

**Part VI**  
**Allocation of Principal and Income**  
**Chapter 61**  
**DELAWARE UNIFORM PRINCIPAL AND INCOME ACT**

**Subchapter I**  
**Definitions and General Principles**

**§ 61-101 Short title.**

Subchapters I through VI of this chapter may be cited as the "Delaware Uniform Principal and Income Act."  
(77 Del. Laws, c. 99, § 1.)

**§ 61-102 Definitions.**

In this chapter:

(1) "Accounting period" means a calendar year unless another 12-month period is selected by a fiduciary. The term includes a portion of a calendar year or other 12-month period that begins when an income interest begins or ends when an income interest ends.

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

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

(4) "Income" means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in subchapter IV of this chapter.

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

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

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

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

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

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

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

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

(13) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court, and an adviser described in § 3313 of this title.

(77 Del. Laws, c. 99, § 1; 77 Del. Laws, c. 330, § 19.)

**§ 61-103 Fiduciary duties; general principles.**

(a) In allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of subchapters II and III of this chapter, a fiduciary:

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

(2) May administer a trust or estate by the exercise of a discretionary power of administration, which shall include a power to allocate between principal and income, given to the fiduciary by the terms of the trust or the will or by local law including, but not limited to, § 3325(23) of this title, even if the exercise of the power produces a result different from a result required or permitted by this chapter;

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

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

(b) In exercising the power to adjust under § 61-104(a) of this title or a discretionary power of administration regarding a matter within the scope of this chapter, whether granted by the terms of a trust, a will, or this chapter, a fiduciary shall administer a trust or estate

impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an intention that the fiduciary shall or may favor 1 or more of the beneficiaries. A determination in accordance with this chapter is presumed to be fair and reasonable to all of the beneficiaries.

(77 Del. Laws, c. 99, § 1; 77 Del. Laws, c. 330, § 20.)

### § 61-104 Trustee's power to adjust.

(a) A trustee may adjust between principal and income to the extent the trustee considers necessary if the trustee invests and manages trust assets as a prudent investor, the terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust's income, and the trustee determines, after applying the rules in § 61-103(a) of this title, that the trustee is otherwise unable to comply with § 61-103(b) of this title.

(b) In deciding whether and to what extent to exercise the power conferred by subsection (a) of this section, a trustee shall consider all factors relevant to the trust and its beneficiaries, including the following factors to the extent they are relevant:

- (1) The nature, purpose, and expected duration of the trust;
- (2) The intent of the settlor;
- (3) The identity and circumstances of the beneficiaries;
- (4) The needs for liquidity, regularity of income, and preservation and appreciation of capital;
- (5) The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor;
- (6) The net amount allocated to income under the other sections of this chapter, and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;
- (7) Whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;
- (8) The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and
- (9) The anticipated tax consequences of an adjustment.

(c) A trustee may not make an adjustment:

- (1) That diminishes the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment;
  - (2) That reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;
  - (3) That changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;
  - (4) If the adjustment is from any amount that is permanently set aside for charitable purposes under the governing instrument and for which a federal estate or gift tax deduction has been taken unless both income and principal are so set aside;
  - (5) If possessing or exercising the power to make an adjustment causes an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;
  - (6) If possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment;
  - (7) If the trustee is a beneficiary of the trust; or
  - (8) If the trustee is not a beneficiary, but the adjustment would benefit the trustee directly or indirectly.
- (d) If paragraph (c)(5), (6), (7), or (8) of this section applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.

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

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

(g) This section shall have no application to trusts governed by §§ 61-106 and 61-107 of this title. This section shall be construed as pertaining to the administration of a trust.

(h) Following the exercise of the power conferred by subsection (a) of this section to adjust principal to income, the trustee:

(1) Shall consider as ordinary income the amount so adjusted that is not capital gain net income described in paragraph (h)(2) of this section as paid from trust accounting income;

(2) After calculating the trust's capital gain net income described in § 1222(9) (26 U.S.C. § 1222(9)) of the Internal Revenue Code of 1986, as amended, may consider the amount so adjusted as paid from net short-term capital gain described in § 1222(5) (26 U.S.C. § 1222(5)) of the Internal Revenue Code of 1986, as amended, and then from net long-term capital gain described in § 1222(7) (26 U.S.C. § 1222(7)) of the Internal Revenue Code of 1986, as amended; and

(3) Shall then consider any remaining amount so adjusted as paid from the principal of the trust.

(77 Del. Laws, c. 99, § 1; 77 Del. Laws, c. 330, § 21.)

### § 61-105 Judicial control of discretionary power.

(a) In any proceeding that involves a fiduciary's decision to exercise or refrain from the exercise of a discretionary power conferred upon the fiduciary by this chapter, the fiduciary's decision shall be changed by the court only if the court determines that the decision was an abuse of the fiduciary's discretion. A fiduciary's decision is not an abuse of discretion merely because the court would have exercised the power in a different manner or would not have exercised the power.

(b) The decisions to which subsection (a) of this section applies include:

(1) A decision under § 61-104(a) of this title as to whether and to what extent an amount should be transferred from principal to income or from income to principal.

(2) A decision regarding the factors that are relevant to the trust and its beneficiaries, the extent to which the factors are relevant, and the weight, if any, to be given to those factors, in deciding whether and to what extent to exercise the discretionary power conferred by § 61-104(a) of this title.

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

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

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

(3) To the extent that the court is unable, after applying paragraphs (c)(1) and (2) of this section, to place the beneficiaries, the trust, or both, in the positions they would have occupied if the discretion had not been abused, the court may order the fiduciary to pay an appropriate amount from its own funds to 1 or more of the beneficiaries or the trust or both.

(d) In a proceeding brought by a fiduciary under this section, the court is to determine in accordance with the provisions of this section whether a proposed exercise or nonexercise by the fiduciary of a discretionary power conferred by this chapter will result in an abuse of the fiduciary's discretion. If the petition or other pleading to the court describes the proposed exercise or nonexercise of the power and contains sufficient information to inform the beneficiaries of the reasons for the proposal, the facts upon which the fiduciary relies, and an explanation of how the income and remainder beneficiaries will be affected by the proposed exercise or nonexercise of the power, a beneficiary who challenges the proposed exercise or nonexercise has the burden of establishing that it will result in an abuse of discretion.

(77 Del. Laws, c. 99, § 1.)

### § 61-106 Total return unitrusts.

(a) In this section:

(1) "Disinterested person" means a person who is not a "related or subordinate party" (as defined in § 672(c) of the Internal Revenue Code [26 U.S.C. § 672(c)] or any successor provision thereof (hereinafter referred to in this section as the "I.R.C.)) with respect to the person then acting as trustee of the trust and excludes the trustor of the trust and any interested trustee.

(2) "Income trust" means a trust, created by either an inter vivos or a testamentary instrument, which directs or permits the trustee to distribute the net income of the trust to 1 or more persons, either in fixed proportions or in amounts or proportions determined by the trustee and regardless of whether the trust directs or permits the trustee to distribute the principal of the trust to 1 or more such persons.

(3) "Interested distributee" means a person to whom distributions of income or principal can currently be made who has the power to remove the existing trustee and designate as successor a person who may be a "related or subordinate party" (as defined in I.R.C. § 672(c) [26 U.S.C. § 672(c)]) with respect to such distributee.

(4) "Interested trustee" means:

## Title 12 - Decedents' Estates and Fiduciary Relations

---

- a. An individual trustee to whom the net income or principal of the trust can currently be distributed or would be distributed if the trust were then to terminate and be distributed,
  - b. Any trustee who may be removed and replaced by an interested distributee and/or
  - c. An individual trustee whose legal obligation to support a beneficiary may be satisfied by distributions of income and principal of the trust.
- (5) "Total return unitrust" means an income trust that has been converted under this section or the laws of any other jurisdiction that permits an income trust to be converted to a trust in which a unitrust amount is treated as the net income of the trust.
- (6) "Trustee" means all persons acting as trustee of the trust (except where expressly noted otherwise), whether acting in their discretion or on the direction of 1 or more persons acting in a fiduciary capacity.
- (7) "Trustor" means an individual who created an inter vivos or a testamentary trust.
- (8) "Unitrust amount" means an amount computed as a percentage of the fair market value of the trust.
- (b) A trustee, other than an interested trustee, or where 2 or more persons are acting as trustee, a majority of the trustees who are not an interested trustee (in either case hereafter "trustee"), may, in its sole discretion and without the approval of the Court of Chancery:
- (1) Convert an income trust to a total return unitrust;
  - (2) In the case of a total return unitrust converted under this section or the laws of any other jurisdiction, reconvert a total return unitrust to an income trust; or
  - (3) In the case of a total return unitrust converted under this section or the laws of any other jurisdiction, change the percentage used to calculate the unitrust amount and/or the method used to determine the fair market value of the trust if:
    - a. The trustee adopts a written policy for the trust providing:
      1. In the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income;
      2. In the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income rather than unitrust amounts; or
      3. That the percentage used to calculate the unitrust amount and/or the method used to determine the fair market value of the trust will be changed as stated in the policy;
    - b. The trustee sends written notice of its intention to take such action, along with copies of such written policy and this section, to:
      1. The trustor of the trust, if living;
      2. All living persons who are currently receiving or eligible to receive distributions of income of the trust;
      3. Without regard to the exercise of any power of appointment, all living persons who would receive principal of the trust if the trust were to terminate at the time of the giving of such notice and all living persons who would receive or be eligible to receive distributions of income or principal of the trust if the interests of all of the beneficiaries currently eligible to receive income under paragraph (b)(3)b.2. of this section were to terminate at the time of the giving of such notice; and
      4. All persons acting as adviser or protector of the trust;
    - c. At least 1 person receiving notice under each of paragraphs (b)(3)b.2. and (b)(3)b.3. of this section above is legally competent; and
    - d. No person receiving such notice objects, by written instrument delivered to the trustee, to the proposed action of the trustee within 30 days of receipt of such notice.
- (c) If there is no trustee of the trust other than an interested trustee, the interested trustee or, where two or more persons are acting as trustee and are interested trustees, a majority of such interested trustees may, in its sole discretion and without the approval of the Court of Chancery:
- (1) Convert an income trust to a total return unitrust;
  - (2) Reconvert a total return unitrust to an income trust; or
  - (3) Change the percentage used to calculate the unitrust amount and/or the method used to determine the fair market value of the trust if:
    - a. The trustee adopts a written policy for the trust providing:
      1. In the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income;
      2. In the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income rather than unitrust amounts; or
      3. That the percentage used to calculate the unitrust amount and/or the method used to determine the fair market value of the trust will be changed as stated in the policy;
    - b. The trustee appoints a disinterested person who, in its sole discretion but acting in a fiduciary capacity, determines for the trustee:

1. The percentage to be used to calculate the unitrust amount;
  2. The method to be used in determining the fair market value of the trust; and
  3. Which assets, if any, are to be excluded in determining the unitrust amount;
- c. The trustee sends written notice of its intention to take such action, along with copies of such written policy and this section, and the determinations of the disinterested person to:
1. The trustor of the trust, if living;
  2. All living persons who are currently receiving or eligible to receive distributions of income of the trust;
  3. Without regard to the exercise of any power of appointment, all living persons who would receive principal of the trust if the trust were to terminate at the time of the giving of such notice and all living persons who would receive or be eligible to receive distributions of income or principal of the trust if the interests of all of the beneficiaries currently eligible to receive income under paragraph (c)(3)c.2. of this section were to terminate at the time of the giving of such notice; and
  4. All persons acting as adviser or protector of the trust;
- d. At least 1 person receiving notice under each of paragraphs (c)(3)c.2. and (c)(3)c.3. of this section is legally competent; and
- e. No person receiving such notice objects, by written instrument delivered to the trustee, to the proposed action or the determinations of the disinterested person within 30 days of receipt of such notice.

(g) If any trustee desires to (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount and/or the method used to determine the fair market value of the trust but does not have the ability to or elects not to do it under the provisions of subsection (b) or (c) of this section above, the trustee may petition the Court of Chancery for such order as the trustee deems appropriate. In the event, however, there is only 1 trustee of such trust and such trustee is an interested trustee or in the event there are 2 or more trustees of such trust and a majority of them are interested trustees, the Court, in its own discretion or on the petition of such trustee or trustees or any person interested in the trust, may appoint a disinterested person who, acting in a fiduciary capacity, shall present such information to the Court as shall be necessary to enable the Court to make its determinations hereunder.

(e) The fair market value of the trust shall be determined at least annually, using such valuation date or dates or averages of valuation dates as are deemed appropriate. Assets for which a fair market value cannot be readily ascertained shall be valued using such valuation methods as are deemed reasonable and appropriate. Assets used by a trust beneficiary, such as a residence property or tangible personal property, may be excluded from fair market value for computing the unitrust amount.

(f) The percentage to be used in determining the unitrust amount shall be a reasonable current return from the trust, in any event not less than 3 percent nor more than 5 percent, taking into account the intentions of the trustor of the trust as expressed in the governing instrument, the needs of the beneficiaries, general economic conditions, projected current earnings and appreciation for the trust, and projected inflation and its impact on the trust.

(g) A trustee may act pursuant to subsection (b) or subsection (c) of this section with respect to a trust for which both income and principal have been permanently set aside for charitable purposes under the governing instrument and for which a federal estate or gift tax deduction has been taken, provided, that:

(1) Instead of sending written notice to the persons described in paragraphs (b)(3)b.2. and (b)(3)b.3. of this section or paragraphs (c)(3)c.2. and (c)(3)c.3. of this section, as the case may be, the trustee shall send such written notice to the named charity or charities then entitled to receive income of the trust and, if no named charity or charities are entitled to receive all of such income, to the Attorney General of this State;

(2) Paragraph (b)(3)c. of this section or paragraph (c)(3)d. of this section, as the case may be, shall not apply to such action; and

(3) In each taxable year, the trustee shall distribute the greater of the unitrust amount and the amount required by I.R.C. § 4942 [26 U.S.C. § 4942].

(h) Following the conversion of an income trust to a total return unitrust, the trustee:

(1) Shall consider the unitrust amount as paid from net accounting income determined as if the trust were not a unitrust;

(2) Shall then consider the unitrust amount as paid from ordinary income not allocable to net accounting income;

(3) After calculating the trust's capital gain net income described in I.R.C. § 1222(9) [26 U.S.C. § 1222(9)], may consider the unitrust amount as paid from net short-term capital gain described in I.R.C. § 1222(5) [26 U.S.C. § 1222(5)] and then from net long-term capital gain described in I.R.C. § 1222(7) [26 U.S.C. § 1222(7)]; and

(4) Shall then consider the unitrust amount as coming from the principal of the trust.

(i) In administering a total return unitrust, the trustee may, in its sole discretion but subject to the provisions of the governing instrument, determine:

(1) The effective date of the conversion;

(2) The timing of distributions (including provisions for prorating a distribution for a short year in which a beneficiary's right to payments commences or ceases);

- (3) Whether distributions are to be made in cash or in kind or partly in cash and partly in kind;
- (4) If the trust is reconverted to an income trust, the effective date of such reconversion; and
- (5) Such other administrative issues as may be necessary or appropriate to carry out the purposes of this section.

(j) Conversion to a total return unitrust under the provisions of this section shall not affect any other provision of the governing instrument, if any, regarding distributions of principal.

(k) In the case of a trust for which a marital deduction has been taken for federal tax purposes under I.R.C. § 2056 or § 2523 [26 U.S.C. § 2056 or § 2523], the spouse otherwise entitled to receive the net income of the trust shall have the right, by written instrument delivered to the trustee, to compel the reconversion during that spouse's lifetime of the trust from a total return unitrust to an income trust, notwithstanding anything in this section to the contrary.

(l) This section shall be construed as pertaining to the administration of a trust and shall be available to any trust including a trust initially converted to a total return unitrust under the laws of another jurisdiction that is administered in Delaware under Delaware law or to any trust, regardless of its place of administration, whose governing instrument provides that Delaware law governs matters of construction or administration unless:

(1) The governing instrument reflects an intention that the current beneficiary or beneficiaries are to receive an amount other than a reasonable current return from the trust;

(2) The trust is a pooled income fund described in I.R.C. § 642(c)(5) (26 U.S.C. § 642(c)(5)) or a charitable-remainder trust described in I.R.C. § 664(d) (26 U.S.C. § 664(d));

(3) The governing instrument expressly prohibits use of this section by specific reference to the section or expressly states the trustor's intent that net income not be calculated as a unitrust amount. A provision in the governing instrument that "The provisions of 12 Del. C. § 61-106, as amended, or any corresponding provision of future law, shall not be used in the administration of this trust." or "My trustee shall not determine the distributions to the income beneficiary as a unitrust amount." or similar words reflecting such intent shall be sufficient to preclude the use of this section.

(4) [Deleted.]

(m) Any trustee or disinterested person who in good faith takes or fails to take any action under this section shall not be liable to any person affected by such action or inaction, regardless of whether such person received written notice as provided in this section and regardless of whether such person was under a legal disability at the time of the delivery of such notice. Such person's exclusive remedy shall be to obtain an order of the Court directing the trustee to convert an income trust to a total return unitrust, to reconvert from a total return unitrust to an income trust or to change the percentage used to calculate the unitrust amount.

(n) This section shall be effective June 21, 2001, and shall be available to trusts in existence June 21, 2001, or created thereafter.

(73 Del. Laws, c. 48, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 270, §§ 1-12; 75 Del. Laws, c. 97, § 17; 77 Del. Laws, c. 98, §§ 8-11; 77 Del. Laws, c. 330, § 10.)

### § 61-107 Express total return unitrusts [For application of this section, see 81 Del. Laws, c. 149, § 6]

(a) The following provisions shall apply to a trust that, by its governing instrument, requires or permits the distribution, at least annually, of a unitrust amount equal to a fixed percentage of not less than 3 nor more than 5 percent per year of the fair market value of the trust's assets, valued at least annually, such trust to be referred to in this section as an "express total return unitrust."

(b) The unitrust amount for an express total return unitrust may be determined by reference to the fair market value of the trust's assets in 1 year or more than 1 year.

(c) Distribution of such a fixed percentage unitrust amount is considered a distribution of all of the income of the express total return unitrust.

(d) An express total return unitrust may or may not provide a mechanism for changing the unitrust percentage similar to the mechanism provided under § 61-106 of this title, based upon the factors noted therein, and may or may not provide for a conversion from a unitrust to an income trust and/or a reconversion of an income trust to a unitrust similar to the mechanism under § 61-106 of this title.

(e) If an express total return unitrust does not specifically or by reference to § 61-106 of this title deny a power to change the unitrust percentage or to convert to an income trust, then the trustee shall have such power and the express total return unitrust shall be deemed to be a "total return unitrust" within the meaning of § 61-106 of this title for purposes of applying § 61-106 of this title to the trust.

(f) The distribution of a fixed percentage of not less than 3 percent nor more than 5 percent reasonably apportions the total return of an express total return unitrust.

(g) The trust instrument may grant discretion to the trustee to adopt a consistent practice of treating capital gains as part of the unitrust distribution, to the extent that the unitrust distribution exceeds the net accounting income, or it may specify the ordering of such classes of income.

(h) Unless the terms of the trust specifically provide otherwise, the trustee:

- (1) Shall consider the unitrust amount as paid from net accounting income determined as if the trust were not a unitrust;
- (2) Shall then consider the unitrust amount as paid from ordinary income not allocable to net accounting income;

(3) After calculating the trust's capital gain net income as described in Internal Revenue Code ("I.R.C.") § 1222(9) (26 U.S.C. § 1222(9)), may consider the unitrust amount as paid from net realized short-term capital gain as described in I.R.C. § 1222(5) (26 U.S.C. § 1222(5)) and then from net realized long-term capital gain described in I.R.C. § 1222(7) (26 U.S.C. § 1222(7)); and

(4) Shall then consider the unitrust amount as paid from the principal of the trust.

(i) The trust instrument may provide that:

(1) Assets for which a fair market value cannot be readily ascertained shall be valued using such valuation methods as are deemed reasonable and appropriate; and

(2) Assets used by a trust beneficiary, such as a residence property or tangible personal property, may be excluded from the net fair market value for computing the unitrust amount.

(74 Del. Laws, c. 270, § 13; 77 Del. Laws, c. 98, § 12; 77 Del. Laws, c. 330, § 10; 81 Del. Laws, c. 149, § 3.)

### Subchapter II

#### Decedent's Estate or Terminating Income Interest

##### § 61-201 Determination and distribution of net income.

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

(1) A fiduciary of an estate or of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under the rules in subchapters III through V of this chapter which apply to trustees and the rules in paragraph (5) of this section. The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.

(2) A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the rules in subchapters III through V of this chapter that apply to trustees and by:

(A) Including in net income all income from property used to discharge liabilities;

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

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

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

(4) A fiduciary shall distribute the net income remaining after distributions required by paragraph (3) of this section in the manner described in § 61-202 of this title to all other beneficiaries, including a beneficiary who receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

(5) A fiduciary may not reduce principal or income receipts from property described in paragraph (1) of this section because of a payment described in § 61-501 or § 61-502 of this title to the extent that the will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property are determined by including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts accrued or became due before, on, or after the date of a decedent's death or an income interest's terminating event, and by making a reasonable provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed.

(77 Del. Laws, c. 99, § 1.)

##### § 61-202 Distribution to residuary and remainder beneficiaries.

(a) Each beneficiary described in § 61-201(4) of this title is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

(b) In determining a beneficiary's share of net income, the following rules apply:

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

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

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

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

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

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

(77 Del. Laws, c. 99, § 1.)

### Subchapter III

#### Apportionment at Beginning and End of Income Interest

##### § 61-301 When right to income begins and ends.

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

(b) An asset becomes subject to a trust:

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

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

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

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

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

(77 Del. Laws, c. 99, § 1.)

##### § 61-302 Apportionment of receipts and disbursements when decedent dies or income interest begins.

(a) A trustee shall allocate an income receipt or disbursement other than 1 to which § 61-201(1) of this title applies to principal if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

(b) A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement must be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins must be allocated to principal and the balance must be allocated to income.

(c) An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of this chapter. Distributions to shareholders or other owners from an entity to which § 61-401 of this title applies are deemed to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

(77 Del. Laws, c. 99, § 1.)

##### § 61-303 Apportionment when income interest ends.

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

(b) When a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed



income that is not disposed of under the terms of the trust unless the beneficiary has an unqualified power to revoke more than 5 percent of the trust immediately before the income interest ends. In the latter case, the undistributed income from the portion of the trust that may be revoked must be added to principal.

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

(77 Del. Laws, c. 99, § 1.)

### Subchapter IV

#### Allocation of Receipts During Administration of Trust

##### § 61-401 Character of receipts.

(a) In this section, "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, statutory trust or any other organization in which a trustee has an interest other than a trust or estate to which § 61-402 of this title applies, a business or activity to which § 61-403 of this title applies, or an asset-backed security to which § 61-415 of this title applies.

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

(c) Subject to subsection (f) of this section, a trustee shall allocate the following receipts from an entity to principal:

(1) Property other than money; provided that if a trustee receives an option to receive a distribution in the form of money or in the form of property and elects to receive the distribution in the form of property, such distribution shall be deemed to be a distribution of money;

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

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

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

(d) Money is received in partial liquidation:

(1) Subject to subsection (f) of this section, to the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or

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

(e) Money is not received in partial liquidation, nor may it be taken into account under paragraph (d)(2) of this section, to the extent that it does not exceed the amount of income tax that a trustee or beneficiary must pay on taxable income of the entity that distributes the money.

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

(77 Del. Laws, c. 99, § 1; 78 Del. Laws, c. 117, § 15.)

##### § 61-402 Distribution from trust or estate.

A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest, and shall allocate to principal an amount received as a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, § 61-401 or § 61-415 of this title applies to a receipt from the trust.

(77 Del. Laws, c. 99, § 1.)

##### § 61-403 Business and other activities conducted by an estate.

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

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

(c) Activities for which a trustee may maintain separate accounting records include:

- (1) Retail, manufacturing, service, and other traditional business activities;
- (2) Farming;
- (3) Raising and selling livestock and other animals;
- (4) Management of rental properties;
- (5) Extraction of minerals and other natural resources;
- (6) Timber operations; and
- (7) Activities to which § 61-414 of this title applies.

(77 Del. Laws, c. 99, § 1.)

### § 61-404 Principal receipts.

A trustee shall allocate to principal:

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

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

(3) Amounts recovered from third parties to reimburse the trust because of disbursements described in § 61-502(a)(7) of this title or for other reasons to the extent not based on the loss of income;

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

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

(6) Other receipts as provided in subchapter III of this chapter.

(77 Del. Laws, c. 99, § 1.)

### § 61-405 Rental property.

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

(77 Del. Laws, c. 99, § 1.)

### § 61-406 Obligation to pay money.

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

(b) A trustee shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the trustee more than 1 year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity. If the obligation matures within 1 year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust must be allocated to income.

(c) This section does not apply to an obligation to which § 61-409, § 61-410, § 61-411, § 61-412, § 61-414 or § 61-415 of this title applies.

(77 Del. Laws, c. 99, § 1.)

### § 61-407 Insurance policies and similar contracts.

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

(b) A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income, or, subject to § 61-403 of this title, loss of profits from a business.

(c) This section does not apply to a contract to which § 61-409 of this title applies.

(77 Del. Laws, c. 99, § 1.)

### § 61-408 Insubstantial allocations not required.

If a trustee determines that an allocation between principal and income required by § 61-409, § 61-410, § 61-411, § 61-412 or § 61-415 of this title is insubstantial, the trustee may allocate the entire amount to principal unless 1 of the circumstances described in § 61-104(c) of this title applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in § 61-104(d) of this title and may be released for the reasons and in the manner described in § 61-104(e) of this title. An allocation is presumed to be insubstantial if:

- (1) The amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than 10 percent; or
- (2) The value of the asset producing the receipt for which the allocation would be made is less than 10 percent of the total value of the trust's assets at the beginning of the accounting period.

(77 Del. Laws, c. 99, § 1.)

### § 61-409 Deferred compensation, annuities, and similar payments.

(a) In this section:

(1) "Payment" means a payment that a trustee may receive over a fixed number of years or during the life of 1 or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer. For purposes of subsections (d), (e), (f) and (g) of this section, the term also includes any payment from any separate fund, regardless of the reason for the payment.

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

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

(c) If no part of a payment is characterized as interest, a dividend, or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income 5 percent of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

(d) Except as otherwise provided in subsection (c) of this section, subsections (f) and (g) of this section apply, and subsections (b) and (c) of this section do not apply, in determining the allocation of a payment from a separate fund to:

(1) A trust to which an election to qualify for a marital deduction under § 2056(b)(7) of the Internal Revenue Code of 1986 [26 U.S.C. § 2056(b)(7)], as amended, has been made, or

(2) A trust that qualifies for the marital deduction under § 2056(b)(5) of the Internal Revenue Code of 1986 [26 U.S.C. § 2056(b)(5)], as amended.

(e) Subsections (d), (f) and (g) of this section do not apply if and to the extent that the series of payments would, without the application of subsection (d) of this section, qualify for the marital deduction under § 2056(b)(7)(C) of the Internal Revenue Code of 1986 [26 U.S.C. § 2056(b)(7)(C)], as amended.

(f) A trustee shall determine the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to this chapter. Upon request of the surviving spouse, the trustee shall demand that the person administering the separate fund distribute the internal income to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and distribute that amount to the surviving spouse. The trustee shall allocate the balance of the payment to principal. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent that the internal income of the separate fund exceeds payments made from the separate fund to the trust during the accounting period.

(g) If a trustee cannot determine the internal income of a separate fund but can determine the value of the separate fund, the internal income of the separate fund is deemed to equal 4 percent of the fund's value, according to the most recent statement of value preceding the beginning of the accounting period. If the trustee can determine neither the internal income of the separate fund nor the fund's value, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments, as determined under § 7520 of the Internal Revenue Code of 1986 [26 U.S.C. § 7520], as amended, for the month preceding the accounting period for which the computation is made.

(h) This section does not apply to a payment to which § 61-410 of this title applies.

(77 Del. Laws, c. 99, § 1.)

### § 61-410 Liquidating asset.

(a) In this section, "liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right, and right to receive payments during a period of more than 1 year under an arrangement that does not provide for the payment of interest on the unpaid balance. The

term does not include a payment subject to § 61-409 of this title, resources subject to § 61-411 of this title, timber subject to § 61-412 of this title, an activity subject to § 61-414 of this title, an asset subject to § 61-415 of this title, or any asset for which the trustee establishes a reserve for depreciation under § 61-503 of this title.

(b) A trustee shall allocate to income 5 percent of the receipts from a liquidating asset and the balance to principal.  
(77 Del. Laws, c. 99, § 1.)

### § 61-411 Minerals, water and other natural resources.

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

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

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

(3) If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, 95 percent must be allocated to principal and the balance to income.

(4) If an amount is received from a working interest or any other interest not provided for in paragraph (a)(1), (2), or (3) of this section, 95 percent of the net amount received must be allocated to principal and the balance to income.

(b) An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, 95 percent of the amount must be allocated to principal and the balance to income.

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

(d) If a trust owns an interest in minerals, water, or other natural resources on August 1, 2009, the trustee may allocate receipts from the interest as provided in this chapter or in the manner used by the trustee before August 1, 2009. If the trust acquires an interest in minerals, water, or other natural resources after August 1, 2009, the trustee shall allocate receipts from the interest as provided in the provisions of this chapter.

(77 Del. Laws, c. 99, § 1.)

### § 61-412 Timber.

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

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

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

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

(4) to principal to the extent that advance payments, bonuses, and other payments are not allocated pursuant to paragraph (a)(1), (2), or (3) of this section.

(b) In determining net receipts to be allocated pursuant to subsection (a) of this section, a trustee shall deduct and transfer to principal a reasonable amount for depletion.

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

(d) If a trust owns an interest in timberland on August 1, 2009, the trustee may allocate net receipts from the sale of timber and related products as provided in this chapter or in the manner used by the trustee before August 1, 2009. If the trust acquires an interest in timberland after August 1, 2009, the trustee shall allocate net receipts from the sale of timber and related products as provided in the provisions of this chapter.

(77 Del. Laws, c. 99, § 1.)

### § 61-413 Property not productive of income.

Upon request of the income beneficiary, if the trustee determines that the assets of a trust consist substantially of property that does not provide the income beneficiary with a reasonable income from or use of the trust assets, and that the amounts that the trustee transfers from principal to income under § 61-104 of this title and distributes to the income beneficiary from principal pursuant to the terms of the trust are insufficient to provide the income beneficiary with the beneficial enjoyment of the income interest, the trustee shall make such property productive of income, convert such property within a reasonable time, or exercise the power conferred by § 61-104(a) of this title, as such action or combination of actions are deemed appropriate in the trustee's discretion.

(77 Del. Laws, c. 99, § 1; 78 Del. Laws, c. 117, § 16.)

### § 61-414 Derivatives and options.

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

(b) To the extent that a trustee does not account under § 61-403 of this title for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

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

(77 Del. Laws, c. 99, § 1.)

### § 61-415 Asset-backed securities.

(a) In this section, "asset-backed security" means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not include an asset to which § 61-401 or § 61-409 of this title applies.

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

(c) If a trust receives 1 or more payments in exchange for the trust's entire interest in an asset-backed security in 1 accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust's interest in the security over more than one accounting period, the trustee shall allocate 5 percent of the payment to income and the balance to principal.

(77 Del. Laws, c. 99, § 1.)

## Subchapter V

### Allocation of Disbursements During Administration of Trust

#### § 61-501 Disbursements from income.

A trustee shall make the following disbursements from income to the extent that they are not disbursements to which § 61-201(2)(B) or (C) of this title applies:

- (1) One-half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee;
- (2) One-half of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests;
- (3) All of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a proceeding or other matter that concerns primarily the income interest; and
- (4) Recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

(77 Del. Laws, c. 99, § 1.)

#### § 61-502 Disbursements from principal.

(a) A trustee shall make the following disbursements from principal:

- (1) The remaining 1/2 of the disbursements described in § 61-501(1) and (2) of this title;
- (2) All of the trustee's compensation calculated on principal as a fee for acceptance, distribution, or termination, and disbursements made to prepare property for sale;
- (3) Payments on the principal of a trust debt;
- (4) Expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property;
- (5) Premiums paid on a policy of insurance not described in § 61-501(4) of this title of which the trust is the owner and beneficiary;
- (6) Estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust; and

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

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

(77 Del. Laws, c. 99, § 1.)

### § 61-503 Transfers from income to principal for depreciation.

(a) In this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset having a useful life of more than 1 year.

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

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

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

(3) Under this section if the trustee is accounting under § 61-403 of this title for the business or activity in which the asset is used.

(c) An amount transferred to principal need not be held as a separate fund.

(77 Del. Laws, c. 99, § 1.)

### § 61-504 Transfers from income to reimburse principal.

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

(b) Principal disbursements to which subsection (a) of this section applies include the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:

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

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

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

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

(5) Disbursements described in § 61-502(a)(7) of this title.

(c) If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in subsection (a) of this section.

(77 Del. Laws, c. 99, § 1.)

### § 61-505 Income taxes.

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

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

(c) A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid:

(1) From income to the extent that receipts from the entity are allocated only to income;

(2) From principal to the extent that receipts from the entity are allocated only to principal;

(3) Proportionately from principal and income to the extent that receipts from the entity are allocated to both income and principal; and

(4) From principal to the extent that the tax exceeds the total receipts from the entity.

(d) After applying subsections (a) through (c) of this section, the trustee shall adjust income or principal receipts to the extent that the trust's taxes are reduced because the trust receives a deduction for payments made to a beneficiary.

(77 Del. Laws, c. 99, § 1.)

### § 61-506 Adjustments between principal and income because of taxes.

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

- (1) Elections and decisions, other than those described in subsection (b) of this section, that the fiduciary makes from time to time regarding tax matters;
- (2) An income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust; or
- (3) The ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust, or a beneficiary.

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

(77 Del. Laws, c. 99, § 1.)

## Subchapter VI

### Miscellaneous Provisions

### § 61-601 Uniformity of application and construction.

In applying and construing subchapters I through V of this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among States that enact the Uniform Principal and Income Act.

(77 Del. Laws, c. 99, § 1.)

### § 61-602 Applicability of § 61-409 of this title.

Section 61-409 of this title applies to a trust described in § 61-409(d) of this title on and after the following dates:

- (1) If the trust is not funded as of the effective date of this chapter, that is, August 1, 2009, the date of decedent's death.
- (2) If the trust is initially funded in the calendar year beginning January 1, 2009, the date of the decedent's death.
- (3) If the trust is not described in paragraph (1) or (2) of this section, January 1, 2009.

(77 Del. Laws, c. 99, § 1.)

### § 61-603 Accounts with register of wills not affected.

Nothing in this chapter shall be construed to effect or change the form of accounting required under § 2301 of this title.

(77 Del. Laws, c. 99, § 1.)

### § 61-604 Certain charitable remainder unitrusts.

(a) Notwithstanding any contrary provision of the chapter, if the trust instrument adopts the provisions of this section by reference, an increase in the value of the following investments owned by a charitable remainder unitrust of the type authorized in § 664(d)(3) of the Internal Revenue Code (26 U.S.C. § 664(d)(3)) or any successor provision thereof, is distributable as income when it becomes available for distribution:

- (1) A zero coupon bond;
- (2) An annuity contract before annuitization;
- (3) A life insurance contract before the death of the insured;
- (4) An interest in a common trust fund (as defined in § 584 of the Internal Revenue Code (26 U.S.C. § 584) or any successor provision thereof);
- (5) An interest in partnership (as defined in § 7701 of the Internal Revenue Code (26 U.S.C. § 7701) or any successor provision thereof); or
- (6) Any other obligation for the payment of money that is payable at a future time in accordance with the a fixed, variable or discretionary schedule of appreciation in excess of the price at which it was issued.

(b) For purposes of this section the increase in value of an investment described in subsection (a) of this section is available for distribution only when the trustee receives cash on account of the investment. Any trust instrument executed prior to June 30, 1997, that

incorporates by reference the provisions of former subsection (c) of this section, which existed prior to amendment effective June 30, 1997, shall be deemed to have incorporated by reference this subsection.

(77 Del. Laws, c. 99, § 1.)

### **§ 61-605 Trusts governed by this act.**

This chapter shall apply to any trust that is administered in Delaware under Delaware law or to any trust, wherever administered, whose governing instrument provides that the construction or administration of the trust be governed by Delaware law.

(77 Del. Laws, c. 99, § 1.)