund agreement, or the related
119 change, amendment, or revision, shall be deemed approved and may be used by the cemetery
120 operator and the trustee. Notwithstanding any other provision of this section, the office may
121 review and disapprove an endowed care trust fund agreement, or any submitted change,
122 amendment, or revision, after the thirty days provided herein or at any other time if the
123 agreement is not in compliance with sections 214.270 to 214.410 or the rules promulgated
124 thereunder. Notice of disapproval by the office shall be in writing and delivered to the
125 cemetery operator and the trustee within ten days of disapproval.

126 10. Funds in an endowed care trust fund or escrow account may be commingled with
127 endowed care funds for other endowed care cemeteries, provided that the cemetery operator
128 and the trustee shall maintain adequate accounting records of the disbursements,
129 contributions, and income allocated for each cemetery.

130 11. By accepting the trusteeship of an endowed care trust or accepting funds as an
131 escrow agent pursuant to sections 214.270 to 214.410, the trustee or escrow agent submits

132 personally to the jurisdiction of the courts of this state and the office of endowed care
133 cemeteries regarding the administration of the trust or escrow account. A trustee or escrow
134 agent shall consent in writing to the jurisdiction of the state of Missouri and the office in
135 regards to the trusteeship or the operation of the escrow account and to the appointment of the
136 office of secretary of state as its agent for service of process regarding any administrative or
137 legal actions relating to the trust or the escrow account, if it has no designated agent for
138 service of process located in this state. Such consent shall be filed with the office prior to
139 accepting funds pursuant to sections 214.270 to 214.410 as trustee or as an escrow agent on a
140 form provided by the office by rule.

362.245. 1. The affairs and business of the corporation shall be managed by a board
2 of directors, consisting of not less than five nor more than thirty-five stockholders who shall
3 be elected annually; except, that trust companies in existence on October 13, 1967, may
4 continue to divide the directors into three classes of equal number, as near as may be, and to
5 elect one class each year for three-year terms. Notwithstanding any provision of this chapter
6 to the contrary, a director who is not a stockholder shall have all the rights, privileges, and
7 duties of a director who is a stockholder.

8 2. Each director shall be a citizen of the United States, and **except for a private trust**
9 **company as described under section 361.160**, at least a majority of the directors must be
10 residents of this state at the time of their election and during their continuance in office;
11 provided, however, that if a director actually resides within a radius of one hundred miles of
12 the banking house of said bank or trust company, even though his or her residence be in
13 another state adjoining and contiguous to the state of Missouri, he or she shall for the
14 purposes of this section be considered as a resident of this state and in the event such director
15 shall be a nonresident of the state of Missouri he or she shall upon his or her election as a
16 director file with the president of the banking house or such other chief executive [~~office~~]
17 **officer** as otherwise permitted by this chapter written consent to service of legal process upon
18 him in his or her capacity as a director by service of the legal process upon the president as
19 though the same were personally served upon the director in Missouri.

20 3. If at a time when not more than a majority of the directors are residents of this
21 state, **except for a private trust company as described under section 361.160**, any director
22 shall cease to be a resident of this state or adjoining state as [~~defined~~] **described** in subsection
23 2 of this section, he or she shall forthwith cease to be a director of the bank or trust company
24 and his or her office shall be vacant.

25 4. No person shall be a director in any bank or trust company against whom such
26 bank or trust company shall hold a judgment.

27 5. Cumulative voting shall only be permitted at any meeting of the members or
28 stockholders in electing directors when it is provided for in the articles of incorporation or
29 bylaws.

469.399. Sections 469.399 to 469.487 shall be known and may be cited as the
2 **"Missouri Uniform Fiduciary Income and Principal Act".**

469.401. As used in sections ~~[469.401]~~ **469.399** to ~~[469.467]~~ **469.487**, the following
2 terms mean:

3 (1) "Accounting period", a calendar year unless ~~[another twelve-month period is~~
4 ~~selected by]~~ a fiduciary **selects another period of twelve calendar months or**
5 **approximately twelve calendar months.** The term includes a ~~[portion]~~ part of a
6 calendar year or ~~[other twelve-month]~~ **another period [that] of twelve calendar months or**
7 **approximately twelve calendar months that** begins when an income interest begins or ends
8 when an income interest ends;

9 (2) "Asset-backed security", a security that is serviced primarily by the cash
10 flows of a discrete pool of fixed or revolving receivables or other financial assets that by
11 their terms convert into cash within a finite time. The term includes rights or other
12 assets that ensure the servicing or timely distribution of proceeds to the holder of the
13 asset-backed security. The term does not include an asset to which section 469.423,
14 469.437, or 469.447 applies;

15 (3) "Beneficiary"~~[-]~~ includes:

16 (a) For a trust:

17 a. A current beneficiary, including a current income beneficiary and a
18 beneficiary that may receive only principal;

19 b. A remainder beneficiary; and

20 c. Any other successor beneficiary;

21 (b) For an estate, an heir, legatee, and devisee ~~[of a decedent's estate, and an income~~
22 ~~beneficiary and a remainder beneficiary of a trust, including any type of entity that has a~~
23 ~~beneficial interest in either an estate or a trust]; and~~

24 (c) For a life estate or term interest, a person that holds a life estate, term
25 interest, or remainder or other interest following a life estate or term interest;

26 (4) "Court", any court in this state having jurisdiction relating to a trust, estate,
27 life estate, or other term interest described in subdivision (2) of subsection 1 of section
28 469.402;

29 (5) "Current income beneficiary", a beneficiary to which a fiduciary may
30 distribute net income, whether or not the fiduciary also may distribute principal to the
31 beneficiary;

32 **(6) "Distribution"**, a payment or transfer by a fiduciary to a beneficiary in the
33 beneficiary's capacity as a beneficiary, made under the terms of the trust, without
34 consideration other than the beneficiary's right to receive the payment or transfer
35 under the terms of the trust. "Distribute", "distributed", and "distributee" have
36 corresponding meanings;

37 **(7) "Estate"**, a decedent's estate. The term includes the property of the decedent
38 as the estate is originally constituted and the property of the estate as it exists at any
39 time during administration;

40 ~~[(3)]~~ **(8) "Fiduciary"**~~[-]~~ includes a trustee, trust protector determined under
41 section 456.8-808, personal representative, ~~[trustee, executor, administrator, successor~~
42 ~~personal representative, special administrator and any other person performing~~
43 ~~substantially the same function]~~ life tenant, holder of a term interest, and person acting
44 under a delegation from a fiduciary. The term includes a person that holds property for
45 a successor beneficiary whose interest may be affected by an allocation of receipts and
46 expenditures between income and principal. If there are two or more co-fiduciaries, the
47 term includes all co-fiduciaries acting under the terms of the trust and applicable law;

48 ~~[(4)]~~ **(9) "Income"**, money or other property ~~[that]~~ a fiduciary receives as current
49 return from ~~[a]~~ principal ~~[asset, including a portion]~~. The term includes a part of receipts
50 from a sale, exchange, or liquidation of a principal asset, ~~[as]~~ to the extent provided in
51 sections 469.423 to ~~[469.449]~~ **469.450**;

52 ~~[(5)]~~ **"Income beneficiary"**, a person to whom net income of a trust is or may be
53 payable;

54 ~~[(6)]~~ **(10) "Income interest"**, the right of ~~[an]~~ a current income beneficiary to receive
55 all or part of net income, whether the terms of the trust require ~~[it]~~ the net income to be
56 distributed or authorize ~~[it]~~ the net income to be distributed in the ~~[trustee's]~~ fiduciary's
57 discretion. The term includes the right of a current beneficiary to use property held by a
58 fiduciary;

59 **(11) "Independent person"**, a person that is not:

60 **(a) For a trust:**

61 a. A qualified beneficiary as defined under section 456.1-103;

62 b. A settlor of the trust; or

63 c. An individual whose legal obligation to support a beneficiary may be satisfied
64 by a distribution from the trust;

65 **(b) For an estate, a beneficiary;**

66 **(c) A spouse, parent, brother, sister, or issue of an individual described in**
67 **paragraph (a) or (b) of this subdivision;**

68 **(d) A corporation, partnership, limited liability company, or other entity in**
69 **which persons described in paragraphs (a) to (c) of this subdivision, in the aggregate,**
70 **have voting control; or**

71 **(e) An employee of a person described in paragraph (a), (b), (c), or (d) of this**
72 **subdivision;**

73 ~~[(7)]~~ **(12) "Mandatory income interest", the right of ~~[an]~~ a current income**
74 **beneficiary to receive net income that the terms of the trust require the fiduciary to distribute;**

75 ~~[(8)]~~ **(13) "Net income", [if section 469.411 applies to the trust, the unitrust amount,**
76 **or if section 469.411 does not apply to the trust,] the total [receipts allocated to income]**
77 **allocations during an accounting period to income under the terms of a trust and sections**
78 **469.399 to 469.487 minus the disbursements [made from income during the same period, plus**
79 **or minus transfers pursuant to sections 469.401 to 469.467 to or from income during the same**
80 **period] during the period, other than distributions, allocated to income under the terms**
81 **of the trust and sections 469.399 to 469.487. To the extent the trust is a unitrust under**
82 **sections 469.471 to 469.487, "net income" means the unitrust amount determined**
83 **thereunder. "Net income" includes an adjustment from principal to income under**
84 **section 469.405. The term does not include an adjustment from income to principal**
85 **under section 469.405;**

86 ~~[(9)]~~ **(14) "Person", an individual, [corporation, business trust,] estate, trust,**
87 **[partnership, limited liability company, association, joint venture] business or nonprofit**
88 **entity, public corporation, government[;] or governmental subdivision, agency, or**
89 **instrumentality, [public corporation] or [any] other legal [or commercial] entity;**

90 **(15) "Personal representative", an executor, administrator, successor personal**
91 **representative, special administrator, or person that performs substantially the same**
92 **function with respect to an estate under the law governing the person's status;**

93 ~~[(10)]~~ **(16) "Principal", property held in trust for distribution to [a remainder],**
94 **production of income for, or use by a current or successor beneficiary [when the trust**
95 **terminates];**

96 ~~[(11)]~~ **"Qualified beneficiary", a beneficiary defined in section 456.1-103;**

97 ~~[(12)]~~ **"Remainder beneficiary", a person entitled to receive principal when an income**
98 **interest ends;**

99 ~~[(13)]~~ **(17) "Record", information that is inscribed on a tangible medium or that**
100 **is stored in an electronic or other medium and is retrievable in perceivable form;**

101 **(18) "Settlor", a person, including a testator, that creates or contributes**
102 **property to a trust. If more than one person creates or contributes property to a trust,**
103 **the term includes each person, to the extent of the trust property attributable to that**

104 person's contribution, except to the extent another person has the power to revoke or
105 withdraw that portion;

106 (19) "Special tax benefit":

107 (a) Exclusion of a transfer to a trust from gifts described in 26 U.S.C. Section
108 2503(b), as amended, because of the qualification of an income interest in the trust as a
109 present interest in property;

110 (b) Status as a qualified subchapter S trust described in 26 U.S.C. Section 1361
111 (d)(3), as amended, at a time the trust holds stock of an S corporation described in 26
112 U.S.C. Section 1361(a)(1), as amended;

113 (c) An estate or gift tax marital deduction for a transfer to a trust under 26
114 U.S.C. Section 2056 or 2523, as amended, which depends or depended in whole or in
115 part on the right of the settlor's spouse to receive the net income of the trust;

116 (d) Exemption in whole or in part of a trust from the federal generation-skipping
117 transfer tax imposed by 26 U.S.C. Section 2601, as amended, because the trust was
118 irrevocable on September 25, 1985, if there is any possibility that:

119 a. A taxable distribution, as defined in 26 U.S.C. Section 2612(b), as amended,
120 could be made from the trust; or

121 b. A taxable termination, as defined in 26 U.S.C. Section 2612(a), as amended,
122 could occur with respect to the trust; or

123 (e) An inclusion ratio, as defined in 26 U.S.C. Section 2642(a), as amended, of the
124 trust which is less than one, if there is any possibility that:

125 a. A taxable distribution, as defined in 26 U.S.C. Section 2612(b), as amended,
126 could be made from the trust; or

127 b. A taxable termination, as defined in 26 U.S.C. Section 2612(a), as amended,
128 could occur with respect to the trust;

129 (20) "Successive interest", the interest of a successor beneficiary;

130 (21) "Successor beneficiary", a person entitled to receive income or principal or
131 to use property when an income interest or other current interest ends;

132 (22) "Terms of a trust":

133 (a) Except as otherwise provided in paragraph (b) of this subdivision, the
134 manifestation of the settlor's ~~or decedent's~~ intent regarding a trust's provisions as:

135 a. Expressed in ~~a manner which is~~ the trust instrument; or

136 b. Established by other evidence that would be admissible ~~as proof~~ in a judicial
137 proceeding~~[- whether by written or spoken words or by conduct];~~

138 (b) The trust's provisions as established, determined, or amended by:

139 a. A trustee or trust director in accordance with applicable law;

140 b. Court order; or

- 141 **c. A nonjudicial settlement agreement under section 456.1-111;**
 142 **(c) For an estate, a will; or**
 143 **(d) For a life estate or term interest, the corresponding manifestation of the**
 144 **rights of the beneficiaries;**
 145 **(23) "Trust":**
 146 **(a) Includes:**
 147 **a. An express trust, private or charitable, with additions to the trust, wherever**
 148 **and however created; and**
 149 **b. A trust created or determined by judgment or decree under which the trust is**
 150 **to be administered in the manner of an express trust; and**
 151 **(b) Does not include:**
 152 **a. A constructive trust;**
 153 **b. A resulting trust, conservatorship, guardianship, multi-party account,**
 154 **custodial arrangement for a minor, business trust, voting trust, security arrangement,**
 155 **liquidation trust, or trust for the primary purpose of paying debts, dividends, interest,**
 156 **salaries, wages, profits, pensions, retirement benefits, or employee benefits of any kind;**
 157 **or**
 158 **c. An arrangement under which a person is a nominee, escrowee, or agent for**
 159 **another;**
 160 ~~[(14)]~~ **(24) "Trustee", a person, other than a personal representative, that owns or**
 161 **holds property for the benefit of a beneficiary. The term includes an original, additional,**
 162 **or successor trustee, whether or not appointed or confirmed by a court;**
 163 ~~[(15) "Unitrust amount", net income as defined by section 469.411]~~ **(25) "Will", any**
 164 **testamentary instrument recognized by applicable law that makes a legally effective**
 165 **disposition of an individual's property, effective at the individual's death. The term**
 166 **includes a codicil or other amendment to a testamentary instrument.**
- 469.402. ~~[The provisions of sections 456.3-301 to 456.3-305 shall apply to sections~~
 2 ~~469.401 to 469.467 for all purposes.]~~ **1. Except as otherwise provided in the terms of a**
 3 **trust or sections 469.399 to 469.487, sections 469.399 to 469.487 apply to:**
 4 **(1) A trust or estate; and**
 5 **(2) A life estate or other term interest in which the interest of one or more**
 6 **persons will be succeeded by the interest of one or more other persons.**
 7 **2. Except as otherwise provided in the terms of a trust or sections 469.399 to**
 8 **469.487, sections 469.399 to 469.487 apply when this state is the principal place of**
 9 **administration of a trust or estate or the situs of property that is not held in a trust or**
 10 **estate and is subject to a life estate or other term interest described in subdivision (2) of**
 11 **subsection 1 of this section. By accepting the trusteeship of a trust having its principal**

12 **place of administration in this state or by moving the principal place of administration**
 13 **of a trust to this state, the trustee submits to the application of sections 469.399 to**
 14 **469.487 to any matter within the scope of sections 469.399 to 469.487 involving the trust.**

2 ~~469.403. 1. [In allocating receipts and disbursements to or between principal and~~
 3 ~~income, and with respect to any matter within the scope of]~~ **In making an allocation or**
 4 **determination or exercising discretion under** sections 469.413 to 469.421, a fiduciary

5 **shall:**
 6 **(1) [Shall] Act in good faith, based on what is fair and reasonable to all**

7 **beneficiaries;**
 8 **(2) Administer a trust or estate [under] impartially, except to the extent the terms of**
 9 **the trust manifest an intent that the fiduciary shall or [the will] may favor one or more**
 10 **beneficiaries;**

11 **(3) Administer the trust or estate in accordance with the terms of the trust, even**
 12 **if there is a different provision in sections [469.401] 469.399 to [469.467] 469.487; and**

13 ~~[(2) May]~~ **(4) Administer [a] the trust or estate [by exercising] in accordance with**
 14 **sections 469.399 to 469.487, except to the extent the terms of the trust provide otherwise**
 15 **or authorize the fiduciary to determine otherwise.**

16 **2. A fiduciary's allocation, determination, or exercise of discretion under**
 17 **sections 469.399 to 409.487 is presumed to be fair and reasonable to all beneficiaries. A**
 18 **fiduciary may exercise a discretionary power of administration given to the fiduciary by the**
 19 **terms of the trust [or the will, even if the] , and an exercise of the power that produces a**
 20 **result different from a result required or permitted by sections [469.401] 469.399 to**
 21 **[469.467;] 469.487 does not create an inference that the fiduciary abused the fiduciary's**
 22 **discretion.**

23 ~~[(3) Shall administer a trust or estate pursuant]~~ **3. A fiduciary shall:**

24 **(1) Add a receipt to [sections 469.401 to 469.467 if] principal, to the extent neither**
 25 **the terms of the trust [or the will do not contain a different provision or do not give] nor**
 26 **sections 469.399 to 469.487 allocate the [fiduciary a discretionary power of administration]**
 27 **receipt between income and principal; and**

28 ~~[(4) Shall add a receipt or]~~ **(2) Charge a disbursement to principal, to the extent [that**
 29 **the terms of the trust and sections 469.401 to 469.467 do not provide a rule for allocating the**
 30 **receipt or disbursement to or between principal and income.**

31 ~~2. In exercising the power to adjust pursuant to section 469.405 or a discretionary~~
 32 ~~power of administration regarding a matter within the scope of sections 469.401 to 469.467,~~
 33 ~~whether granted by the terms of a trust, a will, or sections 469.401 to 469.467, a fiduciary~~
 34 ~~shall administer a trust or estate impartially, based on what is fair and reasonable to all of the~~
 35 ~~beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an~~

35 ~~intent that the fiduciary shall or may favor one or more of the beneficiaries. A determination~~
36 ~~in accordance with sections 469.401 to 469.467 is presumed to be fair and reasonable to all of~~
37 ~~the beneficiaries]~~ **neither the terms of the trust nor sections 469.399 to 469.487 allocate**
38 **the disbursement between income and principal.**

39 **4. A fiduciary may exercise the power to adjust under section 469.405, convert**
40 **an income trust to a unitrust under subdivision (1) of subsection 1 of section 469.475,**
41 **change the percentage or method used to calculate a unitrust amount under subdivision**
42 **(2) of subsection 1 of section 469.475, or convert a unitrust to an income trust under**
43 **subdivision (3) of subsection 1 of section 469.475, if the fiduciary determines the exercise**
44 **of the power will assist the fiduciary to administer the trust or estate impartially.**

45 **5. Factors the fiduciary shall consider in making the determination under**
46 **subsection 4 of this section include:**

47 **(1) The terms of the trust;**

48 **(2) The nature, distribution standards, and expected duration of the trust;**

49 **(3) The effect of the allocation rules, including specific adjustments between**
50 **income and principal, under sections 407.413 to 407.461;**

51 **(4) The desirability of liquidity and regularity of income;**

52 **(5) The desirability of the preservation and appreciation of principal;**

53 **(6) The extent to which an asset is used or may be used by a beneficiary;**

54 **(7) The increase or decrease in the value of principal assets, reasonably**
55 **determined by the fiduciary;**

56 **(8) Whether and to what extent the terms of the trust give the fiduciary power to**
57 **accumulate income or invade principal or prohibit the fiduciary from accumulating**
58 **income or invading principal;**

59 **(9) The extent to which the fiduciary has accumulated income or invaded**
60 **principal in preceding accounting periods;**

61 **(10) The effect of current and reasonably expected economic conditions; and**

62 **(11) The reasonably expected tax consequences of the exercise of the power.**

469.404. 1. In this section, "fiduciary decision" means:

2 **(1) A fiduciary's allocation between income and principal or other**
3 **determination regarding income and principal required or authorized by the terms of**
4 **the trust or sections 469.399 to 469.487;**

5 **(2) The fiduciary's exercise or nonexercise of a discretionary power regarding**
6 **income and principal granted by the terms of the trust or sections 469.399 to 469.487,**
7 **including the power to adjust under section 469.405, convert an income trust to a**
8 **unitrust under subdivision (1) of subsection 1 of section 469.475, change the percentage**
9 **or method used to calculate a unitrust amount under subdivision (2) of subsection 1 of**

10 section 469.475, or convert a unitrust to an income trust under subdivision (3) of
11 subsection 1 section 469.475; or

12 (3) The fiduciary's implementation of a decision described in subdivision (1) or
13 (2) of this subsection.

14 2. The court shall not order a fiduciary to change a fiduciary decision unless the
15 court determines that the fiduciary decision was an abuse of the fiduciary's discretion.

16 3. If the court determines that a fiduciary decision was an abuse of the
17 fiduciary's discretion, the court may order a remedy authorized by law, including under
18 section 456.10-1001. To place the beneficiaries in the positions the beneficiaries would
19 have occupied if there had not been an abuse of the fiduciary's discretion, the court may
20 order:

21 (1) The fiduciary to exercise or refrain from exercising the power to adjust
22 under section 469.405;

23 (2) The fiduciary to exercise or refrain from exercising the power to convert an
24 income trust to a unitrust under subdivision (1) of subsection 1 of section 469.475,
25 change the percentage or method used to calculate a unitrust amount under subdivision
26 (2) of subsection 1 of section 469.475, or convert a unitrust to an income trust under
27 subdivision (3) of subsection 1 of section 469.475;

28 (3) The fiduciary to distribute an amount to a beneficiary;

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

30 (5) The fiduciary to withhold an amount from one or more future distributions
31 to a beneficiary.

32 4. On petition by a fiduciary for instruction, the court may determine whether a
33 proposed fiduciary decision will result in an abuse of the fiduciary's discretion. If the
34 petition describes the proposed decision, contains sufficient information to inform the
35 beneficiary of the reasons for making the proposed decision and the facts on which the
36 fiduciary relies, and explains how the beneficiary will be affected by the proposed
37 decision, a beneficiary that opposes the proposed decision has the burden to establish
38 that it will result in an abuse of the fiduciary's discretion.

469.405. 1. [~~A trustee may adjust between principal and income to the extent the
2 trustee considers necessary if the trustee invests and manages trust assets as a prudent
3 investor, the terms of the trust describe the amount that may or shall be distributed to a
4 beneficiary by referring to the trust's income, and the trustee determines, after applying
5 subsection 1 of section 469.403, that the trustee is unable to comply with subsection 2 of
6 section 469.403.] Except as otherwise provided in the terms of a trust or this section, a
7 fiduciary, in a record, without court approval, may adjust between income and principal~~

8 **if the fiduciary determines the exercise of the power to adjust will assist the fiduciary to**
9 **administer the trust or estate impartially.**

10 **2. This section does not create a duty to exercise or consider the power to adjust**
11 **under subsection 1 of this section or to inform a beneficiary about the applicability of**
12 **this section.**

13 **3. A fiduciary that in good faith exercises or fails to exercise the power to adjust**
14 **under subsection 1 of this section is not liable to a person affected by the exercise or**
15 **failure to exercise.**

16 ~~[2-]~~ **4. In deciding whether and to what extent to exercise the power [conferred by] to**
17 **adjust under subsection 1 [of this section, a trustee] , a fiduciary shall consider all factors**
18 **the fiduciary considers relevant [to the trust and its beneficiaries], including [the following]**
19 **relevant factors [to the extent relevant:] in subsection 5 of section 469.403 and the**
20 **application of sections 469.423, 469.435, and 469.445.**

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

22 ~~(2) The intent of the settlor;~~

23 ~~(3) The identity and circumstances of the beneficiaries;~~

24 ~~(4) The needs for liquidity, regularity of income, and preservation and appreciation of~~
25 ~~capital;~~

26 ~~(5) The assets held in the trust, including the extent to which such assets consist of~~
27 ~~financial assets, interests in closely held enterprises, tangible and intangible personal~~
28 ~~property, or real property, and the extent to which such assets are used by a beneficiary, and~~
29 ~~whether such assets were purchased by the trustee or received from the settlor;~~

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

33 ~~(7) Whether and to what extent the terms of the trust give the trustee the power to~~
34 ~~invade principal or accumulate income, or prohibit the trustee from invading principal or~~
35 ~~accumulating income, and the extent to which the trustee has exercised a power from time to~~
36 ~~time to invade principal or accumulate income;~~

37 ~~(8) The actual and anticipated effect of economic conditions on principal and income~~
38 ~~and effects of inflation and deflation; and~~

39 ~~(9) The anticipated tax consequences of an adjustment.~~

40 ~~3-]~~ **5. A [trustee may] fiduciary shall not exercise the power under subsection 1 of**
41 **this section to make an adjustment or under section 469.435 to make a determination that**
42 **an allocation is insubstantial if:**

43 (1) ~~[That diminishes the income interest in a trust which requires all of the income to~~
44 ~~be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction~~

45 would be allowed, in whole or in part, if the trustee did not have the power to make the
46 adjustment;

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

49 (3) ~~That changes~~ **The adjustment or determination would reduce** the amount
50 payable to a ~~beneficiary~~ **current income beneficiary from a trust that qualifies for a**
51 **special tax benefit, except to the extent the adjustment is made to provide for a**
52 **reasonable apportionment of the total return of the trust between the current income**
53 **beneficiary and successor beneficiaries;**

54 (2) **The adjustment or determination would change the amount payable to a**
55 **beneficiary, as a fixed annuity or a fixed fraction of the value of the trust assets, under the**
56 **terms of the trust;**

57 ~~[(4) From any]~~ (3) **The adjustment or determination would reduce an** amount that
58 is permanently set aside for a charitable ~~purposes~~ **purpose** under ~~[a will or]~~ the terms of ~~[a]~~
59 **the trust [to the extent that the existence of the power to adjust would change the character of**
60 **the amount] , unless both income and principal are set aside for [federal income, gift or**
61 **estate tax purposes] the charitable purpose;**

62 ~~[(5) If]~~ (4) Possessing or exercising the power ~~[to make an adjustment causes an~~
63 ~~individual]~~ **would cause a person** to be treated as the owner of all or part of the trust for
64 ~~[income tax purposes, and the individual would not be treated as the owner if the trustee did~~
65 ~~not possess the power to make an adjustment]~~ **federal income tax purposes;**

66 ~~[(6) If]~~ (5) Possessing or exercising the power ~~[to make an adjustment causes]~~ **would**
67 **cause** all or part of the **value of the** trust assets to be included ~~[for estate tax purposes]~~ in the
68 **gross** estate of an individual ~~[who has]~~ **for federal estate tax purposes;**

69 (6) Possessing or exercising the power ~~[to remove or appoint a trustee, or both,]~~
70 **would cause an individual to be treated as making a gift for federal gift tax purposes;**

71 (7) **The fiduciary is not an independent person;**

72 (8) **The trust is irrevocable and [the assets would not be included in the estate of the**
73 ~~individual if the trustee did not possess]~~ **provides for income to be paid to the settlor and**
74 **possessing or exercising** the power ~~[to make an adjustment]~~ **would cause the adjusted**
75 **principal or income to be considered an available resource or available income under a**
76 **public-benefit program; or**

77 ~~[(7) If the trustee is a beneficiary of the trust; or~~

78 ~~(8) If the trustee is not a beneficiary, but the adjustment would benefit the trustee~~
79 ~~directly or indirectly]~~ (9) **The trust is a unitrust under sections 469.471 to 469.487.**

80 ~~[4.]~~ **6.** If ~~[subdivision (5), (6), (7) or (8) of]~~ subsection ~~[3]~~ **5** of this section applies to a
81 ~~[trustee and there is more than one trustee, a cotrustee to whom the provision does]~~ **fiduciary:**

82 **(1) A co-fiduciary to which subdivisions (4) to (7) of subsection 5 of this section**
 83 **do not apply may [make] exercise the [adjustment] power to adjust** unless the exercise of the
 84 power by the remaining [~~trustee or trustees~~] **co-fiduciary or co-fiduciaries** is not permitted
 85 by the terms of the trust **or law other than sections 469.399 to 469.487; and**

86 **(2) If there is no co-fiduciary to which subdivisions (4) to (7) of subsection 5 of**
 87 **this section do not apply, the fiduciary may appoint a co-fiduciary to which subdivisions**
 88 **(4) to (7) of subsection 5 of this section do not apply, which may be a special fiduciary**
 89 **with limited powers, and the appointed co-fiduciary may exercise the power to adjust**
 90 **under subsection 1 of this section, unless the appointment of a co-fiduciary or the**
 91 **exercise of the power by a co-fiduciary is not permitted by the terms of the trust or law**
 92 **other than under sections 469.399 to 469.487.**

93 ~~[5-] 7. A [trustee] fiduciary may release [the entire power conferred by subsection 1~~
 94 ~~of this section, or may release only the power to adjust from income to principal or the power~~
 95 ~~to adjust from principal to income if the trustee is uncertain about whether possessing or~~
 96 ~~exercising the power will] or delegate to a co-fiduciary the power to adjust under~~
 97 **subsection 1 of this section if the fiduciary determines that the fiduciary's possession or**
 98 **exercise of the power will or may:**

99 **(1) Cause a result described in subdivisions (1) to (6) or subdivision (8) of subsection**
 100 **[3] 5 of this section [5]; or [if the trustee determines that possessing or exercising the power**
 101 **will or may]**

102 **(2) Deprive the trust of a tax benefit or impose a tax burden not described in**
 103 **subdivisions (1) to (6) of subsection [3] 5 of this section.**

104 **8. A fiduciary's release or delegation to a co-fiduciary under subsection 7 of this**
 105 **section of the power to adjust under subsection 1 of this section:**

106 **(1) Shall be in a record;**

107 **(2) Applies to the entire power, unless the release or delegation provides a**
 108 **limitation, which may be a limitation to the power to adjust:**

109 **(a) From income to principal;**

110 **(b) From principal to income;**

111 **(c) For specified property; or**

112 **(d) In specified circumstances;**

113 **(3) For a delegation, may be modified by a re-delegation under this subsection**
 114 **by the co-fiduciary to which the delegation is made; and**

115 **(4) Subject to subdivision (3) of this subsection, is [may be] permanent [or for]**
 116 **unless the release or delegation provides a specified period, including a period measured by**
 117 **the life of an individual or the lives of more than one individual.**

118 ~~[6.]~~ **9.** Terms of a trust that **deny or** limit the power ~~[of a trustee]~~ to ~~[make an~~
 119 ~~adjustment]~~ **adjust** between **income and** principal ~~[and income]~~ do not affect the application
 120 of this section unless ~~[it is clear from]~~ the terms of the trust ~~[that the terms are intended to]~~
 121 **expressly deny** ~~[the trustee]~~ **or limit** the power ~~[of adjustment conferred by]~~ **to adjust under**
 122 subsection 1 of this section.

123 **10. The exercise of the power to adjust under subsection 1 of this section in any**
 124 **accounting period may apply to the current period, the immediately preceding period,**
 125 **and one or more subsequent periods.**

126 **11. A description of the exercise of the power to adjust under subsection 1 of this**
 127 **section shall be:**

128 **(1) Included in a report, if any, sent to beneficiaries under subsection 3 of section**
 129 **456.8-813; or**

130 **(2) Communicated at least annually to the qualified beneficiaries defined under**
 131 **section 456.1-103 other than all beneficiaries that receive or are entitled to receive**
 132 **income from the trust or would be entitled to receive a distribution of principal if the**
 133 **trust were terminated at the time the notice is sent, assuming no power of appointment**
 134 **is exercised.**

469.413. ~~[After a decedent dies, in the case]~~ **1. This section applies when:**

2 **(1) The death of an individual results in the creation of an estate**~~[, or after]~~ **or**
 3 **trust; or**

4 **(2) An income interest in a trust** ~~[ends, the following rules apply:]~~ **terminates,**
 5 **whether the trust continues or is distributed.**

6 ~~[(1)]~~ **2.** A fiduciary of an estate or ~~[of a terminating]~~ **trust with an** income interest
 7 **that terminates** shall determine, **under subsection 7 of this section and sections 469.417 to**
 8 **469.462,** the amount of net income and net principal receipts received from property
 9 specifically given to a beneficiary ~~[pursuant to the rules in sections 469.417 to 469.461 which~~
 10 ~~apply to trustees and the rules in subdivision (5) of this section]~~. The fiduciary shall distribute
 11 the net income and net principal receipts to the beneficiary ~~[who]~~ **that** is to receive the
 12 specific property~~;~~.

13 ~~[(2)]~~ **3.** A fiduciary shall determine the ~~[remaining]~~ **income and** net income of ~~[a~~
 14 ~~decedent's]~~ **an** estate or ~~[a terminating]~~ income interest ~~[pursuant to the rules in]~~ **in a trust**
 15 **that terminates, other than the amount of net income determined under subsection 2 of**
 16 **this section, under** sections 469.417 to ~~[469.461 which apply to trustees]~~ **469.462** and by:

17 ~~[(a)]~~ **(1)** Including in net income all income from property used **or sold** to discharge
 18 liabilities;

19 ~~[(b)]~~ **(2)** Paying from income or principal, in the fiduciary's discretion, fees of
 20 attorneys, accountants, and fiduciaries; court costs and other expenses of administration; and

21 interest on ~~[death]~~ **estate and inheritance taxes and other taxes imposed because of the**
 22 **decedent's death**, but the fiduciary may pay ~~[those]~~ **the** expenses from income of property
 23 passing to a trust for which the fiduciary claims ~~[an]~~ **a federal** estate tax marital or charitable
 24 deduction only to the extent ~~[that]:~~

25 (a) The payment of ~~[those]~~ **the** expenses from income will not cause the reduction or
 26 loss of the deduction; ~~[and]~~ **or**

27 (b) **The fiduciary makes an adjustment under subsection 2 of section 469.462;**
 28 **and**

29 ~~[(e)]~~ (3) Paying from principal ~~[all]~~ other disbursements made or incurred in
 30 connection with the settlement of ~~[a decedent's]~~ **the** estate or the winding up of ~~[a~~
 31 ~~terminating]~~ **an** income interest~~;~~ **that terminates**, including:

32 (a) **To the extent authorized by the decedent's will, the terms of the trust, or**
 33 **applicable law**, debts, funeral expenses, disposition of remains, family allowances, ~~[and~~
 34 ~~death taxes]~~ **estate and inheritance taxes, and other taxes imposed because of the**
 35 **decedent's death; and**

36 (b) Related penalties that are apportioned, **by the decedent's will, the terms of the**
 37 **trust, or applicable law**, to the estate or ~~[terminating]~~ income interest ~~[by the will, the terms~~
 38 ~~of the trust, or applicable law;]~~ **that terminates.**

39 ~~[(3) A fiduciary shall distribute to a beneficiary who receives a pecuniary amount~~
 40 ~~outright the interest or any other amount provided by the will, the terms of the trust, or in the~~
 41 ~~absence of any such provisions, the provisions of section 473.633, from net income~~
 42 ~~determined pursuant to subdivision (2) of this section or from principal to the extent that net~~
 43 ~~income is insufficient.]~~ **4. If a decedent's will, the terms of a trust, or applicable law**
 44 **provides for the payment of interest or the equivalent of interest to a beneficiary that**
 45 **receives a pecuniary amount outright, the fiduciary shall make the payment from net**
 46 **income determined under subsection 3 of this section or from principal to the extent net**
 47 **income is insufficient.**

48 **5. If a beneficiary is to receive a pecuniary amount outright from a trust after an**
 49 **income interest ends because of an income beneficiary's death, and no payment of interest**
 50 **or** ~~[other amount]~~ **the equivalent of interest** is provided for by the terms of the trust or
 51 applicable law, the fiduciary shall ~~[distribute]~~ **pay** the interest or ~~[other amount]~~ **the**
 52 **equivalent of interest** to which the beneficiary would be entitled under applicable law if the
 53 pecuniary amount were required to be paid under a will~~;~~.

54 ~~[(4)]~~ **6. A fiduciary shall distribute [the] net income remaining after [distributions]**
 55 **payments** required by ~~[subdivision (3)]~~ **subsections 4 and 5** of this section in the manner
 56 described in section 469.415 to all other beneficiaries, including a beneficiary ~~[who]~~ **that**
 57 receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to

58 withdraw assets from the trust or other presently exercisable general power of appointment
59 over the trust[;].

60 ~~[(5)]~~ 7. A fiduciary ~~[may]~~ **shall** not reduce principal or income receipts from property
61 described in ~~[subdivision (1)]~~ **subsection 2** of this section because of a payment described in
62 sections 469.451 and 469.453 to the extent ~~[that]~~ **the decedent's will, the terms of the trust, or**
63 **applicable law requires the fiduciary to make the payment from assets other than the property**
64 **or to the extent** ~~[that]~~ **the fiduciary recovers or expects to recover the payment from a third**
65 **party. The net income and principal receipts from the property** ~~[are]~~ **shall be determined by**
66 **including** ~~[all of]~~ **the amounts the fiduciary receives or pays** ~~[with respect to]~~ **regarding the**
67 **property, whether** ~~[those amounts]~~ **the amount** accrued or became due before, on, or after the
68 date of ~~[a decedent's]~~ **the decedent's death or an income interest's terminating event, and** ~~[by]~~
69 **making a reasonable provision for** ~~[amounts that the fiduciary believes]~~ **an amount** the estate
70 **or** ~~[terminating]~~ **income interest may become obligated to pay after the property is distributed.**

469.415. 1. ~~[Each]~~ **Except to the extent sections 469.471 to 469.487 apply for a**
2 **beneficiary that is a trust, each beneficiary** described in subdivision ~~[(4)]~~ **(6)** of section
3 469.413 is entitled to receive a ~~[portion]~~ **share** of the net income equal to the beneficiary's
4 fractional interest in undistributed principal assets, using values as of the distribution date. If
5 a fiduciary makes more than one distribution of assets to beneficiaries to ~~[whom]~~ **which** this
6 section applies, each beneficiary, including ~~[one who]~~ **a beneficiary that** does not receive
7 part of the distribution, is entitled, as of each distribution date, to **a share of** the net income
8 the fiduciary ~~[has]~~ received after the ~~[date of]~~ **decedent's death** ~~[or]~~ **, an income interest's**
9 **other terminating event, or** ~~[earlier]~~ **the preceding distribution** ~~[date but has not distributed~~
10 ~~as of the current distribution date]~~ **by the fiduciary.**

11 2. In determining a beneficiary's share of net income **under subsection 1 of this**
12 **section**, the following rules apply:

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

16 (2) The beneficiary's fractional interest ~~[in the undistributed principal assets shall]~~
17 **under subdivision (1) shall** be calculated ~~[without regard to property specifically given to a~~
18 ~~beneficiary and property required to pay pecuniary amounts not in trust;~~

19 ~~(3) The beneficiary's fractional interest in the undistributed principal assets shall be~~
20 ~~calculated] :~~

21 (a) On the ~~[basis of the]~~ aggregate value of ~~[those]~~ **the assets** as of the distribution
22 date without reducing the value by any unpaid principal obligation; **and**

23 (b) **Without regard to:**

24 **a. Property specifically given to a beneficiary under the decedent's will or the**
 25 **terms of the trust; and**

26 **b. Property required to pay pecuniary amounts not in trust; and**

27 ~~[(4)] (3)~~ The distribution date ~~[for purposes of this section]~~ **under subdivision (1) of**
 28 **this subsection** may be the date as of which the fiduciary calculates the value of the assets if
 29 that date is reasonably near the date on which **the** assets are ~~[actually]~~ distributed.

30 3. ~~[(f)]~~ **To the extent** a fiduciary does not distribute **under this section** all ~~[of]~~ the
 31 collected but undistributed net income to each ~~[person]~~ **beneficiary** as of a distribution date,
 32 the fiduciary shall maintain ~~[appropriate]~~ records showing the interest of each beneficiary in
 33 ~~[that]~~ **the** net income.

34 4. **If this section applies to income from an asset**, a fiduciary may apply the rules in
 35 this section~~[-, to the extent that the fiduciary considers it appropriate,]~~ to net gain or loss
 36 realized **from the disposition of the asset** after the ~~[date of death or]~~ **decedent's death, an**
 37 **income interest's** terminating event, or ~~[earlier]~~ **the preceding** distribution ~~[date from the~~
 38 ~~disposition of a principal asset if this section applies to the income from the asset]~~ **by the**
 39 **fiduciary.**

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

5 **(1) The trust for the current income beneficiary; or**

6 **(2) A successive interest for a successor beneficiary.**

7 2. An asset becomes subject to a trust **under subdivision (1) of subsection 1 of this**
 8 **section:**

9 (1) ~~[On the date it is transferred to the trust in the case of]~~ **For** an asset that is
 10 transferred to ~~[a]~~ **the** trust during the ~~[transferor's]~~ **settlor's** life, **on the date the asset is**
 11 **transferred;**

12 (2) ~~[On the date of a testator's death in the case of]~~ **For** an asset that becomes subject
 13 to ~~[a]~~ **the** trust ~~[by reason]~~ **because** of a ~~[will]~~ **decedent's death, on the date of the**
 14 **decedent's death**, even if there is an intervening period of administration of the ~~[testator's]~~
 15 **decedent's** estate; or

16 (3) ~~[On the date of an individual's death in the case of]~~ **For** an asset that is transferred
 17 to a fiduciary by a third party because of ~~[the individual's]~~ **a decedent's death, on the date of**
 18 **the decedent's death.**

19 3. An asset becomes subject to a successive ~~[income]~~ interest **under subdivision (2)**
 20 **of subsection 1 of this section** on the day after the preceding income interest ends, as

21 determined ~~[pursuant to]~~ **under** subsection 4 of this section, even if there is an intervening
 22 period of administration to wind up the preceding income interest.

23 4. An income interest ends on the day before an income beneficiary dies or another
 24 terminating event occurs~~;~~ or on the last day of a period during which there is no beneficiary
 25 to ~~[whom]~~ **which a [trustee] fiduciary may or shall** distribute income.

469.419. 1. A ~~[trustee]~~ **fiduciary** shall allocate an income receipt or disbursement,
 2 other than ~~[one]~~ **a receipt** to which ~~[subdivision (1)]~~ **subsection 2** of section 469.413 applies,
 3 to principal if its due date occurs before ~~[a decedent dies in the case of]~~ **the date on which:**

4 **(1) For an estate, the decedent died; or [before]**

5 **(2) For a trust or successive interest,** an income interest begins ~~[in the case of a trust~~
 6 ~~or successive income interest]~~.

7 2. ~~[A trustee shall allocate an income receipt or disbursement to income if its]~~ **If the**
 8 due date **of a periodic income receipt or disbursement** occurs on or after the date on which
 9 a decedent ~~[dies]~~ **died** or an income interest ~~[begins and it is a periodic due date. An income]~~
 10 **began, a fiduciary shall allocate the receipt or disbursement to income.**

11 3. **If an income receipt or disbursement is not periodic or has no due date, a**
 12 **fiduciary shall [be treated] treat the receipt or disbursement under this section** as
 13 accruing from day to day ~~[if its due date is not periodic or it has no due date]~~. The **fiduciary**
 14 **shall allocate to principal** the portion of the receipt or disbursement accruing before the date
 15 on which a decedent ~~[dies]~~ **died** or an income interest ~~[begins shall be allocated to principal]~~
 16 **began, and to income** the balance ~~[shall be allocated to income]~~.

17 ~~[3-]~~ 4. **A receipt or disbursement is periodic under subsections 2 and 3 of this**
 18 **section if:**

19 **(1) The receipt or disbursement shall be paid at regular intervals under an**
 20 **obligation to make payments; or**

21 **(2) The payer customarily makes payments at regular intervals.**

22 5. An item of income or ~~[an]~~ obligation is due **under this section** on the date ~~[a~~
 23 ~~payment]~~ **the payer is required to make a payment.** If a payment date is not stated, there is
 24 no due date ~~[for the purposes of sections 469.401 to 469.467]~~.

25 6. Distributions to shareholders or other owners from an entity to which section
 26 469.423 applies are ~~[deemed to be]~~ due:

27 **(1) On the date fixed by or on behalf of** the entity for determining ~~[who is]~~ **the**
 28 **persons** entitled to receive the distribution ~~[or];~~

29 **(2) If no date is fixed, on the [declaration] date [for] of the decision by or on behalf**
 30 **of the entity to make** the distribution~~[- A due date is periodic for receipts or disbursements~~
 31 ~~that shall be paid at regular intervals under a lease or an obligation to pay interest or if an~~
 32 ~~entity customarily makes distributions at regular intervals]; or~~

33 **(3) If no date is fixed and the fiduciary does not know the date of the decision by**
 34 **or on behalf of the entity to make the distribution, on the date the fiduciary learns of the**
 35 **decision.**

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

2. **Except as otherwise provided in subsection 3 of this section,** when a mandatory income interest **of a beneficiary** ends, the ~~[trustee]~~ **fiduciary** shall pay ~~[to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end,]~~ the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust ~~[unless the]~~ **to the beneficiary or, if the beneficiary does not survive the date the interest ends, to the beneficiary's estate.**

3. **If a beneficiary has an unqualified power to [revoke] withdraw** more than five percent of the **value of a trust** immediately before ~~[the]~~ **an** income interest ends~~[- In the latter case,]~~:

(1) **The fiduciary shall allocate to principal** the undistributed income from the portion of the trust that may be ~~[revoked shall be added to principal]~~ **withdrawn; and**

(2) **Subsection 2 of this section applies only to the balance of the undistributed income.**

~~[3-]~~ 4. When a ~~[trustee's]~~ **fiduciary's** obligation to pay a fixed annuity or a fixed fraction of the value of ~~[the trust's]~~ assets ends, the ~~[trustee]~~ **fiduciary** shall prorate the final payment ~~[if and to the extent]~~ as required ~~[by applicable law to accomplish a purpose of the trust or its settlor relating]~~ to **preserve an** income **tax**, gift **tax**, estate **tax**, or other tax ~~[requirements]~~ **benefit.**

469.423. 1. ~~[For purposes of]~~ **In** this section~~[- the term]~~:

(1) **"Capital distribution" means an entity distribution of money that is a:**

(a) **Return of capital; or**

(b) **Distribution in total or partial liquidation of the entity;**

(2) **"Entity":**

(a) Means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization ~~[in which a trustee has an interest, other than a trust or estate to which section 469.425 applies, a business or activity to which section 469.427 applies, or an asset backed security to which section 469.449 applies.]~~ **or arrangement in which a fiduciary owns or holds an interest, whether or not the entity is a taxpayer for federal income tax purposes; and**

12 (b) Does not include:

13 a. A trust or estate to which section 469.425 applies;

14 b. A business or other activity to which section 469.427 applies that is not
15 conducted by an entity described in paragraph (a) of this subdivision;

16 c. An asset-backed security; or

17 d. An instrument or arrangement to which section 469.450 applies;

18 (3) "Entity distribution" means a payment or transfer by an entity made to a
19 person in the person's capacity as an owner or holder of an interest in the entity.

20 2. In this section, an attribute or action of an entity includes an attribute or
21 action of any other entity in which the entity owns or holds an interest, including an
22 interest owned or held indirectly through another entity.

23 ~~[2.]~~ 3. Except as otherwise provided in ~~[this section]~~ subdivisions (2) to (4) of
24 subsection 4 of this section, a ~~[trustee]~~ fiduciary shall allocate to income:

25 (1) Money received ~~[from]~~ in an entity[-

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

27 ~~(1) Property other than money;~~

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

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

31 ~~(4) Money received from an entity that is] distribution; and~~

32 (2) Tangible personal property of nominal value received from the entity.

33 4. A fiduciary shall allocate to principal:

34 (1) Property received in an entity distribution that is not:

35 (a) Money; or

36 (b) Tangible personal property of nominal value;

37 (2) Money received in an entity distribution in an exchange for part or all of the
38 fiduciary's interest in the entity, to the extent the entity distribution reduces the
39 fiduciary's interest in the entity relative to the interests of other persons that own or
40 hold interests in the entity;

41 (3) Money received in an entity distribution that the fiduciary determines or
42 estimates is a capital distribution; and

43 (4) Money received in an entity distribution from an entity that is:

44 (a) A regulated investment company or [a] real estate investment trust if the money
45 ~~[distributed]~~ received is a capital gain dividend for federal income tax purposes[-

46 ~~4. Money is received in partial liquidation:~~

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

49 ~~(2) If]; or~~

50 (b) Treated for federal income tax purposes comparably to the treatment
51 described in paragraph (a) of this subdivision.

52 5. A fiduciary may determine or estimate that money received in an entity
53 distribution is a capital distribution:

54 (1) By relying, without inquiry or investigation, on a characterization of the
55 entity distribution provided by or on behalf of the entity unless the fiduciary:

56 (a) Determines, on the basis of information known to the fiduciary, that the
57 characterization is or may be incorrect; or

58 (b) Owns or holds more than fifty percent of the voting interest in the entity;

59 (2) By determining or estimating, on the basis of information known to the
60 fiduciary or provided to the fiduciary by or on behalf of the entity, that the total amount
61 of money and property received by the fiduciary in ~~a] the entity~~ distribution or a series of
62 related entity distributions is or will be greater than twenty percent of the ~~[entity's gross~~
63 assets, as shown by the entity's year-end financial statements immediately preceding the
64 initial receipt.

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

69 ~~6. A trustee may rely upon a statement made by an entity about the source or~~
70 ~~character of a distribution if the statement is made at or near the time of distribution by the~~
71 ~~entity's board of directors or other person or group of persons authorized to exercise powers to~~
72 ~~pay money or transfer property comparable to those of a corporation's board of directors.] fair~~
73 ~~market value of the fiduciary's interest in the entity; or~~

74 (3) If neither subdivision (1) nor (2) of this subsection applies, by considering the
75 factors in subsection 6 of this section and the information known to the fiduciary or
76 provided to the fiduciary by or on behalf of the entity.

77 6. In making a determination or estimate under subdivision (3) of subsection 5 of
78 this section, a fiduciary may consider:

79 (1) A characterization of an entity distribution provided by or on behalf of the
80 entity;

81 (2) The amount of money or property received in:

82 (a) The entity distribution; or

83 (b) What the fiduciary determines is or will be a series of related entity
84 distributions;

85 **(3) The amount described in subdivision (2) of this subsection compared to the**
86 **amount the fiduciary determines or estimates is, during the current or preceding**
87 **accounting periods:**

88 **(a) The entity's operating income;**

89 **(b) The proceeds of the entity's sale or other disposition of:**

90 **a. All or part of the business or other activity conducted by the entity;**

91 **b. One or more business assets that are not sold to customers in the ordinary**
92 **course of the business or other activity conducted by the entity; or**

93 **c. One or more assets other than business assets, unless the entity's primary**
94 **activity is to invest in assets to realize gain on the disposition of all or some of the assets;**

95 **(c) If the entity's primary activity is to invest in assets to realize gain on the**
96 **disposition of all or some of the assets, the gain realized on the disposition;**

97 **(d) The entity's regular, periodic entity distributions;**

98 **(e) The amount of money the entity has accumulated;**

99 **(f) The amount of money the entity has borrowed;**

100 **(g) The amount of money the entity has received from the sources described in**
101 **sections 469.433, 469.439, 469.441, and 469.443; and**

102 **(h) The amount of money the entity has received from a source not otherwise**
103 **described in this paragraph; and**

104 **(4) Any other factor the fiduciary determines is relevant.**

105 **7. If, after applying subsections 3 to 6 of this section, a fiduciary determines that**
106 **a part of an entity distribution is a capital distribution but is in doubt about the amount**
107 **of the entity distribution that is a capital distribution, the fiduciary shall allocate to**
108 **principal the amount of the entity distribution that is in doubt.**

109 **8. If a fiduciary receives additional information about the application of this**
110 **section to an entity distribution before the fiduciary has paid part of the entity**
111 **distribution to a beneficiary, the fiduciary may consider the additional information**
112 **before making the payment to the beneficiary and may change a decision to make the**
113 **payment to the beneficiary.**

114 **9. If a fiduciary receives additional information about the application of this**
115 **section to an entity distribution after the fiduciary has paid part of the entity**
116 **distribution to a beneficiary, the fiduciary is not required to change or recover the**
117 **payment to the beneficiary but may consider that information in determining whether**
118 **to exercise the power to adjust under section 469.405.**

 469.425. A ~~trustee~~ **fiduciary** shall allocate to income an amount received as a
2 distribution of income, **including a unitrust distribution under sections 469.471 to**
3 **469.487, from a trust or ~~an~~ estate in which the ~~trust~~ **fiduciary** has an interest, other than **[a]****

4 **an interest the fiduciary** purchased [~~interest~~] **in a trust that is an investment entity**, and
 5 shall allocate to principal an amount received as a distribution of principal from [~~such a~~] **the**
 6 **trust or estate**. If a [~~trustee~~] **fiduciary purchases, or receives from a settlor**, an interest in a
 7 trust that is an investment entity, [~~or a decedent or donor transfers an interest in such a trust to~~
 8 ~~a trustee,~~] section 469.423 [~~or~~], 469.449 [~~shall apply~~], **or 469.450 applies** to a receipt from
 9 the trust.

469.427. 1. [~~If a trustee who conducts~~] **This section applies to** a business or other
 2 activity **conducted by a fiduciary if the fiduciary** determines that it is in the [~~best interest~~]
 3 **interests** of [~~all~~] the beneficiaries to account separately for the business or **other** activity
 4 instead of:

5 (1) Accounting for [~~it~~] **the business or other activity** as part of the [~~trust's~~]
 6 **fiduciary's** general accounting records[~~;~~]; **or**

7 (2) **Conducting** the [~~trustee~~] **business or other activity through an entity described**
 8 **in paragraph (a) of subdivision (2) of subsection 1 of section 469.423.**

9 2. A **fiduciary** may [~~maintain separate accounting records~~] **account separately**
 10 **under this section** for [~~its~~] **the transactions of a business or other activity**, whether or not
 11 [~~its~~] **assets of the business or other activity** are segregated from other [~~trust~~] **assets held by**
 12 **the fiduciary.**

13 [~~2.~~] 3. A [~~trustee who~~] **fiduciary that** accounts separately **under this section** for a
 14 business or other activity:

15 (1) May determine:

16 (a) The extent to which **the net cash receipts** [~~shall~~] **of the business or other activity**
 17 **shall** be retained for:

18 a. Working capital[~~;~~];

19 b. The acquisition or replacement of fixed assets[~~;~~]; and

20 c. Other reasonably foreseeable needs of the business or **other** activity[~~;~~]; and

21 (b) The extent to which the remaining net cash receipts are accounted for as principal
 22 or income in the [~~trust's~~] **fiduciary's** general accounting records[~~—If a trustee sells assets of~~
 23 ~~the business or other activity, other than in the ordinary course of the business or activity, the~~
 24 ~~trustee~~] **for the trust;**

25 (2) **May make a determination under subdivision (1) of this subsection**
 26 **separately and differently from the fiduciary's decisions concerning distributions of**
 27 **income or principal; and**

28 (3) Shall account for the net amount received **from the sale of an asset of the**
 29 **business or other activity, other than a sale in the ordinary course of the business or**
 30 **other activity**, as principal in the [~~trust's~~] **fiduciary's** general accounting records **for the**

31 **trust**, to the extent the ~~[trustee]~~ **fiduciary** determines that the **net** amount received is no
32 longer required in the conduct of the business **or other activity**.

33 ~~[3.]~~ **4.** Activities for which a ~~[trustee may maintain separate accounting records]~~
34 **fiduciary may account separately under this section** include:

- 35 (1) Retail, manufacturing, service, and other traditional business activities;
36 (2) Farming;
37 (3) Raising and selling livestock and other animals;
38 (4) ~~[Management of]~~ **Managing** rental properties;
39 (5) ~~[Extraction of]~~ **Extracting** minerals, **water**, and other natural resources;
40 (6) **Growing and cutting** timber ~~[operations]; [and]~~
41 (7) ~~[Activities]~~ **An activity** to which section 469.447, **469.449, or 469.450** applies~~[-];~~

42 **and**

43 **(8) Any other business conducted by the fiduciary.**

469.429. A ~~[trustee]~~ **fiduciary** shall allocate to principal:

- 2 (1) To the extent not allocated to income ~~[pursuant to]~~ **under** sections ~~[469.401]~~
3 **469.399** to ~~[469.467]~~ **469.487**, ~~[assets]~~ **an asset** received from ~~[a transferor]~~;
4 (a) **An individual** during the ~~[transferor's]~~ **individual's** lifetime~~[-a decedent's]~~;
5 (b) **An estate**~~[-];~~
6 (c) A trust ~~[with a terminating]~~ **on termination of an** income interest~~[-];~~ or
7 (d) A payer under a contract naming the ~~[trust or its trustee]~~ **fiduciary** as beneficiary;
8 (2) **Except as otherwise provided in sections 469.423 to 469.450**, money or other
9 property received from the sale, exchange, liquidation, or change in form of a principal asset~~[-~~
10 ~~including realized profit, subject to sections 469.423 to 469.467]~~;
11 (3) ~~[Amounts]~~ **An amount** recovered from a third ~~[parties]~~ **party** to reimburse the
12 ~~[trust]~~ **fiduciary** because of ~~[disbursements]~~ **a disbursement** described in ~~[subdivision (7) of]~~
13 subsection 1 of section 469.453 or for ~~[other reasons]~~ **another reason** to the extent not based
14 on ~~[the]~~ loss of income;
15 (4) Proceeds of property taken by eminent domain, ~~[but a separate award made]~~
16 **except that proceeds awarded** for ~~[the]~~ loss of income ~~[with respect to]~~ **in** an accounting
17 period ~~[during which]~~ **are income if** a current income beneficiary had a mandatory income
18 interest ~~[is income]~~ **during the period**;
19 (5) Net income received in an accounting period during which there is no beneficiary
20 to ~~[whom]~~ **which** a ~~[trustee]~~ **fiduciary** may or shall distribute income; and
21 (6) Other receipts as provided in sections 469.435 to ~~[469.449]~~ **469.450**.

469.431. To the extent ~~[that a trustee accounts]~~ **a fiduciary does not account** for
2 ~~[receipts from]~~ **the management of** rental property ~~[pursuant to this section]~~ **as a business**
3 **under section 469.427**, the ~~[trustee]~~ **fiduciary** shall allocate to income an amount received as

4 rent of real or personal property, including an amount received for cancellation or renewal of
 5 a lease. An amount received as a refundable deposit, including a security deposit or a deposit
 6 that is to be applied as rent for future periods~~], shall be added to principal and held subject to~~
 7 ~~the terms of the lease and is not available for distribution to a beneficiary until the trustee's~~
 8 ~~contractual obligations have been satisfied with respect to that amount.]:~~

9 **(1) Shall be added to principal and held subject to the terms of the lease, except**
 10 **as otherwise provided by law other than sections 469.399 to 469.487; and**

11 **(2) Is not allocated to income or available for distribution to a beneficiary until**
 12 **the fiduciary's contractual obligations have been satisfied with respect to that amount.**

469.432. 1. **This section does not apply to an obligation to which section 469.437,**
 2 **469.439, 469.441, 469.443, 469.447, 469.449, or 469.450 applies.**

3 **2. A fiduciary shall allocate to income, without provision for amortization of**
 4 **premium,** an amount received as interest~~], whether determined at a fixed, variable or floating~~
 5 ~~rate,] on an obligation to pay money to the [trustee] fiduciary, including an amount received~~
 6 ~~as consideration for prepaying principal], shall be allocated to income without any provision~~
 7 ~~for amortization of premium].~~

8 ~~[2.] 3. A [trustee] fiduciary shall allocate to principal an amount received from the~~
 9 ~~sale, redemption, or other disposition of an obligation to pay money to the [trustee more than~~
 10 ~~one year after it is purchased or acquired by the trustee, including an obligation whose~~
 11 ~~purchase price or value when it is acquired is less than its value at maturity. If the obligation~~
 12 ~~matures within one year after it is purchased or acquired by the trustee, an amount received in~~
 13 ~~excess of its purchase price or its value when acquired by the trust shall be allocated to~~
 14 ~~income] fiduciary. A fiduciary shall allocate to income the increment in value of a bond~~
 15 **or other obligation for the payment of money bearing no stated interest but payable or**
 16 **redeemable, at maturity or another future time, in an amount that exceeds the amount**
 17 **in consideration of which it was issued.**

18 ~~[3. This section does not apply to an obligation to which section 469.437, 469.439,~~
 19 ~~469.441, 469.443, 469.447 or 469.449 applies.]~~

469.433. 1. **This section does not apply to a contract to which section 469.437**
 2 **applies.**

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

10 ~~[2-]~~ **3.** A ~~[trustee]~~ **fiduciary** shall allocate to income proceeds of a contract that
 11 insures the ~~[trustee]~~ **fiduciary** against loss of:

12 (1) Occupancy or other use by ~~[an income beneficiary, loss of]~~ **a current income**~~[-]~~
 13 **beneficiary;**

14 (2) **Income;** or~~[-]~~

15 (3) Subject to section 469.427, ~~[loss of]~~ profits from a business.

16 ~~[3- This section does not apply to a contract to which section 469.437 applies.]~~

469.435. 1. If a ~~[trustee]~~ **fiduciary** determines that an allocation between **income**
 2 **and** principal ~~[and income]~~ required by section 469.437, 469.439, 469.441, 469.443 or
 3 469.449 is insubstantial, the ~~[trustee]~~ **fiduciary** may allocate the entire amount to principal,
 4 unless ~~[one of the circumstances described in]~~ subsection ~~[3]~~ **5** of section 469.405 applies to
 5 the allocation. ~~[This power]~~

6 2. A **fiduciary** may ~~[be exercised by a cotrustee in the circumstances described in]~~
 7 ~~subsection 4 of section 469.405 and may be released for the reasons and in the manner~~
 8 ~~described in subsection 5 of section 469.405.]~~ **presume** an allocation is ~~[presumed to be]~~
 9 insubstantial **under subsection 1 of this section** if:

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

12 (2) ~~[The value of]~~ The asset producing the receipt ~~[for which the allocation would]~~ **to**
 13 ~~be [made is]~~ **allocated has a fair market value** less than ten percent of the total **fair market**
 14 value of the ~~[trust's]~~ **assets owned or held by the fiduciary** at the beginning of the
 15 accounting period.

16 **3. The power to make a determination under subsection 1 of this section may be:**

17 (1) **Exercised by a co-fiduciary in the manner described in subsection 6 of section**
 18 **469.405; or**

19 (2) **Released or delegated for a reason described in subsection 7 of section**
 20 **469.405 and in the manner described in subsection 8 of section 469.405.**

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

2 (1) ~~["Payment", an amount that is:~~

3 ~~(a) Received or withdrawn from a plan; or~~

4 ~~(b) One of a series of distributions that have been or will be received over a fixed~~
 5 ~~number of years or during the life of one or more individuals under any contractual or other~~
 6 ~~arrangement, or is a single payment from a plan that the trustee could have received over a~~
 7 ~~fixed number of years or during the life of one or more individuals;~~

8 ~~(2) "Plan", a contractual, custodial, trust or other arrangement that provides for~~
 9 ~~distributions to the trust, including, but not limited to, qualified retirement plans, Individual~~
 10 ~~Retirement Accounts, Roth Individual Retirement Accounts, public and private annuities, and~~

11 ~~deferred compensation, including payments received directly from an entity as defined in~~
12 ~~section 469.423 regardless of whether or not such distributions are made from a specific fund~~
13 ~~or account.~~

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

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

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

34 ~~5. For purposes of this section if the payment is received from a plan that does not~~
35 ~~maintain a separate account or fund for its participants or account holders, including by way~~
36 ~~of example and not limitation defined benefit retirement plans and some types of deferred~~
37 ~~compensation plans, the term "plan income" shall mean four percent of the total present value~~
38 ~~of the trust's interest in the plan as of the first day of the accounting period, based on~~
39 ~~reasonable actuarial assumptions as determined by the trustee.~~

40 ~~6. Notwithstanding subsections 1 to 5 of this section, with respect to a trust where an~~
41 ~~election to qualify for a marital deduction under Section 2056(b)(7) or Section 2523(f) of the~~
42 ~~Internal Revenue Code of 1986, as amended, has been made, or a trust that qualified for the~~
43 ~~marital deduction under either Section 2056(b)(5) or Section 2523(e) of the Internal Revenue~~
44 ~~Code of 1986, as amended, a trustee shall determine the plan income for the accounting~~
45 ~~period as if the plan were a trust subject to sections 469.401 to 469.467. Upon request of the~~
46 ~~surviving spouse, the trustee shall demand that the person administering the plan distribute~~
47 ~~the plan income to the trust. The trustee shall allocate a payment from the plan to income to~~

48 ~~the extent of the plan income and distribute that amount to the surviving spouse. The trustee~~
49 ~~shall allocate the balance of the payment to principal. Upon request of the surviving spouse,~~
50 ~~the trustee shall allocate principal to income to the extent the plan income exceeds payments~~
51 ~~made from the plan to the trust during the accounting period.~~

52 ~~7. If, to obtain an estate or gift tax marital deduction for a trust, a trustee shall allocate~~
53 ~~more of a payment to income than provided for by this section, the trustee shall allocate to~~
54 ~~income the additional amount necessary to obtain the marital deduction.] "Internal income~~
55 **of a separate fund", the amount determined under subsection 2 of this section;**

56 **(2) "Marital trust", a trust:**

57 **(a) Of which the settlor's surviving spouse is the only current income beneficiary**
58 **and is entitled to a distribution of all the current net income of the trust; and**

59 **(b) That qualifies for a marital deduction with respect to the settlor's estate**
60 **under 26 U.S.C. Section 2056, as amended, because:**

61 **a. An election to qualify for a marital deduction under 26 U.S.C. Section 2056(b)**
62 **(7), as amended, has been made; or**

63 **b. The trust qualifies for a marital deduction under 26 U.S.C. Section 2056(b)(5),**
64 **as amended;**

65 **(3) "Payment", an amount a fiduciary may receive over a fixed number of years**
66 **or during the life of one or more individuals because of services rendered or property**
67 **transferred to the payer in exchange for future amounts the fiduciary may receive. The**
68 **term includes an amount received in money or property from the payer's general assets**
69 **or from a separate fund created by the payer;**

70 **(4) "Separate fund" includes a private or commercial annuity, an individual**
71 **retirement account, and a pension, profit-sharing, stock bonus, or stock ownership plan.**

72 **2. For each accounting period, the following rules apply to a separate fund:**

73 **(1) The fiduciary shall determine the internal income of the separate fund as if**
74 **the separate fund was a trust subject to sections 469.399 to 469.487;**

75 **(2) If the fiduciary cannot determine the internal income of the separate fund**
76 **under subdivision (1) of this subsection, the internal income of the separate fund is**
77 **deemed to equal three percent of the value of the separate fund, according to the most**
78 **recent statement of value preceding the beginning of the accounting period; and**

79 **(3) If the fiduciary cannot determine the value of the separate fund under**
80 **subdivision (2) of this subsection, the value of the separate fund is deemed to equal the**
81 **present value of the expected future payments, as determined under 26 U.S.C. Section**
82 **7520, as amended, for the month preceding the beginning of the accounting period for**
83 **which the computation is made.**

84 **3. A fiduciary shall allocate a payment received from a separate fund during an**
 85 **accounting period to income, to the extent of the internal income of the separate fund**
 86 **during the period, and the balance to principal.**

87 **4. The fiduciary of a marital trust shall:**

88 **(1) Withdraw from a separate fund the amount the current income beneficiary**
 89 **of the trust requests the fiduciary to withdraw, not greater than the amount by which**
 90 **the internal income of the separate fund during the accounting period exceeds the**
 91 **amount the fiduciary otherwise receives from the separate fund during the period;**

92 **(2) Transfer from principal to income the amount the current income**
 93 **beneficiary requests the fiduciary to transfer, not greater than the amount by which**
 94 **the internal income of the separate fund during the period exceeds the amount the**
 95 **fiduciary receives from the separate fund during the period after the application of**
 96 **subdivision (1) of this subsection; and**

97 **(3) Distribute to the current income beneficiary as income:**

98 **(a) The amount of the internal income of the separate fund received or**
 99 **withdrawn during the period; and**

100 **(b) The amount transferred from principal to income under subdivision (2) of**
 101 **this subsection.**

102 **5. For a trust, other than a marital trust, of which one or more current income**
 103 **beneficiaries are entitled to a distribution of all the current net income, the fiduciary**
 104 **shall transfer from principal to income the amount by which the internal income of a**
 105 **separate fund during the accounting period exceeds the amount the fiduciary receives**
 106 **from the separate fund during the period.**

469.439. 1. ~~[As used]~~ In this section, ~~[the phrase]~~ "liquidating asset" means an asset
 2 whose value will diminish or terminate because the asset is expected to produce receipts for a
 3 ~~[period of]~~ limited ~~[duration]~~ time. The ~~[phrase]~~ term includes a leasehold, patent,
 4 copyright, royalty right, and right to receive payments during a period of more than one year
 5 under an arrangement that does not provide for the payment of interest on the unpaid balance.
 6 ~~[The phrase]~~

7 **2. This section does not ~~[include a payment]~~ apply to a receipt** subject to section
 8 **469.423, 469.437, ~~[resources subject to section]~~ 469.441, ~~[timber subject to section]~~ 469.443,**
 9 **~~[an activity subject to section]~~ 469.447, ~~[an asset subject to section]~~ 469.449, **469.450,** or ~~[any~~
 10 **asset for which the trustee establishes a reserve for depreciation pursuant to section] 469.455.****

11 ~~[2.]~~ **3. A ~~[trustee]~~ fiduciary shall allocate:**

12 **(1) To income ~~[ten percent of the receipts from]:~~**

13 **(a) A receipt produced by a liquidating asset ~~[and the balance], to the extent the~~**
 14 **receipt does not exceed three percent of the value of the asset; or**

15 **(b) If the fiduciary cannot determine the value of the asset, ten percent of the**
 16 **receipt; and**

17 **(2) To principal, the balance of the receipt.**

 469.441. 1. To the extent [~~that a trustee accounts for receipts~~] **a fiduciary does not**
 2 **account for a receipt** from an interest in minerals, water, or other natural resources [~~pursuant~~
 3 ~~to this section~~] **as a business under section 469.427, the [trustee] fiduciary shall allocate**
 4 **[~~them as follows~~] the receipt:**

5 **(1) [If] To income, to the extent received:**

6 **(a) As [nominal] delay rental or [nominal] annual rent on a lease**[~~, a receipt shall be~~
 7 ~~allocated to income~~];

8 **(b) As a factor for interest or the equivalent of interest under an agreement**
 9 **creating a production payment; or**

10 **(c) On account of an interest in renewable water;**

11 **(2) To principal, if received from a production payment, [a receipt shall be allocated**
 12 ~~to income if and to the extent that the agreement creating the production payment provides a~~
 13 ~~factor for interest or its equivalent. The balance shall be allocated to principal;]~~ **to the extent**
 14 **paragraph (b) of subdivision (1) of this subsection does not apply; or**

15 **(3) [~~If an amount received~~] Between income and principal equitably, to the extent**
 16 **received:**

17 **(a) On account of an interest in nonrenewable water;**

18 **(b) As a royalty, shut-in-well payment, take-or-pay payment, or bonus [or delay**
 19 ~~rental is more than nominal, ninety percent shall be allocated to principal and the balance to~~
 20 ~~income]; or~~

21 ~~[(4) If an amount is received]~~ **(c) From a working interest or any other interest not**
 22 ~~provided for in subdivision (1)[5] or (2) [or (3)] of this subsection~~[~~, ninety percent of the net~~
 23 ~~amount received shall be allocated to principal and the balance to income]~~ **or paragraph (a)**
 24 **or (b) of this subdivision.**

25 2. [~~An amount received on account of~~] **This section applies to an interest [in water**
 26 ~~that is renewable shall be allocated to income. If the water is not renewable, ninety percent of~~
 27 ~~the amount shall be allocated to principal and the balance to income.~~

28 ~~3. Sections 469.401 to 469.467 apply]~~ **owned or held by a fiduciary** whether or not a
 29 **[decedent or donor] settlor** was extracting minerals, water, or other natural resources before
 30 **the fiduciary owned or held the interest [became subject to the trust].**

31 **3. An allocation of a receipt under subdivision (3) of subsection 1 of this section**
 32 **is presumed to be equitable if the amount allocated to principal is equal to the amount**
 33 **allowed by 26 U.S.C., as amended, as a deduction for depletion of the interest.**

34 4. If a ~~[trust]~~ **fiduciary** owns **or holds** an interest in minerals, water, or other natural
35 resources ~~[on]~~ **before** August 28, ~~[2001]~~ **2024**, the ~~[trustee]~~ **fiduciary** may allocate receipts
36 from the interest as provided in ~~[sections 469.401 to 469.467]~~ **this section** or in the manner
37 used by the ~~[trustee]~~ **fiduciary** before August 28, ~~[2001]~~ **2024**. If the ~~[trust]~~ **fiduciary**
38 acquires an interest in minerals, water, or other natural resources **on or** after August 28,
39 ~~[2001]~~ **2024**, the ~~[trustee]~~ **fiduciary** shall allocate receipts from the interest as provided in
40 ~~[sections 469.401 to 469.467]~~ **this section**.

469.443. 1. To the extent ~~[that a trustee accounts]~~ **a fiduciary does not account** for
2 receipts from the sale of timber and related products ~~[pursuant to this section]~~ **as a business**
3 **under section 469.427**, the ~~[trustee]~~ **fiduciary** shall allocate the net receipts:

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

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

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

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

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

20 3. ~~[Sections 469.401 to 469.467 apply]~~ **This section applies to land owned or held**
21 **by a fiduciary** whether or not a ~~[decedent or transferor]~~ **settlor** was ~~[harvesting]~~ **cutting**
22 timber from the **land before the fiduciary owned or held the property** ~~[before it became~~
23 ~~subject to the trust]~~.

24 4. If a ~~[trust]~~ **fiduciary** owns **or holds** an interest in ~~[timberland on]~~ **land used for**
25 **growing and cutting timber before** August 28, ~~[2001]~~ **2024**, the ~~[trustee]~~ **fiduciary** may
26 allocate net receipts from the sale of timber and related products as provided in ~~[sections~~
27 ~~469.401 to 469.467]~~ **this section** or in the manner used by the ~~[trustee]~~ **fiduciary** before
28 August 28, ~~[2001]~~ **2024**. If the ~~[trust]~~ **fiduciary** acquires an interest in ~~[timberland]~~ **land**
29 **used for growing and cutting timber on or** after August 28, ~~[2001]~~ **2024**, the ~~[trustee]~~

30 **fiduciary** shall allocate net receipts from the sale of timber and related products as provided
31 in ~~[sections 469.401 to 469.467]~~ **this section.**

469.445. 1. If a **trust received property for which a gift or estate tax** marital
2 deduction ~~[is allowed for all or part of a trust whose]~~ **was allowed and the settlor's spouse**
3 **holds a mandatory income interest in the trust, the spouse may require the trustee, to**
4 **the extent the trust** assets ~~[consist substantially of property that does]~~ **otherwise do not**
5 provide the spouse with sufficient income from or use of the trust assets~~], and if the amounts~~
6 ~~that the trustee transfers from principal to income pursuant to section 469.405 and distributes~~
7 ~~to the spouse from principal pursuant to the terms of the trust are insufficient to provide the~~
8 ~~spouse with the beneficial enjoyment required to obtain the marital]~~ **to qualify for the**
9 deduction, ~~[the spouse may require the trustee]~~ to:

10 (1) Make property productive of income~~];~~

11 (2) Convert property **to property productive of income** within a reasonable time~~];~~

12 or

13 (3) Exercise the power ~~[conferred by subsection 1 of]~~ **to adjust under** section
14 469.405.

15 2. The trustee may decide which action or combination of actions **in subsection 1 of**
16 **this section** to take.

17 ~~[2. In cases not governed by subsection 1 of this section, proceeds from the sale or~~
18 ~~other disposition of an asset are principal without regard to the amount of income the asset~~
19 ~~produces during any accounting period.]~~

469.447. 1. ~~[As used]~~ In this section, ~~[the term]~~ "derivative" means a contract ~~[or~~
2 ~~financial]~~, instrument, **other arrangement**, or a combination of contracts ~~[and financial]~~,
3 instruments, **or other arrangements, the value, rights, and obligations of** which ~~[gives a~~
4 ~~trust the right or obligation to participate in some or all changes in the price of a]~~ **are, in**
5 **whole or in part, dependent on or derived from an underlying** tangible or intangible asset
6 ~~[or group of assets, or changes in a rate, an index of prices or]~~, **group of tangible or**
7 **intangible assets, index, or occurrence of an event. The term includes stocks, fixed**
8 **income securities, and financial instruments and arrangements based on indices,**
9 **commodities, interest** rates, ~~[or other market indicator for an asset or a group of assets]~~
10 **weather-related events, and credit default events.**

11 2. To the extent ~~[that a trustee]~~ a **fiduciary** does not account ~~[pursuant to section~~
12 ~~469.427 for transactions]~~ **for a transaction** in derivatives~~], the trustee]~~ **as a business under**
13 **section 469.427, the fiduciary shall allocate [to principal] ten percent of receipts from the**
14 **transaction and ten percent of disbursements made in connection with [those transactions]**
15 **the transaction to income and the balance to principal.**

16 3. **Subsection 4 of this section applies if:**

17 (1) A ~~[trustee]~~ **fiduciary:**

18 (a) Grants an option to buy property from ~~[the]~~ a trust, whether or not the trust owns
19 the property when the option is granted~~];~~;

20 (b) Grants an option that permits another person to sell property to the trust~~];~~ or

21 (c) Acquires an option to buy property for the trust or an option to sell an asset owned
22 by the trust~~];~~ and

23 (2) The ~~[trustee]~~ **fiduciary** or other owner of the asset is required to deliver the asset
24 if the option is exercised~~];~~.

25 **4. If this subsection applies, the fiduciary shall allocate ten percent to income**
26 **and the balance to principal of the following amounts:**

27 (1) An amount received for granting the option ~~[shall be allocated to principal];~~

28 (2) An amount paid to acquire the option ~~[shall be paid from principal. A]; and~~

29 (3) Gain or loss realized ~~[upon]~~ **on** the exercise ~~[of an option, including an option~~
30 ~~granted to a settlor], exchange, settlement, offset, closing, or expiration of the [trust for~~
31 ~~services rendered, shall be allocated to principal] option.~~

469.449. 1. ~~[As used in this section, the phrase "asset-backed security" means an~~
2 ~~asset whose value is based upon the right it gives the owner to receive distributions from the~~
3 ~~proceeds of financial assets that provide collateral for the security. The phrase includes an~~
4 ~~asset that gives the owner the right to receive from the collateral financial assets only the~~
5 ~~interest or other current return or only the proceeds other than interest or current return. The~~
6 ~~phrase does not include an asset to which section 469.423 or 469.437 applies.~~

7 ~~2. If a trust receives a payment from interest or other current return and from other~~
8 ~~proceeds of the collateral financial assets, the trustee] Except as otherwise provided in~~
9 **subsection 2 of this section, a fiduciary shall allocate to income [the portion of] a receipt**
10 **from or related to an asset-backed security, to the extent the [payment which the] payer**
11 **identifies the payment as being from interest or other current return, and [shall allocate] to**
12 **principal the balance of the [payment to principal] receipt.**

13 ~~[3-] 2. If a [trust] fiduciary receives one or more payments in exchange for part or~~
14 **all of the [trust's entire] fiduciary's interest in an asset-backed security [in one accounting**
15 **period, the trustee shall allocate the payments to principal. If a payment is one of a series of**
16 **payments that will result in the-], including a liquidation or redemption of the [trust's]**
17 **fiduciary's interest in the security [over more than one accounting period,] the [trustee]**
18 **fiduciary shall allocate [ten] to income ten percent of receipts from the [payment to**
19 **income] transaction and [the balance to principal] ten percent of disbursements made in**
20 **connection with the transaction, and to principal the balance of the receipts and**
21 **disbursements.**

469.450. A fiduciary shall allocate receipts from or related to a financial instrument or arrangement not otherwise addressed by sections 469.399 to 469.487. The allocation shall be consistent with sections 469.447 and 469.449.

~~469.451. [A trustee shall make the following disbursements from income to the extent that they are not disbursements to which paragraph (b) or (c) of]~~ **Subject to section 469.456, and except as otherwise provided in subdivision (2) or (3) of subsection 3 of section 469.413 [applies], a fiduciary shall disburse from income:**

(1) One-half of:

(a) The regular compensation of the ~~[trustee]~~ **fiduciary** and ~~[of]~~ any person providing investment advisory ~~[or]~~, custodial, or other services to the ~~[trustee]~~ **fiduciary, to the extent income is sufficient; and**

~~[(2) One-half of all expenses]~~ (b) **An expense for [accountings] an accounting, judicial [proceedings] or nonjudicial proceeding, or other [matters] matter that [involve] involves both [the] income and [remainder] successive interests, to the extent income is sufficient;**

~~[(3) All of the other]~~ (2) **The balance of the disbursements described in subdivision (1) of this section, to the extent a fiduciary that is an independent person determines that making those disbursements from income would be in the interests of the beneficiaries;**

(3) **Another ordinary [expenses] expense incurred in connection with [the] administration, management, or preservation of [trust] property and [the] distribution of income, including interest, an ordinary [repairs] repair, regularly recurring [taxes] tax assessed against principal, and [expenses] an expense of [a] an accounting, judicial or nonjudicial proceeding, or other matter that [concerns] involves primarily [the] an income interest, to the extent income is sufficient; and**

(4) ~~[Recurring premiums]~~ **A premium on insurance covering [the] loss of a principal asset or [the loss of] income from or use of the asset.**

~~469.453. 1. [A trustee shall make the following disbursements]~~ **Subject to section 469.457, and except as otherwise provided in subdivision (2) of subsection 3 of section 469.413, a fiduciary shall disburse from principal:**

(1) The ~~[remaining one-half]~~ **balance of the disbursements described in [subdivisions (1) and (2)] subsections 1 and 3 of section 469.451, after application of subsection 2 of section 469.451;**

(2) ~~[All of]~~ The ~~[trustee's]~~ **fiduciary's** compensation calculated on principal as a fee for acceptance, distribution, or termination~~[-, and disbursements made to prepare property for sale];~~

10 (3) ~~[Payments]~~ **A payment of an expense to prepare for or execute a sale or other**
 11 **disposition of property;**

12 (4) **A payment** on the principal of a trust debt;

13 ~~[(4) Expenses of a]~~ (5) **A payment of an expense of an accounting, judicial or**
 14 **nonjudicial** proceeding, or other matter that ~~[concerns]~~ **involves** primarily ~~[an interest in]~~
 15 principal, **including a proceeding to construe the terms of the trust or protect property;**

16 ~~[(5) Premiums paid on a policy of]~~ (6) **A payment of a premium for insurance,**
 17 **including title** insurance, not described in subdivision (4) of section 469.451 of which the
 18 ~~[trust]~~ **fiduciary** is the owner and beneficiary;

19 ~~[(6)]~~ (7) **A payment of an estate[;] or inheritance [and other transfer taxes] tax or**
 20 **other tax imposed because of the death of a decedent,** including penalties, apportioned to
 21 the trust; and

22 ~~[(7) Extraordinary expenses incurred in connection with the management and~~
 23 ~~preservation of trust property;~~

24 ~~(8) Expenses for a capital improvement to a principal asset, whether in the form of~~
 25 ~~changes to an existing asset or the construction of a new asset, including special assessments;~~
 26 **and**

27 ~~(9) Disbursements]~~ (8) **A payment:**

28 (a) Related to environmental matters, including:

29 a. Reclamation[;];

30 b. Assessing environmental conditions[;];

31 c. Remedying and removing environmental contamination[;];

32 d. Monitoring remedial activities and the release of substances[;];

33 e. Preventing future releases of substances[;];

34 f. Collecting amounts from persons liable or potentially liable for the costs of ~~[those]~~
 35 activities[;] **described in subparagraphs a. to e. of this paragraph;**

36 g. Penalties imposed under environmental laws or regulations ~~[and];~~

37 h. Other ~~[payments made]~~ **actions** to comply with ~~[those]~~ **environmental** laws or
 38 regulations[;];

39 i. Statutory or common law claims by third parties[;]; and

40 j. Defending claims based on environmental matters[-]; **and**

41 (b) **For a premium for insurance for matters described in paragraph (a) of this**
 42 **subdivision.**

43 2. If a principal asset is encumbered with an obligation that requires income from
 44 ~~[that]~~ **the** asset to be paid directly to ~~[the]~~ **a** creditor, the ~~[trustee]~~ **fiduciary** shall transfer from
 45 principal to income an amount equal to the income paid to the creditor in reduction of the
 46 principal balance of the obligation.

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

2. A ~~[trustee]~~ **fiduciary** may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but ~~[may]~~ **shall** not transfer any amount for depreciation:

(1) Of ~~[that portion]~~ **the part** of real property used or available for use by a beneficiary as a residence ~~[or]~~;

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

~~[(2) During the administration of a decedent's estate; or]~~

(3) ~~[Pursuant to]~~ **Under** this section ~~[if the trustee is accounting pursuant to section 469.427]~~, **to the extent the fiduciary accounts:**

(a) **Under section 469.439 for the asset; or**

(b) **Under section 469.427** for the business or **other** activity in which the asset is used.

3. An amount transferred to principal **under this section** need not be **separately** held ~~[as a separate fund]~~.

469.456. 1. **If a fiduciary makes or expects to make an income disbursement described in subsection 2 of this section, the fiduciary may transfer an appropriate amount from principal to income in one or more accounting periods to reimburse income.**

2. **To the extent the fiduciary has not been and does not expect to be reimbursed by a third party, income disbursements to which subsection 1 of this section applies include:**

(1) **An amount chargeable to principal but paid from income because principal is illiquid;**

(2) **A disbursement made to prepare property for sale, including improvements and commissions; and**

(3) **A disbursement described in subsection 1 of section 469.453.**

3. **If an asset whose ownership gives rise to an income disbursement becomes subject to a successive interest after an income interest ends, the fiduciary may continue to make transfers under subsection 1 of this section.**

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

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

9 (1) An amount chargeable to income but paid from principal because ~~[it]~~ **income** is
 10 ~~[unusually large, including extraordinary repairs]~~ **not sufficient;**

11 (2) ~~[Disbursements]~~ **The cost of an improvement to principal, whether a change**
 12 **to an existing asset or the construction of a new asset, including a special assessment;**

13 (3) **A disbursement** made to prepare property for rental, including tenant allowances,
 14 leasehold improvements, and ~~[broker's]~~ commissions;

15 ~~[(3)]~~ (4) **A periodic [payments] payment** on an obligation secured by a principal
 16 asset, to the extent ~~[that]~~ the amount transferred from income to principal for depreciation is
 17 less than the periodic ~~[payments]~~ **payment;** and

18 ~~[(4) Disbursements]~~ (5) **A disbursement** described in ~~[subdivision (7) of]~~ subsection
 19 1 of section 469.453.

20 3. If ~~[the]~~ **an** asset whose ownership gives rise to ~~[the disbursements]~~ **a principal**
 21 **disbursement** becomes subject to a successive ~~[income]~~ interest after an income interest
 22 ends, ~~[a trustee]~~ **the fiduciary** may continue to ~~[transfer amounts from income to principal as~~
 23 ~~provided in]~~ **make transfers under** subsection 1 of this section.

469.459. 1. A tax required to be paid by a ~~[trustee]~~ **fiduciary that is** based on
 2 receipts allocated to income shall be paid from income.

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

6 3. **Subject to subsection 4 of this section and sections 469.456, 469.457, and**
 7 **469.462**, a tax required to be paid by a ~~[trustee]~~ **fiduciary** on ~~[the trust's]~~ a share of an entity's
 8 taxable income **in an accounting period** shall be paid from:

9 (1) ~~[From]~~ **Income and principal proportionately** to the ~~[extent that]~~ **allocation**
 10 **between income and principal of** receipts from the entity ~~[are allocated to income]~~ **in the**
 11 **period;** and

12 (2) ~~[From]~~ **Principal** to the extent ~~[that]~~ **the tax exceeds the** receipts from the entity
 13 ~~[are allocated only to principal]~~ **in the period.**

14 4. After applying subsections 1 to 3 of this section, ~~[the trustee]~~ **a fiduciary** shall
 15 adjust income or principal receipts, to the extent ~~[that]~~ the ~~[trust's]~~ **taxes the fiduciary pays**
 16 are reduced because ~~[the trust receives]~~ **of** a deduction for a payment made to a beneficiary.

469.462. 1. A fiduciary may make an adjustment between income and principal to offset the shifting of economic interests or tax benefits between current income beneficiaries and successor beneficiaries that arises from:

(1) An election or decision the fiduciary makes regarding a tax matter, other than a decision to claim an income tax deduction to which subsection 2 of this section applies;

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

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

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

3. A fiduciary that charges a beneficiary under subsection 2 of this section may offset the charge by obtaining payment from the beneficiary, withholding an amount from future distributions to the beneficiary, or adopting another method or combination of methods.

469.463. In applying and construing sections [469.401] 469.399 to [469.467] 469.487, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

469.464. Sections 469.399 to 469.487 modify, limit, or supersede the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but do not modify, limit, or supersede 15 U.S.C. Section 7001(c) or authorize electronic delivery of any of the notices described in 15 U.S.C. Section 7003(b).

469.465. If any provision of sections [469.401] 469.399 to [469.467] 469.487 or [the] its application [of these sections] to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of sections [469.401] 469.399 to [469.467]

4 **469.487** which can be given effect without the invalid provision or application **and to this**
5 **end, the provisions of sections 469.399 to 469.487 are severable.**

2 469.467. Sections ~~[469.401]~~ **469.399** to ~~[469.467]~~ **469.487** apply to ~~[every]~~ a trust or
3 ~~[decedent's]~~ estate existing **or created** on or after August 28, ~~[2001]~~ **2024**, except as
4 otherwise expressly provided in the ~~[will or]~~ terms of the trust or ~~[in]~~ sections ~~[469.401]~~
4 **469.399** to ~~[469.467]~~ **469.487**.

200 **469.471. As used in sections 469.471 to 469.487, the following terms mean:**

- 2 (1) "Applicable value", the amount of the net fair market value of a trust taken
3 into account under section 469.483;
- 4 (2) "Express unitrust", a trust for which, under the terms of the trust without
5 regard to sections 469.471 to 469.487, income or net income shall or may be calculated
6 as a unitrust amount;
- 7 (3) "Income trust", a trust that is not a unitrust;
- 8 (4) "Net fair market value of a trust", the fair market value of the assets of the
9 trust, less the noncontingent liabilities of the trust;
- 10 (5) "Unitrust", a trust for which net income is a unitrust amount. The term
11 includes an express unitrust;
- 12 (6) "Unitrust amount", an amount computed by multiplying a determined value
13 of a trust by a determined percentage. For a unitrust administered under a unitrust
14 policy, the term means the applicable value multiplied by the unitrust rate;
- 15 (7) "Unitrust policy", a policy described in sections 469.479 to 469.487 and
16 adopted under section 469.475;
- 17 (8) "Unitrust rate", the rate used to compute the unitrust amount for a unitrust
18 administered under a unitrust policy.

201 **469.473. 1. Except as otherwise provided in subsection 2 of this section, sections**
2 **469.471 to 469.487 apply to:**

- 3 (1) An income trust, unless the terms of the trust expressly prohibit use of
4 sections 469.471 to 469.487 by a specific reference to these sections or an explicit
5 expression of intent that net income not be calculated as a unitrust amount; and
- 6 (2) An express unitrust, except to the extent the terms of the trust explicitly:
 - 7 (a) Prohibit use of sections 469.471 to 469.487 by a specific reference to such
8 sections;
 - 9 (b) Prohibit conversion to an income trust; or
 - 10 (c) Limit changes to the method of calculating the unitrust amount.

11 **2. Sections 469.471 to 469.487 do not apply to a trust described in 26 U.S.C.**
12 **Section 170(f)(2)(B), 642(c)(5), 664(d), 2702(a)(3)(A)(ii) or (iii), or 2702(b), as amended.**

13 **3. An income trust to which sections 469.471 to 469.487 apply under subdivision**
14 **(1) of subsection 1 of this section may be converted to a unitrust under sections 469.471**
15 **to 469.487 regardless of the terms of the trust concerning distributions. Conversion to a**
16 **unitrust under sections 469.471 to 469.487 does not affect other terms of the trust**
17 **concerning distributions of income or principal.**

18 **4. Sections 469.471 to 469.487 apply to an estate only to the extent a trust is a**
19 **beneficiary of the estate. To the extent of the trust's interest in the estate, the estate may**
20 **be administered as a unitrust, the administration of the estate as a unitrust may be**
21 **discontinued, or the percentage or method used to calculate the unitrust amount may be**
22 **changed, in the same manner as for a trust under sections 469.471 to 469.487.**

23 **5. Sections 469.471 to 469.487 do not create a duty to take or consider action**
24 **under sections 469.471 to 469.487 or to inform a beneficiary about the applicability of**
25 **sections 469.471 to 469.487.**

26 **6. A fiduciary that in good faith takes or fails to take an action under sections**
27 **469.471 to 469.487 is not liable to a person affected by the action or inaction.**

469.475. 1. A fiduciary, without court approval, by complying with subsections 2
2 **and 6 of this section, may:**

3 **(1) Convert an income trust to a unitrust if the fiduciary adopts in a record a**
4 **unitrust policy for the trust providing:**

5 **(a) That in administering the trust the net income of the trust will be a unitrust**
6 **amount rather than net income determined without regard to sections 469.471 to**
7 **469.487; and**

8 **(b) The percentage and method used to calculate the unitrust amount;**

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

13 **(3) Convert a unitrust to an income trust if the fiduciary adopts in a record a**
14 **determination that, in administering the trust, the net income of the trust will be net**
15 **income determined without regard to sections 469.471 to 469.487 rather than a unitrust**
16 **amount.**

17 **2. A fiduciary may take an action under subsection 1 of this section if:**

18 **(1) The fiduciary determines that the action will assist the fiduciary to**
19 **administer a trust impartially;**

20 **(2) The fiduciary sends a notice in a record, in the manner required by section**
21 **469.477, describing and proposing to take the action;**

22 **(3) The fiduciary sends a copy of the notice under subdivision (2) of this**
23 **subsection to each settlor of the trust that is:**

24 **(a) If an individual, living; or**

25 **(b) If not an individual, in existence;**

26 **(4) At least one member of each class of the qualified beneficiaries described**
27 **under section 456.1-103 receiving the notice under subdivision (2) of this subsection is:**

28 **(a) If an individual, legally competent;**

29 **(b) If not an individual, in existence; or**

30 **(c) Represented in the manner provided in subsection 2 of section 469.477; and**

31 **(5) The fiduciary does not receive, by the date specified in the notice under**
32 **subdivision (5) of subsection 4 of section 469.477, an objection in a record to the action**
33 **proposed under subdivision (2) of this subsection from a person to which the notice**
34 **under subdivision (2) of this subsection is sent.**

35 **3. If a fiduciary receives, not later than the date stated in the notice under**
36 **subdivision (5) of subsection 4 of section 469.477, an objection in a record described in**
37 **subdivision (4) of subsection 4 of section 469.477 to a proposed action, the fiduciary or a**
38 **beneficiary may request the court to have the proposed action taken as proposed, taken**
39 **with modifications, or prevented. A person described in subsection 1 of section 469.477**
40 **may oppose the proposed action in the proceeding under this subsection, whether or not**
41 **the person:**

42 **(1) Consented under subsection 3 of section 469.477; or**

43 **(2) Objected under subdivision (4) of subsection 4 of section 469.477.**

44 **4. If, after sending a notice under subdivision (2) of subsection 2 of this section, a**
45 **fiduciary decides not to take the action proposed in the notice, the fiduciary shall notify**
46 **in a record each person described in subsection 1 of section 469.477 of the decision not to**
47 **take the action and the reasons for the decision.**

48 **5. If a beneficiary requests in a record that a fiduciary take an action described**
49 **in subsection 1 of this section and the fiduciary declines to act or does not act within**
50 **ninety days after receiving the request, the beneficiary may request the court to direct**
51 **the fiduciary to take the action requested.**

52 **6. In deciding whether and how to take an action authorized by subsection 1 of**
53 **this section, or whether and how to respond to a request by a beneficiary under**
54 **subsection 5 of this section, a fiduciary shall consider all factors relevant to the trust and**
55 **the beneficiaries, including relevant factors in subsection 5 of section 469.403.**

56 **7. A fiduciary may release or delegate the power to convert an income trust to a**
57 **unitrust under subdivision (1) of subsection 1 of this section, change the percentage or**
58 **method used to calculate a unitrust amount under subdivision (2) of subsection 1 of this**

59 section, or convert a unitrust to an income trust under subdivision (3) of subsection 1 of
60 this section, for a reason described in subsection 7 of section 469.405 and in the manner
61 described in subsection 8 of section 469.405.

2 469.477. 1. A notice required by subdivision (3) of subsection 2 of section
3 469.475 shall be sent in a manner authorized under section 456.1-109 to:

4 (1) The qualified beneficiaries defined under section 456.1-103;

5 (2) Each person acting as trust protector under section 456.8-808; and

6 (3) Each person that is granted a power over the trust by the terms of the trust,
7 to the extent the power is exercisable when the person is not then serving as a trustee:

8 (a) Including a:

9 a. Power over the investment, management, or distribution of trust property or
10 other matters of trust administration; and

11 b. Power to appoint or remove a trustee or person described in this paragraph;
12 and

13 (b) Excluding a:

14 a. Power of appointment;

15 b. Power of a beneficiary over the trust, to the extent the exercise or nonexercise
16 of the power affects the beneficial interest of the beneficiary or another beneficiary
17 represented by the beneficiary under sections 456.3-301 to 456.3-305 with respect to the
18 exercise or nonexercise of the power; and

19 c. Power over the trust if the terms of the trust provide that the power is held in
20 a nonfiduciary capacity and the power shall be held in a nonfiduciary capacity to
21 achieve a tax objective under 26 U.S.C., as amended.

22 2. The representation provisions of sections 456.3-301 to 456.3-305 apply to
23 notice under this section.

24 3. A person may consent in a record at any time to action proposed under
25 subdivision (2) of subsection 2 of section 469.475. A notice required by subdivision (2) of
26 subsection 2 of section 469.475 need not be sent to a person that consents under this
27 subsection.

28 4. A notice required by subdivision (2) of subsection 2 of section 469.475 shall
29 include:

30 (1) The action proposed under subdivision (2) of subsection 2 of section 469.475;

31 (2) For a conversion of an income trust to a unitrust, a copy of the unitrust policy
32 adopted under subdivision (1) of subsection 1 of section 469.475;

33 (3) For a change in the percentage or method used to calculate the unitrust
34 amount, a copy of the unitrust policy or amendment or replacement of the unitrust
policy adopted under subdivision (2) of subsection 1 of section 469.475;

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

38 (5) The date by which an objection under subdivision (4) shall be received by the
39 fiduciary, which shall be at least thirty days after the date the notice is sent;

40 (6) The date on which the action is proposed to be taken and the date on which
41 the action is proposed to take effect;

42 (7) The name and contact information of the fiduciary; and

43 (8) The name and contact information of a person that may be contacted for
44 additional information.

469.479. 1. In administering a unitrust under sections 469.471 to 469.487, a
2 fiduciary shall follow a unitrust policy adopted under subdivision (1) or (2) of subsection
3 1 of section 469.475 or amended or replaced under subdivision (2) of section 1 of section
4 469.475.

5 2. A unitrust policy shall provide:

6 (1) The unitrust rate or the method for determining the unitrust rate under
7 section 469.481;

8 (2) The method for determining the applicable value under section 469.483; and

9 (3) The rules described in sections 469.481 to 469.487 that apply in the
10 administration of the unitrust, whether the rules are:

11 (a) Mandatory, as provided in subsection 1 of section 469.483 and subsection 1 of
12 section 469.485; or

13 (b) Optional, as provided in section 469.481, subsection 2 of section 469.483,
14 subsection 2 of section 469.485, and subsection 1 of section 469.487, to the extent the
15 fiduciary elects to adopt such rules.

469.481. 1. Except as otherwise provided in subdivision (1) of subsection 2 of
2 section 469.487, a unitrust rate may be:

3 (1) A fixed unitrust rate; or

4 (2) A unitrust rate that is determined for each period using:

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

6 (b) A mathematical blend of market indices or other published data over a
7 stated number of preceding periods.

8 2. Except as otherwise provided in subdivision (1) of subsection 2 of section
9 469.487, a unitrust policy may provide:

10 (1) A limit on how high the unitrust rate determined under subdivision (2) of
11 subsection 1 of this section may rise;

12 **(2) A limit on how low the unitrust rate determined under subdivision (2) of**
13 **subsection 1 of this section may fall;**

14 **(3) A limit on how much the unitrust rate determined under subdivision (2) of**
15 **subsection 1 of this section may increase over the unitrust rate for the preceding period**
16 **or a mathematical blend of unitrust rates over a stated number of preceding periods;**

17 **(4) A limit on how much the unitrust rate determined under subdivision (2) of**
18 **subsection 1 of this section may decrease below the unitrust rate for the preceding**
19 **period or a mathematical blend of unitrust rates over a stated number of preceding**
20 **periods; or**

21 **(5) A mathematical blend of any of the unitrust rates determined under**
22 **subdivision (2) of subsection 1 of this section and subdivisions (1) to (4) of this**
23 **subsection.**

469.483. 1. A unitrust policy shall provide the method for determining the fair
2 **market value of an asset for the purpose of determining the unitrust amount, including:**

3 **(1) The frequency of valuing the asset, which need not require a valuation in**
4 **every period; and**

5 **(2) The date for valuing the asset in each period in which the asset is valued.**

6 **2. Except as otherwise provided in subdivision (2) of subsection 2 of section**
7 **469.487, a unitrust policy may provide methods for determining the amount of the net**
8 **fair market value of the trust to take into account in determining the applicable value,**
9 **including:**

10 **(1) Obtaining an appraisal of an asset for which fair market value is not readily**
11 **available;**

12 **(2) Exclusion of specific assets or groups or types of assets;**

13 **(3) Other exceptions or modifications of the treatment of specific assets or**
14 **groups or types of assets;**

15 **(4) Identification and treatment of cash or property held for distribution;**

16 **(5) Use of:**

17 **(a) An average of fair market values over a stated number of preceding periods;**

18 **or**

19 **(b) Another mathematical blend of fair market values over a stated number of**
20 **preceding periods;**

21 **(6) A limit on how much the applicable value of all assets, groups of assets, or**
22 **individual assets may increase over:**

23 **(a) The corresponding applicable value for the preceding period; or**

24 **(b) A mathematical blend of applicable values over a stated number of preceding**
25 **periods;**

26 (7) A limit on how much the applicable value of all assets, groups of assets, or
27 individual assets may decrease below:

28 (a) The corresponding applicable value for the preceding period; or

29 (b) A mathematical blend of applicable values over a stated number of preceding
30 periods;

31 (8) The treatment of accrued income and other features of an asset that affect
32 value; and

33 (9) Determining the liabilities of the trust, including treatment of liabilities to
34 conform with the treatment of assets under subdivisions (1) to (8) of this subsection.

469.485. 1. A unitrust policy shall provide the period used under sections
2 469.481 and 469.483. Except as otherwise provided in subdivision (3) of subsection 2 of
3 section 469.481, the period may be:

4 (1) A calendar year;

5 (2) A twelve-month period other than a calendar year;

6 (3) A calendar quarter;

7 (4) A three-month period other than a calendar quarter; or

8 (5) Another period.

9 2. Except as otherwise provided in subsection 2 of section 469.487, a unitrust
10 policy may provide standards for:

11 (1) Using fewer preceding periods under paragraph (b) of subdivision (2) of
12 subsection 1 of section 469.481 or subdivision (3) or (4) of subsection 2 of section 469.481
13 if:

14 (a) The trust was not in existence in a preceding period; or

15 (b) Market indices or other published data are not available for a preceding
16 period;

17 (2) Using fewer preceding periods under paragraph (a) or (b) of subdivision (5)
18 of subsection 2 of section 469.483, paragraph (b) of subdivision (6) of subsection 2 of
19 section 469.483, or paragraph (b) of subdivision (7) of subsection 2 of section 469.483 if:

20 (a) The trust was not in existence in a preceding period; or

21 (b) Fair market values are not available for a preceding period; and

22 (3) Prorating the unitrust amount on a daily basis for a part of a period in which
23 the trust or the administration of the trust as a unitrust or the interest of any beneficiary
24 commences or terminates.

469.487. 1. A unitrust policy may:

2 (1) Provide methods and standards for:

3 (a) Determining the timing of distributions;

4 **(b) Making distributions in cash or in kind or partly in cash and partly in kind;**
 5 **or**

6 **(c) Correcting an underpayment or overpayment to a beneficiary based on the**
 7 **unitrust amount if there is an error in calculating the unitrust amount;**

8 **(2) Specify sources and the order of sources, including categories of income for**
 9 **federal income tax purposes, from which distributions of a unitrust amount are paid; or**

10 **(3) Provide other standards and rules the fiduciary determines serve the**
 11 **interests of the beneficiaries.**

12 **2. If a trust qualifies for a special tax benefit or a fiduciary is not an independent**
 13 **person:**

14 **(1) The unitrust rate established under section 469.481 shall not be less than**
 15 **three percent or more than five percent;**

16 **(2) The only provisions of section 469.483 that apply are subsection 1 of section**
 17 **469.483; subdivisions (1), (4), and (9) of subsection 2 of section 469.483; and paragraph**
 18 **(a) of subdivision (5) of subsection 2 of section 469.483;**

19 **(3) The only period that may be used under section 469.485 is a calendar year**
 20 **under subdivision (1) of subsection 1 of section 469.485; and**

21 **(4) The only other provisions of section 469.485 that apply are paragraph (a) of**
 22 **subdivision (2) of subsection 2 of section 469.485 and subdivision (3) of subsection 2 of**
 23 **section 469.485.**

2 ~~[469.409. 1. Any claim for breach of a trustee's duty to impartially~~
 3 ~~administer a trust related, directly or indirectly, to an adjustment made by a~~
 4 ~~fiduciary to the allocation between principal and income pursuant to~~
 5 ~~subsection 1 of section 469.405 or any allocation made by the fiduciary~~
 6 ~~pursuant to any authority or discretion specified in subsection 1 of section~~
 7 ~~469.403, unless previously barred by adjudication, consent or other limitation,~~
 8 ~~shall be barred as provided in this section.~~

9 ~~(1) Any such claim brought by a qualified beneficiary is barred if not~~
 10 ~~asserted in a judicial proceeding commenced within two years after the trustee~~
 11 ~~has sent a report to that qualified beneficiary that adequately discloses the facts~~
 12 ~~constituting the claim.~~

13 ~~(2) Any such claim brought by a beneficiary (other than a qualified~~
 14 ~~beneficiary) with any interest whatsoever in the trust, no matter how remote or~~
 15 ~~contingent, or whether or not the beneficiary is ascertainable or has the~~
 16 ~~capacity to contract, is barred if not asserted in a judicial proceeding~~
 17 ~~commenced within two years after the first to occur of:~~

18 ~~(a) The date the trustee sent a report to all qualified beneficiaries that~~
 19 ~~adequately discloses the facts constituting the claim; or~~

20 ~~(b) The date the trustee sent a report to a person that represents the~~
 21 ~~beneficiary under the provisions of subdivision (2) of subsection 2 of this~~
 22 ~~section.~~

- 22 2. For purposes of this section the following rules shall apply:
 23 (1) ~~A report adequately discloses the facts constituting a claim if it~~
 24 ~~provides sufficient information so that the beneficiary should know of the~~
 25 ~~claim or reasonably should have inquired into its existence;~~
 26 (2) ~~Section 469.402 shall apply in determining whether a beneficiary~~
 27 ~~(including a qualified beneficiary) has received notice for purposes of this~~
 28 ~~section;~~
 29 (3) ~~The determination of the identity of all qualified beneficiaries shall~~
 30 ~~be made on the date the report is deemed to have been sent; and~~
 31 (4) ~~This section does not preclude an action to recover for fraud or~~
 32 ~~misrepresentation related to the report.]~~

2 [469.411. 1. (1) If the provisions of this section apply to a trust, the
 3 ~~unitrust amount determined for each accounting year of the trust shall be a~~
 4 ~~percentage between three and five percent of the average net fair market value~~
 5 ~~of the trust, as of the first day of the trust's current accounting year. The~~
 6 ~~percentage applicable to a trust shall be that percentage specified by the terms~~
 7 ~~of the governing instrument or by the election made in accordance with~~
 8 ~~subdivision (2) of subsection 5 of this section.~~

9 (2) ~~The unitrust amount for the current accounting year computed~~
 10 ~~pursuant to this section shall be proportionately reduced for any distributions,~~
 11 ~~in whole or in part, other than distributions of the unitrust amount, and for any~~
 12 ~~payments of expenses, including debts, disbursements and taxes, from the trust~~
 13 ~~within a current accounting year that the trustee determines to be material and~~
 14 ~~substantial, and shall be proportionately increased for the receipt, other than a~~
 15 ~~receipt that represents a return on investment, of any additional property into~~
 16 ~~the trust within a current accounting year.~~

17 (3) ~~For purposes of this section, the net fair market values of the assets~~
 18 ~~held in the trust on the first business day of a prior accounting quarter shall be~~
 19 ~~adjusted to reflect any reduction, in the case of a distribution or payment, or~~
 20 ~~increase, in the case of a receipt, for the prior accounting year pursuant to~~
 21 ~~subdivision (1) of this subsection, as if the distribution, payment or receipt had~~
 22 ~~occurred on the first day of the prior accounting year.~~

23 (4) ~~In the case of a short accounting period, the trustee shall prorate~~
 24 ~~the unitrust amount on a daily basis.~~

25 (5) ~~In the case where the net fair market value of an asset held in the~~
 26 ~~trust has been incorrectly determined in any quarter, the unitrust amount shall~~
 27 ~~be increased in the case of an undervaluation, or be decreased in the case of an~~
 28 ~~overvaluation, by an amount equal to the difference between the unitrust~~
 29 ~~amount determined based on the correct valuation of the asset and the unitrust~~
 30 ~~amount originally determined.~~

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

32 (1) ~~"Average net fair market value", a rolling average of the fair~~
 33 ~~market value of the assets held in the trust on the first business day of the~~
 34 ~~lessor of the number of accounting quarters of the trust from the date of~~
 35 ~~inception of the trust to the determination of the trust's average net fair market~~
 36 ~~value, or twelve accounting quarters of the trust, regardless of whether this~~
 section applied to the ascertainment of net income for all valuation quarters;

37 ~~(2) "Current accounting year", the accounting period of the trust for~~
38 ~~which the unitrust amount is being determined.~~

39 ~~3. In determining the average net fair market value of the assets held in~~
40 ~~the trust, there shall not be included the value of:~~

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

48 ~~(2) Any asset specifically given to a beneficiary under the terms of the~~
49 ~~trust and the return on investment on that asset, which return on investment~~
50 ~~shall be distributable to the beneficiary.~~

51 ~~4. In determining the average net fair market value of the assets held in~~
52 ~~the trust pursuant to subsection 1 of this section, the trustee shall, not less often~~
53 ~~than annually, determine the fair market value of each asset of the trust that~~
54 ~~consists primarily of real property or other property that is not traded on a~~
55 ~~regular basis in an active market by appraisal or other reasonable method or~~
56 ~~estimate, and that determination, if made reasonably and in good faith, shall be~~
57 ~~conclusive as to all persons interested in the trust. Any claim based on a~~
58 ~~determination made pursuant to this subsection shall be barred if not asserted~~
59 ~~in a judicial proceeding brought by any beneficiary with any interest~~
60 ~~whatsoever in the trust within two years after the trustee has sent a report to all~~
61 ~~qualified beneficiaries that adequately discloses the facts constituting the~~
62 ~~claim. The rules set forth in subsection 2 of section 469.409 shall apply to the~~
63 ~~barring of claims pursuant to this subsection.~~

64 ~~5. This section shall apply to the following trusts:~~

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

67 ~~(2) Any trust created under an instrument that became irrevocable on,~~
68 ~~before, or after August 28, 2001, if the trustee, in the trustee's discretion, elects~~
69 ~~to have this section apply unless the instrument creating the trust specifically~~
70 ~~prohibits an election under this subdivision. The trustee shall deliver notice to~~
71 ~~all qualified beneficiaries and the settlor of the trust, if he or she is then living,~~
72 ~~of the trustee's intent to make such an election at least sixty days before~~
73 ~~making that election. The trustee shall have sole authority to make the~~
74 ~~election. Section 469.402 shall apply for all purposes of this subdivision. An~~
75 ~~action or order by any court shall not be required. The election shall be made~~
76 ~~by a signed writing delivered to the settlor of the trust, if he or she is then~~
77 ~~living, and to all qualified beneficiaries. The election is irrevocable, unless~~
78 ~~revoked by order of the court having jurisdiction of the trust. The election~~
79 ~~may specify the percentage used to determine the unitrust amount pursuant to~~
80 ~~this section, provided that such percentage is between three and five percent,~~
81 ~~or if no percentage is specified, then that percentage shall be three percent. In~~
82 ~~making an election pursuant to this subsection, the trustee shall be subject to~~
83 ~~the same limitations and conditions as apply to an adjustment between income~~
84 ~~and principal pursuant to subsections 3 and 4 of section 469.405; and~~

85 ~~(3) No action of any kind based on an election made by a trustee~~
 86 ~~pursuant to subdivision (2) of this subsection shall be brought against the~~
 87 ~~trustee by any beneficiary of that trust three years from the effective date of~~
 88 ~~that election.~~

89 ~~6. (1) Once the provisions of this section become applicable to a trust,~~
 90 ~~the net income of the trust shall be the unitrust amount.~~

91 ~~(2) Unless otherwise provided by the governing instrument, the~~
 92 ~~unitrust amount distributed each year shall be paid from the following sources~~
 93 ~~for that year up to the full value of the unitrust amount in the following order:~~

94 ~~(a) Net income as determined if the trust were not a unitrust;~~

95 ~~(b) Other ordinary income as determined for federal income tax~~
 96 ~~purposes;~~

97 ~~(c) Assets of the trust principal for which there is a readily available~~
 98 ~~market value; and~~

99 ~~(d) Other trust principal.~~

100 ~~(3) Additionally, the trustee may allocate to trust income for each~~
 101 ~~taxable year of the trust, or portion thereof:~~

102 ~~(a) Net short term capital gain described in the Internal Revenue Code,~~
 103 ~~26 U.S.C. Section 1222(5), for such year, or portion thereof, but only to the~~
 104 ~~extent that the amount so allocated together with all other amounts to trust~~
 105 ~~income, as determined under the provisions of this chapter without regard to~~
 106 ~~this section, for such year, or portion thereof, does not exceed the unitrust~~
 107 ~~amount for such year, or portion thereof;~~

108 ~~(b) Net long term capital gain described in the Internal Revenue Code,~~
 109 ~~26 U.S.C. Section 1222(7), for such year, or portion thereof, but only to the~~
 110 ~~extent that the amount so allocated together with all other amounts, including~~
 111 ~~amounts described in paragraph (a) of this subdivision, allocated to trust~~
 112 ~~income for such year, or portion thereof, does not exceed the unitrust amount~~
 113 ~~for such year, or portion thereof.~~

114 ~~7. A trust with respect to which this section applies on August 28,~~
 115 ~~2011, may calculate the unitrust amount in accordance with the provisions of~~
 116 ~~this section, as it existed either before or after such date, as the trustee of such~~
 117 ~~trust shall determine in a writing kept with the records of the trust in the~~
 118 ~~trustee's discretion.]~~

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

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

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

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

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

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