

SECOND REGULAR SESSION

SENATE BILL NO. 1468

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR BURGER.

6242S.01I

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 214.330, 456.4-420, 469.401, 469.402, 469.403, 469.405, 469.409, 469.411, 469.413, 469.415, 469.417, 469.419, 469.421, 469.423, 469.425, 469.427, 469.429, 469.431, 469.432, 469.433, 469.435, 469.437, 469.439, 469.441, 469.443, 469.445, 469.447, 469.449, 469.451, 469.453, 469.455, 469.457, 469.459, 469.461, 469.463, 469.465, 469.467, 513.430, and 536.085, RSMo, and to enact in lieu thereof fifty-one new sections relating to civil jurisprudence.

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

Section A. Sections 214.330, 456.4-420, 469.401, 469.402,
2 469.403, 469.405, 469.409, 469.411, 469.413, 469.415, 469.417,
3 469.419, 469.421, 469.423, 469.425, 469.427, 469.429, 469.431,
4 469.432, 469.433, 469.435, 469.437, 469.439, 469.441, 469.443,
5 469.445, 469.447, 469.449, 469.451, 469.453, 469.455, 469.457,
6 469.459, 469.461, 469.463, 469.465, 469.467, 513.430, and
7 536.085, RSMo, are repealed and fifty-one new sections enacted
8 in lieu thereof, to be known as sections 214.330, 456.4-420,
9 469.399, 469.401, 469.402, 469.403, 469.404, 469.405, 469.413,
10 469.415, 469.417, 469.419, 469.421, 469.423, 469.425, 469.427,
11 469.429, 469.431, 469.432, 469.433, 469.435, 469.437, 469.439,
12 469.441, 469.443, 469.445, 469.446, 469.447, 469.449, 469.451,
13 469.453, 469.455, 469.456, 469.457, 469.459, 469.462, 469.463,
14 469.464, 469.465, 469.467, 469.471, 469.473, 469.475, 469.477,
15 469.479, 469.481, 469.483, 469.485, 469.487, 513.430, and
16 536.085, to read as follows:

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

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

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

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

26 2. An endowed care trust fund shall be administered in
27 accordance with Missouri law governing trusts, including but
28 not limited to the applicable provisions of chapters 456 and
29 469, except as specifically provided in this subsection or
30 where the provisions of sections 214.270 to 214.410 provide
31 differently, provided that a cemetery operator shall not in
32 any circumstances be authorized to restrict, enlarge,

33 change, or modify the requirements of this section or the
34 provisions of chapters 456 and 469 by agreement or otherwise.

35 (1) Income and principal of an endowed care trust fund
36 shall be determined under the provisions of law applicable
37 to trusts, except that the [provisions of section 469.405
38 shall not apply] trustee shall have:

39 (a) No power of adjustment under section 469.405;
40 (b) No power of conversion either from an income trust
41 to a unitrust or from a unitrust to an income trust under
42 section 469.475;

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

46 (d) No discretion to determine applicable value for
47 purposes of computing the unitrust amount beyond that
48 granted by law and exercised solely for reasons of
49 administrative convenience and not affect the size of
50 distributions.

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

54 (2) No principal shall be distributed from an endowed
55 care trust fund except to the extent that a unitrust
56 [election is in effect with respect to such trust under the
57 provisions of section 469.411] amount is required by the
58 terms of the endowed care trust fund agreement under
59 subdivision (6) of this subsection.

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

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

63 (5) No trustee shall have the power to terminate an
64 endowed care trust fund under the provisions of section
65 456.4-414.

66 (6) A unitrust [election made in accordance with the
67 provisions of chapter 469] **definition of income under**
68 **sections 469.471 to 469.487** shall be [made] **established** by
69 the cemetery operator in the terms of the endowed care trust
70 fund agreement itself, not by the trustee, **and shall not**
71 **provide for a unitrust rate exceeding five percent per**
72 **annum. The unitrust rate shall be changed only by amendment**
73 **to the agreement as provided in this section.**

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

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

92 4. In addition to any other duty, obligation, or
93 requirement imposed by sections 214.270 to 214.410 or the
94 endowed care trust agreement, the trustee's duties shall be

95 the maintenance of records related to the trust and the
96 accounting for and investment of moneys deposited by the
97 operator to the endowed care trust fund.

98 (1) For the purposes of sections 214.270 to 214.410,
99 the trustee shall not be deemed responsible for the care,
100 the maintenance, or the operation of the cemetery, or for
101 any other matter relating to the cemetery, or the proper
102 expenditure of funds distributed by the trustee to the
103 cemetery operator, including, but not limited to, compliance
104 with environmental laws and regulations.

105 (2) With respect to cemetery property maintained by
106 endowed care funds, the cemetery operator shall be
107 responsible for the performance of the care and maintenance
108 of the cemetery property.

109 5. If the endowed care cemetery fund is not
110 permanently set aside in a trust fund as required by
111 subsection 1 of this section, then the funds shall be
112 permanently set aside in an escrow account in the state of
113 Missouri. Funds in an escrow account shall be placed in an
114 endowed care trust fund under subsection 1 if the funds in
115 the escrow account exceed three hundred fifty thousand
116 dollars, unless otherwise approved by the division for good
117 cause. The account shall be insured by the Federal Deposit
118 Insurance Corporation or comparable deposit insurance and
119 held in a state or federally chartered financial institution
120 authorized to do business in Missouri and located in this
121 state.

122 (1) The interest from the escrow account may be
123 distributed to the cemetery operator at least in annual or
124 semiannual installments, but not later than six months
125 following the calendar year. Any interest not distributed
126 within six months following the end of the calendar year

127 shall be added to and held as part of the principal of the
128 account.

129 (2) The cemetery operator shall have the duty and
130 responsibility to apply the interest to provide care and
131 maintenance only for that part of the cemetery in which
132 burial space shall have been sold and with respect to which
133 sales the escrow account shall have been established and not
134 for any other purpose. The principal of such funds shall be
135 kept intact. The cemetery operator's duties shall be the
136 maintenance of records and the accounting for an investment
137 of moneys deposited by the operator to the escrow account.
138 For purposes of sections 214.270 to 214.410, the
139 administrator of the office of endowed care cemeteries shall
140 not be deemed to be responsible for the care, maintenance,
141 or operation of the cemetery. With respect to cemetery
142 property maintained by cemetery care funds, the cemetery
143 operator shall be responsible for the performance of the
144 care and maintenance of the cemetery property owned by the
145 cemetery operator.

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

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

153 7. Excluding funds held in an escrow account, all
154 endowed care trust funds shall be administered in accordance
155 with an endowed care trust fund agreement, which shall be
156 submitted to the office by the cemetery operator for review
157 and approval. The endowed care cemetery shall be notified
158 in writing by the office of endowed care cemeteries

159 regarding the approval or disapproval of the endowed care
160 trust fund agreement and regarding any changes required to
161 be made for compliance with sections 214.270 to 214.410 and
162 the rules and regulations promulgated thereunder.

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

169 9. If the endowed care trust fund agreement, or any
170 changes, amendments, or revisions filed with the office, are
171 not disapproved by the office within thirty days after
172 submission by the cemetery operator, the endowed care trust
173 fund agreement, or the related change, amendment, or
174 revision, shall be deemed approved and may be used by the
175 cemetery operator and the trustee. Notwithstanding any
176 other provision of this section, the office may review and
177 disapprove an endowed care trust fund agreement, or any
178 submitted change, amendment, or revision, after the thirty
179 days provided herein or at any other time if the agreement
180 is not in compliance with sections 214.270 to 214.410 or the
181 rules promulgated thereunder. Notice of disapproval by the
182 office shall be in writing and delivered to the cemetery
183 operator and the trustee within ten days of disapproval.

184 10. Funds in an endowed care trust fund or escrow
185 account may be commingled with endowed care funds for other
186 endowed care cemeteries, provided that the cemetery operator
187 and the trustee shall maintain adequate accounting records
188 of the disbursements, contributions, and income allocated
189 for each cemetery.

190 11. By accepting the trusteeship of an endowed care
191 trust or accepting funds as an escrow agent pursuant to
192 sections 214.270 to 214.410, the trustee or escrow agent
193 submits personally to the jurisdiction of the courts of this
194 state and the office of endowed care cemeteries regarding
195 the administration of the trust or escrow account. A
196 trustee or escrow agent shall consent in writing to the
197 jurisdiction of the state of Missouri and the office in
198 regards to the trusteeship or the operation of the escrow
199 account and to the appointment of the office of secretary of
200 state as its agent for service of process regarding any
201 administrative or legal actions relating to the trust or the
202 escrow account, if it has no designated agent for service of
203 process located in this state. Such consent shall be filed
204 with the office prior to accepting funds pursuant to
205 sections 214.270 to 214.410 as trustee or as an escrow agent
206 on a form provided by the office by rule.

456.4-420. 1. If a trust instrument containing a no-
2 contest clause is or has become irrevocable, an interested
3 person may file a petition to the court for [an
4 ~~interlocutory~~] a determination whether a particular [motion,
5 ~~petition, or other~~] claim for relief by the interested
6 person would trigger application of the no-contest clause
7 [~~or would otherwise trigger a forfeiture~~] that is
8 enforceable under applicable law and public policy.

9 2. The petition described in subsection 1 of this
10 section shall be verified under oath. The petition [may]
11 **shall** be filed by an interested person either as a separate
12 judicial proceeding, or brought with other claims for relief
13 in a single judicial proceeding, all in the manner
14 prescribed generally for such proceedings under this
15 chapter. If a petition is joined with other claims for

16 relief, **the interested person shall seek, and** the court
17 shall enter, its order or judgment on the petition before
18 proceeding any further with [any other claim for relief
19 joined therein] **the matter**. In ruling on such a petition,
20 the court shall consider the text of the clause, the context
21 to the terms of the trust instrument as a whole, and in the
22 context of the verified factual allegations in the
23 petition. No evidence beyond the pleadings and the trust
24 instrument shall be taken except as required to resolve an
25 ambiguity in the no-contest clause.

26 3. An order or judgment [determining a petition]
27 **making a determination** described in subsection 1 of this
28 section shall have the effect set forth in subsections 4 and
29 5 of this section, and shall be subject to appeal as with
30 other final judgments. [If the] **An** order **that** disposes of
31 fewer than all claims for relief in a [judicial]
32 proceeding[, that order] **under this section** is subject to
33 [interlocutory] **immediate** appeal in accordance with the
34 applicable rules for taking such an appeal. If an
35 [interlocutory] appeal is taken, the court may stay the
36 pending judicial proceeding until final disposition of said
37 appeal on such terms and conditions as the court deems
38 reasonable and proper under the circumstances. A final
39 ruling on the applicability of a no-contest clause shall not
40 preclude any later filing and adjudication of other claims
41 related to the trust.

42 4. An order or judgment, in whole or in part, on a
43 petition described in subsection 1 of this section shall
44 result in the no-contest clause being enforceable to the
45 extent of the court's ruling, and shall govern application
46 of the no-contest clause to the extent that the interested
47 person then proceeds forward with the claims described

48 therein. In the event such an [interlocutory] order or
49 judgment is vacated, reversed, or otherwise modified on
50 appeal, no interested person shall be prejudiced by any
51 reliance, through action, inaction, or otherwise, on the
52 order or judgment prior to final disposition of the appeal.

53 5. An order or judgment shall have effect [only] as to
54 the **claims**, specific trust terms, and factual basis recited
55 in the petition, **and shall relate to all actions taken by**
all parties in the suit under the Missouri supreme court
rules of civil procedure and this chapter. If claims are
56 later filed **or amended** that are materially different than
57 those upon which the order or judgment is based, then to the
58 extent such new claims are raised, the party in whose favor
59 the order or judgment was entered shall have no protection
60 from enforcement of the no-contest clause otherwise afforded
61 by the order and judgment entered under this section.

62 6. For purposes of this section, a "no-contest clause"
63 shall mean a provision in a trust instrument purporting to
64 rescind a donative transfer to, or a fiduciary appointment
65 of, any person, or that otherwise effects a forfeiture of
66 some or all of an interested person's beneficial interest in
67 a trust estate as a result of some action taken by the
68 beneficiary. This definition shall not be construed in any
69 way as determining whether a no-contest clause is
70 enforceable under applicable law and public policy in a
71 particular factual situation. As used in this section, the
72 term "no-contest clause" shall also mean an "in terrorem
73 clause".

74 7. A no-contest clause is not enforceable against an
75 interested person in[, but not limited to,] the following
76 circumstances:

79 (1) Filing a motion, petition, or other claim for
80 relief objecting to the jurisdiction or venue of the court
81 over a proceeding concerning a trust, or over any person
82 joined, or attempted to be joined, in such a proceeding;

83 (2) Filing a motion, petition, or other claim for
84 relief concerning an accounting, report, or notice that has
85 or should have been made by a trustee, provided the
86 interested person otherwise has standing to do so under
87 applicable law, including, but not limited to, section 456.6-
88 603;

92 (4) Filing a motion, petition, or other claim for
93 relief under chapter 404 concerning the settlor;

94 (5) Disclosure to any person of information concerning
95 a trust instrument or that is relevant to a proceeding
96 before the court concerning the trust instrument or property
97 of the trust estate, unless such disclosure is otherwise
98 prohibited by law;

99 (6) Filing a motion, pleading, or other claim for
100 relief seeking approval of a nonjudicial settlement
101 agreement concerning a trust instrument, as set forth in
102 section 456.1-111;

103 (7) [To the extent] **Filing** a petition [under
104 subsection 1 of] **pursuant to** this section, **provided the**
105 **petition** is limited to the [procedure] **procedures** and
106 [purpose] **purposes** described [therein] **in this section**;

107 (8) Participation in a suit consistent with the
108 Missouri supreme court rules of civil procedure by any
109 interested person where the interested person has not
110 asserted any affirmative claim for relief;

111 (9) As to the interested persons party to an action,
112 to the extent the court determines that the application of
113 the no-contest clause is void or unenforceable as against
114 the public policy of this state;

115 (10) The scope of the no-contest clause does not
116 include the factual allegations of the petition as they
117 apply to the specific terms of the trust; and

(11) A no-contest clause that seeks to cause a forfeiture against a beneficiary challenging a trust term that would otherwise be prohibited under subsection 2 of section 456.1-105 or section 456.10-1008.

122 8. An interested person that does not seek a
123 determination in accordance with the provisions of this
124 section is not thereafter prohibited in any manner from
125 challenging the validity or application of a no-contest
126 clause in a proceeding without the protections afforded by
127 this section.

128 **9.** In any proceeding brought under this section, the
129 court may award costs, expenses, and attorneys' fees to any
130 party, as provided in section 456.10-1004.

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

469.401. As used in sections [469.401] **469.399** to
2 [469.467] **469.487**, the following terms mean:
3 (1) "Accounting period", a calendar year, unless
4 [another twelve-month period is selected by] a fiduciary
5 selects another period of twelve calendar months or
6 approximately twelve calendar months. The term "accounting
7 period" includes a [portion] part of a calendar year or
8 [other twelve-month] another period [that] of twelve
9 calendar months or approximately twelve calendar months that

10 begins when an income interest begins or ends when an income
11 interest ends;

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

21 (3) **"Beneficiary"**, includes:

22 (a) **For a trust**:

23 a. A current beneficiary, including a current income
24 beneficiary and a beneficiary that may receive only
25 principal;

26 b. A remainder beneficiary; and

27 c. Any other successor beneficiary;

28 (b) **For an estate**, an heir, legatee, and devisee [of a
29 decedent's estate, and an income beneficiary and a remainder
30 beneficiary of a trust, including any type of entity that
31 has a beneficial interest in either an estate or a trust];

32 and

33 (c) **For a life estate or term interest**, a person that
34 holds a life estate, term interest, or remainder or other
35 interest following a life estate or term interest;

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

40 (5) **"Current income beneficiary"**, a beneficiary to
41 which a fiduciary may distribute net income, whether or not

42 the fiduciary also may distribute principal to the
43 beneficiary;

44 (6) "Distribution", a payment or transfer by a
45 fiduciary to a beneficiary in the beneficiary's capacity as
46 a beneficiary, made under the terms of the trust, without
47 consideration other than the beneficiary's right to receive
48 the payment or transfer under the terms of the trust. The
49 terms "distribute", "distributed", and "distributee" have
50 corresponding meanings;

51 (7) "Estate", a decedent's estate. The term "estate"
52 includes the property of the decedent as the estate is
53 originally constituted and the property of the estate as it
54 exists at any time during administration;

55 [(3)] (8) "Fiduciary", includes a trustee, trust
56 protector determined under section 456.8-808, personal
57 representative, [trustee, executor, administrator, successor
58 personal representative, special administrator and any other
59 person performing substantially the same function] life
60 tenant, holder of a term interest, and person acting under a
61 delegation from a fiduciary. The term "fiduciary" includes
62 a person that holds property for a successor beneficiary
63 whose interest may be affected by an allocation of receipts
64 and expenditures between income and principal. If there are
65 two or more cofiduciaries, the term "fiduciary" includes all
66 cofiduciaries acting under the terms of the trust and
67 applicable law;

68 [(4)] (9) "Income", money or other property [that] a
69 fiduciary receives as current return from [a] principal
70 [asset, including a portion]. The term "income" includes a
71 part of receipts from a sale, exchange, or liquidation of a
72 principal asset, [as] to the extent provided in sections
73 469.423 to 469.449;

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

76 [(6)] (10) "Income interest", the right of [an] a
77 **current** income beneficiary to receive all or part of net
78 income, whether the terms of the trust require [it] **the net**
79 **income** to be distributed or authorize [it] **the net income** to
80 be distributed in the [trustee's] **fiduciary's** discretion.
81 **The term "income interest" includes the right of a current**
82 **beneficiary to use property held by a fiduciary;**

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

84 (a) For a trust:

85 a. A qualified beneficiary as defined in section 456.1-
86 103;

87 b. A settlor of the trust; or

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

91 (b) For an estate, a beneficiary;

92 (c) A spouse, parent, brother, sister, or issue of an
93 individual described in paragraph (a) or (b) of this
94 subdivision;

95 (d) A corporation, partnership, limited liability
96 company, or other entity in which persons described in
97 paragraphs (a) to (c) of this subdivision, in the aggregate,
98 have voting control; or

99 (e) An employee of a person described in paragraph
100 (a), (b), (c), or (d) of this subdivision;

101 [(7)] (12) "Mandatory income interest", the right of
102 [an] a **current** income beneficiary to receive net income that
103 the terms of the trust require the fiduciary to distribute;

104 [(8)] (13) "Net income", [if section 469.411 applies
105 to the trust, the unitrust amount, or if section 469.411

106 does not apply to the trust,] the total [receipts allocated
107 to income] **allocations** during an accounting period **to income**
108 **under the terms of a trust and sections 469.399 to 469.487**
109 minus the disbursements [made from income during the same
110 period, plus or minus transfers pursuant to sections 469.401
111 to 469.467 to or from income] during the [same] **accounting**
112 **period, other than distributions, allocated to income under**
113 **the terms of the trust and sections 469.399 to 469.487.** To
114 **the extent the trust is a unitrust under sections 469.471 to**
115 **469.487, the term "net income" means the unitrust amount**
116 **determined under sections 469.471 to 469.487. The term "net**
117 **income" includes an adjustment from principal to income**
118 **under section 469.405. The term "net income" does not**
119 **include an adjustment from income to principal under section**
120 **469.405;**

121 [(9)] (14) "Person", an individual, [corporation,
122 business trust,] estate, trust, [partnership, limited
123 liability company, association, joint venture] **business or**
124 **nonprofit entity, public corporation, government[,]** or
125 governmental subdivision, agency, or instrumentality,
126 [public corporation] or [any] other legal [or commercial]
127 entity;

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

133 [(10)] (16) "Principal", property held in trust for
134 distribution to [a remainder], **production of income for, or**
135 **use by a current or successor** beneficiary [when the trust
136 terminates];

137 [(11) "Qualified beneficiary", a beneficiary defined
138 in section 456.1-103;
139 (12) "Remainder beneficiary", a person entitled to
140 receive principal when an income interest ends;
141 (13)] (17) "Record", information that is inscribed on
142 a tangible medium or that is stored in an electronic or
143 other medium and is retrievable in perceivable form;
144 (18) "Settlor", a person, including a testator, that
145 creates or contributes property to a trust. If more than
146 one person creates or contributes property to a trust, the
147 term "settlor" includes each person, to the extent of the
148 trust property attributable to that person's contribution,
149 except to the extent another person has the power to revoke
150 or withdraw that portion;
151 (19) "Special tax benefit":
152 (a) Exclusion of a transfer to a trust from gifts
153 described in 26 U.S.C. Section 2503(b), as amended, because
154 of the qualification of an income interest in the trust as a
155 present interest in property;
156 (b) Status as a qualified subchapter S trust described
157 in 26 U.S.C. Section 1361(d)(3), as amended, at a time the
158 trust holds stock of an S corporation described in 26 U.S.C.
159 Section 1361(a)(1), as amended;
160 (c) An estate or gift tax marital deduction for a
161 transfer to a trust under 26 U.S.C. Section 2056 or 2523, as
162 amended, which depends or depended in whole or in part on
163 the right of the settlor's spouse to receive the net income
164 of the trust;
165 (d) Exemption in whole or in part of a trust from the
166 federal generation-skipping transfer tax imposed by 26
167 U.S.C. Section 2601, as amended, because the trust was

168 **irrevocable on September 25, 1985, if there is any**
169 **possibility that:**

170 a. **A taxable distribution, as defined in 26 U.S.C.**
171 **Section 2612(b), as amended, could be made from the trust; or**
172 b. **A taxable termination, as defined in 26 U.S.C.**
173 **Section 2612(a), as amended, could occur with respect to the**
174 **trust; or**

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

178 a. **A taxable distribution, as defined in 26 U.S.C.**
179 **Section 2612(b), as amended, could be made from the trust; or**
180 b. **A taxable termination, as defined in 26 U.S.C.**
181 **Section 2612(a), as amended, could occur with respect to the**
182 **trust;**

183 (20) **"Successive interest", the interest of a**
184 **successor beneficiary;**

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

188 (22) **"Terms of a trust":**

189 (a) **Except as otherwise provided in paragraph (b) of**
190 **this subdivision, the manifestation of the settlor's [or**
191 **decedent's] intent regarding a trust's provisions as:**

192 a. **Expressed in [a manner which is] the trust**
193 **instrument; or**

194 b. **Established by other evidence that would be**
195 **admissible [as proof] in a judicial proceeding[, whether by**
196 **written or spoken words or by conduct];**

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

199 a. A trustee or trust director in accordance with
200 applicable law;
201 b. Court order; or
202 c. A nonjudicial settlement agreement under section
203 456.1-111;
204 (c) For an estate, a will; or
205 (d) For a life estate or term interest, the
206 corresponding manifestation of the rights of the
207 beneficiaries;

208 (23) "Trust":
209 (a) Includes:
210 a. An express trust, private or charitable, with
211 additions to the trust, wherever and however created; and
212 b. A trust created or determined by judgment or decree
213 under which the trust is to be administered in the manner of
214 an express trust; and
215 (b) Does not include:
216 a. A constructive trust;
217 b. A resulting trust, conservatorship, guardianship,
218 multi-party account, custodial arrangement for a minor,
219 business trust, voting trust, security arrangement,
220 liquidation trust, or trust for the primary purpose of
221 paying debts, dividends, interest, salaries, wages, profits,
222 pensions, retirement benefits, or employee benefits of any
223 kind; or
224 c. An arrangement under which a person is a nominee,
225 escrowee, or agent for another;
226 [(14)] (24) "Trustee", a person, other than a personal
227 representative, that owns or holds property for the benefit
228 of a beneficiary. The term "trustee" includes an original,
229 additional, or successor trustee, whether or not appointed
230 or confirmed by a court;

231 [(15) "Unitrust amount", net income as defined by
232 section 469.411]

233 (25) "Will", any testamentary instrument recognized by
234 applicable law that makes a legally effective disposition of
235 an individual's property, effective at the individual's
236 death. The term "will" includes a codicil or other
237 amendment to a testamentary instrument.

469.402. 1. Except as otherwise provided in the terms
2 of a trust or sections 469.399 to 469.487, the provisions of
3 sections [456.3-301] 469.399 to [456.3-305 shall] 469.487
4 apply to [sections 469.401 to 469.467 for all purposes]:

5 (1) A trust or estate; and

6 (2) A life estate or other term interest in which the
7 interest of one or more persons will be succeeded by the
8 interest of one or more other persons.

9 2. Except as otherwise provided in the terms of a
10 trust or sections 469.399 to 469.487, the provisions of
11 sections 469.399 to 469.487 apply when this state is the
12 principal place of administration of a trust or estate or
13 the situs of property that is not held in a trust or estate
14 and is subject to a life estate or other term interest
15 described in subdivision (2) of subsection 1 of this
16 section. By accepting the trusteeship of a trust having its
17 principal place of administration in this state or by moving
18 the principal place of administration of a trust to this
19 state, the trustee submits to the application of sections
20 469.399 to 469.487 to any matter within the scope of
21 sections 469.399 to 469.487 involving the trust.

469.403. 1. In [allocating receipts and disbursements
2 to or between principal and income, and with respect to any
3 matter within the scope of] **making an allocation or**

4 determination or exercising discretion under sections
5 469.413 to 469.421, a fiduciary shall:

6 (1) [Shall] Act in good faith, based on what is fair
7 and reasonable to all beneficiaries;

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

12 (3) Administer the trust or estate in accordance with
13 the terms of the trust, even if there is a different
14 provision in sections [469.401] 469.399 to [469.467]
15 469.487; and

16 [(2) May] (4) Administer [a] the trust or estate [by
17 exercising] in accordance with sections 469.399 to 469.487,
18 except to the extent the terms of the trust provide
19 otherwise or authorize the fiduciary to determine otherwise.

20 2. A fiduciary's allocation, determination, or
21 exercise of discretion pursuant to sections 469.399 to
22 469.487 is presumed to be fair and reasonable to all
23 beneficiaries. A fiduciary may exercise a discretionary
24 power of administration given to the fiduciary by the terms
25 of the trust [or the will, even if the], and an exercise of
26 the power that produces a result different from a result
27 required or permitted by sections [469.401] 469.399 to
28 [469.467;] 469.487 does not create an inference that the
29 fiduciary abused the fiduciary's discretion.

30 [(3) Shall administer a trust or estate pursuant]

31 3. A fiduciary shall:

32 (1) Add a receipt to [sections 469.401 to 469.467 if]
33 principal, to the extent neither the terms of the trust [or
34 the will do not contain a different provision or do not
35 give] nor sections 469.399 to 469.487 allocate the

36 [fiduciary a discretionary power of administration] **receipt**
37 **between income and principal;** and

38 [(4) Shall add a receipt or] **(2) Charge a**
39 disbursement to principal, to the extent [that] **neither** the
40 terms of the trust [and] **nor** sections [469.401] **469.399** to
41 [469.467 do not provide a rule for allocating the receipt
42 **or] 469.487 allocate the** disbursement [to or] between
43 **[principal and] income and principal.**

44 [2. In exercising the power to adjust pursuant to
45 section 469.405 or a discretionary power of administration
46 regarding a matter within the scope of sections 469.401 to
47 469.467, whether granted by the terms of a trust, a will, or
48 sections 469.401 to 469.467, a fiduciary shall administer a
49 trust or estate impartially, based on what is fair and
50 reasonable to all of the beneficiaries, except to the extent
51 that the terms of the trust or the will clearly manifest an
52 intent that the fiduciary shall or may favor one or more of
53 the beneficiaries. A determination in accordance with
54 sections 469.401 to 469.467 is presumed to be fair and
55 reasonable to all of the beneficiaries]

56 **4. A fiduciary may exercise the power to adjust under**
57 **section 469.405, convert an income trust to a unitrust under**
58 **subdivision (1) of subsection 1 of section 469.475, change**
59 **the percentage or method used to calculate a unitrust amount**
60 **under subdivision (2) of subsection 1 of section 469.475, or**
61 **convert a unitrust to an income trust under subdivision (3)**
62 **of subsection 1 of section 469.475, if the fiduciary**
63 **determines the exercise of the power will assist the**
64 **fiduciary to administer the trust or estate impartially.**

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

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

68 (2) The nature, distribution standards, and expected
69 duration of the trust;

70 (3) The effect of the allocation rules, including
71 specific adjustments between income and principal, under
72 sections 407.413 to 407.461;

73 (4) The desirability of liquidity and regularity of
74 income;

75 (5) The desirability of the preservation and
76 appreciation of principal;

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

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

81 (8) Whether and to what extent the terms of the trust
82 give the fiduciary power to accumulate income or invade
83 principal or prohibit the fiduciary from accumulating income
84 or invading principal;

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

87 (10) The effect of current and reasonably expected
88 economic conditions; and

89 (11) The reasonably expected tax consequences of the
90 exercise of the power.

469.404. 1. As used in this section, the term
2 "fiduciary decision" means:

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

10 including the power to adjust under section 469.405, convert
11 an income trust to a unitrust under subdivision (1) of
12 subsection 1 of section 469.475, change the percentage or
13 method used to calculate a unitrust amount under subdivision
14 (2) of subsection 1 of section 469.475, or convert a
15 unitrust to an income trust under subdivision (3) of
16 subsection 1 of section 469.475; or

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

19 2. The court shall not order a fiduciary to change a
20 fiduciary decision unless the court determines that the
21 fiduciary decision was an abuse of the fiduciary's
22 discretion.

23 3. If the court determines that a fiduciary decision
24 was an abuse of the fiduciary's discretion, the court may
25 order a remedy authorized by law, including under section
26 456.10-1001. To place the beneficiaries in the positions
27 the beneficiaries would have occupied if there had not been
28 an abuse of the fiduciary's discretion, the court may order:

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

31 (2) The fiduciary to exercise or refrain from
32 exercising the power to convert an income trust to a
33 unitrust under subdivision (1) of subsection 1 of section
34 469.475, change the percentage or method used to calculate a
35 unitrust amount under subdivision (2) of subsection 1 of
36 section 469.475, or convert a unitrust to an income trust
37 under subdivision (3) of subsection 1 of section 469.475;

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

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

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

44 4. On petition by a fiduciary for instruction, the
45 court may determine whether a proposed fiduciary decision
46 will result in an abuse of the fiduciary's discretion. If
47 the petition describes the proposed decision, contains
48 sufficient information to inform the beneficiary of the
49 reasons for making the proposed decision and the facts on
50 which the fiduciary relies, and explains how the beneficiary
51 will be affected by the proposed decision, a beneficiary
52 that opposes the proposed decision has the burden to
53 establish that it will result in an abuse of the fiduciary's
54 discretion.

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

14 2. This section does not create a duty to exercise or
15 consider the power to adjust under subsection 1 of this
16 section or to inform a beneficiary about the applicability
17 of this section.

18 3. A fiduciary that in good faith exercises or fails
19 to exercise the power to adjust under subsection 1 of this

20 **section is not liable to a person affected by the exercise**
21 **or failure to exercise.**

22 [2.] 4. In deciding whether and to what extent to
23 exercise the power [conferred by] to **adjust under** subsection
24 1 of this section, a [trustee] **fiduciary** shall consider all
25 factors **the fiduciary considers** relevant [to the trust and
26 its beneficiaries], including [the following] **relevant**
27 factors [to the extent relevant:] **in subsection 5 of section**
28 **469.403 and the application of sections 469.423, 469.435,**
29 **and 469.445.**

30 [(1) The nature, purpose and expected duration of the
31 trust;

32 (2) The intent of the settlor;

33 (3) The identity and circumstances of the
34 beneficiaries;

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

37 (5) The assets held in the trust, including the extent
38 to which such assets consist of financial assets, interests
39 in closely held enterprises, tangible and intangible
40 personal property, or real property, and the extent to which
41 such assets are used by a beneficiary, and whether such
42 assets were purchased by the trustee or received from the
43 settlor;

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

49 (7) Whether and to what extent the terms of the trust
50 give the trustee the power to invade principal or accumulate
51 income, or prohibit the trustee from invading principal or

52 accumulating income, and the extent to which the trustee has
53 exercised a power from time to time to invade principal or
54 accumulate income;

55 (8) The actual and anticipated effect of economic
56 conditions on principal and income and effects of inflation
57 and deflation; and

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

59 3.] 5. A [trustee may] **fiduciary shall** not **exercise**
60 **the power under subsection 1 of this section to** make an
61 **adjustment or under section 469.435 to make a determination**
62 **that an allocation is insubstantial if:**

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

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

71 (3) That changes] **The adjustment or determination**
72 **would reduce** the amount payable to a **current income**
73 **beneficiary from a trust that qualifies for a special tax**
74 **benefit, except to the extent the adjustment is made to**
75 **provide for a reasonable apportionment of the total return**
76 **of the trust between the current income beneficiary and**
77 **successor beneficiaries;**

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

82 [(4) From any] (3) **The adjustment or determination**
83 **would reduce an** amount that is permanently set aside for a

84 charitable [purposes] **purpose** under [a will or] the terms of
85 [a] **the** trust [to the extent that the existence of the power
86 to adjust would change the character of the amount], **unless**
87 **both income and principal are** set aside for [federal income,
88 gift or estate tax purposes] **the charitable purpose**;

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

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

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

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

104 **(8) The trust is irrevocable** and [the assets would not
105 be included in the estate of the individual if the trustee
106 did not possess] **provides for income to be paid to the**
107 **settlor and possessing or exercising** the power [to make an
108 adjustment] **would cause the adjusted principal or income to**
109 **be considered an available resource or available income**
110 **under a public-benefit program; or**

111 [(7) **If the trustee is a beneficiary of the trust; or**

112 **(8) If the trustee is not a beneficiary, but the**
113 **adjustment would benefit the trustee directly or indirectly**]

114 **(9) The trust is a unitrust under sections 469.471 to**
115 **469.487.**

116 [4.] 6. If [subdivision (5), (6), (7) or (8) of]
117 subsection [3] 5 of this section applies to a [trustee and
118 there is more than one trustee, a cotrustee to whom the
119 provision does] **fiduciary**:

120 (1) A **cofiduciary** to which subdivisions (4) to (7) of
121 subsection 5 of this section do not apply may [make]
122 **exercise** the [adjustment] **power to adjust** unless the
123 exercise of the power by the remaining [trustee or trustees]
124 **cofiduciary or cofiduciaries** is not permitted by the terms
125 of the trust **or law other than sections 469.399 to 469.487**;
126 and

127 (2) If there is no **cofiduciary** to which subdivisions
128 (4) to (7) of subsection 5 of this section do not apply, the
129 **fiduciary** may appoint a **cofiduciary** to which subdivisions
130 (4) to (7) of subsection 5 of this section do not apply,
131 which may be a **special fiduciary** with limited powers, and
132 the appointed **cofiduciary** may **exercise the power to adjust**
133 under subsection 1 of this section, unless the appointment
134 of a **cofiduciary** or the **exercise of the power by a**
135 **cofiduciary** is not permitted by the terms of the trust or
136 law other than under sections 469.399 to 469.487.

137 [5.] 7. A [trustee] **fiduciary** may release [the entire]
138 power conferred by subsection 1 of this section, or may
139 release only] **or delegate to a **cofiduciary**** the power to
140 adjust [from income to principal or the power to adjust from
141 principal to income if the trustee is uncertain about
142 whether possessing or exercising] **under subsection 1 of this**
143 **section if the fiduciary determines that the fiduciary's**
144 **possession or exercise of** the power will **or may**:

145 (1) Cause a result described in subdivisions (1) to
146 (6) or subdivision (8) of subsection [3] 5 of this section

147 [,]; or [if the trustee determines that possessing or
148 exercising the power will or may]

149 (2) Deprive the trust of a tax benefit or impose a tax
150 burden not described in **subdivisions (1) to (6) of**
151 subsection [3] 5 of this section. [The release may be
152 permanent or for]

153 8. **A fiduciary's release or delegation to a**
154 **cofiduciary under subsection 7 of this section of the power**
155 **to adjust under subsection 1 of this section:**

156 (1) Shall be in a record;

157 (2) Applies to the entire power, unless the release or
158 delegation provides a limitation, which may be a limitation
159 to the power to adjust:

160 (a) From income to principal;

161 (b) From principal to income;

162 (c) For specified property; or

163 (d) In specified circumstances;

164 (3) For a delegation, may be modified by a
165 redelegation under this subsection by the cofiduciary to
166 which the delegation is made; and

167 (4) Subject to subdivision (3) of this subsection, is
168 permanent unless the release or delegation provides a
169 specified period, including a period measured by the life of
170 an individual **or the lives of more than one individual**.

171 [6.] 9. Terms of a trust that **deny or** limit the power
172 [of a trustee] to [make an adjustment] **adjust** between **income**
173 **and** principal [and income] do not affect the application of
174 this section unless [it is clear from] the terms of the
175 trust [that the terms are intended to] **expressly** deny [the
176 trustee] **or limit** the power [of adjustment conferred by] **to**
177 **adjust under** subsection 1 of this section.

178 10. The exercise of the power to adjust under
179 subsection 1 of this section in any accounting period may
180 apply to the current period, the immediately preceding
181 period, and one or more subsequent periods.

182 11. A description of the exercise of the power to
183 adjust under subsection 1 of this section shall be:

184 (1) Included in a report, if any, sent to
185 beneficiaries under subsection 3 of section 456.8-813; or
186 (2) Communicated at least annually to the qualified
187 beneficiaries defined in section 456.1-103 other than all
188 beneficiaries that receive or are entitled to receive income
189 from the trust or would be entitled to receive a
190 distribution of principal if the trust were terminated at
191 the time the notice is sent, assuming no power of
192 appointment is exercised.

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

3 (1) The death of an individual results in the creation
4 of an estate[, or after] or trust; or
5 (2) An income interest in a trust [ends, the following
6 rules apply:] terminates, whether the trust continues or is
7 distributed.

8 [(1)] 2. A fiduciary of an estate or [of a
9 terminating] trust with an income interest that terminates
10 shall determine, under subsection 7 of this section and
11 sections 469.417 to 469.462, the amount of net income and
12 net principal receipts received from property specifically
13 given to a beneficiary [pursuant to the rules in sections
14 469.417 to 469.461 which apply to trustees and the rules in
15 subdivision (5) of this section]. The fiduciary shall
16 distribute the net income and net principal receipts to the

17 beneficiary [who] **that** is to receive the specific
18 property[;].

19 [(2)] **3.** A fiduciary shall determine the [remaining]
20 **income and** net income of [a decedent's] **an** estate or [a
21 terminating] income interest [pursuant to the rules in] **in a**
22 **trust that terminates, other than the amount of net income**
23 **determined under subsection 2 of this section, under**
24 sections 469.417 to [469.461 which apply to trustees]
25 **469.462** and by:

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

28 [(b)] **(2)** Paying from income or principal, in the
29 fiduciary's discretion, fees of attorneys, accountants, and
30 fiduciaries[;], court costs and other expenses of
31 administration[;], and interest on [death] **estate and**
32 **inheritance taxes and other taxes imposed because of the**
33 **decedent's death**, but the fiduciary may pay [those] **the**
34 expenses from income of property passing to a trust for
35 which the fiduciary claims [an] **a federal** estate tax marital
36 or charitable deduction only to the extent [that]:

37 **(a)** The payment of [those] **the** expenses from income
38 will not cause the reduction or loss of the deduction; [and]
39 **or**

40 **(b)** **The fiduciary makes an adjustment under subsection**
41 **2 of section 469.462; and**

42 [(c)] **(3)** Paying from principal [all] other
43 disbursements made or incurred in connection with the
44 settlement of [a decedent's] **the** estate or the winding up of
45 [a terminating] **an** income interest **that terminates**,
46 including:

47 **(a)** **To the extent authorized by the decedent's will,**
48 **the terms of the trust, or applicable law, debts, funeral**

49 expenses, disposition of remains, family allowances, **estate**
50 and [death] **inheritance** taxes, **and other taxes imposed**
51 **because of the decedent's death;** and

52 (b) Related penalties that are apportioned, **by the**
53 **decedent's will, the terms of the trust, or applicable law,**
54 to the estate or [terminating] income interest [by the will,
55 the terms of the trust, or applicable law;

56 (3) A fiduciary shall distribute to a beneficiary who
57 receives a pecuniary amount outright the interest or any
58 other amount provided by the will, the terms of the trust,
59 or in the absence of any such provisions, the provisions of
60 section 473.633, from net income determined pursuant to
61 subdivision (2) of this section or from principal to the
62 extent that net income is insufficient] **that terminates.**

63 4. If a decedent's will, the terms of a trust, or
64 applicable law provides for the payment of interest or the
65 equivalent of interest to a beneficiary that receives a
66 pecuniary amount outright, the fiduciary shall make the
67 payment from net income determined under subsection 3 of
68 this section or from principal to the extent net income is
69 insufficient.

70 5. If a beneficiary is to receive a pecuniary amount
71 outright from a trust after an income interest ends **because**
72 **of an income beneficiary's death**, and no **payment of** interest
73 or [other amount] **the equivalent of interest** is provided for
74 by the terms of the trust or applicable law, the fiduciary
75 shall [distribute] **pay** the interest or [other amount] **the**
76 **equivalent of interest** to which the beneficiary would be
77 entitled under applicable law if the pecuniary amount were
78 required to be paid under a will[;].

79 [(4)] 6. A fiduciary shall distribute [the] net income
80 remaining after [distributions] **payments** required by

81 [subdivision (3)] **subsections 4 and 5** of this section in the
82 manner described in section 469.415 to all other
83 beneficiaries, including a beneficiary [who] **that** receives a
84 pecuniary amount in trust, even if the beneficiary holds an
85 unqualified power to withdraw assets from the trust or other
86 presently exercisable general power of appointment over the
87 trust[;].

88 [(5)] 7. A fiduciary [may] **shall** not reduce principal
89 or income receipts from property described in [subdivision
90 (1)] **subsection 2** of this section because of a payment
91 described in sections 469.451 and 469.453 to the extent
92 [that] the **decedent's** will, the terms of the trust, or
93 applicable law requires the fiduciary to make the payment
94 from assets other than the property or to the extent [that]
95 the fiduciary recovers or expects to recover the payment
96 from a third party. The net income and principal receipts
97 from the property [are] **shall be** determined by including
98 [all of] the amounts the fiduciary receives or pays [with
99 respect to] **regarding** the property, whether [those amounts]
100 **the amount** accrued or became due before, on, or after the
101 date of [a] **the** decedent's death or an income interest's
102 terminating event, and [by] making a reasonable provision
103 for [amounts that the fiduciary believes] **an amount** the
104 estate or [terminating] income interest may become obligated
105 to pay after the property is distributed.

469.415. 1. [Each] **Except to the extent** sections
2 **469.471 to 469.487 apply for a** beneficiary **that is a trust,**
3 **each beneficiary** described in [subdivision (4)] **subsection 6**
4 of section 469.413 is entitled to receive a [portion] **share**
5 of the net income equal to the beneficiary's fractional
6 interest in undistributed principal assets, using values as
7 of the distribution date. If a fiduciary makes more than

8 one distribution of assets to beneficiaries to [whom] **which**
9 this section applies, each beneficiary, including [one who]
10 **a beneficiary that** does not receive part of the
11 distribution, is entitled, as of each distribution date, to
12 **a share of** the net income the fiduciary [has] received after
13 the [date of] **decedent's** death [or], **an income interest's**
14 **other** terminating event, or [earlier] **the preceding**
15 distribution [date but has not distributed as of the current
16 distribution date] **by the fiduciary.**

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

20 (1) The beneficiary is entitled to receive a [portion]
21 **share** of the net income equal to the beneficiary's
22 fractional interest in the undistributed principal assets
23 immediately before the distribution date[, including assets
24 that later may be sold to meet principal obligations];

25 (2) The beneficiary's fractional interest [in the
26 undistributed principal assets] **under subdivision (1) of**
27 **this subsection** shall be calculated [without regard to
28 property specifically given to a beneficiary and property
29 required to pay pecuniary amounts not in trust;

30 (3) The beneficiary's fractional interest in the
31 undistributed principal assets shall be calculated]:

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

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

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

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

40 **[(4)] (3)** The distribution date [for purposes of this
41 **section]** **under subdivision (1) of this subsection** may be the
42 date as of which the fiduciary calculates the value of the
43 assets if that date is reasonably near the date on which **the**
44 assets are **[actually]** distributed.

45 3. **[If]** **To the extent** a fiduciary does not distribute
46 **under this section** all **[of]** the collected but undistributed
47 net income to each **[person]** **beneficiary** as of a distribution
48 date, the fiduciary shall maintain **[appropriate]** records
49 showing the interest of each beneficiary in **[that]** **the** net
50 income.

51 4. **If this section applies to income from an asset**, a
52 fiduciary may apply the rules in this section~~[, to the~~
53 **extent that the fiduciary considers it appropriate,**~~[, to net~~
54 gain or loss realized **from the disposition of the asset**
55 after the **[date of]** **decedent's** death **[or]**, **an income**
56 **interest's** terminating event, or **[earlier]** **the preceding**
57 distribution **[date from the disposition of a principal asset**
58 **if this section applies to the income from the asset]** **by the**
59 **fiduciary**.

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

- 7 **(1) The trust for the current income beneficiary; or**
- 8 **(2) A successive interest for a successor beneficiary.**

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

- 11 **(1) [On the date it is transferred to the trust in the**
12 **case of]** **For** an asset that is transferred to **[a]** **the** trust

13 during the [transferor's] **settlor's** life, **on the date the**
14 **asset is transferred;**

15 (2) [On the date of a testator's death in the case of]
16 **For** an asset that becomes subject to [a] **the** trust [by]
17 **reason]** **because** of a [will] **decedent's death, on the date of**
18 **the decedent's death,** even if there is an intervening period
19 of administration of the [testator's] **decedent's** estate; or
20 (3) [On the date of an individual's death in the case
21 of] **For** an asset that is transferred to a fiduciary by a
22 third party because of [the individual's] **a decedent's**
23 **death, on the date of the decedent's death.**

24 3. An asset becomes subject to a successive [income]
25 **interest under subdivision (2) of subsection 1 of this**
26 **section** on the day after the preceding income interest ends,
27 as determined [pursuant to] **under** subsection 4 of this
28 section, even if there is an intervening period of
29 administration to wind up the preceding income interest.

30 4. An income interest ends on the day before an income
31 beneficiary dies or another terminating event occurs[,] or
32 on the last day of a period during which there is no
33 beneficiary to [whom] **which** a [trustee] **fiduciary** may **or**
34 **shall** distribute income.

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

6 (1) **For** an estate, **the decedent died;** or [before]
7 (2) **For a trust or successive interest,** an income
8 interest begins [in the case of a trust or successive income
9 **interest**].

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

17 3. **If an income receipt or disbursement is not**
18 **periodic or has no due date, a fiduciary shall [be treated]**
19 **treat the receipt or disbursement under this section** as
20 accruing from day to day [if its due date is not periodic or
21 it has no due date]. **The fiduciary shall allocate to**
22 **principal the** portion of the receipt or disbursement
23 accruing before the date on which a decedent [dies] **died** or
24 an income interest [begins shall be allocated to principal]
25 **began, and to income** the balance [shall be allocated to
26 income].

27 [3.] 4. **A receipt or disbursement is periodic under**
28 **subsections 2 and 3 of this section if:**

29 (1) **The receipt or disbursement shall be paid at**
30 **regular intervals under an obligation to make payments; or**
31 (2) **The payer customarily makes payments at regular**
32 **intervals.**

33 5. An item of income or [an] obligation is due **under**
34 **this section** on the date [a payment] **the payer** is required
35 **to make a payment.** If a payment date is not stated, there
36 is no due date [for the purposes of sections 469.401 to
37 469.467].

38 6. Distributions to shareholders or other owners from
39 an entity to which section 469.423 applies are [deemed to
40 be] due:

41 **(1)** On the date fixed by **or on behalf of** the entity
42 for determining [who is] **the persons** entitled to receive the
43 distribution [or,];

44 **(2)** If no date is fixed, on the [declaration] date
45 [for] **of the decision by or on behalf of the entity to make**
46 the distribution[. A due date is periodic for receipts or
47 disbursements that shall be paid at regular intervals under
48 a lease or an obligation to pay interest or if an entity
49 customarily makes distributions at regular intervals]; **or**

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

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

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

18 **3. If a** beneficiary has an unqualified power to
19 [revoke] **withdraw** more than five percent of the **value of a**

20 trust immediately before [the] **an** income interest ends[. In
21 the latter case,]:

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

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

27 [3.] 4. When a [trustee's] **fiduciary's** obligation to
28 pay a fixed annuity or a fixed fraction of the value of [the
29 trust's] assets ends, the [trustee] **fiduciary** shall prorate
30 the final payment [if and to the extent] **as** required [by
31 applicable law to accomplish a purpose of the trust or its
32 settlor relating] to **preserve an income tax, gift tax,**
33 **estate tax, or other tax [requirements] benefit.**

469.423. 1. [For purposes of] **As used in** this
2 section, the [term] **following terms mean:**

3 (1) **"Capital distribution", an entity distribution of**
4 **money that is a:**

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

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

8 (2) **"Entity" [means]:**

9 (a) A corporation, partnership, limited liability
10 company, regulated investment company, real estate
11 investment trust, common trust fund, or any other
12 organization [in which a trustee has an interest, other than
13 a trust or estate to which section 469.425 applies, a
14 business or activity to which section 469.427 applies, or an
15 asset-backed security to which section 469.449 applies] **or**
16 **arrangement in which a fiduciary owns or holds an interest,**
17 **whether or not the entity is a taxpayer for federal income**
18 **tax purposes; and**

27 (3) "Entity distribution", a payment or transfer by an
28 entity made to a person in the person's capacity as an owner
29 or holder of an interest in the entity.

30 2. In this section, an attribute or action of an
31 entity includes an attribute or action of any other entity
32 in which the entity owns or holds an interest, including an
33 interest owned or held indirectly through another entity.

34 [2.] 3. Except as otherwise provided in **subdivisions**
35 (2) to (4) of **subsection 4 of** this section, a [trustee]
36 **fiduciary** shall allocate to income:

37 (1) Money received [from] in an entity[.]

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

40 (1) Property other than money;

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

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

46 (4) Money received from an entity that is]
47 **distribution; and**

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

50 4. A fiduciary shall allocate to principal:

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

53 (a) Money; or

54 (b) Tangible personal property of nominal value;

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

65 **(a)** A regulated investment company or [a] real estate
66 investment trust if the money [distributed] **received** is a
67 capital gain dividend for federal income tax purposes [.]

4. Money is received in partial liquidation:

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

72 (2) If 1; or

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

76 5. A fiduciary may determine or estimate that money
77 received in an entity distribution is a capital distribution;

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

81 (a) **Determines, on the basis of information known to**
82 **the fiduciary, that the characterization is or may be**
83 **incorrect; or**

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

86 (2) **By determining or estimating, on the basis of**
87 **information known to the fiduciary or provided to the**
88 **fiduciary by or on behalf of the entity, that the total**
89 **amount of money and property received by the fiduciary in**
90 **[a] the entity distribution or a series of related entity**
91 **distributions is or will be greater than twenty percent of**
92 **the [entity's gross assets, as shown by the entity's year-**
93 **end financial statements immediately preceding the initial**
94 **receipt.**

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

101 6. A trustee may rely upon a statement made by an
102 entity about the source or character of a distribution if
103 the statement is made at or near the time of distribution by
104 the entity's board of directors or other person or group of
105 persons authorized to exercise powers to pay money or
106 transfer property comparable to those of a corporation's
107 board of directors] **fair market value of the fiduciary's**
108 **interest in the entity; or**

109 (3) **If neither subdivision (1) nor (2) of this**
110 **subsection applies, by considering the factors in subsection**
111 **6 of this section and the information known to the fiduciary**
112 **or provided to the fiduciary by or on behalf of the entity.**

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

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

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

119 (a) The entity distribution; or

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

122 (3) The amount described in subdivision (2) of this
123 subsection compared to the amount the fiduciary determines
124 or estimates is, during the current or preceding accounting
125 periods:

126 (a) The entity's operating income;

127 (b) The proceeds of the entity's sale or other
128 disposition of:

129 a. All or part of the business or other activity
130 conducted by the entity;

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

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

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

141 (d) The entity's regular, periodic entity
142 distributions;

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

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

145 (g) The amount of money the entity has received from
146 the sources described in sections 469.433, 469.439, 469.441,
147 and 469.443; and

148 (h) The amount of money the entity has received from a
149 source not otherwise described in this subdivision; and

150 (4) Any other factor the fiduciary determines is
151 relevant.

152 7. If, after applying subsections 3 to 6 of this
153 section, a fiduciary determines that a part of an entity
154 distribution is a capital distribution but is in doubt about
155 the amount of the entity distribution that is a capital
156 distribution, the fiduciary shall allocate to principal the
157 amount of the entity distribution that is in doubt.

158 8. If a fiduciary receives additional information
159 about the application of this section to an entity
160 distribution before the fiduciary has paid part of the
161 entity distribution to a beneficiary, the fiduciary may
162 consider the additional information before making the
163 payment to the beneficiary and may change a decision to make
164 the payment to the beneficiary.

165 9. If a fiduciary receives additional information
166 about the application of this section to an entity
167 distribution after the fiduciary has paid part of the entity
168 distribution to a beneficiary, the fiduciary is not required
169 to change or recover the payment to the beneficiary but may
170 consider that information in determining whether to exercise
171 the power to adjust under section 469.405.

469.425. A [trustee] **fiduciary** shall allocate to
2 income an amount received as a distribution of income,
3 **including a unitrust distribution under sections 469.471 to**
4 **469.487**, from a trust or [an] estate in which the [trust]
5 **fiduciary** has an interest, other than [a] **an interest the**

6 **fiduciary** purchased [interest] in a trust that is an
7 **investment entity**, and shall allocate to principal an amount
8 received as a distribution of principal from [such a] the
9 trust or estate. If a [trustee] **fiduciary** purchases, or
10 **receives from a settlor**, an interest in a trust that is an
11 investment entity, [or a decedent or donor transfers an
12 interest in such a trust to a trustee,] section 469.423,
13 **469.446**, or 469.449 [shall apply] **applies** to a receipt from
14 the trust.

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

7 (1) Accounting for [it] **the business or other activity**
8 as part of the [trust's] **fiduciary's** general accounting
9 records[,]; or

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

13 2. A **fiduciary** may [maintain separate accounting
14 records] **account separately under this section** for [its] the
15 transactions **of a business or other activity**, whether or not
16 [its] assets **of the business or other activity** are
17 segregated from other [trust] assets **held by the fiduciary**.

18 [2.] 3. A [trustee who] **fiduciary that** accounts
19 separately **under this section** for a business or other
20 activity:

21 (1) May determine:

22 (a) The extent to which **the** net cash receipts **of the**
23 **business or other activity** shall be retained for:

- 24 **a.** Working capital[,];
25 **b.** The acquisition or replacement of fixed assets[,];

26 and

27 **c.** Other reasonably foreseeable needs of the business
28 or **other** activity[,]; and

29 **(b)** The extent to which the remaining net cash
30 receipts are accounted for as principal or income in the
31 **[trust's] fiduciary's** general accounting records[. If a
32 trustee sells assets of the business or other activity,
33 other than in the ordinary course of the business or
34 activity, the trustee] **for the trust**;

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

39 **(3) Shall account for the net amount received from the**
40 **sale of an asset of the business or other activity, other**
41 **than a sale in the ordinary course of the business or other**
42 **activity, as principal in the [trust's] fiduciary's general**
43 **accounting records for the trust, to the extent the**
44 **[trustee] fiduciary** determines that the **net** amount received
45 is no longer required in the conduct of the business **or**
46 **other activity.**

47 **[3.] 4. Activities for which a [trustee may maintain**
48 **separate accounting records] fiduciary may account**
49 **separately under this section** include:

50 **(1) Retail, manufacturing, service, and other**
51 **traditional business activities;**

52 **(2) Farming;**

53 **(3) Raising and selling livestock and other animals;**

54 **(4) [Management of] Managing rental properties;**

- 55 (5) [Extraction of] **Extracting** minerals, **water**, and
56 other natural resources;
- 57 (6) **Growing and cutting** timber [operations]; [and]
- 58 (7) [Activities] **An activity** to which section **469.446**,
59 **469.447**, **or 469.449** applies; and
- 60 (8) **Any other business conducted by the fiduciary.**

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

3 (1) To the extent not allocated to income [pursuant
4 to] **under** sections [469.401] **469.399** to [469.467] **469.487**,
5 [assets] **an asset** received from [a transferor]:

6 (a) **An individual** during the [transferor's]
7 **individual's** lifetime[, a decedent's];

8 (b) **An estate**[,];

9 (c) A trust [with a terminating] **on termination of an**
10 income interest[,]; or

11 (d) A payer under a contract naming the [trust or its
12 trustee] **fiduciary** as beneficiary;

13 (2) **Except as otherwise provided in sections 469.423**
14 **to 469.449**, money or other property received from the sale,
15 exchange, liquidation, or change in form of a principal
16 asset[, including realized profit, subject to sections
17 469.423 to 469.467];

18 (3) [Amounts] **An amount** recovered from a third
19 [parties] **party** to reimburse the [trust] **fiduciary** because
20 of [disbursements] **a disbursement** described in [subdivision
21 (7) of] subsection 1 of section 469.453 or for [other
22 reasons] **another reason** to the extent not based on [the]
23 loss of income;

24 (4) Proceeds of property taken by eminent domain, [but
25 a separate award made] **except that proceeds awarded for**
26 [the] loss of income [with respect to] **in** an accounting

27 period [during which] **are income if** a current income
28 beneficiary had a mandatory income interest [is income]
29 **during the period;**

30 (5) Net income received in an accounting period during
31 which there is no beneficiary to [whom] **which** a [trustee]
32 **fiduciary** may or shall distribute income; and

33 (6) Other receipts as provided in sections 469.435 to
34 469.449.

469.431. To the extent [that a trustee accounts] **a**
2 **fiduciary does not account** for [receipts from] **the**
3 **management of** rental property [pursuant to this section] **as**
4 **a business under section 469.427**, the [trustee] **fiduciary**
5 shall allocate to income an amount received as rent of real
6 or personal property, including an amount received for
7 cancellation or renewal of a lease. An amount received as a
8 refundable deposit, including a security deposit or a
9 deposit that is to be applied as rent for future periods[,]:

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

13 (2) Is not **allocated to income** or available for
14 distribution to a beneficiary until the [trustee's]
15 **fiduciary's** contractual obligations have been satisfied with
16 respect to that amount.

469.432. 1. **This section does not apply to an**
2 **obligation to which section 469.437, 469.439, 469.441,**
3 **469.443, 469.446, 469.447, or 469.449 applies.**

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

9 consideration for prepaying principal[, shall be allocated
10 to income without any provision for amortization of premium].

11 [2.] 3. A [trustee] **fiduciary** shall allocate to
12 principal an amount received from the sale, redemption, or
13 other disposition of an obligation to pay money to the
14 [trustee more than one year after it is purchased or
15 acquired by the trustee, including an obligation whose
16 purchase price or value when it is acquired is less than its
17 value at maturity. If the obligation matures within one
18 year after it is purchased or acquired by the trustee, an
19 amount received in excess of its purchase price or its value
20 when acquired by the trust shall be allocated to income.

21 3. This section does not apply to an obligation to
22 which section 469.437, 469.439, 469.441, 469.443, 469.447 or
23 469.449 applies] **fiduciary**. A **fiduciary** shall allocate to
24 income the increment in value of a bond or other obligation
25 for the payment of money bearing no stated interest but
26 payable or redeemable, at maturity or another future time,
27 in an amount that exceeds the amount in consideration of
28 which it was issued.

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

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

13 principal [if] to the extent premiums on the policy are paid
14 from principal.

15 [2.] 3. A [trustee] fiduciary shall allocate to income
16 proceeds of a contract that insures the [trustee] fiduciary
17 against loss of:

18 (1) Occupancy or other use by [an] a current income
19 beneficiary[, loss of];

20 (2) Income[,]; or[,]

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

23 [3. This section does not apply to a contract to which
24 section 469.437 applies.]

469.435. 1. If a [trustee] fiduciary determines that
2 an allocation between income and principal [and income]
3 required by section 469.437, 469.439, 469.441, 469.443 or
4 469.449 is insubstantial, the [trustee] fiduciary may
5 allocate the entire amount to principal, unless [one of the
6 circumstances described in] subsection [3] 5 of section
7 469.405 applies to the allocation. [This power]

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

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

17 (2) [The value of] The asset producing the receipt
18 [for which the allocation would] to be [made is] allocated
19 has a fair market value less than ten percent of the total

20 **fair market** value of the [trust's] assets **owned or held by**
21 **the fiduciary** at the beginning of the accounting period.

22 **3. The power to make a determination under subsection**
23 **1 of this section may be:**

24 **(1) Exercised by a cofiduciary in the manner described**
25 **in subsection 6 of section 469.405; or**

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

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

3 **(1) "Internal income of a separate fund", the amount**
4 **determined under subsection 2 of this section;**

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

6 **(a) Of which the settlor's surviving spouse is the**
7 **only current income beneficiary and is entitled to a**
8 **distribution of all the current net income of the trust; and**
9 **(b) That qualifies for a marital deduction with**
10 **respect to the settlor's estate under 26 U.S.C. Section**
11 **2056, as amended, because:**

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

15 **b. The trust qualifies for a marital deduction under**
16 **26 U.S.C. Section 2056(b)(5), as amended;**

17 **(3) "Payment", an amount [that is:**

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

19 **(b) One of a series of distributions that have been or**
20 **will be received] a fiduciary may receive over a fixed**
21 **number of years or during the life of one or more**
22 **individuals [under any contractual or other arrangement, or**
23 **is a single payment from a plan that the trustee could have**

24 received over a fixed number of years or during the life of
25 one or more individuals] because of services rendered or
26 property transferred to the payer in exchange for future
27 amounts the fiduciary may receive. The term "payment"
28 includes an amount received in money or property from the
29 payer's general assets or from a separate fund created by
30 the payer;

31 [(2) "Plan", a contractual, custodial, trust or other
32 arrangement that provides for distributions to the trust,
33 including, but not limited to, qualified retirement plans,
34 Individual Retirement Accounts, Roth Individual Retirement
35 Accounts, public and private annuities, and deferred
36 compensation, including payments received directly from an
37 entity as defined in section 469.423 regardless of whether
38 or not such distributions are made from a specific fund or
39 account.

40 2. If any portion of a payment is characterized as a
41 distribution to the trustee of interest, dividends or a
42 dividend equivalent, the trustee shall allocate the portion
43 so characterized to income. The trustee shall allocate the
44 balance of that payment to principal.

45 3. If no part of a payment is allocated to income
46 pursuant to subsection 2 of this section, then for each
47 accounting period of the trust that any payment is received
48 by the trust with respect to the trust's interest in a plan,
49 the trustee shall allocate to income that portion of the
50 aggregate value of all payments received by the trustee in
51 that accounting period equal to the amount of plan income
52 attributable to the trust's interest in the plan for that
53 calendar year. The trustee shall allocate the balance of
54 that payment to principal.

55 4. For purposes of this section, if a payment is
56 received from a plan that maintains a separate account or
57 fund for its participants or account holders, including, but
58 not limited to, defined contribution retirement plans,
59 Individual Retirement Accounts, Roth Individual Retirement
60 Accounts, and some types of deferred compensation plans, the
61 phrase "plan income" shall mean either the amount of the
62 plan account or fund held for the benefit of the trust that,
63 if the plan account or fund were a trust, would be allocated
64 to income pursuant to sections 469.401 to 469.467 for that
65 accounting period, or four percent of the value of the plan
66 account or fund on the first day of that accounting period.
67 The method of determining plan income pursuant to this
68 subsection shall be chosen by the trustee in the trustee's
69 discretion. The trustees may change the method of
70 determining plan income pursuant to this subsection for any
71 future accounting period.

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

82 6. Notwithstanding subsections 1 to 5 of this section,
83 with respect to a trust where an election to qualify for a
84 marital deduction under Section 2056(b) (7) or Section
85 2523(f) of the Internal Revenue Code of 1986, as amended,
86 has been made, or a trust that qualified for the marital

87 deduction under either Section 2056(b)(5) or Section 2523(e)
88 of the Internal Revenue Code of 1986, as amended, a trustee
89 shall determine the plan income for the accounting period as
90 if the plan were a trust subject to sections 469.401 to
91 469.467. Upon request of the surviving spouse, the trustee
92 shall demand that the person administering the plan
93 distribute the plan income to the trust. The trustee shall
94 allocate a payment from the plan to income to the extent of
95 the plan income and distribute that amount to the surviving
96 spouse. The trustee shall allocate the balance of the
97 payment to principal. Upon request of the surviving spouse,
98 the trustee shall allocate principal to income to the extent
99 the plan income exceeds payments made from the plan to the
100 trust during the accounting period.

101 7. If, to obtain an estate or gift tax marital
102 deduction for a trust, a trustee shall allocate more of a
103 payment to income than provided for by this section, the
104 trustee shall allocate to income the additional amount
105 necessary to obtain the marital deduction.]

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

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

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

114 (2) If the fiduciary cannot determine the internal
115 income of the separate fund under subdivision (1) of this
116 subsection, the internal income of the separate fund is
117 deemed to equal three percent of the value of the separate

118 fund, according to the most recent statement of value
119 preceding the beginning of the accounting period; and

120 (3) If the fiduciary cannot determine the value of the
121 separate fund under subdivision (2) of this subsection, the
122 value of the separate fund is deemed to equal the present
123 value of the expected future payments, as determined under
124 26 U.S.C. Section 7520, as amended, for the month preceding
125 the beginning of the accounting period for which the
126 computation is made.

127 3. A fiduciary shall allocate a payment received from
128 a separate fund during an accounting period to income, to
129 the extent of the internal income of the separate fund
130 during the accounting period, and the balance to principal.

131 4. The fiduciary of a marital trust shall:

132 (1) Withdraw from a separate fund the amount the
133 current income beneficiary of the trust requests the
134 fiduciary to withdraw, not greater than the amount by which
135 the internal income of the separate fund during the
136 accounting period exceeds the amount the fiduciary otherwise
137 receives from the separate fund during the accounting period;

138 (2) Transfer from principal to income the amount the
139 current income beneficiary requests the fiduciary to
140 transfer, not greater than the amount by which the internal
141 income of the separate fund during the accounting period
142 exceeds the amount the fiduciary receives from the separate
143 fund during the accounting period after the application of
144 subdivision (1) of this subsection; and

145 (3) Distribute to the current income beneficiary as
146 income:

147 (a) The amount of the internal income of the separate
148 fund received or withdrawn during the accounting period; and

149 (b) The amount transferred from principal to income
150 under subdivision (2) of this subsection.

151 5. For a trust, other than a marital trust, of which
152 one or more current income beneficiaries are entitled to a
153 distribution of all the current net income, the fiduciary
154 shall transfer from principal to income the amount by which
155 the internal income of a separate fund during the accounting
156 period exceeds the amount the fiduciary receives from the
157 separate fund during the accounting period.

469.439. 1. As used in this section, the [phrase]

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

10 2. **This section** does not [include a payment] **apply to**
11 **a receipt** subject to section **469.423**, 469.437, [resources
12 subject to section] 469.441, [timber subject to section]
13 469.443, [an activity subject to section] **469.446**, 469.447,
14 [an asset subject to section] 469.449, or [any asset for
15 which the trustee establishes a reserve for depreciation
16 pursuant to section] 469.455.

17 [2.] 3. A [trustee] **fiduciary** shall allocate:

18 (1) To income [ten percent of the receipts from]:

19 (a) A receipt produced by a liquidating asset [and the
20 balance], to the extent the receipt does not exceed three
21 percent of the value of the asset; or

22 (b) If the fiduciary cannot determine the value of the
23 asset, ten percent of the receipt; and

24 (2) To principal, the balance of the receipt.

469.441. 1. To the extent [that a trustee accounts

for receipts] a fiduciary does not account for a receipt from an interest in minerals, **water**, or other natural resources [pursuant to this section] as a business under **section 469.427**, the [trustee] fiduciary shall allocate [them as follows] the receipt:

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

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

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

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

13 (2) To principal, if received from a production

14 payment, [a receipt shall be allocated to income if and

15 the extent that the agreement creating the production
16 payment provides a factor for interest or its equivalent.

17 The balance shall be allocated to principal;] to the extent
18 paragraph (b) of subdivision (1) of this subsection does not
19 apply; or

20 (3) [If an amount received] Between income and
21 principal equitably, to the extent received:

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

27 [(4) If an amount is received] (c) From a working
28 interest or any other interest not provided for in
29 subdivision (1) [,] or (2) [or (3)] of this subsection[,]
30 ninety percent of the net amount received shall be alloc

31 to principal and the balance to income] or paragraph (a) or
32 (b) of this subdivision.

33 2. [An amount received on account of] This section
34 applies to an interest [in water that is renewable shall be
35 allocated to income. If the water is not renewable, ninety
36 percent of the amount shall be allocated to principal and
37 the balance to income.

38 3. Sections 469.401 to 469.467 apply] owned or held by
39 a fiduciary whether or not a [decedent or donor] settlor was
40 extracting minerals, water, or other natural resources
41 before the fiduciary owned or held the interest [became
42 subject to the trust].

43 3. An allocation of a receipt under subdivision (3) of
44 subsection 1 of this section is presumed to be equitable if
45 the amount allocated to principal is equal to the amount
46 allowed by Title 26 of the United States Code, as amended,
47 as a deduction for depletion of the interest.

48 4. If a [trust] fiduciary owns or holds an interest in
49 minerals, water, or other natural resources [on] before
50 August 28, [2001] 2026, the [trustee] fiduciary may allocate
51 receipts from the interest as provided in [sections 469.401
52 to 469.467] this section or in the manner used by the
53 [trustee] fiduciary before August 28, [2001] 2026. If the
54 [trust] fiduciary acquires an interest in minerals, water,
55 or other natural resources on or after August 28, [2001]
56 2026, the [trustee] fiduciary shall allocate receipts from
57 the interest as provided in [sections 469.401 to 469.467]
58 this section.

469.443. 1. To the extent [that a trustee accounts] a
2 fiduciary does not account for receipts from the sale of
3 timber and related products [pursuant to this] as a business

4 **under** section **469.427**, the **[trustee]** **fiduciary** shall
5 allocate the net receipts:

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

10 (2) To principal, to the extent **[that]** the amount of
11 timber **[removed]** **cut** from the land exceeds the rate of
12 growth of the timber or the net receipts are from the sale
13 of standing timber;

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

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

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

29 3. **[Sections 469.401 to 469.467 apply]** **This section**
30 **applies to land owned or held by a fiduciary** whether or not
31 a **[decedent or transferor]** **settlor** was **[harvesting]** **cutting**
32 timber from the **land before the fiduciary owned or held the**
33 **property** **[before it became subject to the trust]**.

34 4. If a **[trust]** **fiduciary** owns **or holds** an interest in
35 **[timberland on]** **land used for growing and cutting timber**

36 **before** August 28, [2001] 2026, the [trustee] **fiduciary** may
37 allocate net receipts from the sale of timber and related
38 products as provided in [sections 469.401 to 469.467] **this**
39 **section** or in the manner used by the [trustee] **fiduciary**
40 before August 28, [2001] 2026. If the [trust] **fiduciary**
41 acquires an interest in [timberland] **land used for growing**
42 **and cutting timber on or** after August 28, [2001] 2026, the
43 [trustee] **fiduciary** shall allocate net receipts from the
44 sale of timber and related products as provided in [sections
45 469.401 to 469.467] **this section**.

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

- 15 (1) Make property productive of income[,];
- 16 (2) Convert property **to property productive of income**
17 within a reasonable time[,]; or
- 18 (3) Exercise the power [conferred by subsection 1 of]
19 **to adjust under** section 469.405.

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

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

469.446. A fiduciary shall allocate receipts from or
2 related to a financial instrument or arrangement not
3 otherwise addressed by sections 469.399 to 469.487. The
4 allocation shall be consistent with sections 469.447 and
5 469.449.

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

16 2. To the extent [that a trustee] a fiduciary does not
17 account [pursuant to section 469.427 for transactions] for a
18 transaction in derivatives[, the trustee] as a business
19 under section 469.427, the fiduciary shall allocate [to
20 principal] ten percent of receipts from the transaction and
21 ten percent of disbursements made in connection with [those
22 transactions] the transaction to income and the balance to
23 principal.

24 3. The provisions of subsection 4 of this section
25 apply if:
26 (1) A [trustee] fiduciary:
27 (a) Grants an option to buy property from [the] a
28 trust, whether or not the trust owns the property when the
29 option is granted[,];
30 (b) Grants an option that permits another person to
31 sell property to the trust[,]; or
32 (c) Acquires an option to buy property for the trust
33 or an option to sell an asset owned by the trust[,]; and
34 (2) The [trustee] fiduciary or other owner of the
35 asset is required to deliver the asset if the option is
36 exercised[,].

37 4. If this subsection applies, the fiduciary shall
38 allocate ten percent to income and the balance to principal
39 of the following amounts:

40 (1) An amount received for granting the option [shall
41 be allocated to principal.];
42 (2) An amount paid to acquire the option [shall be
43 paid from principal. A]; and
44 (3) Gain or loss realized [upon] on the exercise [of
45 an option, including an option granted to a settlor],
46 exchange, settlement, offset, closing, or expiration of the
47 [trust for services rendered, shall be allocated to
48 principal] option.

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

8 current return or only the proceeds other than interest or
9 current return. The phrase does not include an asset to
10 which section 469.423 or 469.437 applies.

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

21 [3.] 2. If a [trust] **fiduciary** receives one or more
22 payments in exchange for **part or all of** the [trust's entire]
23 **fiduciary's** interest in an asset-backed security [in one
24 accounting period, the trustee shall allocate the payments
25 to principal. If a payment is one of a series of payments
26 that will result in the], **including a liquidation or**
27 **redemption** of the [trust's] **fiduciary's** interest in the
28 security [over more than one accounting period], the
29 [trustee] **fiduciary** shall allocate **to income** ten percent of
30 **receipts from** the [payment to income] **transaction** and [the
31 balance] **ten percent of disbursements made in connection**
32 **with the transaction, and** to principal **the balance of the**
33 **receipts and disbursements.**

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

(1) One-half of:

(a) The regular compensation of the [trustee]

fiduciary and [of] any person providing investment advisory [or], custodial, **or other** services to the [trustee] **fiduciary, to the extent income is sufficient; and**

[(2) One-half of all expenses] (b) An **expense** for

[accountings] an accounting, judicial [proceedings] or nonjudicial proceeding, or other [matters] matter that [involve] involves both [the] income and [remainder] successive interests to the extent income is sufficient

[3] All of the other [3] The balance of the

disbursements described in subdivision (1) of this section, to the extent a fiduciary that is an independent person determines that making those disbursements from income would be in the interests of the beneficiaries;

(3) **Another** ordinary [expenses] **expense** incurred in

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

(4) [Recurring premiums] **A premium** on insurance

32 covering [the] loss of a principal asset or [the loss of]
33 income from or use of the asset.

469.453. 1. [A trustee shall make the following

2 disbursements] Subject to section 469.457, and except as
3 otherwise provided in subdivision (2) of subsection 3 of
4 section 469.413, a fiduciary shall disburse from princip

5 (1) The [remaining one-half] **balance** of the
6 disbursements described in subdivisions (1) and [(2)] (3) of
7 **section 469.451, after application of subdivision (2) of**
8 **section 469.451;**

13 (3) [Payments] A payment of an expense to prepare for
14 or execute a sale or other disposition of property;

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

16 [(4) Expenses of a] (5) A payment of an expense of an
17 accounting, judicial or nonjudicial proceeding, or other
18 matter that [concerns] involves primarily [an interest in]
19 principal, including a proceeding to construe the terms of
20 the trust or protect property;

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

25 [(6)] (7) A payment of an estate[,] or inheritance
26 [and other transfer taxes] tax or other tax imposed because
27 of the death of a decedent, including penalties, apportioned
28 to the trust; and

29 [(7) Extraordinary expenses incurred in connection
30 with the management and preservation of trust property;

31 (8) Expenses for a capital improvement to a principal
32 asset, whether in the form of changes to an existing asset
33 or the construction of a new asset, including special
34 assessments; and

35 (9) Disbursements] (8) A payment:

36 (a) Related to environmental matters, including:

37 a. Reclamation[,];
38 b. Assessing environmental conditions[,];
39 c. Remedying and removing environmental
40 contamination[,];
41 d. Monitoring remedial activities and the release of
42 substances[,];
43 e. Preventing future releases of substances[,];
44 f. Collecting amounts from persons liable or
45 potentially liable for the costs of [those] activities[,]
46 **described in subparagraphs a. to e. of this paragraph;**
47 g. Penalties imposed under environmental laws or
48 regulations [and];
49 h. Other [payments made] **actions** to comply with
50 [those] **environmental** laws or regulations[,];
51 i. Statutory or common law claims by third parties[,];
52 and
53 j. Defending claims based on environmental matters; **and**
54 **(b) For a premium for insurance for matters described**
55 **in paragraph (a) of this subdivision.**
56 2. If a principal asset is encumbered with an
57 obligation that requires income from [that] **the** asset to be
58 paid directly to [the] **a** creditor, the [trustee] **fiduciary**
59 shall transfer from principal to income an amount equal to
60 the income paid to the creditor in reduction of the
61 principal balance of the obligation.
62 469.455. 1. As used in this section, the term
63 "depreciation" means a reduction in value due to wear, tear,
64 decay, corrosion, or gradual obsolescence of a [fixed]
65 **tangible** asset having a useful life of more than one year.
66 2. A [trustee] **fiduciary** may transfer to principal a
67 reasonable amount of the net cash receipts from a principal

7 asset that is subject to depreciation, but [may] **shall** not
8 transfer any amount for depreciation:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 [(3)] (4) **A periodic [payments] payment** on an
23 obligation secured by a principal asset, to the extent
24 [that] the amount transferred from income to principal for
25 depreciation is less than the periodic [payments] **payment**;
26 and

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

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

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

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

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

13 (1) [From] **Income and principal proportionately** to the
14 [extent that] **allocation between income and principal of**
15 receipts from the entity [are allocated to income] **in the**
16 **accounting period**; and

17 (2) [From] **Principal to the extent [that] the tax**
18 **exceeds the** receipts from the entity [are allocated only to
19 **principal**] **in the accounting period**.

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

469.462. 1. **A fiduciary may make an adjustment**
2 **between income and principal to offset the shifting of**

3 economic interests or tax benefits between current income
4 beneficiaries and successor beneficiaries that arises from:

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

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

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

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

33 3. A fiduciary that charges a beneficiary under
34 subsection 2 of this section may offset the charge by

35 obtaining payment from the beneficiary, withholding an
36 amount from future distributions to the beneficiary, or
37 adopting another method or combination of methods.

469.463. In applying and construing sections [469.401]
2 469.399 to [469.467] 469.487, consideration shall be given
3 to the need to promote uniformity of the law with respect to
4 its subject matter among states that enact it.

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

469.465. If any provision of sections [469.401]
2 469.399 to [469.467] 469.487 or [the] its application [of
3 these sections] to any person or circumstance is held
4 invalid, the invalidity does not affect other provisions or
5 applications of sections [469.401] 469.399 to [469.467]
6 469.487 which can be given effect without the invalid
7 provision or application and to this end, the provisions of
8 sections 469.399 to 469.487 are severable.

469.467. The provisions of sections [469.401] 469.399
2 to [469.467] 469.487 apply to [every] a trust or
3 [decedent's] estate existing or created on or after August
4 28, [2001] 2026, except as otherwise expressly provided in
5 the [will or] terms of the trust or [in] sections [469.401]
6 469.399 to [469.467] 469.487.

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

3 (1) "Applicable value", the amount of the net fair
4 market value of a trust taken into account under section
5 469.483;

6 (2) "Express unitrust", a trust for which, under the
7 terms of the trust without regard to sections 469.471 to
8 469.487, income or net income shall or may be calculated as
9 a unitrust amount;

10 (3) "Income trust", a trust that is not a unitrust;

11 (4) "Net fair market value of a trust", the fair
12 market value of the assets of the trust, less the
13 noncontingent liabilities of the trust;

14 (5) "Unitrust", a trust for which net income is a
15 unitrust amount. The term "unitrust" includes an express
16 unitrust;

22 (7) "Unitrust policy", a policy described in sections
23 469.479 to 469.487 and adopted under section 469.475;

24 (8) "Unitrust rate", the rate used to compute the
25 unitrust amount for a unitrust administered under a unitrust
26 policy.

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

(a) Prohibit use of sections 469.471 to 469.487 by a specific reference to such sections;

(b) Prohibit conversion to an income trust; or

(c) Limit changes to the method of calculating the unitrust amount.

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

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

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

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

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

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

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

6 (a) That, in administering the trust, the net income
7 of the trust will be a unitrust amount rather than net
8 income determined without regard to sections 469.471 to
9 469.487; and

10 (b) The percentage and method used to calculate the
11 unitrust amount;

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

24 (1) The fiduciary determines that the action will
25 assist the fiduciary to administer a trust impartially;

32 (a) If an individual, living; or
33 (b) If not an individual, in existence;

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

(a) If an individual, legally competent;

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

(c) Represented in the manner provided in subsection 2
ection 469.477; and

(5) The fiduciary does not receive, by the date

specified in the notice under subdivision (5) of subsection 4 of section 469.477, an objection in a record to the action proposed under subdivision (2) of this subsection from a person to which the notice under subdivision (2) of this subsection is sent.

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

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

(2) Objected under subdivision (4) of subsection 4 of
on 469.477.

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

66 5. If a beneficiary requests in a record that a
67 fiduciary take an action described in subsection 1 of this
68 section and the fiduciary declines to act or does not act
69 within ninety days after receiving the request, the
70 beneficiary may request the court to direct the fiduciary to
71 take the action requested.

72 6. In deciding whether and how to take an action
73 authorized by subsection 1 of this section, or whether and
74 how to respond to a request by a beneficiary under
75 subsection 5 of this section, a fiduciary shall consider all
76 factors relevant to the trust and the beneficiaries,
77 including relevant factors in subsection 5 of section
78 469.403.

79 7. A fiduciary may release or delegate the power to
80 convert an income trust to a unitrust under subdivision (1)
81 of subsection 1 of this section, change the percentage or
82 method used to calculate a unitrust amount under subdivision
83 (2) of subsection 1 of this section, or convert a unitrust
84 to an income trust under subdivision (3) of subsection 1 of
85 this section, for a reason described in subsection 7 of
86 section 469.405 and in the manner described in subsection 8
87 of section 469.405.

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

4 (1) The qualified beneficiaries defined in section
5 456.1-103;

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

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

11 (a) Including a:

12 a. Power over the investment, management, or

13 distribution of trust property or other matters of trust
14 administration; and

15 b. Power to appoint or remove a trustee or person

16 described in this paragraph; and

17 (b) Excluding a:

18 a. Power of appointment;

19 b. Power of a beneficiary over the trust, to the
20 extent the exercise or nonexercise of the power affects the
21 beneficial interest of the beneficiary or another
22 beneficiary represented by the beneficiary under sections
23 456.3-301 to 456.3-305 with respect to the exercise or
24 nonexercise of the power; and

25 c. Power over the trust if the terms of the trust
26 provide that the power is held in a nonfiduciary capacity
27 and the power shall be held in a nonfiduciary capacity to
28 achieve a tax objective under Title 26 of the United States
29 Code, as amended.

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

32 3. A person may consent in a record at any time to
33 action proposed under subdivision (2) of subsection 2 of
34 section 469.475. A notice required by subdivision (2) of
35 subsection 2 of section 469.475 need not be sent to a person
36 that consents under this subsection.

37 4. A notice required by subdivision (2) of subsection
38 2 of section 469.475 shall include:

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

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

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

48 (4) A statement that the person to whom the notice is
49 sent may object to the proposed action by stating in a
50 record the basis for the objection and sending or delivering
51 the record to the fiduciary;

52 (5) The date by which an objection under subdivision
53 (4) of this subsection shall be received by the fiduciary,
54 which shall be at least thirty days after the date the
55 notice is sent;

56 (6) The date on which the action is proposed to be
57 taken and the date on which the action is proposed to take
58 effect;

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

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

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

6 2. A unitrust policy shall provide:

14 (a) Mandatory, as provided in subsection 1 of section
15 469.483 and subsection 1 of section 469.485; or

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

4 (1) A fixed unitrust rate; or

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

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

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

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

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

16 (2) A limit on how low the unitrust rate determined
17 under subdivision (2) of subsection 1 of this section may
18 fall:

24 (4) A limit on how much the unitrust rate determined
25 under subdivision (2) of subsection 1 of this section may
26 decrease below the unitrust rate for the preceding period or
27 a mathematical blend of unitrust rates over a stated number
28 of preceding periods; or

29 (5) A mathematical blend of any of the unitrust rates
30 determined under subdivision (2) of subsection 1 of this
31 section and subdivisions (1) to (4) of this subsection.

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

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

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

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

13 (1) Obtaining an appraisal of an asset for which fair
14 market value is not readily available;

15 (2) Exclusion of specific assets or groups or types of
16 assets;

17 (3) Other exceptions or modifications of the treatment
18 of specific assets or groups or types of assets;

19 (4) Identification and treatment of cash or property
20 held for distribution;

21 (5) Use of:

22 (a) An average of fair market values over a stated
23 number of preceding periods; or

24 (b) Another mathematical blend of fair market values
25 over a stated number of preceding periods;

26 (6) A limit on how much the applicable value of all
27 assets, groups of assets, or individual assets may increase
28 over:

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

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

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

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

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

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

5 (1) A calendar year;

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

7 (3) A calendar quarter;

10 (5) Another period.

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

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

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

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

20 (2) Using fewer preceding periods under paragraph (a)
21 or (b) of subdivision (5) of subsection 2 of section
22 469.483, paragraph (b) of subdivision (6) of subsection 2 of
23 section 469.483, or paragraph (b) of subdivision (7) of
24 subsection 2 of section 469.483 if:

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

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

29 (3) Prorating the unitrust amount on a daily basis for
30 a part of a period in which the trust or the administration
31 of the trust as a unitrust or the interest of any
32 beneficiary commences or terminates.

469.487. 1. A unitrust policy may:

2 (1) Provide methods and standards for:

3 (a) Determining the timing of distributions;

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

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

9 (2) Specify sources and the order of sources,
10 including categories of income for federal income tax

11 purposes, from which distributions of a unitrust amount are
12 paid; or

13 (3) Provide other standards and rules the fiduciary
14 determines serve the interests of the beneficiaries.

15 2. If a trust qualifies for a special tax benefit or a
16 fiduciary is not an independent person:

17 (1) The unitrust rate established under section
18 469.481 shall not be less than three percent or more than
19 five percent;

20 (2) The only provisions of section 469.483 that apply
21 are subsection 1 of section 469.483; subdivisions (1), (4),
22 and (9) of subsection 2 of section 469.483; and paragraph
23 (a) of subdivision (5) of subsection 2 of section 469.483;

24 (3) The only period that may be used under section
25 469.485 is a calendar year under subdivision (1) of
26 subsection 1 of section 469.485; and

27 (4) The only other provisions of section 469.485 that
28 apply are paragraph (a) of subdivision (2) of subsection 2
29 of section 469.485 and subdivision (3) of subsection 2 of
30 section 469.485.

513.430. 1. The following property shall be exempt
2 from attachment and execution to the extent of any person's
3 interest therein:

4 (1) Household furnishings, household goods, wearing
5 apparel, appliances, books, animals, crops or musical
6 instruments that are held primarily for personal, family or
7 household use of such person or a dependent of such person,
8 not to exceed three thousand dollars in value in the
9 aggregate;

10 (2) A wedding ring not to exceed one thousand five
11 hundred dollars in value and other jewelry held primarily
12 for the personal, family or household use of such person or

13 a dependent of such person, not to exceed five hundred
14 dollars in value in the aggregate;

15 (3) Any other property of any kind, not to exceed in
16 value six hundred dollars in the aggregate;

17 (4) Any implements or professional books or tools of
18 the trade of such person or the trade of a dependent of such
19 person not to exceed three thousand dollars in value in the
20 aggregate;

21 (5) Any motor vehicles, not to exceed three thousand
22 dollars in value in the aggregate;

23 (6) Any mobile home used as the principal residence
24 but not attached to real property in which the debtor has a
25 fee interest, not to exceed five thousand dollars in value;

26 (7) Any one or more unmatured life insurance contracts
27 owned by such person, other than a credit life insurance
28 contract, and up to fifteen thousand dollars of any matured
29 life insurance proceeds for actual funeral, cremation, or
30 burial expenses where the deceased is the spouse, child, or
31 parent of the beneficiary;

32 (8) The amount of any accrued dividend or interest
33 under, or loan value of, any one or more unmatured life
34 insurance contracts owned by such person under which the
35 insured is such person or an individual of whom such person
36 is a dependent; provided, however, that if proceedings under
37 Title 11 of the United States Code are commenced by or
38 against such person, the amount exempt in such proceedings
39 shall not exceed in value one hundred fifty thousand dollars
40 in the aggregate less any amount of property of such person
41 transferred by the life insurance company or fraternal
42 benefit society to itself in good faith if such transfer is
43 to pay a premium or to carry out a nonforfeiture insurance
44 option and is required to be so transferred automatically

45 under a life insurance contract with such company or society
46 that was entered into before commencement of such
47 proceedings. No amount of any accrued dividend or interest
48 under, or loan value of, any such life insurance contracts
49 shall be exempt from any claim for child support.

50 Notwithstanding anything to the contrary, no such amount
51 shall be exempt in such proceedings under any such insurance
52 contract which was purchased by such person within one year
53 prior to the commencement of such proceedings;

54 (9) Professionally prescribed health aids for such
55 person or a dependent of such person;

56 (10) Such person's right to receive:

57 (a) A Social Security benefit, unemployment
58 compensation or a public assistance benefit;

59 (b) A veteran's benefit;

60 (c) A disability, illness or unemployment benefit;

61 (d) Alimony, support or separate maintenance, not to
62 exceed seven hundred fifty dollars a month;

63 (e) a. Any payment under a stock bonus plan, pension
64 plan, disability or death benefit plan, profit-sharing plan,
65 nonpublic retirement plan or any plan described, defined, or
66 established pursuant to section 456.014, the person's right
67 to a participant account in any deferred compensation
68 program offered by the state of Missouri or any of its
69 political subdivisions, or annuity or similar plan or
70 contract on account of illness, disability, death, age or
71 length of service, to the extent reasonably necessary for
72 the support of such person and any dependent of such person
73 unless:

74 (i) Such plan or contract was established by or under
75 the auspices of an insider that employed such person at the
76 time such person's rights under such plan or contract arose;

77 (ii) Such payment is on account of age or length of
78 service; and

83 b. Notwithstanding the exemption provided in
84 subparagraph a. of this paragraph, any such payment to any
85 person shall be subject to attachment or execution pursuant
86 to a qualified domestic relations order, as defined by
87 Section 414(p) of the Internal Revenue Code of 1986 (26
88 U.S.C. Section 414(p)), as amended, issued by a court in any
89 proceeding for dissolution of marriage or legal separation
90 or a proceeding for disposition of property following
91 dissolution of marriage by a court which lacked personal
92 jurisdiction over the absent spouse or lacked jurisdiction
93 to dispose of marital property at the time of the original
94 judgment of dissolution;

95 (f) Any money or assets, payable to a participant or
96 beneficiary from, or any interest of any participant or
97 beneficiary in, a retirement plan, profit-sharing plan,
98 health savings plan, or similar plan, including an inherited
99 account or plan, that is qualified under Section 401(a),
100 403(a), 403(b), 408, 408A or 409 of the Internal Revenue
101 Code of 1986 (26 U.S.C. Section 401(a), 403(a), 403(b), 408,
102 408A, or 409), as amended, whether such participant's or
103 beneficiary's interest arises by inheritance, designation,
104 appointment, or otherwise, except as provided in this
105 paragraph. Any plan or arrangement described in this
106 paragraph shall not be exempt from the claim of an alternate
107 payee under a qualified domestic relations order **or assignee**
108 **pursuant to a final judgment of dissolution of marriage or**

109 **legal separation**; however, the interest of any and all
110 alternate payees under a qualified domestic relations order
111 **or assignees pursuant to a final judgment of dissolution of**
112 **marriage or legal separation** shall be exempt from any and
113 all claims of any creditor, other than the state of Missouri
114 through its department of social services, **as of the time**
115 **the interest is awarded or received, and continues to be**
116 **exempt thereafter**. As used in this paragraph, the terms
117 "alternate payee" and "qualified domestic relations order"
118 have the meaning given to them in Section 414(p) of the
119 Internal Revenue Code of 1986 (26 U.S.C. Section 414(p)), as
120 amended. If proceedings under Title 11 of the United States
121 Code are commenced by or against such person, no amount of
122 funds shall be exempt in such proceedings under any such
123 plan, contract, or trust which is fraudulent as defined in
124 subsection 2 of section 428.024 and for the period such
125 person participated within three years prior to the
126 commencement of such proceedings. For the purposes of this
127 section, when the fraudulently conveyed funds are recovered
128 and after, such funds shall be deducted and then treated as
129 though the funds had never been contributed to the plan,
130 contract, or trust;

131 (11) The debtor's right to receive, or property that
132 is traceable to, a payment on account of the wrongful death
133 of an individual of whom the debtor was a dependent, to the
134 extent reasonably necessary for the support of the debtor
135 and any dependent of the debtor;

136 (12) Firearms, firearm accessories, and ammunition,
137 not to exceed one thousand five hundred dollars in value in
138 the aggregate;

139 (13) Any moneys accruing to and deposited in
140 individual savings accounts or individual deposit accounts

141 under sections 166.400 to 166.456 or sections 166.500 to
142 166.529, subject to the following provisions:

143 (a) This subdivision shall apply to any proceeding
144 that:

145 a. Is filed on or after January 1, 2022; or

146 b. Was filed before January 1, 2022, and is pending or
147 on appeal after January 1, 2022;

148 (b) Except as provided by paragraph (c) of this
149 subdivision, if the designated beneficiary of an individual
150 savings account or individual deposit account established
151 under sections 166.400 to 166.456 or sections 166.500 to
152 166.529 is a lineal descendant of the account owner, all
153 moneys in the account shall be exempt from any claims of
154 creditors of the account owner or designated beneficiary;

155 (c) The provisions of paragraph (b) of this
156 subdivision shall not apply to:

157 a. Claims of any creditor of an account owner as to
158 amounts contributed within a two-year period preceding the
159 date of the filing of a bankruptcy petition under 11 U.S.C.
160 Section 101 et seq., as amended; or

161 b. Claims of any creditor of an account owner as to
162 amounts contributed within a one-year period preceding an
163 execution on judgment for such claims against the account
164 owner.

165 2. Nothing in this section shall be interpreted to
166 exempt from attachment or execution for a valid judicial or
167 administrative order for the payment of child support or
168 maintenance any money or assets, payable to a participant or
169 beneficiary from, or any interest of any participant or
170 beneficiary in, a retirement plan which is qualified
171 pursuant to Sections 408 and 408A of the Internal Revenue
172 Code of 1986 (26 U.S.C. Sections 408 and 408A), as amended.

536.085. As used in section 536.087, the following
2 terms mean:

3 (1) "Agency proceeding", an adversary proceeding in a
4 contested case pursuant to this chapter in which the state
5 is represented by counsel, but does not include proceedings
6 for determining the eligibility or entitlement of an
7 individual to a monetary benefit or its equivalent, child
8 custody proceedings, eminent domain proceedings, driver's
9 license proceedings, vehicle registration proceedings,
10 proceedings to establish or fix a rate, or proceedings
11 before the state tax commission;

12 (2) "Party":

13 (a) An individual whose net worth did not exceed two
14 million dollars at the time the civil action or agency
15 proceeding was initiated; or

16 (b) Any owner of an unincorporated business or any
17 partnership, corporation, association, unit of local
18 government or organization, the net worth of which did not
19 exceed seven million dollars at the time the civil action or
20 agency proceeding was initiated, and which had not more than
21 five hundred employees at the time the civil action or
22 agency proceeding was initiated;

23 (3) "Prevails", obtains a favorable order, decision,
24 judgment, or dismissal in a civil action or agency
25 proceeding;

26 (4) "Reasonable fees and expenses" includes the
27 reasonable expenses of expert witnesses, the reasonable cost
28 of any study, analysis, engineering report, test, or project
29 which is found by the court or agency to be necessary for
30 the preparation of the party's case, and reasonable attorney
31 or agent fees. The amount of fees awarded as reasonable
32 fees and expenses shall be based upon prevailing market

33 rates for the kind and quality of the services furnished,
34 except that no expert witness shall be compensated at a rate
35 in excess of the highest rate of compensation for expert
36 witnesses paid by the state in the type of civil action or
37 agency proceeding[, and attorney fees shall not be awarded
38 in excess of seventy-five dollars per hour unless the court
39 determines that a special factor, such as the limited
40 availability of qualified attorneys for the proceedings
41 involved, justifies a higher fee];

42 (5) "State", the state of Missouri, its officers and
43 its agencies, but shall not include political subdivisions
44 of the state.

1 [469.409. 1. Any claim for breach of a
2 trustee's duty to impartially administer a trust
3 related, directly or indirectly, to an
4 adjustment made by a fiduciary to the allocation
5 between principal and income pursuant to
6 subsection 1 of section 469.405 or any
7 allocation made by the fiduciary pursuant to any
8 authority or discretion specified in subsection
9 1 of section 469.403, unless previously barred
10 by adjudication, consent or other limitation,
11 shall be barred as provided in this section.

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

18 (2) Any such claim brought by a
19 beneficiary (other than a qualified beneficiary)
20 with any interest whatsoever in the trust, no
21 matter how remote or contingent, or whether or
22 not the beneficiary is ascertainable or has the
23 capacity to contract, is barred if not asserted
24 in a judicial proceeding commenced within two
25 years after the first to occur of:

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

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

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

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

(2) Section 469.402 shall apply in determining whether a beneficiary (including a qualified beneficiary) has received notice for purposes of this section;

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

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

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

(2) The unitrust amount for the current accounting year computed pursuant to this section shall be proportionately reduced for any distributions, in whole or in part, other than distributions of the unitrust amount, and for any payments of expenses, including debts, disbursements and taxes, from the trust within a

20 current accounting year that the trustee
21 determines to be material and substantial, and
22 shall be proportionately increased for the
23 receipt, other than a receipt that represents a
24 return on investment, of any additional property
25 into the trust within a current accounting year.

26 (3) For purposes of this section, the net
27 fair market values of the assets held in the
28 trust on the first business day of a prior
29 accounting quarter shall be adjusted to reflect
30 any reduction, in the case of a distribution or
31 payment, or increase, in the case of a receipt,
32 for the prior accounting year pursuant to
33 subdivision (1) of this subsection, as if the
34 distribution, payment or receipt had occurred on
35 the first day of the prior accounting year.

36 (4) In the case of a short accounting
37 period, the trustee shall prorate the unitrust
38 amount on a daily basis.

39 (5) In the case where the net fair market
40 value of an asset held in the trust has been
41 incorrectly determined in any quarter, the
42 unitrust amount shall be increased in the case
43 of an undervaluation, or be decreased in the
44 case of an overvaluation, by an amount equal to
45 the difference between the unitrust amount
46 determined based on the correct valuation of the
47 asset and the unitrust amount originally
48 determined.

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

51 (1) "Average net fair market value", a
52 rolling average of the fair market value of the
53 assets held in the trust on the first business
54 day of the lesser of the number of accounting
55 quarters of the trust from the date of inception
56 of the trust to the determination of the trust's
57 average net fair market value, or twelve
58 accounting quarters of the trust, regardless of
59 whether this section applied to the
60 ascertainment of net income for all valuation
61 quarters;

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

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

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

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

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

106 5. This section shall apply to the
107 following trusts:

108 (1) Any trust created after August 28,
109 2001, with respect to which the terms of the
110 trust clearly manifest an intent that this
111 section apply;

112 (2) Any trust created under an instrument
113 that became irrevocable on, before, or after
114 August 28, 2001, if the trustee, in the
115 trustee's discretion, elects to have this
116 section apply unless the instrument creating the
117 trust specifically prohibits an election under
118 this subdivision. The trustee shall deliver
119 notice to all qualified beneficiaries and the
120 settlor of the trust, if he or she is then
121 living, of the trustee's intent to make such an
122 election at least sixty days before making that
123 election. The trustee shall have sole authority
124 to make the election. Section 469.402 shall
125 apply for all purposes of this subdivision. An
126 action or order by any court shall not be
127 required. The election shall be made by a
128 signed writing delivered to the settlor of the
129 trust, if he or she is then living, and to all
130 qualified beneficiaries. The election is
131 irrevocable, unless revoked by order of the
132 court having jurisdiction of the trust. The
133 election may specify the percentage used to
134 determine the unitrust amount pursuant to this
135 section, provided that such percentage is
136 between three and five percent, or if no
137 percentage is specified, then that percentage
138 shall be three percent. In making an election
139 pursuant to this subsection, the trustee shall
140 be subject to the same limitations and
141 conditions as apply to an adjustment between
142 income and principal pursuant to subsections 3
143 and 4 of section 469.405; and

144 (3) No action of any kind based on an
145 election made by a trustee pursuant to
146 subdivision (2) of this subsection shall be
147 brought against the trustee by any beneficiary
148 of that trust three years from the effective
149 date of that election.

150 6. (1) Once the provisions of this
151 section become applicable to a trust, the net
152 income of the trust shall be the unitrust amount.

153 (2) Unless otherwise provided by the
154 governing instrument, the unitrust amount
155 distributed each year shall be paid from the
156 following sources for that year up to the full
157 value of the unitrust amount in the following
158 order:

159 (a) Net income as determined if the trust
160 were not a unitrust;

161 (b) Other ordinary income as determined
162 for federal income tax purposes;

163 (c) Assets of the trust principal for
164 which there is a readily available market value;
165 and

166 (d) Other trust principal.

167 (3) Additionally, the trustee may allocate
168 to trust income for each taxable year of the
169 trust, or portion thereof:

170 (a) Net short-term capital gain described
171 in the Internal Revenue Code, 26 U.S.C. Section
172 1222(5), for such year, or portion thereof, but
173 only to the extent that the amount so allocated
174 together with all other amounts to trust income,
175 as determined under the provisions of this
176 chapter without regard to this section, for such
177 year, or portion thereof, does not exceed the
178 unitrust amount for such year, or portion
179 thereof;

180 (b) Net long-term capital gain described
181 in the Internal Revenue Code, 26 U.S.C. Section
182 1222(7), for such year, or portion thereof, but
183 only to the extent that the amount so allocated
184 together with all other amounts, including
185 amounts described in paragraph (a) of this
186 subdivision, allocated to trust income for such
187 year, or portion thereof, does not exceed the
188 unitrust amount for such year, or portion
189 thereof.

190 7. A trust with respect to which this
191 section applies on August 28, 2011, may
192 calculate the unitrust amount in accordance with
193 the provisions of this section, as it existed

194 either before or after such date, as the trustee
195 of such trust shall determine in a writing kept
196 with the records of the trust in the trustee's
197 discretion.]

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

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

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

14 (3) The ownership by an estate or trust of
15 an interest in an entity whose taxable income,
16 whether or not distributed, is includable in the
17 taxable income of the estate, trust or a
18 beneficiary.

19 2. If the amount of an estate tax marital
20 deduction or charitable contribution deduction
21 is reduced because a fiduciary deducts an amount
22 paid from principal for income tax purposes
23 instead of deducting it for estate tax purposes,
24 and as a result estate taxes paid from principal
25 are increased and income taxes paid by an
26 estate, trust or beneficiary are decreased, each
27 estate, trust or beneficiary that benefits from
28 the decrease in income tax shall reimburse the
29 principal from which the increase in estate tax
30 is paid. The total reimbursement shall equal
31 the increase in the estate tax to the extent
32 that the principal used to pay the increase
33 would have qualified for a marital deduction or
34 charitable contribution deduction but for the
35 payment. The proportionate share of the
36 reimbursement for each estate, trust or
37 beneficiary whose income taxes are reduced shall
38 be the same as its proportionate share of the

39 total decrease in income tax. An estate or
40 trust shall reimburse principal from income.]

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