

As Reported by the House Financial Institutions Committee

124th General Assembly

Regular Session

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Sub. H. B. No. 522

**REPRESENTATIVES Willamowski, Seitz, Reidelbach, Salerno, Schmidt,
Setzer**

A B I L L

To amend sections 1340.031, 1340.35, and 2109.68, to 1
enact sections 1340.40 to 1340.42, 1340.46, 2
1340.47, 1340.51 to 1340.53, 1340.57 to 1340.59, 3
1340.63 to 1340.66, 1340.70 to 1340.77, 1340.81 to 4
1340.86, 1340.90, and 1340.91; to amend, for the 5
purpose of adopting a new section number as 6
indicated in the parentheses, section 1340.031 7
(1339.69); and to repeal sections 1340.01, 1340.02, 8
1340.03, 1340.04, 1340.05, 1340.06, 1340.07, 9
1340.08, 1340.09, 1340.10, 1340.11, 1340.12, 10
1340.13, 2109.66, and 2109.67 of the Revised Code 11
to revise Fiduciary Law by adopting the Uniform 12
Principal and Income Act (1997) regarding the 13
apportionment and distribution of income to trust 14
beneficiaries and regarding a fiduciary's 15
allocation of receipts and disbursements to or 16
between principal and income, and by specifying the 17
extent of a trustee's liability with respect to 18
authorized adjustments between principal and 19
income. 20

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 1340.031, 1340.35, and 2109.68 be 21
amended; section 1340.031 (1339.69), for the purpose of adopting a 22
new section number as indicated in the parentheses be amended; and 23
sections 1340.40, 1340.41, 1340.42, 1340.46, 1340.47, 1340.51, 24
1340.52, 1340.53, 1340.57, 1340.58, 1340.59, 1340.63, 1340.64, 25
1340.65, 1340.66, 1340.70, 1340.71, 1340.72, 1340.73, 1340.74, 26
1340.75, 1340.76, 1340.77, 1340.81, 1340.82, 1340.83, 1340.84, 27
1340.85, 1340.86, 1340.90, and 1340.91 of the Revised Code be 28
enacted to read as follows: 29

~~Sec. 1340.031~~ **1339.69.** (A) For purposes of this section, both 30
of the following apply: 31

(1) "Qualified beneficiary" means a beneficiary who is 32
entitled or eligible to receive a distribution of income or 33
principal whether presently or at some future time that is 34
predicated upon the happening of an event that is certain. An 35
event that is certain includes, but is not limited to, the 36
termination of an intervening life estate. If a trust is subject 37
to amendment, appointment, or revocation by the grantor, then only 38
the grantor shall be deemed to be a qualified beneficiary. 39

(2) "Legal representative" includes, but is not limited to, a 40
parent as a natural guardian of a minor child under section 41
2111.08 of the Revised Code, an attorney-at-law, a guardian 42
appointed pursuant to court order, including a guardian of the 43
person or a guardian of the estate, or a guardian ad litem. 44

(B)(1) Not more than once every six months, a qualified 45
beneficiary or, if a qualified beneficiary is under a legal 46
disability, a legal representative of the qualified beneficiary 47
may request in writing that an inter vivos trustee furnish the 48
qualified beneficiary or legal representative a report of the 49
management of the inter vivos trust as provided in this section. 50

(2) Within thirty days after receiving the written request 51
for a report of the management of the inter vivos trust, the inter 52
vivos trustee shall furnish the qualified beneficiary or legal 53
representative that made the request a report that is current to 54
within five months prior to the date of the request and that shows 55
an inventory of the trust property and the receipts credited and 56
expenditures charged to income or principal with respect to the 57
inter vivos trust for the two years prior to the preparation of 58
the report. 59

(3) If the inter vivos trustee does not comply with the 60
request for a report under this section, the qualified beneficiary 61
or legal representative that made the request may file an 62
appropriate action in a court of competent jurisdiction to compel 63
the inter vivos trustee to furnish the report. 64

~~(B)~~(C) A current report furnished by an inter vivos trustee 65
under this section or during the usual course of business has 66
binding legal effect regarding matters described or disclosed in 67
the report on the qualified beneficiary who received the report, 68
on the legal representative who received the report on behalf of 69
the qualified beneficiary who is under legal disability, and on 70
the heirs and assigns of the qualified beneficiary who received 71
the report unless, notwithstanding section 2305.22 of the Revised 72
Code, the qualified beneficiary, the legal representative of the 73
qualified beneficiary, or any of the heirs or assigns of the 74
qualified beneficiary institutes an action regarding matters 75
described or disclosed in the report against the inter vivos 76
trustee within two years from the date the report is furnished to 77
the qualified beneficiary or legal representative of the qualified 78
beneficiary. 79

~~(C)~~(D) No provision in this section eliminates any other 80
rights or causes of action that a qualified beneficiary of an 81
inter vivos trust, a legal representative of a qualified 82

beneficiary of an inter vivos trust, or any of the heirs or 83
assigns of a qualified beneficiary of an inter vivos trust may 84
have against the inter vivos trustee under any other section of 85
the Revised Code. 86

Sec. 1340.35. Nothing in ~~section 2109.67,~~ sections ~~1340.01~~ 87
1340.40 to ~~1340.13~~ 1340.91, or any other section of the Revised 88
Code limits or restricts the definition of income in division (A) 89
of section 1340.32 of the Revised Code or limits or restricts a 90
governing board of an institution from requesting, or a trustee 91
from making, distributions from an institutional trust fund in 92
accordance with sections 1340.31 to 1340.37 of the Revised Code. 93

Sec. 1340.40. As used in sections 1340.40 to 1340.91 of the 94
Revised Code: 95

(A) "Accounting period" means a calendar year unless another 96
twelve-month period is selected by a fiduciary. "Accounting 97
period" includes a portion of a calendar year or other 98
twelve-month period that begins when an income interest begins or 99
ends when an income interest ends. 100

(B) "Beneficiary" includes, in the case of a decedent's 101
estate, an heir, legatee, and devisee and, in the case of a trust, 102
an income beneficiary and a remainder beneficiary. 103

(C) "Fiduciary" means a personal representative or a trustee. 104
The term includes an executor, administrator, successor personal 105
representative, special administrator, and a person performing 106
substantially the same function. 107

(D) "Income" means money or property that a fiduciary 108
receives as current return from a principal asset. "Income" 109
includes a portion of receipts from a sale, exchange, or 110
liquidation of a principal asset, to the extent provided in 111
sections 1340.57 to 1340.77 of the Revised Code. 112

(E) "Income beneficiary" means a person to whom net income of a trust is or may be payable. 113
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(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 or authorize it to be distributed in the trustee's discretion. 115
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(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. 119
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(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 sections 1340.40 to 1340.91 of the Revised Code to or from income during the period. 122
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(I) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity. 127
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(J) "Principal" means property held in trust for distribution to a remainder beneficiary when the trust terminates. 132
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(K) "Remainder beneficiary" means a person entitled to receive principal when an income interest ends. 134
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(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. 136
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(M) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court. 140
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Sec. 1340.41. (A) In allocating receipts and disbursements to 142
or between principal and income, and with respect to any matter 143
within the scope of sections 1340.46 to 1340.53 of the Revised 144
Code, all of the following apply: 145

(1) A fiduciary shall administer a trust or estate in 146
accordance with the terms of the trust or the will, even if there 147
is a different provision in sections 1340.40 to 1340.91 of the 148
Revised Code. 149

(2) A fiduciary may administer a trust or estate by the 150
exercise of a discretionary power of administration given to the 151
fiduciary by the terms of the trust or the will, even if the 152
exercise of the power produces a result different from a result 153
required or permitted by any provision of sections 1340.40 to 154
1340.91 of the Revised Code. 155

(3) A fiduciary shall administer a trust or estate in 156
accordance with sections 1340.40 to 1340.91 of the Revised Code if 157
the terms of the trust or the will do not contain a different 158
provision or do not give the fiduciary a discretionary power of 159
administration. 160

(4) A fiduciary shall add a receipt, or charge a 161
disbursement, to principal to the extent that the terms of the 162
trust and any provision of sections 1340.40 to 1340.91 of the 163
Revised Code do not provide for allocating the receipt or 164
disbursement to or between principal and income. 165

(B) In exercising the power to adjust under division (A) of 166
section 1340.42 of the Revised Code or a discretionary power of 167
administration regarding a matter within the scope of sections 168
1340.40 to 1340.91 of the Revised Code, whether granted by the 169
terms of a trust, a will, or a provision of any such section, a 170
fiduciary shall administer a trust or estate impartially, based on 171
what is fair and reasonable to all of the beneficiaries, except to 172

the extent that the terms of the trust or the will clearly 173
manifest an intention that the fiduciary shall or may favor one or 174
more of the beneficiaries. A determination in accordance with 175
sections 1340.40 to 1340.91 of the Revised Code is presumed to be 176
fair and reasonable to all of the beneficiaries. 177

Sec. 1340.42. (A) A trustee may adjust between principal and 178
income to the extent the trustee considers necessary if the 179
trustee invests and manages the trust assets as a prudent 180
investor, the terms of the trust describe the amount that may or 181
must be distributed to a beneficiary by referring to the trust's 182
income, and the trustee determines, after applying division (A) of 183
section 1340.41 of the Revised Code, that the trustee is unable to 184
comply with division (B) of that section. 185

(B) In deciding whether and to what extent to exercise the 186
power conferred by division (A) of this section, a trustee shall 187
consider all factors relevant to the trust and its beneficiaries, 188
including all of the following factors to the extent they are 189
relevant: 190

(1) The nature, purpose, and expected duration of the trust; 191

(2) The intent of the settlor; 192

(3) The identity and circumstances of the beneficiaries; 193

(4) The needs for liquidity, regularity of income, and 194
preservation and appreciation of capital; 195

(5) The assets held in the trust; the extent to which they 196
consist of financial assets, interests in closely held 197
enterprises, tangible and intangible personal property, or real 198
property; the extent to which an asset is used by a beneficiary; 199
and whether an asset was purchased by the trustee or received from 200
the settlor; 201

(6) The net amount allocated to income under sections 202

1340.40, 1340.41, and 1340.46 to 1340.91 of the Revised Code; and 203
the increase or decrease in the value of the principal assets, 204
which the trustee may estimate as to assets for which market 205
values are not readily available; 206

(7) Whether and to what extent the terms of the trust give 207
the trustee the power to invade principal or accumulate income or 208
prohibit the trustee from invading principal or accumulating 209
income, and the extent to which the trustee has exercised a power 210
from time to time to invade principal or accumulate income; 211

(8) The actual and anticipated effect of economic conditions 212
on principal and income and effects of inflation and deflation; 213

(9) The anticipated tax consequences of an adjustment. 214

(C) A trustee shall not make an adjustment if any of the 215
following applies: 216

(1) The adjustment diminishes the income interest in a trust 217
that requires all of the income to be paid at least annually to a 218
spouse and for which an estate tax or gift tax marital deduction 219
would be allowed, in whole or in part, if the trustee did not have 220
the power to make the adjustment. 221

(2) The adjustment reduces the actuarial value of the income 222
interest in a trust to which a person transfers property with the 223
intent to qualify for a gift tax exclusion. 224

(3) The adjustment changes the amount payable to a 225
beneficiary as a fixed annuity or a fixed fraction of the value of 226
the trust assets. 227

(4) The adjustment is from any amount that is permanently set 228
aside for charitable purposes under a will or the terms of a trust 229
unless both income and principal are so set aside. 230

(5) If possessing or exercising the power to make the 231
adjustment causes an individual to be treated as the owner of all 232

or part of the trust for income tax purposes, and the individual 233
would not be treated as the owner if the trustee did not possess 234
the power to make the adjustment; 235

(6) If possessing or exercising the power to make the 236
adjustment causes all or part of the trust assets to be included 237
for estate tax purposes in the estate of an individual who has the 238
power to remove a trustee or appoint a trustee, or both, and the 239
assets would not be included in the estate of the individual if 240
the trustee did not possess the power to make the adjustment; 241

(7) If the trustee is a beneficiary of the trust; 242

(8) If the trustee is not a beneficiary, but the adjustment 243
would benefit the trustee directly or indirectly. 244

(D) If division (C)(5), (6), (7), or (8) of this section 245
applies to a trustee and there is more than one trustee, a 246
cotrustee to whom the provision does not apply may make the 247
adjustment unless the exercise of the power by the remaining 248
trustee or trustees is not permitted by the terms of the trust. 249

(E) A trustee may release the entire power conferred by 250
division (A) of this section or may release only the power to 251
adjust from income to principal or the power to adjust from 252
principal to income if the trustee is uncertain about whether 253
possessing or exercising the power will cause a result described 254
in division (C)(1), (2), (3), (4), (5), (6), or (8) of this 255
section or if the trustee determines that possessing or exercising 256
the power will or may deprive the trust of a tax benefit or impose 257
a tax burden not described in division (C) of this section. The 258
release may be permanent or for a specified period, including a 259
period measured by the life of an individual. 260

(F) Terms of a trust that limit the power of a trustee to 261
make an adjustment between principal and income do not affect the 262
application of this section unless it is clear from the terms of 263

the trust that the terms are intended to deny the trustee the 264
power of adjustment conferred by division (A) of this section. 265

(G) The liability of a trustee relative to the exercise of 266
adjustment authority conferred by divisions (A) to (F) of this 267
section shall be limited in the following manner: 268

(1) Unless a court determines that a trustee has acted in bad 269
faith, no trustee shall be held liable for damages for choosing 270
not to make an adjustment. 271

(2) Unless a court determines that a trustee has acted in bad 272
faith with respect to an adjustment, the sole remedy to be ordered 273
by a court shall be a prospective correction of the adjustment. 274
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(3) For purposes of this section, and subject to division (C) 276
of this section, from time to time a trustee may make a 277
safe-harbor adjustment to increase net trust accounting income up 278
to and including an amount equal to four per cent of the trust's 279
fair market value determined as of the first business day of the 280
current year. If a trustee determines to make this safe-harbor 281
adjustment, the propriety of this adjustment shall be conclusively 282
presumed. Nothing in division (G)(3) of this section prohibits any 283
other type of adjustment authorized under any provision of this 284
section. 285

Sec. 1340.46. After a decedent dies, in the case of an 286
estate, or after an income interest in a trust ends, all of the 287
following apply: 288

(A) The fiduciary of the estate or of the terminating income 289
interest shall determine, under the provisions of sections 1340.51 290
to 1340.86 of the Revised Code that apply to trustees and under 291
division (E) of this section, the amount of net income and net 292
principal receipts received from property specifically given to a 293

beneficiary. The fiduciary shall distribute the net income and net principal receipts to the beneficiary that is to receive the specific property. 294
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(B) A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the provisions of sections 1340.51 to 1340.86 of the Revised Code that apply to trustees and by doing all of the following: 297
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(1) Including in net income all income from property used to discharge liabilities; 301
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(2) 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. However, 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. 303
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(3) 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. 311
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(C) A fiduciary shall distribute to a beneficiary that 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 division (B) of this section or from principal to the extent that net income is insufficient. If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends and no interest or other 318
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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.

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(D) A fiduciary shall distribute the net income remaining after distributions required by division (C) of this section, in the manner described in section 1340.47 of the Revised Code, to all other beneficiaries, including a beneficiary that 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.

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(E) A fiduciary shall not reduce principal or income receipts from property described in division (A) of this section because of a payment described in section 1340.81 or 1340.82 of the Revised Code 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.

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Sec. 1340.47. (A) Each beneficiary described in division (D) of section 1340.46 of the Revised Code 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

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distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one that 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 the decedent's death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

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(B) In determining a beneficiary's share of net income for the purpose of this section, all of the following apply:

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

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

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

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

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(C) If a fiduciary does not distribute all of the collected but undistributed net income described in divisions (A) and (B) of this section to each person as of a distribution date, the fiduciary shall maintain appropriate records showing the interest

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(D) To the extent that a fiduciary considers it appropriate, 388
the fiduciary may apply the provisions of divisions (A) to (C) of 389
this section to any net gain or loss, realized after the date of 390
the decedent's death or an income interest termination or earlier 391
distribution date, from the disposition of a principal asset to 392
which such provisions apply. 393

Sec. 1340.51. (A) An income beneficiary is entitled to net 394
income from the date on which the income interest begins. An 395
income interest begins on the date specified in the terms of the 396
trust or, if no date is specified, on the date an asset becomes 397
subject to a trust or successive income interest. 398

(B) An asset becomes subject to a trust on any of the 399
following dates: 400

(1) The date it is transferred to the trust, in the case of 401
an asset that is transferred to a trust during the transferor's 402
life; 403

(2) The date of a testator's death, in the case of an asset 404
that becomes subject to a trust by reason of a will, even if there 405
is an intervening period of administration of the testator's 406
estate; 407

(3) The date of an individual's death, in the case of an 408
asset that is transferred to a fiduciary by a third party because 409
of the individual's death. 410

(C) An asset becomes subject to a successive income interest 411
on the day after the preceding income interest ends, as determined 412
under division (D) of this section, even if there is an 413
intervening period of administration to wind up the preceding 414
income interest. 415

(D) An income interest ends on the day before an income 416

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.

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Sec. 1340.52. (A) A trustee shall allocate to principal an
income receipt or disbursement other than one to which division
(A) of section 1340.46 of the Revised Code applies, if its due
date occurs before a decedent dies in the case of an estate or
before an income interest begins in the case of a trust or
successive income interest.

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(B) A trustee shall allocate an income receipt or
disbursement to income if its due date occurs on or after the date
on which a decedent dies or an income interest begins and if 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 a decedent dies or
an income interest begins shall be allocated to principal, and the
balance shall be allocated to income.

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(C) For the purposes of this section, 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.
Distributions to shareholders or other owners from an entity to
which section 1340.57 of the Revised Code applies are deemed to be
due on the date fixed by the entity for determining who is
entitled to receive the distribution or, if no date is fixed, on
the declaration date for the distribution. A due date is periodic
for receipts or disbursements that must be paid at regular
intervals under a lease or an obligation to pay interest or if an
entity customarily makes distributions at regular intervals.

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Sec. 1340.53. (A) As used in this section, "undistributed

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income" means net income received before the date on which an 447
income interest ends. "Undistributed income" excludes an item of 448
income or expense that is due or accrued or net income that has 449
been added or is required to be added to principal under the terms 450
of the trust. 451

(B) When a mandatory income interest ends, the trustee shall 452
pay to a mandatory income beneficiary that survives that date, or 453
the estate of a deceased mandatory income beneficiary whose death 454
causes the interest to end, the beneficiary's share of the 455
undistributed income that is not disposed of under the terms of 456
the trust, unless the beneficiary has an unqualified power to 457
revoke more than five per cent of the trust immediately before the 458
income interest ends. If the beneficiary has such power, the 459
undistributed income from the portion of the trust that may be 460
revoked shall be added to principal. 461

(C) When a trustee's obligation to pay a fixed annuity or a 462
fixed fraction of the value of the trust's assets ends, the 463
trustee shall prorate the final payment if and to the extent 464
required by applicable law to accomplish a purpose of the trust or 465
its settlor relating to income, gift, estate, or other tax 466
requirements. 467

Sec. 1340.57. (A) As used in this section, "entity" means a 468
corporation, partnership, limited liability company, regulated 469
investment company, real estate investment trust, common trust 470
fund, or any other organization in which a trustee has an interest 471
other than a trust or estate to which section 1340.58 of the 472
Revised Code applies, a business or activity to which section 473
1340.59 of the Revised Code applies, or an asset-backed security 474
to which section 1340.77 of the Revised Code applies. 475

(B) Except as otherwise provided in this section, a trustee 476

shall allocate to income money received from an entity. 477

(C) A trustee shall allocate all of the following receipts from an entity to principal: 478
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(1) Property other than money; 480

(2) Money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity; 481
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(3) Money received in total or partial liquidation of the entity; 484
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(4) Money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes. 486
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(D) Money is received in partial liquidation in either of the following circumstances: 490
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(1) To the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; 492
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(2) If the total amount of money and property received in a distribution or series of related distributions is greater than twenty per cent of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt. 495
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(E) Money is not received in partial liquidation, nor shall it be taken into account under division (D)(2) of this section, to the extent that it does not exceed the amount of income tax that a trustee or beneficiary must pay on taxable income of the entity that distributes the money. 500
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(F) A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement 505
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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.

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Sec. 1340.58. 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 1340.57 or 1340.77 of the Revised Code applies to a receipt from the trust.

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Sec. 1340.59. (A) If a trust that 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.

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(B) A trustee that accounts separately for a business or other activity may determine the extent to which its net cash receipts must be retained for working capital, the acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines

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that the amount received is no longer required in the conduct of 538
the business. 539

(C) Activities for which a trustee may maintain separate 540
accounting records under this section include all of the 541
following: 542

(1) Retail, manufacturing, service, and other traditional 543
business activities; 544

(2) Farming; 545

(3) Raising and selling livestock and other animals; 546

(4) Management of rental properties; 547

(5) Extraction of minerals and other natural resources; 548

(6) Timber operations; 549

(7) Activities to which section 1340.76 of the Revised Code 550
applies. 551

Sec. 1340.63. A trustee shall allocate to principal all of 552
the following: 553

(A) To the extent not allocated to income under sections 554
1340.40 to 1340.91 of the Revised Code, assets received from a 555
transferor during the transferor's lifetime, a decedent's estate, 556
a trust with a terminating income interest, or a payer under a 557
contract naming the trust or its trustee as beneficiary; 558

(B) Money or other property received from the sale, exchange, 559
liquidation, or change in form of a principal asset, including 560
realized profit, subject to sections 1340.57 to 1340.77 of the 561
Revised Code; 562

(C) Amounts recovered from third parties to reimburse the 563
trust because of disbursements described in division (A)(7) of 564
section 1340.82 of the Revised Code or for other reasons to the 565

extent not based on the loss of income; 566

(D) Proceeds of property taken by eminent domain, but a 567
separate award made for the loss of income with respect to an 568
accounting period during which a current income beneficiary had a 569
mandatory income interest is income; 570

(E) Net income received in an accounting period during which 571
there is no beneficiary to whom a trustee may or must distribute 572
income; 573

(F) Other receipts as provided in sections 1340.70 to 1340.77 574
of the Revised Code. 575

Sec. 1340.64. To the extent that a trustee accounts for 576
receipts from rental property pursuant to this section, the 577
trustee shall allocate to income an amount received as rent of 578
real or personal property, including an amount received for 579
cancellation or renewal of a lease. An amount received as a 580
refundable deposit, including a security deposit or a deposit that 581
is to be applied as rent for future periods, shall be added to 582
principal and held subject to the terms of the lease and shall not 583
be available for distribution to a beneficiary until the trustee's 584
contractual obligations have been satisfied with respect to that 585
amount. 586

Sec. 1340.65. (A) An amount received as interest, whether 587
determined at a fixed, variable, or floating rate, on an 588
obligation to pay money to the trustee, including an amount 589
received as consideration for prepaying principal, shall be 590
allocated to income without any provision for amortization of 591
premium. 592

(B) A trustee shall allocate to principal an amount received 593
from the sale, redemption, or other disposition of an obligation 594
to pay money to the trustee more than one year after the date it 595

is purchased or acquired by the trustee, including an obligation 596
whose purchase price or value when it is acquired is less than its 597
value at maturity. If the obligation matures within one year after 598
the date it is purchased or acquired by the trustee, an amount 599
received in excess of its purchase price or its value when 600
acquired by the trust shall be allocated to income. 601

(C) This section does not apply to an obligation to which 602
section 1340.71, 1340.72, 1340.73, 1340.74, 1340.76, or 1340.77 of 603
the Revised Code applies. 604

Sec. 1340.66. (A) Except as otherwise provided in division 605
(B) of this section, a trustee shall allocate to principal the 606
proceeds of a life insurance policy or other contract in which the 607
trust or its trustee is named as beneficiary, including a contract 608
that insures the trust or its trustee against loss for damage to, 609
destruction of, or loss of title to a trust asset. The trustee 610
shall allocate dividends on an insurance policy to income if the 611
premiums on the policy are paid from income, and to principal if 612
the premiums are paid from principal. 613

(B) A trustee shall allocate to income proceeds of a contract 614
that insures the trustee against loss of occupancy or other use by 615
an income beneficiary, loss of income, or, subject to section 616
1340.59 of the Revised Code, loss of profits from a business. 617

(C) This section does not apply to a contract to which 618
section 1340.71 of the Revised Code applies. 619
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Sec. 1340.70. If a trustee determines that an allocation 622
between principal and income required by section 1340.71, 1340.72, 623
1340.73, 1340.74, or 1340.77 of the Revised Code is insubstantial, 624
the trustee may allocate the entire amount to principal unless one 625
of the circumstances described in division (C) of section 1340.42 626

of the Revised Code applies to the allocation. This power may be 627
exercised by a cotrustee in the circumstances described in 628
division (D) of that section and may be released for the reasons 629
and in the manner described in division (E) of the section. An 630
allocation is presumed to be insubstantial if either of the 631
following applies: 632

(A) The amount of the allocation would increase or decrease 633
net income in an accounting period, as determined before the 634
allocation, by less than ten per cent. 635

(B) The value of the asset producing the receipt for which 636
the allocation would be made is less than ten per cent of the 637
total value of the trust's assets at the beginning of the 638
accounting period. 639

Sec. 1340.71. (A) As used in this section, "payment" means a 640
payment that a trustee may receive over a fixed number of years or 641
during the life of one or more individuals because of services 642
rendered or property transferred to the payer in exchange for 643
future payments. "Payment" includes a payment made in money or 644
property from the payer's general assets or from a separate fund 645
created by the payer, including a private or commercial annuity, 646
an individual retirement account, or a pension, profit-sharing, 647
stock-bonus, or stock-ownership plan. 648

(B) To the extent that a payment is characterized as interest 649
or a dividend or a payment made in lieu of interest or a dividend, 650
a trustee shall allocate it to income. The trustee shall allocate 651
to principal the balance of the payment and any other payment 652
received in the same accounting period that is not characterized 653
as interest, a dividend, or an equivalent payment. 654

(C) If no part of a payment is characterized as interest, a 655
dividend, or an equivalent payment, and all or part of the payment 656

is required to be made, a trustee shall allocate to income ten per cent 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 division, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

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(D) If, to obtain an estate tax marital deduction for a trust, a trustee must allocate more of a payment to income than is provided for by this section, the trustee shall allocate to income the additional amount necessary to obtain the marital deduction.

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(E) This section does not apply to payments to which section 1340.72 of the Revised Code applies.

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Sec. 1340.72. (A) 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 one year under an arrangement that does not provide for the payment of interest on the unpaid balance. "Liquidating asset" excludes a payment subject to section 1340.71 of the Revised Code, resources subject to section 1340.73 of the Revised Code, timber subject to section 1340.74 of the Revised Code, an activity subject to section 1340.76 of the Revised Code, an asset subject to section 1340.77 of the Revised Code, or any asset for which the trustee establishes a reserve for depreciation under section 1340.83 of the Revised Code.

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(B) A trustee shall allocate to income ten per cent of the receipts from a liquidating asset and the balance to principal.

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Sec. 1340.73. (A) To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate the receipts in accordance with all of the following: 687
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(1) If received as nominal delay rental or nominal annual rent on a lease, a receipt shall be allocated to income. 691
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(2) If received from a production payment, a receipt shall 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 shall be allocated to principal. 693
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(3) If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, ninety per cent shall be allocated to principal and the balance to income. 697
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(4) If an amount is received from a working interest or any other interest not provided for in division (A)(1), (2), or (3) of this section, ninety per cent of the net amount received shall be allocated to principal and the balance to income. 701
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(B) An amount received on account of an interest in water that is renewable shall be allocated to income. If the water is not renewable, ninety per cent of the amount shall be allocated to principal and the balance to income. 705
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(C) This section applies whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust. 709
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(D) If a trust owns an interest in minerals, water, or other natural resources on the effective date of this section, the trustee may allocate receipts from the interest as provided in this section or in the manner used by the trustee before that date. If the trust acquires an interest in minerals, water, or 712
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other natural resources after the effective date of this section, 717
the trustee shall allocate receipts from the interest as provided 718
in this section. 719

Sec. 1340.74. (A) To the extent that a trustee accounts for 720
receipts from the sale of timber and related products pursuant to 721
this section, the trustee shall allocate the net receipts in 722
accordance with all of the following: 723

(1) To income, to the extent that the amount of timber 724
removed from the land does not exceed the rate of growth of the 725
timber during the accounting periods in which a beneficiary has a 726
mandatory income interest; 727

(2) To principal, to the extent that the amount of timber 728
removed from the land exceeds the rate of growth of the timber or 729
the net receipts are from the sale of standing timber; 730

(3) To or between income and principal, if the net receipts 731
are from the lease of timberland or from a contract to cut timber 732
from land owned by a trust, by determining the amount of timber 733
removed from the land under the lease or contract and applying 734
divisions (A)(1) and (2) of this section; 735

(4) To principal, to the extent that advance payments, 736
bonuses, and other payments are not allocated pursuant to division 737
(A)(1), (2), or (3) of this section. 738

(B) In determining net receipts to be allocated pursuant to 739
division (A) of this section, a trustee shall deduct and transfer 740
to principal a reasonable amount for depletion. 741

(C) This section applies whether or not a decedent or 742
transferor was harvesting timber from the property before it 743
became subject to the trust. 744

(D) If a trust owns an interest in timberland on the 745
effective date of this section, the trustee may allocate net 746

receipts from the sale of timber and related products as provided 747
in this section or in the manner used by the trustee before that 748
date. If the trust acquires an interest in timberland after the 749
effective date of this section, the trustee shall allocate net 750
receipts from the sale of timber and related products as provided 751
in this section. 752

Sec. 1340.75. (A) If a marital deduction is allowed for all 753
or part of a trust whose assets consist substantially of property 754
that does not provide the spouse with sufficient income from or 755
use of the trust assets, and if the amounts that the trustee 756
transfers from principal to income under section 1340.42 of the 757
Revised Code and distributes to the spouse from principal pursuant 758
to the terms of the trust are insufficient to provide the spouse 759
with the beneficial enjoyment required to obtain the marital 760
deduction, the spouse may require the trustee to make property 761
productive of income, convert property within a reasonable time, 762
or exercise the power conferred by division (A) of that section. 763
The trustee may decide which action or combination of actions to 764
take. 765

(B) In cases not governed by division (A) of this section, 766
proceeds from the sale or other disposition of an asset shall be 767
principal without regard to the amount of income the asset 768
produces during any accounting period. 769

Sec. 1340.76. (A) As used in this section, "derivative" means 770
a contract or financial instrument or a combination of contracts 771
and financial instruments that gives a trust the right or 772
obligation to participate in some or all changes in the price of a 773
tangible or intangible asset or group of assets, or changes in a 774
rate, an index of prices or rates, or other market indicator for 775
an asset or a group of assets. 776

(B) To the extent that a trustee does not account under 777
section 1340.59 of the Revised Code for transactions in 778
derivatives, the trustee shall allocate to principal receipts from 779
and disbursements made in connection with those transactions. 780

(C) If a trustee grants an option to buy property from the 781
trust, whether or not the trust owns the property when the option 782
is granted, grants an option that permits another person to sell 783
property to the trust, or acquires an option to buy property for 784
the trust or an option to sell an asset owned by the trust, and 785
the trustee or other owner of the asset is required to deliver the 786
asset if the option is exercised, an amount received for granting 787
the option shall be allocated to principal. An amount paid to 788
acquire the option shall be paid from principal. A gain or loss 789
realized upon the exercise of an option, including an option 790
granted to a settlor of the trust for services rendered, shall be 791
allocated to principal. 792

Sec. 1340.77. (A) As used in this section, "asset-backed 793
security" means an asset whose value is based upon the right it 794
gives the owner to receive distributions from the proceeds of 795
financial assets that provide collateral for the security. 796
"Asset-backed security" includes an asset that gives the owner the 797
right to receive from the collateral financial assets only the 798
interest or other current return or only the proceeds other than 799
interest or current return. "Asset-backed security" excludes an 800
asset to which section 1340.57 or 1340.71 of the Revised Code 801
applies. 802

(B) If a trust receives a payment from interest or other 803
current return and from other proceeds of the collateral financial 804
assets, the trustee shall allocate to income the portion of the 805
payment that the payer identifies as being from interest or other 806
current return and shall allocate the balance of the payment to 807

principal. 808

(C) If a trust receives one or more payments in exchange for 809
the trust's entire interest in an asset-backed security in one 810
accounting period, the trustee shall allocate the payments to 811
principal. If a payment is one of a series of payments that will 812
result in the liquidation of the trust's interest in the security 813
over more than one accounting period, the trustee shall allocate 814
ten per cent of the payment to income and the balance to 815
principal. 816

Sec. 1340.81. A trustee shall make all of the following 817
disbursements from income to the extent that they are not 818
disbursements to which division (B)(2) or (3) of section 1340.46 819
of the Revised Code applies: 820

(A) One-half of the regular compensation of the trustee and 821
of any person providing investment advisory or custodial services 822
to the trustee; 823

(B) One-half of all expenses for accountings, judicial 824
proceedings, or other matters that involve both the income and 825
remainder interests; 826

(C) All of the other ordinary expenses incurred in connection 827
with the administration, management, or preservation of trust 828
property and the distribution of income, including interest, 829
ordinary repairs, regularly recurring taxes assessed against 830
principal, and expenses of a proceeding or other matter that 831
concerns primarily the income interest; 832

(D) Recurring premiums on insurance covering the loss of a 833
principal asset or the loss of income from or use of the asset. 834

Sec. 1340.82. (A) A trustee shall make all of the following 835
disbursements from principal: 836

<u>(1) The remaining one-half of the disbursements described in</u>	837
<u>divisions (A) and (B) of section 1340.81 of the Revised Code;</u>	838
<u>(2) All of the trustee's compensation calculated on principal</u>	839
<u>as a fee for acceptance, distribution, or termination, and</u>	840
<u>disbursements made to prepare property for sale;</u>	841
<u>(3) Payments on the principal of a trust debt;</u>	842
<u>(4) Expenses of a proceeding that concerns primarily</u>	843
<u>principal, including a proceeding to construe the trust or to</u>	844
<u>protect the trust or its property;</u>	845
<u>(5) Premiums paid on a policy of insurance not described in</u>	846
<u>division (D) of section 1340.81 of the Revised Code of which the</u>	847
<u>trust is the owner and beneficiary;</u>	848
<u>(6) Estate, inheritance, and other transfer taxes, including</u>	849
<u>penalties, apportioned to the trust;</u>	850
<u>(7) Disbursements related to environmental matters, including</u>	851
<u>reclamation, assessing environmental conditions, remedying and</u>	852
<u>removing environmental contamination, monitoring remedial</u>	853
<u>activities and the release of substances, preventing future</u>	854
<u>releases of substances, collecting amounts from persons liable or</u>	855
<u>potentially liable for the costs of those activities, penalties</u>	856
<u>imposed under environmental laws or regulations and other payments</u>	857
<u>made to comply with those laws or regulations, statutory or common</u>	858
<u>law claims by third parties, and defending claims based on</u>	859
<u>environmental matters.</u>	860
<u>(B) If a principal asset is encumbered with an obligation</u>	861
<u>that requires income from that asset to be paid directly to the</u>	862
<u>creditor, the trustee shall transfer from principal to income an</u>	863
<u>amount equal to the income paid to the creditor in reduction of</u>	864
<u>the principal balance of the obligation.</u>	865
<u>Sec. 1340.83. (A) As used in this section, "depreciation"</u>	866

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 one year.

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

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

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(2) Any amount for depreciation during the administration of a decedent's estate;

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(3) Any amount for depreciation under this section if the trustee is accounting under section 1340.59 of the Revised Code for the business or activity in which the asset is used.

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

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Sec. 1340.84. (A) If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

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

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

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(2) A capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments; 896
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(3) Disbursements made to prepare property for rental, including tenant allowances, leasehold improvements, and broker's commissions; 899
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(4) Periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments; 902
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(5) Disbursements described in division (A)(7) of section 1340.82 of the Revised Code. 905
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(C) If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in division (A) of this section. 907
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Sec. 1340.85. (A) A tax required to be paid by a trustee based on receipts allocated to income shall be paid from income. 912
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(B) 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. 914
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(C) A tax required to be paid by a trustee on the trust's share of an entity's taxable income shall be paid proportionately as follows: 917
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(1) From income, to the extent that receipts from the entity are allocated to income; 920
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(2) From principal, as follows: 922

(a) To the extent that receipts from the entity are allocated to principal; and 923
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(b) To the extent that the trust's share of the entity's taxable income exceeds the total receipts described in divisions (C)(1) and (2)(a) of this section. 925
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(D) For purposes of this section, receipts allocated to principal or income shall be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax. 928
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Sec. 1340.86. (A) A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries that arise from any of the following: 932
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(1) Elections and decisions, other than those described in division (B) of this section, that the fiduciary makes from time to time regarding tax matters; 936
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(2) An income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust; 939
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(3) The ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust, or beneficiary. 942
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(B) If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal are increased and income taxes paid by an estate, trust, or beneficiary are decreased, each estate, trust, or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement shall equal the 946
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increase in the estate tax to the extent that the principal used 955
to pay the increase would have qualified for a marital deduction 956
or charitable contribution deduction but for the payment. The 957
proportionate share of the reimbursement for each estate, trust, 958
or beneficiary whose income taxes are reduced shall be the same as 959
its proportionate share of the total decrease in income tax. An 960
estate or trust shall reimburse principal from income. 961

Sec. 1340.90. (A) Sections 1340.40 to 1340.91 of the Revised 962
Code may be cited as the "uniform principal and income act 963
(1997)." 964

(B) In applying and construing the "uniform principal and 965
income act (1997)", consideration shall be given to the need to 966
promote uniformity of the law with respect to its subject matter 967
among states that enact the "uniform principal and income act 968
(1997)". 969

Sec. 1340.91. Sections 1340.40 to 1340.90 of the Revised Code 970
apply to every trust or decedent's estate existing on the 971
effective date of this section except as otherwise expressly 972
provided in the will or terms of the trust or in sections 1340.40 973
to 1340.90 of the Revised Code. 974

Sec. 2109.68. In all cases not covered by section 2109.66 or 975
2109.67 of the Revised Code, allocation Allocation of receipts and 976
expenditures by an executor, administrator, or testamentary 977
trustee shall be as prescribed in sections ~~1340.01~~ 1340.40 to 978
~~1340.13~~ 1340.91 of the Revised Code. 979

Section 2. That existing sections 1340.031, 1340.35, and 980
2109.68 and sections 1340.01, 1340.02, 1340.03, 1340.04, 1340.05, 981
1340.06, 1340.07, 1340.08, 1340.09, 1340.10, 1340.11, 1340.12, 982
1340.13, 2109.66, and 2109.67 of the Revised Code are hereby 983

repealed. 984

Section 3. Division (A) of section 1340.75 of the Revised 985
Code relating to the duty of a trustee to make property productive 986
of income, with respect to a trust for which a marital deduction 987
is allowed, is intended to codify existing fiduciary and trust law 988
principles. 989

Section 4. Sections 1, 2, and 3 of this act shall take effect 990
on January 1, 2003. 991