

UNIFORM PRINCIPAL AND INCOME ACT (EXCERPT)
Act 159 of 2004

555.504 Adjustment between principal and income; factors; policy; circumstances prohibiting adjustment; exercise of power by cofiduciary; release of or limitation on power to adjust.

Sec. 104. (1) A fiduciary may adjust between principal and income to the extent the fiduciary considers necessary if the fiduciary invests and manages trust or estate assets as a prudent investor, the terms of the trust or will describe the amount that may or must be distributed to a beneficiary by referring to the trust's or estate's income, and the fiduciary determines, after applying the provisions in section 103(1) and (2), that the fiduciary is unable to comply with section 103(3).

(2) In deciding whether and to what extent to exercise the power conferred by subsection (1), a fiduciary shall consider all factors relevant to the trust or estate and its beneficiaries.

(3) In exercising discretion under this section, a professional trustee may adopt a policy that applies to all trusts and estates, or a policy that applies to individual trusts or estates or classes of trusts or estates, stating whether and under what conditions it will use the adjustment power and the method of making adjustments.

(4) A fiduciary shall not make an adjustment that does 1 or more of the following or under 1 or more of the following circumstances:

(a) Diminishes the income interest in a trust or estate that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the fiduciary did not have the power to make the adjustment.

(b) Reduces the actuarial value of the income interest in a trust or estate to which a person transfers property with the intent to qualify for a gift tax exclusion.

(c) Changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust or estate assets.

(d) Diminishes any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside.

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

(f) If possessing or exercising the power to make an adjustment causes all or part of the trust or estate assets to be included for estate tax purposes in the estate of an individual who has the power to remove a fiduciary or appoint a fiduciary, or both, and the assets would not be included in the estate of the individual if the fiduciary did not possess the power to make an adjustment.

(g) If the fiduciary is a beneficiary of the trust or estate.

(h) If the fiduciary is not a beneficiary, but the adjustment would benefit the fiduciary directly or indirectly.

(5) If subsection (4)(e), (f), (g), or (h) applies to a fiduciary and there is more than 1 fiduciary, a cofiduciary to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining fiduciary or fiduciaries is not permitted by the terms of the trust or will.

(6) A fiduciary may release the entire power conferred by subsection (1) or may release only the power to adjust from income to principal or the power to adjust from principal to income if the fiduciary is uncertain about whether possessing or exercising the power will cause a result described in subsection (4)(a) through (f) or (4)(h) or if the fiduciary determines that possessing or exercising the power will or may deprive the trust or estate of a tax benefit or impose a tax burden not described in subsection (4). The release may be permanent or for a specified period, including a period measured by the life of an individual.

(7) Terms of a trust or will that limit the power of a fiduciary to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust or will that the terms are intended to deny the fiduciary the power of adjustment conferred by subsection (1).

History: 2004, Act 159, Eff. Sept. 1, 2004.