

## CHAPTER 555. USES AND TRUSTS REVISED STATUTES OF 1846

### CHAPTER 63

#### Chapter 63. Of Uses And Trusts.

#### USES AND TRUSTS.

##### **555.1 Uses and trusts; extent of abolition; interests deemed legal.**

Sec. 1. Uses and trusts, except as authorized and modified in this chapter, are abolished, and every estate and interest in lands shall be deemed a legal right, cognizable as such in the courts of law, except when otherwise provided in this title.

**History:** R.S. 1846, Ch. 63;—CL 1857, 2631;—CL 1871, 4114;—How. 5563;—CL 1897, 8829;—CL 1915, 11565;—CL 1929, 12967;—CL 1948, 555.1.

##### **555.2 Executed use confirmed as legal estate.**

Sec. 2. Every estate which is now held as an use, executed under the laws of this state as they formerly existed, is confirmed as a legal estate.

**History:** R.S. 1846, Ch. 63;—CL 1857, 2632;—CL 1871, 4115;—How. 5564;—CL 1897, 8830;—CL 1915, 11566;—CL 1929, 12968;—CL 1948, 555.2.

##### **555.3 Right to possession deemed legal estate.**

Sec. 3. Every person who, by virtue of any grant, assignment or devise, now is, or hereafter shall be entitled to the actual possession of lands, and the receipt of the rents and profits thereof, in law or in equity shall be deemed to have a legal estate therein, of the same quality and duration, and subject to the same conditions as his beneficial interest.

**History:** R.S. 1846, Ch. 63;—CL 1857, 2633;—CL 1871, 4116;—How. 5565;—CL 1897, 8831;—CL 1915, 11567;—CL 1929, 12969;—CL 1948, 555.3.

##### **555.4 Right to possession deemed legal estate; effect on existing active trust.**

Sec. 4. The last preceding section shall not divest the estate of any trustees, in any existing trust, where the title of such trustees is not merely nominal, but is connected with some power of actual disposition or management, in relation to the lands which are the subject of the trust.

**History:** R.S. 1846, Ch. 63;—CL 1857, 2634;—CL 1871, 4117;—How. 5566;—CL 1897, 8832;—CL 1915, 11568;—CL 1929, 12970;—CL 1948, 555.4.

##### **555.5 Passive trust; disposition of lands, trustee interest.**

Sec. 5. Every disposition of lands, whether by deed or devise, hereafter made, except as otherwise provided in this chapter, shall be directly to the person in whom the right to the possession and the profits shall be intended to be vested, and not to any other, to the use of, or in trust for, such person; and if made to 1 or more persons, in trust for, or to the use of another, no estate or interest, legal or equitable, shall vest in the trustee.

**History:** R.S. 1846, Ch. 63;—CL 1857, 2635;—CL 1871, 4118;—How. 5567;—CL 1897, 8833;—CL 1915, 11569;—CL 1929, 12971;—CL 1948, 555.5.

##### **555.6 Constructive, resulting or express trusts; preceding sections effect.**

Sec. 6. The preceding sections of this chapter, shall not extend to trusts arising or resulting by implication of law, nor be construed to prevent or affect the creation of such express trusts as are hereinafter authorized and defined.

**History:** R.S. 1846, Ch. 63;—CL 1857, 2636;—CL 1871, 4119;—How. 5568;—CL 1897, 8834;—CL 1915, 11570;—CL 1929, 12972;—CL 1948, 555.6.

##### **555.7 Payment of consideration for conveyance to another; resulting trust, alienee title.**

Sec. 7. When a grant for a valuable consideration shall be made to 1 person, and the consideration therefor shall be paid by another, no use or trust shall result in favor of the person by whom such payment shall be made; but the title shall vest in the person named as the alienee in such conveyance, subject only to the provisions of the next section.

**History:** R.S. 1846, Ch. 63;—CL 1857, 2637;—CL 1871, 4120;—How. 5569;—CL 1897, 8835;—CL 1915, 11571;—CL 1929,

12973;—CL 1948, 555.7.

**555.8 Payment of consideration for conveyance to another; presumption as fraudulent; resulting trust for creditors of payee.**

Sec. 8. Every such conveyance shall be presumed fraudulent, as against the creditors of the person paying the consideration; and when a fraudulent intent is not disproved, a trust shall result in favor of such creditors, to the extent that may be necessary to satisfy their just demands.

**History:** R.S. 1846, Ch. 63;—CL 1857, 2638;—CL 1871, 4121;—How. 5570;—CL 1897, 8836;—CL 1915, 11572;—CL 1929, 12974;—CL 1948, 555.8.

**555.9 Payment of consideration for conveyance to another; fraudulent alienee exemption.**

Sec. 9. The preceding seventh section shall not extend to cases where the alienee named in the conveyance shall have taken the same as an absolute conveyance in his own name, without the knowledge or consent of the person paying the consideration, or when such alienee, in violation of some trust, shall have purchased the lands so conveyed, with moneys belonging to another person.

**History:** R.S. 1846, Ch. 63;—CL 1857, 2639;—CL 1871, 4122;—How. 5571;—CL 1897, 8837;—CL 1915, 11573;—CL 1929, 12975;—CL 1948, 555.9.

**555.10 Implied or resulting trust; validity against bona fide purchaser.**

Sec. 10. No implied or resulting trust shall be alleged or established to defeat or prejudice the title of a purchase, for a valuable consideration, and without notice of such trust.

**History:** R.S. 1846, Ch. 63;—CL 1857, 2640;—CL 1871, 4123;—How. 5572;—CL 1897, 8838;—CL 1915, 11574;—CL 1929, 12976;—CL 1948, 555.10.

**Compiler's note:** The word “purchase” in this section evidently should read “purchaser”.

**555.11 Express trust; purpose of creation.**

Sec. 11. Express trusts may be created for any or either of the following purposes:

First. To sell lands for the benefit of creditors:

Second. To sell, mortgage or lease lands, for the benefit of legatees, or for the purpose of satisfying any charge thereon:

Third. To receive the rents and profits of lands, and apply them to the use of any person, during the life of such person, or for any shorter term, subject to the rules prescribed in the last preceding chapter:

Fourth. To receive the rents and profits of lands, and to accumulate the same for the benefit of any married woman, or for either of the purposes, and within the limits prescribed in the preceding chapter:

Fifth. For the beneficial interest of any person or persons where such trust is fully expressed and clearly defined upon the face of the instrument creating it subject to the limitations as to time prescribed in this title.

**History:** R.S. 1846, Ch. 63;—CL 1857, 2641;—CL 1871, 4124;—How. 5573;—CL 1897, 8839;—CL 1915, 11575;—CL 1929, 12977;—CL 1948, 555.11.

**555.12 Devise to trustee without power to receive rents and profits; estate of trustee; effect on trust.**

Sec. 12. A devise of lands to executors or other trustees, to be sold or mortgaged, when such trustees are not also empowered to receive the rents and profits, shall vest no estate in the trustees; but the trust shall be valid as a power, and the lands shall descend to the heirs, or pass to the devisees of the testator, subject to the execution of the power.

**History:** R.S. 1846, Ch. 63;—CL 1857, 2642;—CL 1871, 4125;—How. 5574;—CL 1897, 8840;—CL 1915, 11576;—CL 1929, 12978;—CL 1948, 555.12.

**555.13 Rents and profits; liability of surplus to claims of creditors of beneficiary.**

Sec. 13. When a trust is created to receive the rents and profits of lands, and no valid direction for accumulation is given, the surplus of such rents and profits, beyond the sum that may be necessary for the education and support of the person for whose benefit the trust is created, shall be liable in equity, to the claims of the creditors of such person, in the same manner as other personal property which cannot be reached by an execution at law.

**History:** R.S. 1846, Ch. 63;—CL 1857, 2643;—CL 1871, 4126;—How. 5575;—CL 1897, 8841;—CL 1915, 11577;—CL 1929, 12979;—CL 1948, 555.13.

**555.14 Express trust for unauthorized purpose; estate of trustee; power in trust.**

Sec. 14. When an express trust shall be created for any purpose not enumerated in the preceding sections of

this chapter, no estate shall vest in the trustees; but the trust, if directing or authorizing the performance of any act which may be lawfully performed under a power, shall be valid as a power in trust, subject to the provisions in relation to such powers contained in the next succeeding chapter.

**History:** R.S. 1846, Ch. 63;—CL 1857, 2644;—CL 1871, 4127;—How. 5576;—CL 1897, 8842;—CL 1915, 11578;—CL 1929, 12980;—CL 1948, 555.14.

#### **555.15 Trust as valid power; land descent.**

Sec. 15. In every case where the trust shall be valid as a power, the land to which the trust relates, shall remain in, or descend to the persons otherwise entitled, subject to the execution of the trust as a power.

**History:** R.S. 1846, Ch. 63;—CL 1857, 2645;—CL 1871, 4128;—How. 5577;—CL 1897, 8843;—CL 1915, 11579;—CL 1929, 12981;—CL 1948, 555.15.

#### **555.16 Express trust; beneficiary, trustee estates, beneficiary right.**

Sec. 16. Every express trust, valid as such in its creation, except as herein otherwise provided, shall vest the whole estate in the trustees, in law and in equity, subject only to the execution of the trust; and the person for whose benefit the trust was created, shall take no estate or interest in the lands, but may enforce the performance of the trust in equity.

**History:** R.S. 1846, Ch. 63;—CL 1857, 2646;—CL 1871, 4129;—How. 5578;—CL 1897, 8844;—CL 1915, 11580;—CL 1929, 12982;—CL 1948, 555.16.

#### **555.17 Express trust; disposal of land in event of failure or termination of trust.**

Sec. 17. The preceding section shall not prevent any person creating a trust, from declaring to whom the lands to which the trust relates shall belong, in the event of the failure or termination of the trust, nor shall it prevent him from granting or devising such lands subject to the execution of the trust; and every such grantee shall have a legal estate in the lands, as against all persons except the trustees and those lawfully claiming under them.

**History:** R.S. 1846, Ch. 63;—CL 1857, 2647;—CL 1871, 4130;—How. 5579;—CL 1897, 8845;—CL 1915, 11581;—CL 1929, 12983;—CL 1948, 555.17.

#### **555.18 Express trust; undisposed estate or interest.**

Sec. 18. When an express trust is created, every estate and interest not embraced in the trust, and not otherwise disposed of, shall remain in, or revert to the person creating the trust, or his heirs as a legal estate.

**History:** R.S. 1846, Ch. 63;—CL 1857, 2648;—CL 1871, 4131;—How. 5580;—CL 1897, 8846;—CL 1915, 11582;—CL 1929, 12984;—CL 1948, 555.18.

#### **555.19 Express trust; assignability of interest of beneficiary.**

Sec. 19. No person beneficially interested in a trust for the receipt of the rents and profits of lands, can assign or in any manner dispose of such interest; but the rights and interest of every person for whose benefit a trust for the payment of a sum in gross is created, are assignable.

**History:** R.S. 1846, Ch. 63;—CL 1857, 2649;—CL 1871, 4132;—How. 5581;—CL 1897, 8847;—CL 1915, 11583;—CL 1929, 12985;—CL 1948, 555.19.

#### **555.20 Express trust; omission from conveyance; validity as to subsequent creditor and bona fide purchaser from trustee.**

Sec. 20. When an express trust is created, but is not contained or declared in the conveyance to the trustees, such conveyance shall be deemed absolute as against the subsequent creditors of the trustees, not having notice of the trust, and as against purchasers from such trustees, without notice, and for a valuable consideration.

**History:** R.S. 1846, Ch. 63;—CL 1857, 2650;—CL 1871, 4133;—How. 5582;—CL 1897, 8848;—CL 1915, 11584;—CL 1929, 12986;—CL 1948, 555.20.

#### **555.21 Express trust; mention in instrument; invalidity of certain acts of trustee.**

Sec. 21. When the trust shall be expressed in the instrument creating the estate, every sale, conveyance, or other acts of the trustees, in contravention of the trust, shall be absolutely void.

**History:** R.S. 1846, Ch. 63;—CL 1857, 2651;—CL 1871, 4134;—How. 5583;—CL 1897, 8849;—CL 1915, 11585;—CL 1929, 12987;—CL 1948, 555.21.

#### **555.22 Authorized payment to trustee; protection of payor.**

Sec. 22. No person who shall actually and in good faith make any payment to a trustee, which the trustee

as such is authorized to receive, shall be responsible for the application thereof according to the trust; nor shall any right or title derived by such person from the trustee, in consideration of such payment, be impeached or called in question, in consequence of any misapplication of such payment by the trustee.

**History:** R.S. 1846, Ch. 63;—CL 1857, 2652;—CL 1871, 4135;—How. 5584;—CL 1897, 8850;—CL 1915, 11586;—CL 1929, 12988;—CL 1948, 555.22.

#### **555.23 Express trust; termination of estate of trustee.**

Sec. 23. When the purposes for which an express trust shall have been created, shall have ceased, the estate of the trustee shall also cease.

**History:** R.S. 1846, Ch. 63;—CL 1857, 2653;—CL 1871, 4136;—How. 5585;—CL 1897, 8851;—CL 1915, 11587;—CL 1929, 12989;—CL 1948, 555.23.

#### **555.24 Express trust; death of all trustees; execution of trust.**

Sec. 24. Upon the death of the surviving trustee of an express trust, the trust estate shall not descend to his heirs, nor pass to his personal representatives; but the trust if then unexecuted, shall vest in the court of chancery, with all the powers and duties of the original trustees, and shall be executed by some person appointed for that purpose, under the direction of the court.

**History:** R.S. 1846, Ch. 63;—CL 1857, 2654;—CL 1871, 4137;—How. 5586;—CL 1897, 8852;—CL 1915, 11588;—CL 1929, 12990;—CL 1948, 555.24.

#### **555.25 Express trust; trustee resignation.**

Sec. 25. Upon the petition of any trustee of an express trust, the court of chancery may accept his resignation, and discharge him from the trust, under such regulations as shall be established by the court for that purpose, and upon such terms as the rights and interests of the persons interested in the execution of the trust may require.

**History:** R.S. 1846, Ch. 63;—CL 1857, 2655;—CL 1871, 4138;—How. 5587;—CL 1897, 8853;—CL 1915, 11589;—CL 1929, 12991;—CL 1948, 555.25.

#### **555.26 Express trust; trustee removal.**

Sec. 26. Upon the petition or bill of any person interested in the execution of an express trust, and under such regulations as shall be established by the court for that purpose, the court of chancery may remove any trustee who shall have violated or threatened to violate his trust, or who shall be insolvent, or whose insolvency shall be apprehended, or who, for any other cause, shall be deemed an unsuitable person to execute the trust.

**History:** R.S. 1846, Ch. 63;—CL 1857, 2656;—CL 1871, 4139;—How. 5588;—CL 1897, 8854;—CL 1915, 11590;—CL 1929, 12992;—CL 1948, 555.26.

#### **555.27 Express trust; appointment of new trustee.**

Sec. 27. The chancellor shall have full power to appoint a new trustee, in the place of a trustee resigned or removed; and when, in consequence of such resignation or removal, there shall be no acting trustee, the court, in its discretion, may appoint new trustees, or cause the trust to be executed by 1 of its officers, under its direction.

**History:** R.S. 1846, Ch. 63;—CL 1857, 2657;—CL 1871, 4140;—How. 5589;—CL 1897, 8855;—CL 1915, 11591;—CL 1929, 12993;—CL 1948, 555.27.

**Compiler's note:** The office of chancellor, referred to in this section, was abolished by Act 23 of 1847.

#### **555.28 Conflicting provisions.**

Sec. 28. If a provision of this chapter conflicts with a provision of article VII of the estates and protected individuals code, 1998 PA 386, MCL 700.7101 to 700.7913, article VII of the estates and protected individuals code, 1998 PA 386, MCL 700.7101 to 700.7913, prevails.

**History:** Add. 2009, Act 43, Eff. Apr. 1, 2010.

### **THE REVISED UNIFORM PRINCIPAL AND INCOME ACT Act 340 of 1965**

**555.51-555.68 Repealed. 2004, Act 159, Eff. Sept. 1, 2004.**

### **IRREVOCABLE INTER VIVOS TRUST INSTRUMENTS**

**Act 185 of 1966**

**555.81-555.84 Repealed. 2000, Act 54, Eff. Apr. 1, 2000.**

## COLLECTIVE INVESTMENT FUNDS ACT

### Act 174 of 1941

AN ACT to authorize the establishment and the maintenance of common trust funds and collective investment funds; to authorize investments or participations in those funds; to define the requirements and terms of those funds, the conditions and terms governing investments or participations in those funds, and the admission and withdrawal of those investments or participations; to prescribe and define the rights, powers, and duties of banks, trust companies, fiduciaries, participants, beneficiaries, and other persons with respect to common trust funds and collective investment funds; and to provide for the regulation and supervision of those funds.

**History:** 1941, Act 174, Eff. Jan. 10, 1942;—Am. 2004, Act 586, Imd. Eff. Jan. 4, 2005.

**Popular name:** Common Trust Fund Act

*The People of the State of Michigan enact:*

#### **555.101 Short title; definitions.**

Sec. 1. (1) This act shall be known and may be cited as the "collective investment funds act".

(2) As used in this act:

(a) "Collective investment fund" means a fund maintained by a financial institution or by 1 or more affiliated financial institutions that consists solely of assets of retirement, pension, profit sharing, stock bonus, or other trusts that are exempt from federal income tax.

(b) "Common trust fund" means a fund maintained by a financial institution or 1 or more affiliated financial institutions exclusively for the collective investment and reinvestment of money contributed to the fund by the financial institution or the affiliated financial institutions in its capacity as a fiduciary or cofiduciary.

(c) "Fiduciary" means a financial institution or other person acting in the capacity of guardian, conservator, personal representative, or trustee, either solely or together with others, or custodian under a uniform gift or transfer to minors act of any state.

(d) "Financial institution" means any of the following:

(i) A state bank, national bank, state or federally chartered savings and loan association or savings bank that is authorized to act in a fiduciary capacity in this state.

(ii) A wholly owned subsidiary of an entity described in subparagraph (i) that is authorized to act in a fiduciary capacity in this state.

(iii) An entity authorized to act in a fiduciary capacity in any other state that is a member of an affiliated group within the meaning of section 1504 of the internal revenue code of 1986 that includes any of the entities described in subparagraph (i) or (ii).

(e) "Fund" means a common trust fund or a collective investment fund.

(f) "Plan" means the written plan for a fund described in section 4.

**History:** 1941, Act 174, Eff. Jan. 10, 1942;—CL 1948, 555.101;—Am. 1978, Act 433, Imd. Eff. Oct. 5, 1978;—Am. 1984, Act 101, Imd. Eff. May 8, 1984;—Am. 2004, Act 586, Imd. Eff. Jan. 4, 2005.

**Popular name:** Common Trust Fund Act

#### **555.102 Funds; financial institution may establish, maintain, and administer.**

Sec. 2. A financial institution may establish, maintain, and administer 1 or more funds.

**History:** 1941, Act 174, Eff. Jan. 10, 1942;—CL 1948, 555.102;—Am. 2004, Act 586, Imd. Eff. Jan. 4, 2005.

**Popular name:** Common Trust Fund Act

#### **555.103 Funds; financial institution may invest as fiduciary.**

Sec. 3. A financial institution in its capacity as a fiduciary or cofiduciary may invest funds that it lawfully holds for investment in that capacity in interests or participations in 1 or more common trust funds, if the investment is not prohibited by the instrument, judgment, decree, or order creating the fiduciary relationship and if, in the case of a financial institution in its capacity as a cofiduciary, the financial institution complies with any consent requirements imposed by the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8102. A financial institution may invest assets of retirement, pension, profit sharing, stock bonus, or other employee benefit trusts exempt from federal income tax that the financial institution holds in any capacity, including agent, in a collective investment fund.

**History:** 1941, Act 174, Eff. Jan. 10, 1942;—CL 1948, 555.103;—Am. 2004, Act 586, Imd. Eff. Jan. 4, 2005.

**Popular name:** Common Trust Fund Act

#### **555.104 Funds; establishment and maintenance of plan; provisions; availability for inspection.**

Sec. 4. (1) A financial institution shall establish and maintain a fund in accordance with a written plan approved by resolution of the board of directors of the financial institution or by a committee authorized by the board. The plan shall contain full and detailed provisions as to the manner in which the financial institution will operate the fund, including, but not limited to, provisions relating to all of the following:

- (a) The investment powers and policies with respect to the fund.
- (b) The allocation of income, profits, and losses.
- (c) The fees and expenses that the financial institution will charge to the fund and to participating accounts.
- (d) The terms and conditions governing the admission and withdrawal of participating accounts.
- (e) Audits of participating accounts.
- (f) The basis and method of valuing assets in the fund.
- (g) The expected frequency of income distribution from the fund to participating accounts.
- (h) The minimum frequency of valuation of fund assets.
- (i) The period of time following a valuation date in which a valuation of fund assets must be made.
- (j) The bases upon which the financial institution may terminate the funds.
- (k) Any other matters necessary to define clearly the rights of participating accounts.

(2) A financial institution shall make a copy of a written plan described in subsection (1) available at its principal office for inspection during all regular business hours and shall provide a copy of the plan to any person who requests it.

**History:** 1941, Act 174, Eff. Jan. 10, 1942;—CL 1948, 555.104;—Am. 2004, Act 586, Imd. Eff. Jan. 4, 2005.

**Popular name:** Common Trust Fund Act

#### **555.104a Audit; financial report; contents; items to be excluded from report; availability; advertising common trust fund.**

Sec. 4a. (1) At least once during each 12-month period, a financial institution administering a fund shall arrange for an audit of the fund by auditors responsible only to the board of directors of the financial institution.

(2) At least once during each 12-month period, a financial institution administering a fund shall prepare a financial report of the fund based on the audit required in subsection (1). The report shall disclose the fund's fees and expenses, a list of investments in the fund, the cost and current market value of each investment, and a statement covering the period after the previous report that shows all of the following, organized by type of investment:

- (a) A summary of purchases, including costs.
- (b) A summary of sales, including profit or loss and any other investment changes.
- (c) Income to and disbursements from the fund.
- (d) A description of any investments in default.

(3) A financial institution shall not publish in the report described in subsection (2) any predictions or representations as to future performance. In addition, with respect to common trust funds, a financial institution shall not publish the performance of individual funds other than those administered by the financial institution or its affiliates.

(4) A financial institution administering a fund shall provide a copy of the report described in subsection (2), or provide notice that a copy of the report is available upon request without charge, to each person who ordinarily would receive a regular periodic accounting with respect to each participating account. The financial institution may provide a copy of the report to prospective customers and may provide a copy of the report upon request to any person for a reasonable charge.

(5) A financial institution shall not advertise or publicize any common trust fund except in connection with the advertisement of the general fiduciary services of the financial institution.

**History:** Add. 2004, Act 586, Imd. Eff. Jan. 4, 2005.

**Popular name:** Common Trust Fund Act

#### **555.105 Common trust funds; funds investment.**

Sec. 5. A financial institution may invest and reinvest the assets of a fund in accordance with the plan for that fund.

**History:** 1941, Act 174, Eff. Jan. 10, 1942;—CL 1948, 555.105;—Am. 2004, Act 586, Imd. Eff. Jan. 4, 2005.

**Popular name:** Common Trust Fund Act



### **555.105a Interest in fund other than fiduciary; prohibition; restrictions.**

Sec. 5a. (1) A financial institution administering a fund shall not have an interest in that fund other than in its fiduciary capacity. If, because of a creditor relationship or otherwise, a financial institution acquires an interest in a participating account, the financial institution shall withdraw the participating account from the fund on the next withdrawal date. However, a financial institution may invest assets that it holds as fiduciary for its own employees in a fund.

(2) A financial institution administering a common trust fund or a collective investment fund shall not make any loan secured by a participant's interest in the fund. An unsecured advance to a fiduciary account participating in the fund until the time of the next valuation date does not constitute the acquisition of an interest in a participating account by the financial institution.

(3) A financial institution administering a fund may purchase for its own account any defaulted investment held by the fund rather than segregating the investment as provided in section 8, if, in the judgment of the financial institution, the cost of segregating the investment is excessive in light of the market value of the investment. If a financial institution elects to purchase a defaulted investment, it shall purchase it for its market value or the sum of cost and accrued unpaid interest on the defaulted investment, whichever is greater.

**History:** Add. 2004, Act 586, Imd. Eff. Jan. 4, 2005.

**Popular name:** Common Trust Fund Act

### **555.106 Common trust funds; participation; certificate.**

Sec. 6.

(1) A financial institution administering a fund shall not issue a certificate or other document representing a direct or indirect interest in the fund, except to provide a withdrawing account with a record of an interest in a segregated investment.

(2) An account owning or holding an investment or participation in a fund has a proportionate undivided interest in the fund's assets. The account does not have individual ownership of any asset in the fund.

**History:** 1941, Act 174, Eff. Jan. 10, 1942;—CL 1948, 555.106;—Am. 2004, Act 586, Imd. Eff. Jan. 4, 2005.

**Popular name:** Common Trust Fund Act

### **555.107 Common trust funds; management; control; ownership.**

Sec. 7. A financial institution has exclusive management and control of a fund administered by it and the sole right at any time to sell, convert, exchange, transfer, or otherwise change or dispose of the assets comprising the fund. Exclusive management and control include, but are not limited to, the right to delegate responsibilities to others to the extent a fiduciary may delegate responsibilities under the laws of this state. The ownership of assets in a fund by a financial institution is solely as a fiduciary.

**History:** 1941, Act 174, Eff. Jan. 10, 1942;—CL 1948, 555.107;—Am. 2004, Act 586, Imd. Eff. Jan. 4, 2005.

**Popular name:** Common Trust Fund Act

### **555.108 Common trust funds; assets valuation; admission and withdrawal; basis; distribution.**

Sec. 8.

(1) A financial institution administering a fund that is not invested primarily in real estate or other assets that are not readily marketable shall determine the value of the fund's assets at least every 3 months. A financial institution administering a fund that is invested primarily in real estate or other assets that are not readily marketable shall determine the value of the fund's assets at least once a year. A financial institution administering a fund shall admit an account to or withdraw an account from the fund only on the basis of a valuation described in this section.

(2) A financial institution administering a fund may admit an account to or withdraw an account from the fund only if the financial institution has approved a notice for or a notice of intention of taking that action on or before the valuation date on which the admission or withdrawal is based. A request or notice shall not be canceled or countermanded after the valuation date.

(3) A financial institution administering a fund shall make distributions to accounts withdrawing from the fund in cash, ratably in kind, in a combination of cash and ratably in kind, or in any other manner consistent with applicable law in the state in which the financial institution maintains the fund. If an investment is withdrawn in kind from a fund for the benefit of all participants in the fund at the time of the withdrawal but the investment is not distributed ratably in kind, the financial institution shall segregate and administer the investment for the benefit ratably of all participants in the fund at the time of withdrawal.

**History:** 1941, Act 174, Eff. Jan. 10, 1942;—CL 1948, 555.108;—Am. 2004, Act 586, Imd. Eff. Jan. 4, 2005.



**Popular name:** Common Trust Fund Act

### **555.109 Common trust funds; management fee; expenses.**

Sec. 9.

(1) A financial institution administering a fund may charge a reasonable management fee that does not exceed an amount equal to the value of legitimate services of tangible benefit to the participating accounts that would not have been provided to the accounts were they not invested in the fund.

(2) A financial institution administering a fund may charge reasonable expenses incurred in operating the fund.

(3) A financial institution shall pay the cost of establishing or reorganizing a fund.

(4) A financial institution may deduct the fee and expenses allowed under subsections (1) and (2) from the fund or from the participating accounts in proportion to their interests in the fund.

**History:** 1941, Act 174, Eff. Jan. 10, 1942;—CL 1948, 555.109;—Am. 1986, Act 23, Imd. Eff. Mar. 10, 1986;—Am. 2004, Act 586, Imd. Eff. Jan. 4, 2005.

**Popular name:** Common Trust Fund Act

### **555.110 Common trust funds; mistakes in administration; effect.**

Sec. 10. A mistake made in good faith and in the exercise of due care in connection with the administration of a fund is not a violation of this act or any rules or regulations issued under this act, if promptly after discovery of the mistake the financial institution takes whatever action is reasonable under the circumstances to remedy the mistake.

**History:** 1941, Act 174, Eff. Jan. 10, 1942;—CL 1948, 555.110;—Am. 2004, Act 586, Imd. Eff. Jan. 4, 2005.

**Popular name:** Common Trust Fund Act

### **555.111 Common trust funds; rules regulating administration.**

Sec. 11. The commissioner of the office of financial and insurance services may promulgate and enforce rules regulating the administration of funds under this act pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

**History:** 1941, Act 174, Eff. Jan. 10, 1942;—CL 1948, 555.111;—Am. 2004, Act 586, Imd. Eff. Jan. 4, 2005.

**Popular name:** Common Trust Fund Act

### **555.112 Common trust funds; additional investments.**

Sec. 12.

(1) In addition to investing assets in a fund, a financial institution may invest assets that it holds as fiduciary in any of the following, to the extent not prohibited by applicable law:

(a) In any of the following loans or obligations, if the financial institution's only interest in the loans or obligations is its capacity as fiduciary:

(i) A single real estate loan, a direct obligation of the United States, or an obligation fully guaranteed by the United States or a single fixed amount security, obligation, or other property, either real, personal, or mixed, of a single issuer.

(ii) A variable amount note of a borrower of prime credit, if the financial institution uses the note solely for investment of funds held in its fiduciary accounts.

(b) In a fund maintained by the financial institution for the collective investment of cash balances received or held by a financial institution in its capacity as trustee, personal representative, executor, administrator, guardian, or custodian under a uniform gifts or transfers to minors act of any state that the financial institution considers too small to be invested separately to advantage. The total assets in a fund described in this subdivision shall not exceed \$1,000,000.00 and the number of participating accounts shall not exceed 100.

(c) In any investment specifically authorized by the instrument creating the fiduciary account or in a court order, in the case of trusts created by a corporation, including its affiliates and subsidiaries, or by several individual settlors who are closely related.

(d) In any collective investment authorized by applicable law, including, but not limited to, an investment under a preneed funeral statute of any state.

(e) In any other manner described by the financial institution in a written plan approved by the financial institution's state or federal regulator. In order to obtain a special exemption, a financial institution shall submit to its regulator a written plan that sets forth all of the following:

(i) The reason that the proposed fund requires a special exemption.

(ii) The provisions of the proposed fund that are inconsistent with this act.

(iii) The provisions of this act for which the financial institution seeks an exemption.

(iv) The manner in which the proposed fund addresses the rights and interests of the participating accounts.

(2) For purposes of this section, a financial institution acts as a fiduciary if the financial institution acts as any of the following:

(a) A trustee, personal representative, executor, administrator, registrar of stocks and bonds, transfer agent, guardian, assignee, receiver, or custodian under a uniform gifts or transfers to minors act of any state.

(b) An investment adviser, if the financial institution receives a fee for its investment advice.

(c) In any capacity in which the financial institution possesses investment discretion on behalf of another.

(d) In any similar capacity that a federal banking agency having authority over the financial institution may authorize from time to time.

**History:** 1941, Act 174, Eff. Jan. 10, 1942;—CL 1948, 555.112;—Am. 2004, Act 586, Imd. Eff. Jan. 4, 2005.

**Popular name:** Common Trust Fund Act

### **555.113 Common trust funds; court accountings; jurisdiction of probate court.**

Sec. 13.

Unless ordered by a court of competent jurisdiction, a financial institution administering a fund is not required to provide an accounting to a court with regard to the fund. By application to the state probate court with jurisdiction for a county in this state where the financial institution has its principal office, a financial institution may secure approval of an accounting under the conditions established by the court.

**History:** 1941, Act 174, Eff. Jan. 10, 1942;—CL 1948, 555.113;—Am. 2004, Act 586, Imd. Eff. Jan. 4, 2005.

**Popular name:** Common Trust Fund Act

## **TRUST FUND INVESTMENTS**

### **Act 177 of 1937**

**555.201-555.203 Repealed. 2000, Act 54, Eff. Apr. 1, 2000.**

**TRUSTS OF PROPERTY FOR EMPLOYEES**  
**Act 193 of 1947**

AN ACT relative to the validity, duration and effectiveness of certain trusts of any property created by an employer as part of a stock bonus plan, pension plan, disability or death benefit plan, or profit-sharing plan; and to permit the accumulation of the income arising from such trusts.

**History:** 1947, Act 193, Eff. Oct. 11, 1947;—Am. 1951, Act 61, Eff. Sept. 28, 1951.

*The People of the State of Michigan enact:*

**555.301 Trust of property for employees; effect of rule against perpetuities.**

Sec. 1. A trust of any kind of property created by an employer as part of a stock bonus plan, pension plan, disability or death benefit plan, or profit-sharing plan, for the exclusive benefit of some or all of his employees, to which contributions are made by such employer or employees, or both, for the purpose of distributing to such employees the earnings or the principal, or both earnings and principal, of the fund so held in trust, shall not be deemed to be invalid as violating the so-called rule against perpetuities, any other existing law against perpetuities or any law restricting or limiting the duration of trusts; but such a trust may continue for such time as may be necessary to accomplish the purposes for which it was created.

**History:** 1947, Act 193, Eff. Oct. 11, 1947;—CL 1948, 555.301;—Am. 1951, Act 61, Eff. Sept. 28, 1951.

**555.302 Trusts of property for employees; accumulation of trust income.**

Sec. 2. The income arising from any trust within the classifications mentioned in the preceding section may be permitted to accumulate in accordance with the terms of such trust for as long a time as may be necessary to accomplish the purposes for which the same was created, notwithstanding any existing law or laws limiting the period during which trust income may be accumulated.

**History:** 1947, Act 193, Eff. Oct. 11, 1947;—CL 1948, 555.302.

**UNIFORM TRUST RECEIPTS ACT**  
**Act 19 of 1952**

**555.401-555.419 Repealed. 1962, Act 174, Eff. Jan. 1, 1964.**

## **CORPORATE FIDUCIARY STOCKHOLDERS**

### **Act 56 of 1957**

AN ACT relative to the authority of a corporation acting as trustee, executor, administrator, whether special, general, ancillary, with the will annexed or de bonis non, agent or guardian, whether special or general, to hold stock or other securities in the name of a nominee; the manner of indorsement of securities so held; the possession of or transfer of, or accounting for, those securities by the corporation; the liability of the corporation with respect to those transactions; and the promulgation of rules.

**History:** 1957, Act 56, Eff. Sept. 27, 1957;—Am. 1972, Act 149, Imd. Eff. May 26, 1972;—Am. 1975, Act 310, Imd. Eff. Dec. 22, 1975.

*The People of the State of Michigan enact:*

#### **555.441 Corporation as fiduciary or co-fiduciary holding stock or securities in name of nominee; consent of co-fiduciary; endorsement of certificate.**

Sec. 1. In the absence of a direction to the contrary contained in any will or other instrument transferring shares of stock or other securities to a corporation acting as trustee, executor, administrator, whether special, general, ancillary, with the will annexed or de bonis non, agent or guardian, whether special or general, the corporation when acting as the fiduciary or when acting as co-fiduciary, with the consent of its co-fiduciary, may hold the same in the name of a nominee employed by the corporation and responsible to the corporation without mention of the trust in the certificate representing the shares of stock or other securities, or the registration book for the stock or other securities. The co-fiduciaries are authorized to give the consent herein required. The nominee, upon the request of the corporation, shall indorse the certificate representing shares of stock or other securities in blank or by assignment separate from the certificate.

**History:** 1957, Act 56, Eff. Sept. 27, 1957;—Am. 1958, Act 151, Eff. Sept. 13, 1958;—Am. 1972, Act 149, Imd. Eff. May 26, 1972;—Am. 1975, Act 310, Imd. Eff. Dec. 22, 1975.

#### **555.442 Acts of nominee, federal reserve bank, and clearing corporation deemed acts of corporation acting as fiduciary.**

Sec. 2. The acts of a nominee in connection with property held by the nominee shall be deemed to be the acts of the corporation acting as fiduciary. The acts of a federal reserve bank in connection with property held by it, as provided in section 4, and the acts of a clearing corporation in connection with property held by it, as provided in section 5, shall be deemed to be the acts of the corporation acting as fiduciary.

**History:** 1957, Act 56, Eff. Sept. 27, 1957;—Am. 1975, Act 310, Imd. Eff. Dec. 22, 1975.

#### **555.443 Records of corporation to show ownership of stock or other securities held by corporation as fiduciary; manner of keeping stocks and other securities separate from assets of corporation.**

Sec. 3. The records of the corporation shall show the ownership of the shares of stock or other securities held by it as fiduciary. The shares of stock or other securities shall be kept separate from the assets of the corporation and may be kept by the corporation either in a manner that the certificates representing the securities from time to time constituting the assets of a particular estate, trust, or other fiduciary account are held separate from those of all other estates, trusts, or fiduciary accounts; or in a manner that, without certification as to ownership attached, certificates representing securities of the same class of the same issuer and from time to time constituting assets of particular estates, trusts, or other fiduciary accounts, are held in bulk, including to the extent feasible, the merging of certificates of small denomination into 1 or more certificates of large denomination.

**History:** 1957, Act 56, Eff. Sept. 27, 1957;—Am. 1975, Act 310, Imd. Eff. Dec. 22, 1975.

#### **555.444 Deposit of securities with federal reserve bank; crediting deposit; designating fiduciary account; records to show ownership of securities held in account; transfer of securities.**

Sec. 4. A corporation when acting as fiduciary, as provided in section 1, may deposit, or arrange for the deposit, with a federal reserve bank, of securities, the principal and interest of which the United States or a department, agency, or instrumentality thereof has agreed to pay, or has guaranteed payment. The deposit of securities shall be credited to 1 or more accounts on the books of the federal reserve bank in the name of the corporation, and designated a fiduciary account, as distinguished from a safekeeping account, to which account other similar securities may be credited. The records of the corporation depositing securities shall

show the ownership of the securities held in the account. Ownership of, and other interests in, the securities credited to the account, may be transferred by entries on the books of the federal reserve bank without physical delivery of securities.

**History:** Add. 1975, Act 310, Imd. Eff. Dec. 22, 1975.

**555.445 Deposit of securities in clearing corporation, bank, or trust company; deposit of securities by clearing corporation, bank, or trust company in another clearing corporation, bank, or trust company; evidence of safety of securities; merging certificates; holding certificates in bulk; transfer of securities; approval of commissioner.**

Sec. 5. (1) With the written approval of the commissioner of the financial institutions bureau, a corporation acting as a fiduciary as provided in section 1 may deposit, or arrange for deposit, of securities in a clearing corporation as defined in section 8102(3) of Act No. 174 of the Public Acts of 1962, as amended, being section 440.8102 of the Michigan Compiled Laws, or a bank, national banking association, or trust company in a reserve city as designated pursuant to section 205 of Act No. 319 of the Public Acts of 1969, being section 487.505 of the Michigan Compiled Laws. At the annual examination and at any other time the commissioner may request, the corporation acting as fiduciary shall furnish the commissioner, to his or her satisfaction, with evidence that the safety of securities deposited is not impaired.

(2) A clearing corporation, bank, or trust company holding pursuant to this section securities of a corporation acting as a fiduciary may deposit, or arrange for deposit, of the securities in another clearing corporation, bank, or trust company. The corporation acting as fiduciary shall furnish the commissioner upon his or her request and at the annual examination satisfactory evidence that the safety of securities deposited pursuant to this subsection is not impaired.

(3) When securities are deposited in accordance with this section, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the clearing corporation, bank, or trust company, or 1 of their nominees with any other securities deposited in the clearing corporation by any person regardless of the ownership of the securities; and certificates of small denominations may be merged into 1 or more certificates of larger denominations. The records of the corporation acting as fiduciary shall show the name of the party for whose account the securities are deposited. Ownership of, and other interests in, the securities may be transferred by bookkeeping entry on the books of the clearing corporation without physical delivery of certificates representing the securities.

(4) Approval of the commissioner granted under this section shall be effective from the date granted and shall remain in effect until terminated.

(5) The commissioner may terminate an approval granted under this section when the commissioner has reason to believe that the safety of securities deposited in a clearing corporation, bank, or trust company would be impaired, or that this act or a rule promulgated under this act is being violated.

**History:** Add. 1975, Act 310, Imd. Eff. Dec. 22, 1975;—Am. 1983, Act 257, Eff. Mar. 29, 1984.

**555.446 Rules.**

Sec. 6. Pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws, the commissioner of the financial institutions bureau may promulgate rules to effectuate the purposes and to execute and enforce this act. Nothing in this act shall preclude the attorney general of this state from promulgating rules pursuant to Act No. 101 of the Public Acts of 1961, being sections 14.251 to 14.266 of the Michigan Compiled Laws.

**History:** Add. 1975, Act 310, Imd. Eff. Dec. 22, 1975.

**555.447 Applicability of amendatory act.**

Sec. 7. This amendatory act which added this section shall apply to any corporation acting as a fiduciary, as provided in section 1, which was so acting on or after the effective date of this amendatory act, regardless of the date of the will or other instrument pursuant to which the securities were transferred to it.

**History:** Add. 1975, Act 310, Imd. Eff. Dec. 22, 1975.

**UNIFORM TESTAMENTARY ADDITIONS TO TRUSTS ACT  
Act 83 of 1962**

**555.461-555.464 Repealed. 1998, Act 386, Eff. Apr. 1, 2000.**

**DISTRIBUTION IN KIND OF PECUNIARY BEQUESTS AND TRUST INTERESTS  
Act 108 of 1968**

**555.481-555.485 Repealed. 1978, Act 642, Eff. July 1, 1979.**

**UNIFORM PRINCIPAL AND INCOME ACT**  
**Act 159 of 2004**

AN ACT to enact the uniform principal and income act; to prescribe the manner in which receipts and expenditures of trusts and estates are credited and charged between income and principal, and the manner in which income is apportioned among beneficiaries at the beginning and upon the termination of a trust or estate; to make uniform the law with respect to principal and income allocation; and to repeal acts and parts of acts.

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

*The People of the State of Michigan enact:*

**ARTICLE 1**

**555.501 Short title.**

Sec. 101. This act shall be known and may be cited as the “uniform principal and income act”.

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

**555.502 Definitions.**

Sec. 102. As used in this act:

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

(b) “Beneficiary” means, in the case of a decedent's estate, an heir, legatee, or devisee and, in the case of a trust, an income beneficiary or remainder beneficiary.

(c) “Fiduciary” means a personal representative or trustee. Fiduciary includes an executor, administrator, successor personal representative, special personal representative, and a person performing substantially the same function as 1 or more of them.

(d) “Income” means money or property that a fiduciary receives as current return from a principal asset. Income includes a portion of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in article 4.

(e) “Income beneficiary” means a person to whom net income of a trust is or may be payable.

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

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

(h) “Net income” means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under this act to or from income during the period.

(i) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, or joint venture; governmental subdivision, agency, or instrumentality; public corporation; or another legal or commercial entity.

(j) “Principal” means property held in trust for distribution to a remainder beneficiary when the trust terminates.

(k) “Remainder beneficiary” means a person entitled to receive principal when an income interest ends.

(l) “Terms of a trust” means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.

(m) “Trustee” includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

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

**555.503 Duties of fiduciary; allocation of receipts and disbursements to or between principal and income; discretionary power; impartiality.**

Sec. 103. (1) In allocating receipts and disbursements to or between principal and income, and with respect to any matter found within the scope of articles 2 and 3, a fiduciary shall do all of the following:

(a) Administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this act.



(b) Administer a trust or estate in accordance with this act if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration.

(c) Add a receipt or charge a disbursement to principal to the extent that the terms of the trust and this act do not provide a rule for allocating the receipt or disbursement to or between principal and income.

(2) A fiduciary may administer a trust or estate by the exercise of a discretionary power of administration given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted under this act.

(3) In exercising the power to adjust under section 104 or a discretionary power of administration regarding a matter within the scope of this act, whether granted by the terms of a trust or a will, or as provided in this act, a fiduciary shall administer a trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an intention that the fiduciary shall or may favor 1 or more of the beneficiaries. A determination in accordance with this act is presumed to be fair and reasonable to all of the beneficiaries.

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

#### **555.505 Exercise of discretionary power by fiduciary; limitation on court to order; decision; petition; burden of proof.**

Sec. 105. (1) The court may not order a fiduciary to change a decision to exercise or not to exercise a discretionary power conferred by this act unless it determines that the decision was an abuse of the fiduciary's discretion. A fiduciary's decision is not an abuse of discretion merely because the court would have exercised the power in a different manner or would not have exercised the power.

(2) The decisions to which subsection (1) applies include:

(a) A decision under section 104(1) as to whether and to what extent an amount should be transferred from principal to income or from income to principal.

(b) A decision regarding the factors that are relevant to the trust or estate and its beneficiaries, the extent to which the factors are relevant, and the weight, if any, to be given to those factors, in deciding whether and to what extent to exercise the discretionary power conferred by section 104(1).

(c) A decision under section 104(3) to adopt a policy applicable to individual trusts or estates or to classes of trusts or estates.

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

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

(b) To the extent that the abuse of discretion has resulted in a distribution to a beneficiary which is too large, the court shall place the beneficiaries, the trust or estate, or both, in whole or in part, in their appropriate positions by ordering the fiduciary to withhold an amount from 1 or more future distributions to the beneficiary who received the distribution that was too large or ordering that beneficiary to return some or all of the distribution to the trust or estate.

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

(4) Upon petition by the fiduciary, the court having jurisdiction over a trust or estate shall determine whether a proposed exercise or nonexercise by the fiduciary of a discretionary power conferred by this act will result in an abuse of the fiduciary's discretion. If the petition describes the proposed exercise or nonexercise of the power and contains sufficient information to inform the beneficiaries of the reasons for the proposal, the facts upon which the fiduciary relies, and an explanation of how the income and remainder beneficiaries will be affected by the proposed exercise or nonexercise of the power, a beneficiary who challenges the proposed exercise or nonexercise has the burden of establishing that it will result in an abuse of discretion.

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

## **ARTICLE 2**

#### **555.601 Death or termination of trust; duties of fiduciary.**

Sec. 201. After the decedent dies, in the case of an estate, or after an income interest in a trust ends, all of the following apply:

(a) A fiduciary of an estate or of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under the provisions of articles 3 through 5 that apply to trustees and as provided in subdivision (e). The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.

(b) A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the provisions of articles 3 through 5 that apply to trustees and by doing all the following:

(i) Including in net income all income from property used to discharge liabilities.

(ii) Paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants, and

fiduciaries; court costs and other expenses of administration; and interest on death taxes, but the fiduciary may pay those expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction only to the extent that the payment of those expenses from income will not cause the reduction or loss of the deduction.

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

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

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

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

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

#### **555.602 Beneficiary's share of net income; determination; maintenance of records by fiduciary.**

Sec. 202. (1) Each beneficiary described in section 201(d) is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. For purposes of this section, the fiduciary may estimate the value of assets for which market values are not readily available. If a fiduciary makes more than 1 distribution of assets to beneficiaries to whom this section applies, each beneficiary, including a beneficiary who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

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

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

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

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

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

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

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

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

## ARTICLE 3

### **555.701 Income interest; beginning and ending date; conditions.**

Sec. 301. (1) An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

(2) An asset becomes subject to a trust on 1 of the following:

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

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

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

(3) An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under subsection (4), even if there is an intervening period of administration to wind up the preceding income interest.

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

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

### **555.702 Allocation of income receipt or disbursement; occurrence of due date; accrual.**

Sec. 302. (1) Except as provided in section 201(a), a trustee shall allocate an income receipt or disbursement to principal if its due date occurs before the decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

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

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

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

### **555.703 Undistributed income.**

Sec. 303. (1) As used in this section, "undistributed income" means net income received before the date on which an income interest ends. Undistributed income does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.

(2) Except as otherwise provided in this subsection, when a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust. If the beneficiary has an unqualified power to revoke more than 5% of the trust immediately before the income interest ends, the undistributed income from the portion of the trust that may be revoked shall be added to principal.

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

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

## ARTICLE 4

### **555.801 "Entity" defined; allocation to income money received; allocation of receipts to**

**principal; money received in partial liquidation; limitation; statement by entity on source or character of distribution.**

Sec. 401. (1) As used in this section, "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or other organization in which a trustee has an interest, other than a trust or estate to which section 402 applies, a business or other activity to which section 403 applies, or an asset-backed security to which section 415 applies.

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

(3) A trustee shall allocate the following receipts from an entity to principal:

(a) Property other than money.

(b) Money received in 1 distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity.

(c) Money received in total liquidation of the entity, or in partial liquidation of the entity as prescribed by subsections (4) and (5).

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

(4) Money is received in partial liquidation under either of the following circumstances:

(a) To the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation.

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

(5) Money is not received in partial liquidation, nor may it be taken into account under subsection (4)(b), to the extent that it does not exceed the amount of income tax that a trustee or beneficiary must pay on taxable income of the entity that distributes the money.

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

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

**555.802 Income; principal; allocation of amounts received as distributions from trust or purchased interest.**

Sec. 402. A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest, and shall allocate to principal an amount received as a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, section 401 or 415 applies to a receipt from the trust.

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

**555.803 Separate accounting for business or other activity.**

Sec. 403. (1) If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

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

(3) A business or other activity for which a trustee may maintain separate accounting records include all of the following:

(a) A retail, manufacturing, service, and other traditional business activity.

(b) Farming.

(c) Raising and selling livestock and other animals.

(d) Management of rental property.



- (e) Extraction of minerals and other natural resources.
- (f) A timber operation.
- (g) An activity to which section 414 applies.

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

#### **555.804 Principal; allocations.**

Sec. 404. A trustee shall allocate to principal all of the following:

- (a) To the extent not allocated to income under this act, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest, or a payer under a contract naming the trust or its trustee as beneficiary.
- (b) Money or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit, subject to this article.
- (c) Amounts recovered from third parties to reimburse the trust because of disbursements described in section 502(1)(g) or for other reasons to the extent not based on the loss of income.
- (d) Proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income.
- (e) Net income received in an accounting period during which there is no beneficiary to whom a trustee may or must distribute income.
- (f) Other receipts as provided in sections 408 to 415 of this article.

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

#### **555.805 Receipts from rental property.**

Sec. 405. To the extent that a trustee accounts for receipts from rental property pursuant to this section, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, shall be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

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

#### **555.806 Interest received; allocation to income; proceeds of sale; allocation to principal.**

Sec. 406. (1) An amount received as interest, whether determined at a fixed, variable, or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, shall be allocated to income without any provision for amortization of premium.

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

(3) This section does not apply to an obligation to which section 409, 410, 411, 412, 414, or 415 applies.

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

#### **555.807 Life insurance proceeds; other contracts; allocations.**

Sec. 407. (1) Except as otherwise provided in subsection (2), a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of, or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income and to principal if the premiums are paid from principal.

(2) A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income, or, subject to section 403, loss of profits from a business.

(3) This section does not apply to a payment to which section 409 applies.

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

#### **555.808 Insubstantial allocation.**

Sec. 408. If a trustee determines that an allocation between principal and income required by section 409, 410, 411, 412, or 415 is insubstantial, the trustee may allocate the entire amount to principal unless 1 or more of the circumstances described in section 104(4) apply to the allocation. This power may be exercised by a

confiduciary in the circumstances described in section 104(5) and may be released for the reasons and in the manner described in section 104(6). An allocation is presumed to be insubstantial if 1 or more of the following apply:

(a) The amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than 10%.

(b) The value of the asset producing the receipt for which the allocation would be made is less than 10% of the total value of the trust's assets at the beginning of the accounting period.

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

#### **555.809 Definitions; payment allocation.**

Sec. 409. (1) As used in this section:

(a) "Payment" means a payment that a trustee may receive over a fixed number of years or during the life of 1 or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer. For purposes of subsections (4) to (7), payment also includes any payment from any separate fund, regardless of the reason for the payment.

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

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

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

(4) Except as otherwise provided in subsection (5), subsections (6) and (7) apply, and subsections (2) and (3) do not apply, in determining the allocation of a payment made from a separate fund to either of the following:

(a) A trust to which an election to qualify for a marital deduction under section 2056(b)(7) of the internal revenue code of 1986, 26 USC 2056, has been made.

(b) A trust that qualifies for the marital deduction under section 2056(b)(5) of the internal revenue code of 1986, 26 USC 2056.

(5) Subsections (4), (6), and (7) do not apply if and to the extent that the series of payments would, without the application of subsection (4), qualify for the marital deduction under section 2056(b)(7)(C) of the internal revenue code of 1986, 26 USC 2056.

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

(7) If a trustee cannot determine the internal income of a separate fund but can determine the value of the separate fund, the internal income of the separate fund is deemed to equal 3.5% of the fund's value, according to the most recent statement of value preceding the beginning of the accounting period. If the trustee can determine neither the internal income of the separate fund nor the fund's value, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments, as determined under section 7520 of the internal revenue code of 1986, 26 USC 7520, for the month preceding the accounting period for which the computation is made.

(8) This section does not apply to payments to which section 410 applies.

**History:** 2004, Act 159, Eff. Sept. 1, 2004;—Am. 2012, Act 302, Eff. Mar. 28, 2013.

#### **555.810 Liquidating asset; allocation of receipts.**

Sec. 410. (1) As used in this section, "liquidating asset" means an asset whose value will diminish or



terminate because the asset is expected to produce receipts for a period of limited duration. Liquidating asset includes a leasehold, patent, copyright, royalty right, and right to receive payments during a period of more than 1 year under an arrangement that does not provide for the payment of interest on the unpaid balance. Liquidating asset does not include a payment subject to section 409, natural resources subject to section 411, timber subject to section 412, an activity subject to section 414, an asset subject to section 415, or an asset for which the trustee establishes a reserve for depreciation under section 503.

(2) A trustee shall allocate to income 10% of the receipts from a liquidating asset and the balance to principal.

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

#### **555.811 Receipts from minerals, water, or other natural resources; allocations.**

Sec. 411. (1) Except as provided in subsection (4), to the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them as follows:

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

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

(c) If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, 90% must be allocated to principal and the balance to income.

(d) If an amount is received from a working interest or any other interest not provided for in subdivision (a), (b), or (c), 90% of the net amount received must be allocated to principal and the balance to income.

(2) Except as provided in subsection (4), a trustee shall allocate to income an amount received on account of an interest in water that is renewable. If the interest in water is not renewable, the trustee shall allocate 90% of the amount to principal and the balance to income.

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

(4) If a trust owns an interest in minerals, water, or other natural resources on the effective date of this act, the trustee may allocate receipts from the interest as provided in this act or in the manner used by the trustee before the effective date of this act. If the trust acquires an interest in minerals, water, or other natural resources after the effective date of this act, the trustee shall allocate receipts from the interest as provided in this act.

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

#### **555.812 Net receipts from sale of timber; allocations.**

Sec. 412. (1) Except as provided in subsection (4), to the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts as follows:

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

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

(c) To or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying the rules in subdivisions (a) and (b).

(d) To principal to the extent that advance payments, bonuses, and other payments are not allocated pursuant to subdivision (a), (b), or (c).

(2) In determining net receipts to be allocated pursuant to subsection (1), a trustee may deduct and transfer to principal a reasonable amount for depletion.

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

(4) If a trust owns an interest in timberland on the effective date of this act, the trustee may allocate net receipts from the sale of timber and related products as provided in this act or in the manner used by the trustee before the effective date of this act. If the trust acquires an interest in timberland after the effective date of this act, the trustee shall allocate net receipts from the sale of timber and related products as provided in this act.

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

### **555.813 Marital deduction; insufficient income from or use of trust assets; actions to be taken by trustee.**

Sec. 413. (1) If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the spouse with sufficient income from or use of the trust assets, and if the amounts that the trustee transfers from principal to income under section 104 and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee to make property productive of income, convert property within a reasonable time, or exercise the power conferred by section 104(1). The trustee may decide which action or combination of actions to take.

(2) In cases not governed by subsection (1), proceeds from the sale or other disposition of an asset are principal without regard to the amount of income the asset produces during any accounting period.

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

### **555.814 Derivative transactions; gain or loss realized from exercise of option; allocations.**

Sec. 414. (1) As used in this section, “derivative” means a contract or financial instrument or a combination of contracts and financial instruments that gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.

(2) To the extent that a trustee accounts for transactions in derivatives under this section, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

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

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

### **555.815 Asset-backed security; allocation of payments.**

Sec. 415. (1) As used in this section, “asset-backed security” means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. Asset-backed security includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. Asset-backed security does not include an asset to which section 401 or 409 applies.

(2) If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets of an asset-backed security, the trustee shall allocate to income the portion of the payment that the payer identifies as being from interest or other current return and shall allocate the balance of the payment to principal.

(3) If a trust receives 1 or more payments in exchange for the trust's entire interest in an asset-backed security in 1 accounting period, the trustee shall allocate the payments to principal. If a payment is 1 of a series of payments that will result in the liquidation of the trust's interest in the security over more than 1 accounting period, the trustee shall allocate 10% of the payment to income and the balance to principal.

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

## **ARTICLE 5**

### **555.901 Income disbursements.**

Sec. 501. A trustee shall make the following disbursements from income to the extent that they are not disbursements to which section 201(b)(ii) or (iii) applies:

(a) One-half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee.

(b) One-half of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests.

(c) All of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a proceeding or other matter that concerns primarily the income interest.

(d) Recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

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

#### **555.902 Principal disbursements.**

Sec. 502. (1) A trustee shall make the following disbursements from principal:

(a) The remaining 1/2 of the disbursements described in section 501(a) and (b).  
(b) All of the trustee's compensation calculated on principal as a fee for acceptance, distribution, or termination, and disbursements made to prepare property for sale.

(c) Payments on the principal of a trust debt.

(d) Expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property.

(e) Premiums paid on a policy of insurance not described in section 501(d) of which the trust is the owner and beneficiary.

(f) Estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust.

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

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

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

#### **555.903 Depreciation; amount transferred to principal.**

Sec. 503. (1) As used in this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset having a useful life of more than 1 year.

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

(a) An amount for that portion of real property used or available for use by a beneficiary as a residence or an amount for tangible personal property held or made available for the personal use or enjoyment of a beneficiary.

(b) An amount during the administration of a decedent's estate.

(c) An amount under this section, if the trustee is accounting under section 403 for the business or other activity in which the asset is used.

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

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

#### **555.904 Principal disbursement; transfer of amount to provide reserve.**

Sec. 504. (1) If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in 1 or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

(2) Principal disbursements to which subsection (1) applies include the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:

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

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

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

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

(e) Disbursements described in section 502(1)(g).

(3) If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in subsection (1).

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

#### **555.905 Tax payments.**

Sec. 505. (1) A tax required to be paid by a trustee based on receipts allocated to income shall be paid from income.

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

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

(a) From income to the extent that receipts from the entity are allocated only to income.

(b) From principal to the extent that receipts from the entity are allocated only to principal.

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

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

(4) After applying subsections (1) to (3), the trustee shall adjust income or principal receipts to the extent that the trust's taxes are reduced because the trust receives a deduction for payments made to a beneficiary.

**History:** 2004, Act 159, Eff. Sept. 1, 2004;—Am. 2012, Act 302, Eff. Mar. 28, 2013.

#### **555.906 Income beneficiaries and remainder benefits; adjustments between principal and income.**

Sec. 506. (1) A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries that arise from 1 or more of the following:

(a) Elections and decisions, other than those described in subsection (2), that the fiduciary makes from time to time regarding tax matters.

(b) An income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust.

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

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

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

### **ARTICLE 6**

#### **555.1001 Application and construction of act.**

Sec. 601. In applying and construing this act, consideration shall be given to the need to promote uniformity of the law with respect to the subject matter of this act among states that enact it.

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

#### **555.1002 Severability.**

Sec. 602. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

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

#### **555.1003 Repeal of MCL 555.51 to 555.68.**

Sec. 603. The revised uniform principal and income act, 1965 PA 340, MCL 555.51 to 555.68, is repealed.

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

#### **555.1004 Effective date.**

Sec. 604. This act takes effect September 1, 2004.

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

**555.1005 Applicability to trust or estate on effective date of act.**

Sec. 605. This act applies to each trust or decedent's estate existing on the effective date of this act except as otherwise expressly provided in the will or terms of the trust or in this act.

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

**555.1006 Applicability of MCL 555.409 to certain trusts; dates.**

Sec. 606. Section 409 applies to a trust described in section 409(4) on and after the following dates:

(a) If the trust is not funded as of the effective date of the amendatory act that added this section, the date of the decedent's death.

(b) If the trust is initially funded beginning January 1 of the calendar year in which the amendatory act that added this section takes effect, the date of the decedent's death.

(c) If the trust is not described in subdivision (a) or (b), January 1 of the calendar year in which the amendatory act that added this section takes effect.

**History:** Add. 2012, Act 302, Eff. Mar. 28, 2013.