

Fifty-sixth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2169

Introduced by

Judiciary Committee

(At the request of the Commission on Uniform State Laws)

1 A BILL for an Act to create and enact chapter 59-04.2 of the North Dakota Century Code,
2 relating to the Uniform Principal and Income Act (1997); and to repeal chapter 59-04.1 of the
3 North Dakota Century Code, relating to the Uniform Principal and Income Act.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** Chapter 59-04.2 of the North Dakota Century Code is created and
6 enacted as follows:

7 **59-04.2-01. (102) Definitions.** In this chapter:

- 8 1. "Accounting period" means a calendar year unless another twelve-month period is
9 selected by a fiduciary. The term includes a portion of a calendar year or other
10 twelve-month period that begins when an income interest begins or ends when an
11 income interest ends.
- 12 2. "Beneficiary" includes, in the case of a decedent's estate, an heir, legatee, and
13 devisee and, in the case of a trust, an income beneficiary and a remainder
14 beneficiary.
- 15 3. "Fiduciary" means a personal representative or a trustee. The term includes an
16 executor, administrator, successor personal representative, special administrator,
17 and a person performing substantially the same function.
- 18 4. "Income" means money or property that a fiduciary receives as current return from
19 a principal asset. The term includes a portion of receipts from a sale, exchange, or
20 liquidation of a principal asset, to the extent provided in sections 59-04.2-09
21 through 59-04.2-23.
- 22 5. "Income beneficiary" means a person to whom net income of a trust is or may be
23 payable.

- 1 6. "Income interest" means the right of an income beneficiary to receive all or part of
2 net income, whether the terms of the trust require it to be distributed or authorize it
3 to be distributed in the trustee's discretion.
- 4 7. "Mandatory income interest" means the right of an income beneficiary to receive
5 net income that the terms of the trust require the fiduciary to distribute.
- 6 8. "Net income" means the total receipts allocated to income during an accounting
7 period minus the disbursements made from income during the period, plus or
8 minus transfers under this chapter to or from income during the period.
- 9 9. "Principal" means property held in trust for distribution to a remainder beneficiary
10 when the trust terminates.
- 11 10. "Remainder beneficiary" means a person entitled to receive principal when an
12 income interest ends.
- 13 11. "Terms of a trust" means the manifestation of the intent of a settlor or decedent
14 with respect to the trust, expressed in a manner that admits of its proof in a judicial
15 proceeding, whether by written or spoken words or by conduct.
- 16 12. "Trustee" includes an original, additional, or successor trustee, whether or not
17 appointed or confirmed by a court.

18 **59-04.2-02. (103) Fiduciary duties - General principles.**

- 19 1. In allocating receipts and disbursements to or between principal and income, and
20 with respect to any matter within the scope of sections 59-04.2-04 through
21 59-04.2-08, a fiduciary:
- 22 a. Shall administer a trust or estate in accordance with the terms of the trust or
23 the will, even if there is a different provision in this chapter.
- 24 b. May administer a trust or estate by the exercise of a discretionary power of
25 administration given to the fiduciary by the terms of the trust or the will, even if
26 the exercise of the power produces a result different from a result required or
27 permitted by this chapter.
- 28 c. Shall administer a trust or estate in accordance with this chapter if the terms
29 of the trust or the will do not contain a different provision or do not give the
30 fiduciary a discretionary power of administration.

1 d. Shall add a receipt or charge a disbursement to principal to the extent that the
2 terms of the trust and this chapter do not provide a rule for allocating the
3 receipt or disbursement to or between principal and income.

4 2. In exercising a discretionary power of administration regarding a matter within the
5 scope of this chapter, whether granted by the terms of a trust, a will, or this
6 chapter, a fiduciary shall administer a trust or estate impartially, based on what is
7 fair and reasonable to all of the beneficiaries, except to the extent that the terms of
8 the trust or the will clearly manifest an intention that the fiduciary shall or may favor
9 one or more of the beneficiaries. A determination in accordance with this chapter
10 is presumed to be fair and reasonable to all of the beneficiaries.

11 **59-04.2-03. (104) Trustee's power to adjust. (Reserved)**

12 **59-04.2-04. (201) Determination and distribution of net income.** After a decedent
13 dies, in the case of an estate, or after an income interest in a trust ends, the following rules
14 apply:

15 1. A fiduciary of an estate or of a terminating income interest shall determine the
16 amount of net income and net principal receipts received from property specifically
17 given to a beneficiary under the rules in sections 59-04.2-06 through 59-04.2-29
18 which apply to trustees and the rules in subsection 5. The fiduciary shall distribute
19 the net income and net principal receipts to the beneficiary who is to receive the
20 specific property.

21 2. A fiduciary shall determine the remaining net income of a decedent's estate or a
22 terminating income interest under the rules in sections 59-04.2-06 through
23 59-04.2-29 which apply to trustees and by:

24 a. Including in net income all income from property used to discharge liabilities.

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

- 1 c. Paying from principal all other disbursements made or incurred in connection
2 with the settlement of a decedent's estate or the winding up of a terminating
3 income interest, including debts, funeral expenses, disposition of remains,
4 family allowances, and death taxes and related penalties that are apportioned
5 to the estate or terminating income interest by the will, the terms of the trust,
6 or applicable law.
- 7 3. A fiduciary shall distribute to a beneficiary who receives a pecuniary amount
8 outright the interest or any other amount provided by the will, the terms of the trust,
9 or applicable law from net income determined under subsection 2 or from principal
10 to the extent that net income is insufficient. If a beneficiary is to receive a
11 pecuniary amount outright from a trust after an income interest ends and no
12 interest or other amount is provided for by the terms of the trust or applicable law,
13 the fiduciary shall distribute the interest or other amount to which the beneficiary
14 would be entitled under applicable law if the pecuniary amount were required to be
15 paid under a will.
- 16 4. A fiduciary shall distribute the net income remaining after distributions required by
17 subsection 3 in the manner described in section 59-04.2-05 to all other
18 beneficiaries, including a beneficiary who receives a pecuniary amount in trust,
19 even if the beneficiary holds an unqualified power to withdraw assets from the trust
20 or other presently exercisable general power of appointment over the trust.
- 21 5. A fiduciary may not reduce principal or income receipts from property described in
22 subsection 1 because of a payment described in section 59-04.2-24 or 59-04.2-25
23 to the extent that the will, the terms of the trust, or applicable law requires the
24 fiduciary to make the payment from assets other than the property or to the extent
25 that the fiduciary recovers or expects to recover the payment from a third party.
26 The net income and principal receipts from the property are determined by
27 including all of the amounts the fiduciary receives or pays with respect to the
28 property, whether those amounts accrued or became due before, on, or after the
29 date of a decedent's death or an income interest's terminating event, and by
30 making a reasonable provision for amounts that the fiduciary believes the estate or

1 terminating income interest may become obligated to pay after the property is
2 distributed.

3 **59-04.2-05. (202) Distribution to residuary and remainder beneficiaries.**

- 4 1. Each beneficiary described in subsection 4 of section 59-04.2-04 is entitled to
5 receive a portion of the net income equal to the beneficiary's fractional interest in
6 undistributed principal assets, using values as of the distribution date. If a fiduciary
7 makes more than one distribution of assets to beneficiaries to whom this section
8 applies, each beneficiary, including one who does not receive part of the
9 distribution, is entitled, as of each distribution date, to the net income the fiduciary
10 has received after the date of death or terminating event or earlier distribution date
11 but has not distributed as of the current distribution date.
- 12 2. In determining a beneficiary's share of net income, the following rules apply:
- 13 a. 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
15 immediately before the distribution date, including assets that later may be
16 sold to meet principal obligations.
- 17 b. The beneficiary's fractional interest in the undistributed principal assets must
18 be calculated without regard to property specifically given to a beneficiary and
19 property required to pay pecuniary amounts not in trust.
- 20 c. The beneficiary's fractional interest in the undistributed principal assets must
21 be calculated on the basis of the aggregate value of those assets as of the
22 distribution date without reducing the value by any unpaid principal obligation.
- 23 d. The distribution date for purposes of this section may be the date as of which
24 the fiduciary calculates the value of the assets if that date is reasonably near
25 the date on which assets are actually distributed.
- 26 3. If a fiduciary does not distribute all of the collected but undistributed net income to
27 each person as of a distribution date, the fiduciary shall maintain appropriate
28 records showing the interest of each beneficiary in that net income.
- 29 4. A fiduciary may apply the rules in this section, to the extent that the fiduciary
30 considers it appropriate, to net gain or loss realized after the date of death or

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

3 **59-04.2-06. (301) When right to income begins and ends.**

- 4 1. An income beneficiary is entitled to net income from the date on which the income
5 interest begins. An income interest begins on the date specified in the terms of the
6 trust or, if no date is specified, on the date an asset becomes subject to a trust
7 or successive income interest.
- 8 2. An asset becomes subject to a trust:
- 9 a. On the date it is transferred to the trust in the case of an asset that is
10 transferred to a trust during the transferor's life;
- 11 b. On the date of a testator's death in the case of an asset that becomes subject
12 to a trust by reason of a will, even if there is an intervening period of
13 administration of the testator's estate; or
- 14 c. On the date of an individual's death in the case of an asset that is transferred
15 to a fiduciary by a third party because of the individual's death.
- 16 3. An asset becomes subject to a successive income interest on the day after the
17 preceding income interest ends, as determined under subsection 4, even if there is
18 an intervening period of administration to wind up the preceding income interest.
- 19 4. An income interest ends on the day before an income beneficiary dies or another
20 terminating event occurs, or on the last day of a period during which there is no
21 beneficiary to whom a trustee may distribute income.

22 **59-04.2-07. (302) Apportionment of receipts and disbursements when decedent**
23 **dies or income interest begins.**

- 24 1. A trustee shall allocate an income receipt or disbursement other than one to which
25 subsection 1 of section 59-04.2-04 applies to principal if its due date occurs before
26 a decedent dies in the case of an estate or before an income interest begins in the
27 case of a trust or successive income interest.
- 28 2. A trustee shall allocate an income receipt or disbursement to income if its due date
29 occurs on or after the date on which a decedent dies or an income interest begins
30 and it is a periodic due date. An income receipt or disbursement must be treated
31 as accruing from day to day if its due date is not periodic or it has no due date.

1 The portion of the receipt or disbursement accruing before the date on which a
2 decedent dies or an income interest begins must be allocated to principal and the
3 balance must be allocated to income.

4 3. An item of income or an obligation is due on the date the payer is required to make
5 a payment. If a payment date is not stated, there is no due date for the purposes
6 of this chapter. Distributions to shareholders or other owners from an entity to
7 which section 59-04.2-09 applies are deemed to be due on the date fixed by the
8 entity for determining who is entitled to receive the distribution or, if no date is
9 fixed, on the declaration date for the distribution. A due date is periodic for
10 receipts or disbursements that must be paid at regular intervals under a lease or
11 an obligation to pay interest or if an entity customarily makes distributions at
12 regular intervals.

13 **59-04.2-08. (303) Apportionment when income interest ends.**

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

18 2. When a mandatory income interest ends, the trustee shall pay to a mandatory
19 income beneficiary who survives that date, or the estate of a deceased mandatory
20 income beneficiary whose death causes the interest to end, the beneficiary's share
21 of the undistributed income that is not disposed of under the terms of the trust
22 unless the beneficiary has an unqualified power to revoke more than five percent
23 of the trust immediately before the income interest ends. In the latter case, the
24 undistributed income from the portion of the trust that may be revoked must be
25 added to principal.

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

30 **59-04.2-09. (401) Character of receipts.**

- 1 1. In this section, "entity" means a corporation, partnership, limited liability company,
2 regulated investment company, real estate investment trust, common trust fund, or
3 any other organization in which a trustee has an interest other than a trust or
4 estate to which section 59-04.2-10 applies, a business or activity to which section
5 59-04.2-11 applies, or an asset-backed security to which section 59-04.2-23
6 applies.
- 7 2. Except as otherwise provided in this section, a trustee shall allocate to income
8 money received from an entity.
- 9 3. A trustee shall allocate the following receipts from an entity to principal:
10 a. Property other than money.
11 b. Money received in one distribution or a series of related distributions in
12 exchange for part or all of a trust's interest in the entity.
13 c. Money received in total or partial liquidation of the entity.
14 d. Money received from an entity that is a regulated investment company or a
15 real estate investment trust if the money distributed is a capital gain dividend
16 for federal income tax purposes.
- 17 4. Money is received in partial liquidation:
18 a. To the extent that the entity, at or near the time of a distribution, indicates that
19 it is a distribution in partial liquidation; or
20 b. If the total amount of money and property received in a distribution or series
21 of related distributions is greater than twenty percent of the entity's gross
22 assets, as shown by the entity's yearend financial statements immediately
23 preceding the initial receipt.
- 24 5. Money is not received in partial liquidation, nor may it be taken into account under
25 subdivision b of subsection 4, to the extent that it does not exceed the amount of
26 income tax that a trustee or beneficiary must pay on taxable income of the entity
27 that distributes the money.
- 28 6. A trustee may rely upon a statement made by an entity about the source or
29 character of a distribution if the statement is made at or near the time of
30 distribution by the entity's board of directors or other person or group of persons

1 authorized to exercise powers to pay money or transfer property comparable to
2 those of a corporation's board of directors.

3 **59-04.2-10. (402) Distribution from trust or estate.** A trustee shall allocate to income
4 an amount received as a distribution of income from a trust or an estate in which the trust has
5 an interest other than a purchased interest and shall allocate to principal an amount received
6 as a distribution of principal from such a trust or estate. If a trustee purchases 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 59-04.2-09 or 59-04.2-23 applies to a receipt from the trust.

9 **59-04.2-11. (403) Business and other activities conducted by trustee.**

- 10 1. If a trustee who conducts a business or other activity determines that it is in the
11 best interest of all the beneficiaries to account separately for the business or
12 activity instead of accounting for it as part of the trust's general accounting records,
13 the trustee may maintain separate accounting records for its transactions, whether
14 or not its assets are segregated from other trust assets.
- 15 2. A trustee who accounts separately for a business or other activity may determine
16 the extent to which its net cash receipts must be retained for working capital, the
17 acquisition or replacement of fixed assets, and other reasonably foreseeable
18 needs of the business or activity, and the extent to which the remaining net cash
19 receipts are accounted for as principal or income in the trust's general accounting
20 records. If a trustee sells assets of the business or other activity, other than in the
21 ordinary course of the business or activity, the trustee shall account for the net
22 amount received as principal in the trust's general accounting records to the extent
23 the trustee determines that the amount received is no longer required in the
24 conduct of the business.
- 25 3. Activities for which a trustee may maintain separate accounting records include
26 retail, manufacturing, service, and other traditional business activities; farming;
27 raising and selling livestock and other animals; management of rental properties;
28 extraction of minerals and other natural resources; timber operations; and activities
29 to which section 59-04.2-22 applies.

30 **59-04.2-12. (404) Principal receipts.** A trustee shall allocate to principal:

- 1 1. To the extent not allocated to income under this chapter, assets received from a
2 transferor during the transferor's lifetime, a decedent's estate, a trust with a
3 terminating income interest, or a payer under a contract naming the trust or its
4 trustee as beneficiary.
- 5 2. Money or other property received from the sale, exchange, liquidation, or change
6 in form of a principal asset, including realized profit, subject to sections 59-04.2-09
7 through 59-04.2-23.
- 8 3. Amounts recovered from third parties to reimburse the trust because of
9 disbursements described in subdivision g of subsection 1 of section 59-04.2-25 or
10 for other reasons to the extent not based on the loss of income.
- 11 4. Proceeds of property taken by eminent domain, but a separate award made for the
12 loss of income with respect to an accounting period during which a current income
13 beneficiary had a mandatory income interest is income.
- 14 5. Net income received in an accounting period during which there is no beneficiary
15 to whom a trustee may or must distribute income.
- 16 6. Other receipts as provided in sections 59-04.2-16 through 59-04.2-23.

17 **59-04.2-13. (405) Rental property.** To the extent that a trustee accounts for receipts
18 from rental property pursuant to this section, the trustee shall allocate to income an amount
19 received as rent of real or personal property, including an amount received for cancellation or
20 renewal of a lease. An amount received as a refundable deposit, including a security deposit or
21 a deposit that is to be applied as rent for future periods, must be added to principal and held
22 subject to the terms of the lease and is not available for distribution to a beneficiary until the
23 trustee's contractual obligations have been satisfied with respect to that amount.

24 **59-04.2-14. (406) Obligation to pay money.**

- 25 1. An amount received as interest, whether determined at a fixed, variable, or floating
26 rate, on an obligation to pay money to the trustee, including an amount received as
27 consideration for prepaying principal, must be allocated to income without any
28 provision for amortization of premium.
- 29 2. A trustee shall allocate to principal an amount received from the sale, redemption,
30 or other disposition of an obligation to pay money to the trustee more than one
31 year after it is purchased or acquired by the trustee, including an obligation whose

1 purchase price or value when it is acquired is less than its value at maturity. If the
2 obligation matures within one year after it is purchased or acquired by the trustee,
3 an amount received in excess of its purchase price or its value when acquired by
4 the trust must be allocated to income.

5 3. This section does not apply to an obligation to which section 59-04.2-17,
6 59-04.2-18, 59-04.2-19, 59-04.2-20, 59-04.2-22, or 59-04.2-23 applies.

7 **59-04.2-15. (407) Insurance policies and similar contracts.**

- 8 1. Except as otherwise provided in subsection 2, a trustee shall allocate to principal
9 the proceeds of a life insurance policy or other contract in which the trust or its
10 trustee is named as beneficiary, including a contract that insures the trust or its
11 trustee against loss for damage to, destruction of, or loss of title to a trust asset.
12 The trustee shall allocate dividends on an insurance policy to income if the
13 premiums on the policy are paid from income, and to principal if the premiums are
14 paid from principal.
- 15 2. A trustee shall allocate to income proceeds of a contract that insures the trustee
16 against loss of occupancy or other use by an income beneficiary, loss of income,
17 or, subject to section 59-04.2-11, loss of profits from a business.
- 18 3. This section does not apply to a contract to which section 59-04.2-17 applies.

19 **59-04.2-16. (408) Insubstantial allocations not required. (Reserved)**

20 **59-04.2-17. (409) Deferred compensation, annuities, and similar payments.**

- 21 1. In this section, "payment" means a payment that a trustee may receive over a fixed
22 number of years or during the life of one or more individuals because of services
23 rendered or property transferred to the payer in exchange for future payments.
24 The term includes a payment made in money or property from the payer's general
25 assets or from a separate fund created by the payer, including a private or
26 commercial annuity, an individual retirement account, and a pension,
27 profit-sharing, stock-bonus, or stock-ownership plan.
- 28 2. To the extent that a payment is characterized as interest or a dividend or a
29 payment made in lieu of interest or a dividend, a trustee shall allocate it to income.
30 The trustee shall allocate to principal the balance of the payment and any other

1 payment received in the same accounting period that is not characterized as
2 interest, a dividend, or an equivalent payment.

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

11 4. If, to obtain an estate tax marital deduction for a trust, a trustee must allocate more
12 of a payment to income than provided for by this section, the trustee shall allocate
13 to income the additional amount necessary to obtain the marital deduction.

14 5. This section does not apply to payments to which section 59-04.2-18 applies.

15 **59-04.2-18. (410) Liquidating asset.**

16 1. In this section, "liquidating asset" means an asset whose value will diminish or
17 terminate because the asset is expected to produce receipts for a period of limited
18 duration. The term includes a leasehold, patent, copyright, royalty right, and right
19 to receive payments during a period of more than one year under an arrangement
20 that does not provide for the payment of interest on the unpaid balance. The term
21 does not include a payment subject to section 59-04.2-17, resources subject to
22 section 59-04.2-19, timber subject to section 59-04.2-20, an activity subject to
23 section 59-04.2-22, an asset subject to section 59-04.2-23, or any asset for which
24 the trustee establishes a reserve for depreciation under section 59-04.2-26.

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

27 **59-04.2-19. (411) Minerals, water, and other natural resources.**

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

- 1 a. If received as nominal delay rental or nominal annual rent on a lease, a
2 receipt must be allocated to income.
- 3 b. If received from a production payment, a receipt must be allocated to income
4 if and to the extent that the agreement creating the production payment
5 provides a factor for interest or its equivalent. The balance must be allocated
6 to principal.
- 7 c. If an amount received as a royalty, shut-in-well payment, take-or-pay
8 payment, bonus, or delay rental is more than nominal, ninety percent must be
9 allocated to principal and the balance to income.
- 10 d. If an amount is received from a working interest or any other interest not
11 provided for in subdivision a, b, or c, ninety percent of the net amount
12 received must be allocated to principal and the balance to income.
- 13 2. An amount received on account of an interest in water that is renewable must be
14 allocated to income. If the water is not renewable, ninety percent of the amount
15 must be allocated to principal and the balance to income.
- 16 3. This chapter applies whether or not a decedent or donor was extracting minerals,
17 water, or other natural resources before the interest became subject to the trust.
- 18 4. If a trust owns an interest in minerals, water, or other natural resources on
19 August 1, 1999, the trustee may allocate receipts from the interest as provided in
20 this chapter or in the manner used by the trustee before August 1, 1999. If the
21 trust acquires an interest in minerals, water, or other natural resources after
22 August 1, 1999, the trustee shall allocate receipts from the interest as provided in
23 this chapter.

24 **59-04.2-20. (412) Timber.**

- 25 1. To the extent that a trustee accounts for receipts from the sale of timber and
26 related products pursuant to this section, the trustee shall allocate the net receipts:
 - 27 a. To income to the extent that the amount of timber removed from the land
28 does not exceed the rate of growth of the timber during the accounting
29 periods in which a beneficiary has a mandatory income interest;

- 1 b. To principal to the extent that the amount of timber removed from the land
2 exceeds the rate of growth of the timber or the net receipts are from the sale
3 of standing timber;
- 4 c. To or between income and principal if the net receipts are from the lease of
5 timberland or from a contract to cut timber from land owned by a trust, by
6 determining the amount of timber removed from the land under the lease or
7 contract and applying the rules in subdivisions a and b; or
- 8 d. To principal to the extent that advance payments, bonuses, and other
9 payments are not allocated pursuant to subdivision a, b, or c.
- 10 2. In determining net receipts to be allocated pursuant to subsection 1, a trustee shall
11 deduct and transfer to principal a reasonable amount for depletion.
- 12 3. This chapter applies whether or not a decedent or transferor was harvesting timber
13 from the property before it became subject to the trust.
- 14 4. If a trust owns an interest in timberland on August 1, 1999, the trustee may
15 allocate net receipts from the sale of timber and related products as provided in
16 this chapter or in the manner used by the trustee before August 1, 1999. If the
17 trust acquires an interest in timberland after August 1, 1999, the trustee shall
18 allocate net receipts from the sale of timber and related products as provided in
19 this chapter.
- 20 **59-04.2-21. (413) Property not productive of income. (Reserved)**
- 21 **59-04.2-22. (414) Derivatives and options.**
- 22 1. In this section, "derivative" means a contract or financial instrument or a
23 combination of contracts and financial instruments which gives a trust the right or
24 obligation to participate in some or all changes in the price of a tangible or
25 intangible asset or group of assets, or changes in a rate, an index of prices or
26 rates, or other market indicator for an asset or a group of assets.
- 27 2. To the extent that a trustee does not account under section 59-04.2-11 for
28 transactions in derivatives, the trustee shall allocate to principal receipts from and
29 disbursements made in connection with those transactions.
- 30 3. If a trustee grants an option to buy property from the trust, whether or not the trust
31 owns the property when the option is granted, grants an option that permits

1 another person to sell property to the trust, or acquires an option to buy property
2 for the trust or an option to sell an asset owned by the trust, and the trustee or
3 other owner of the asset is required to deliver the asset if the option is exercised,
4 an amount received for granting the option must be allocated to principal. An
5 amount paid to acquire the option must be paid from principal. A gain or loss
6 realized upon the exercise of an option, including an option granted to a settlor of
7 the trust for services rendered, must be allocated to principal.

8 **59-04.2-23. (415) Asset-backed securities.**

- 9 1. In this section, "asset-backed security" means an asset whose value is based
10 upon the right it gives the owner to receive distributions from the proceeds of
11 financial assets that provide collateral for the security. The term includes an asset
12 that gives the owner the right to receive from the collateral financial assets only the
13 interest or other current return or only the proceeds other than interest or current
14 return. The term does not include an asset to which section 59-04.2-09 or
15 59-04.2-17 applies.
- 16 2. If a trust receives a payment from interest or other current return and from other
17 proceeds of the collateral financial assets, the trustee shall allocate to income the
18 portion of the payment which the payer identifies as being from interest or other
19 current return and shall allocate the balance of the payment to principal.
- 20 3. If a trust receives one or more payments in exchange for the trust's entire interest
21 in an asset-backed security in one accounting period, the trustee shall allocate the
22 payments to principal. If a payment is one of a series of payments that will result
23 in the liquidation of the trust's interest in the security over more than one
24 accounting period, the trustee shall allocate ten percent of the payment to income
25 and the balance to principal.

26 **59-04.2-24. (501) Disbursements from income.** A trustee shall make the following
27 disbursements from income to the extent that they are not disbursements to which
28 subdivision b or c of subsection 2 of section 59-04.2-04 applies:

- 29 1. One-half of the regular compensation of the trustee and of any person providing
30 investment advisory or custodial services to the trustee.

- 1 2. One-half of all expenses for accountings, judicial proceedings, or other matters
2 that involve both the income and remainder interests.
- 3 3. All of the other ordinary expenses incurred in connection with the administration,
4 management, or preservation of trust property and the distribution of income,
5 including interest, ordinary repairs, regularly recurring taxes assessed against
6 principal, and expenses of a proceeding or other matter that concerns primarily the
7 income interest.
- 8 4. Recurring premiums on insurance covering the loss of a principal asset or the loss
9 of income from or use of the asset.

10 **59-04.2-25. (502) Disbursements from principal.**

- 11 1. A trustee shall make the following disbursements from principal:
 - 12 a. The remaining one-half of the disbursements described in subsections 1 and
13 2 of section 59-04.2-24;
 - 14 b. All of the trustee's compensation calculated on principal as a fee for
15 acceptance, distribution, or termination, and disbursements made to prepare
16 property for sale;
 - 17 c. Payments on the principal of a trust debt;
 - 18 d. Expenses of a proceeding that concerns primarily principal, including a
19 proceeding to construe the trust or to protect the trust or its property;
 - 20 e. Premiums paid on a policy of insurance not described in subsection 4 of
21 section 59-04.2-24 of which the trust is the owner and beneficiary;
 - 22 f. Estate, inheritance, and other transfer taxes, including penalties, apportioned
23 to the trust; and
 - 24 g. Disbursements related to environmental matters, including reclamation,
25 assessing environmental conditions, remedying and removing environmental
26 contamination, monitoring remedial activities and the release of substances,
27 preventing future releases of substances, collecting amounts from persons
28 liable or potentially liable for the costs of those activities, penalties imposed
29 under environmental laws or regulations and other payments made to comply
30 with those laws or regulations, statutory or common law claims by third
31 parties, and defending claims based on environmental matters.

- 1 2. If a principal asset is encumbered with an obligation that requires income from that
2 asset to be paid directly to the creditor, the trustee shall transfer from principal to
3 income an amount equal to the income paid to the creditor in reduction of the
4 principal balance of the obligation.

5 **59-04.2-26. (503) Transfers from income to principal for depreciation.**

- 6 1. In this section, "depreciation" means a reduction in value due to wear, tear, decay,
7 corrosion, or gradual obsolescence of a fixed asset having a useful life of more
8 than one year.
- 9 2. A trustee may transfer to principal a reasonable amount of the net cash receipts
10 from a principal asset that is subject to depreciation, but may not transfer any
11 amount for depreciation:
- 12 a. Of that portion of real property used or available for use by a beneficiary as a
13 residence or of tangible personal property held or made available for the
14 personal use or enjoyment of a beneficiary;
- 15 b. During the administration of a decedent's estate; or
- 16 c. Under this section if the trustee is accounting under section 59-04.2-11 for the
17 business or activity in which the asset is used.
- 18 3. An amount transferred to principal need not be held as a separate fund.

19 **59-04.2-27. (504) Transfers from income to reimburse principal.**

- 20 1. If a trustee makes or expects to make a principal disbursement described in this
21 section, the trustee may transfer an appropriate amount from income to principal in
22 one or more accounting periods to reimburse principal or to provide a reserve for
23 future principal disbursements.
- 24 2. Principal disbursements to which subsection 1 applies include the following, but
25 only to the extent that the trustee has not been and does not expect to be
26 reimbursed by a third party:
- 27 a. An amount chargeable to income but paid from principal because it is
28 unusually large, including extraordinary repairs;
- 29 b. A capital improvement to a principal asset, whether in the form of changes to
30 an existing asset or the construction of a new asset, including special
31 assessments;

- 1 c. Disbursements made to prepare property for rental, including tenant
2 allowances, leasehold improvements, and broker's commissions;
3 d. Periodic payments on an obligation secured by a principal asset to the extent
4 that the amount transferred from income to principal for depreciation is less
5 than the periodic payments; and
6 e. Disbursements described in subdivision g of subsection 1 of section
7 59-04.2-25.
8 3. If the asset whose ownership gives rise to the disbursements becomes subject to a
9 successive income interest after an income interest ends, a trustee may continue
10 to transfer amounts from income to principal as provided in subsection 1.

11 **59-04.2-28. (505) Income taxes.**

- 12 1. A tax required to be paid by a trustee based on receipts allocated to income must
13 be paid from income.
14 2. A tax required to be paid by a trustee based on receipts allocated to principal must
15 be paid from principal, even if the tax is called an income tax by the taxing
16 authority.
17 3. A tax required to be paid by a trustee on the trust's share of an entity's taxable
18 income must be paid proportionately:
19 a. From income to the extent that receipts from the entity are allocated to
20 income.
21 b. From principal to the extent that:
22 (1) Receipts from the entity are allocated to principal; and
23 (2) The trust's share of the entity's taxable income exceeds the total
24 receipts described in subdivision a and paragraph 1 of subdivision b.
25 4. For purposes of this section, receipts allocated to principal or income must be
26 reduced by the amount distributed to a beneficiary from principal or income for
27 which the trust receives a deduction in calculating the tax.

28 **59-04.2-29. (506) Adjustments between principal and income because of taxes.**

- 29 1. A fiduciary may make adjustments between principal and income to offset the
30 shifting of economic interests or tax benefits between income beneficiaries and
31 remainder beneficiaries which arise from:

- 1 a. Elections and decisions, other than those described in subsection 2, that the
2 fiduciary makes from time to time regarding tax matters;
 - 3 b. An income tax or any other tax that is imposed upon the fiduciary or a
4 beneficiary as a result of a transaction involving or a distribution from the
5 estate or trust; or
 - 6 c. The ownership by an estate or trust of an interest in an entity whose taxable
7 income, whether or not distributed, is includable in the taxable income of the
8 estate, trust, or a beneficiary.
- 9 2. If the amount of an estate tax marital deduction or charitable contribution deduction
10 is reduced because a fiduciary deducts an amount paid from principal for income
11 tax purposes instead of deducting it for estate tax purposes, and as a result estate
12 taxes paid from principal are increased and income taxes paid by an estate, trust,
13 or beneficiary are decreased, each estate, trust, or beneficiary that benefits from
14 the decrease in income tax shall reimburse the principal from which the increase in
15 estate tax is paid. The total reimbursement must equal the increase in the estate
16 tax to the extent that the principal used to pay the increase would have qualified for
17 a marital deduction or charitable contribution deduction but for the payment. The
18 proportionate share of the reimbursement for each estate, trust, or beneficiary
19 whose income taxes are reduced must be the same as its proportionate share of
20 the total decrease in income tax. An estate or trust shall reimburse principal from
21 income.

22 **59-04.2-30. Certain charitable remainder unitrusts.**

- 23 1. Notwithstanding any other provision of this chapter, unless the trust instrument
24 directs otherwise, an increase in the value of the obligations described in this
25 subsection owned by a charitable remainder unitrust of the type authorized in
26 section 664(d)(3) of the Internal Revenue Code [26 U.S.C. 664(d)(3)] or its
27 successor provisions is distributable as income when it becomes available for
28 distribution:
- 29 a. A zero coupon bond;
 - 30 b. An annuity contract before annuitization;
 - 31 c. A life insurance contract before the death of the insured;

- 1 d. An interest in a common trust fund as defined in section 584 of the Internal
2 Revenue Code [26 U.S.C. 584] or its successor provisions;
- 3 e. An interest in a partnership as defined in section 7701 of the Internal
4 Revenue Code [26 U.S.C. 7701] or its successor provisions; and
- 5 f. Any other obligation for the payment of money that is payable at a future time
6 in accordance with a fixed, variable, or discretionary schedule of appreciation
7 in excess of the price at which it was issued.
- 8 2. The increase in value of the obligations described in subsection 1 is distributable to
9 the beneficiary who was the income beneficiary at the time of the increase.
- 10 3. For purposes of this section, the increase in value of an obligation described in
11 subsection 1 is available for distribution only when the trustee receives cash on
12 account of the obligation. If the obligation is surrendered or liquidated partially, the
13 cash available must be attributed first to the increase.
- 14 **SECTION 2. REPEAL.** Chapter 59-04.1 of the North Dakota Century Code is
15 repealed.