

HOUSE BILL 956

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2001 Regular Session
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By: **Delegate Dembrow**
Introduced and read first time: February 9, 2001
Assigned to: Judiciary

Committee Report: Favorable with amendments
House action: Adopted with floor amendments
Read second time: April 1, 2001

CHAPTER _____

1 AN ACT concerning

2 **Uniform Principal and Income Act - Adjustments Between Principal and**
3 **Income**

4 FOR the purpose of authorizing a trustee to make adjustments between principal and
5 income under certain circumstances; requiring a trustee to give notice to certain
6 beneficiaries of certain proposed decisions regarding the power to adjust
7 between principal and income; providing for judicial review of a proposed
8 decision; clarifying the right of a trustee to adjust between income and principal
9 because of taxes with respect to certain liquidating distributions from certain
10 entities; making certain conforming changes; providing for the application of
11 this Act; and generally relating to allocations between principal and income of
12 estates and trusts.

13 BY repealing and reenacting, with amendments,
14 Article - Estates and Trusts
15 Section 15-502, 15-515, 15-520, and 15-528
16 Annotated Code of Maryland
17 (1991 Replacement Volume and 2000 Supplement)

18 BY adding to
19 Article - Estates and Trusts
20 Section 15-502.1 and 15-502.2
21 Annotated Code of Maryland
22 (1991 Replacement Volume and 2000 Supplement)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
24 MARYLAND, That the Laws of Maryland read as follows:

1

Article - Estates and Trusts

2 15-502.

3 (a) In allocating receipts and disbursements to or between principal and
4 income, and with respect to any matter within the scope of Parts II and III of this
5 subtitle, a fiduciary:

6 (1) Shall administer a trust or estate in accordance with the terms of the
7 trust or the will, even if there is a different provision in this subtitle;

8 (2) May administer a trust or estate by the exercise of a discretionary
9 power of administration given to the fiduciary by the terms of the trust or the will,
10 even if the exercise of the power produces a result different from a result required or
11 permitted by this subtitle;

12 (3) Shall administer a trust or estate in accordance with this subtitle if
13 the terms of the trust or the will do not contain a different provision or do not give the
14 fiduciary a discretionary power of administration; and

15 (4) Shall add a receipt or charge a disbursement to principal to the
16 extent that the terms of the trust and this subtitle do not provide a rule for allocating
17 the receipt or disbursement to or between principal and income.

18 (b) In exercising THE POWER TO ADJUST UNDER § 15-502.1(A) OF THIS
19 SUBTITLE OR a discretionary power of administration regarding a matter within the
20 scope of this subtitle, whether granted by the terms of a trust, a will, or this subtitle,
21 a fiduciary shall administer a trust or estate impartially, based on what is fair and
22 reasonable to all of the beneficiaries, except to the extent that the terms of the trust
23 or the will clearly manifest an intention that the fiduciary shall or may favor one or
24 more of the beneficiaries. A determination in accordance with this subtitle is
25 presumed to be fair and reasonable to all of the beneficiaries.

26 15-502.1.

27 (A) A TRUSTEE MAY ADJUST BETWEEN PRINCIPAL AND INCOME TO THE
28 EXTENT THE TRUSTEE CONSIDERS NECESSARY IF:

29 (1) THE TRUSTEE INVESTS AND MANAGES THE TRUST ASSETS IN THE
30 MANNER SET FORTH IN § 15-114 OF THIS TITLE;

31 (2) THE TERMS OF THE TRUST DESCRIBE THE AMOUNT THAT MAY OR
32 MUST BE DISTRIBUTED TO A BENEFICIARY BY REFERRING TO THE TRUST'S INCOME;

33 (3) THE TRUSTEE RECEIVES A WRITTEN REQUEST FROM A BENEFICIARY
34 TO EXERCISE THE POWER CONFERRED BY THIS SUBSECTION TO MAKE AN
35 ADJUSTMENT; ~~AND~~

1 (4) THE TRUSTEE DETERMINES, AFTER APPLYING THE RULES IN §
2 15-502(A) OF THIS SUBTITLE, THAT THE TRUSTEE IS UNABLE TO COMPLY WITH §
3 15-502(B) OF THIS SUBTITLE; AND

4 (5) (I) 1. EACH QUALIFIED BENEFICIARY, AS DEFINED IN § 15-502.2
5 OF THIS SUBTITLE, CONSENTS TO THE PROPOSED DECISION TO EXERCISE THE
6 POWER TO ADJUST BETWEEN PRINCIPAL AND INCOME; AND

7 2. A COURT OF COMPETENT JURISDICTION REVIEWS THE
8 TRUSTEE'S PETITION FILED UNDER § 15-502.2 OF THIS SUBTITLE AND APPROVES THE
9 PROPOSED DECISION TO EXERCISE THE POWER TO ADJUST BETWEEN PRINCIPAL
10 AND INCOME; OR

11 (II) 1. EACH QUALIFIED BENEFICIARY, AS DEFINED IN § 15-502.2
12 OF THIS SUBTITLE, OBJECTS TO THE PROPOSED DECISION TO NOT EXERCISE THE
13 POWER TO ADJUST BETWEEN PRINCIPAL AND INCOME; AND

14 2. A COURT OF COMPETENT JURISDICTION REVIEWS THE
15 TRUSTEE'S PETITION FILED UNDER § 15-502.2 OF THIS SUBTITLE AND DOES NOT
16 APPROVE THE PROPOSED DECISION TO NOT EXERCISE THE POWER TO ADJUST
17 BETWEEN PRINCIPAL AND INCOME.

18 ~~(B) IN DECIDING WHETHER AND TO WHAT EXTENT TO EXERCISE THE POWER~~
19 ~~CONFERRED BY SUBSECTION (A) OF THIS SECTION, A TRUSTEE MAY CONSIDER THE~~
20 ~~FOLLOWING FACTORS:~~

21 (B) IN DECIDING WHETHER AND TO WHAT EXTENT TO EXERCISE THE POWER
22 CONFERRED BY SUBSECTION (A) OF THIS SECTION, A TRUSTEE SHALL CONSIDER ALL
23 OF THE FACTORS RELEVANT TO THE TRUST AND ITS BENEFICIARIES, INCLUDING
24 THE FOLLOWING FACTORS TO THE EXTENT THEY ARE RELEVANT:

25 (1) THE NATURE, PURPOSE, AND EXPECTED DURATION OF THE TRUST;

26 (2) THE INTENT OF THE SETTLOR;

27 (3) THE IDENTITY AND CIRCUMSTANCES OF THE BENEFICIARIES;

28 (4) THE NEEDS FOR LIQUIDITY, REGULARITY OF INCOME, AND
29 PRESERVATION AND APPRECIATION OF CAPITAL;

30 (5) THE ASSETS HELD IN THE TRUST AND:

31 (I) THE EXTENT TO WHICH THEY CONSIST OF FINANCIAL ASSETS,
32 INTERESTS IN CLOSELY HELD ENTERPRISES, TANGIBLE AND INTANGIBLE PERSONAL
33 PROPERTY, OR REAL PROPERTY;

34 (II) THE EXTENT TO WHICH AN ASSET IS USED BY A BENEFICIARY;
35 AND

1 (III) WHETHER AN ASSET WAS ACQUIRED BY THE TRUSTEE OR
2 RECEIVED FROM THE SETTLOR;

3 (6) THE NET AMOUNT ALLOCATED TO INCOME UNDER OTHER
4 PROVISIONS OF THIS SUBTITLE AND THE INCREASE OR DECREASE IN THE VALUE OF
5 THE PRINCIPAL ASSETS, WHICH THE TRUSTEE MAY ESTIMATE AS TO ASSETS FOR
6 WHICH MARKET VALUES ARE NOT READILY AVAILABLE;

7 (7) WHETHER AND TO WHAT EXTENT THE TERMS OF THE TRUST GIVE
8 THE TRUSTEE THE POWER TO INVADE PRINCIPAL OR ACCUMULATE INCOME OR
9 PROHIBIT THE TRUSTEE FROM INVADING PRINCIPAL OR ACCUMULATING INCOME,
10 AND THE EXTENT TO WHICH THE TRUSTEE HAS EXERCISED A POWER FROM TIME TO
11 TIME TO INVADE PRINCIPAL OR ACCUMULATE INCOME;

12 (8) THE ACTUAL AND ANTICIPATED EFFECT OF ECONOMIC CONDITIONS
13 ON PRINCIPAL AND INCOME AND THE EFFECTS OF INFLATION AND DEFLATION; AND

14 (9) THE ANTICIPATED TAX CONSEQUENCES OF AN ADJUSTMENT.

15 (C) A TRUSTEE MAY NOT MAKE AN ADJUSTMENT:

16 (1) THAT DIMINISHES THE INCOME INTEREST IN A TRUST THAT
17 REQUIRES ALL OF THE INCOME TO BE PAID AT LEAST ANNUALLY TO A SPOUSE AND
18 FOR WHICH AN ESTATE TAX OR GIFT TAX MARITAL DEDUCTION WOULD BE
19 ALLOWED, WHOLLY OR PARTLY, IF THE TRUSTEE DID NOT HAVE THE POWER TO
20 MAKE THE ADJUSTMENT;

21 (2) THAT REDUCES THE ACTUARIAL VALUE OF THE INCOME INTEREST
22 IN A TRUST TO WHICH A PERSON TRANSFERS PROPERTY WITH THE INTENT TO
23 QUALIFY FOR A GIFT TAX EXCLUSION;

24 (3) THAT CHANGES THE AMOUNT PAYABLE TO A BENEFICIARY AS A
25 FIXED ANNUITY OR A FIXED FRACTION OF THE VALUE OF THE TRUST ASSETS;

26 (4) FROM ANY AMOUNT THAT IS PERMANENTLY SET ASIDE FOR
27 CHARITABLE PURPOSES UNDER A WILL OR THE TERMS OF A TRUST UNLESS BOTH
28 INCOME AND PRINCIPAL ARE SO SET ASIDE;

29 (5) IF POSSESSING OR EXERCISING THE POWER TO MAKE AN
30 ADJUSTMENT CAUSES AN INDIVIDUAL TO BE TREATED AS THE OWNER OF ALL OR
31 PART OF THE TRUST FOR INCOME TAX PURPOSES, AND THE INDIVIDUAL WOULD NOT
32 BE TREATED AS THE OWNER IF THE TRUSTEE DID NOT POSSESS THE POWER TO
33 MAKE AN ADJUSTMENT;

34 (6) IF POSSESSING OR EXERCISING THE POWER TO MAKE AN
35 ADJUSTMENT CAUSES ALL OR PART OF THE TRUST ASSETS TO BE INCLUDED FOR
36 ESTATE TAX PURPOSES IN THE ESTATE OF AN INDIVIDUAL WHO HAS THE POWER TO
37 REMOVE A TRUSTEE OR APPOINT A TRUSTEE, OR BOTH, AND THE ASSETS WOULD
38 NOT BE INCLUDED IN THE ESTATE OF THE INDIVIDUAL IF THE TRUSTEE DID NOT
39 POSSESS THE POWER TO MAKE AN ADJUSTMENT;

1 (7) IF THE TRUSTEE IS A BENEFICIARY OF THE TRUST;

2 (8) IF THE TRUSTEE IS NOT A BENEFICIARY, BUT THE ADJUSTMENT
3 WOULD BENEFIT THE TRUSTEE DIRECTLY OR INDIRECTLY; ~~OR~~

4 (9) IF POSSESSING OR EXERCISING THE POWER TO MAKE THE
5 ADJUSTMENT CAUSES A CHANGE IN THE INCLUSION RATIO OF THE TRUST OR
6 OTHERWISE CAUSES THE TRUST TO BE POTENTIALLY SUBJECT TO
7 GENERATION-SKIPPING TRANSFER TAX;

8 (10) IF ANY QUALIFIED BENEFICIARY, AS DEFINED IN § 15-502.2 OF THIS
9 SUBTITLE, DOES NOT CONSENT TO THE PROPOSED DECISION TO EXERCISE THE
10 POWER TO ADJUST BETWEEN PRINCIPAL AND INCOME; OR

11 (11) A COURT OF COMPETENT JURISDICTION REVIEWS THE TRUSTEE'S
12 PETITION FILED UNDER § 15-502.2 OF THIS SUBTITLE AND DOES NOT APPROVE THE
13 PROPOSED DECISION TO EXERCISE THE POWER TO ADJUST BETWEEN PRINCIPAL
14 AND INCOME.

15 (D) IF SUBSECTION (C)(5), (6), (7), OR (8) OF THIS SECTION APPLIES TO A
16 TRUSTEE AND THERE IS MORE THAN ONE TRUSTEE, A COTRUSTEE TO WHOM THE
17 PROVISION DOES NOT APPLY MAY MAKE THE ADJUSTMENT UNLESS THE EXERCISE
18 OF THE POWER BY THE REMAINING TRUSTEE OR TRUSTEES IS NOT PERMITTED BY
19 THE TERMS OF THE TRUST.

20 (E) (1) A TRUSTEE MAY RELEASE THE ENTIRE POWER CONFERRED BY
21 SUBSECTION (A) OF THIS SECTION OR MAY RELEASE ONLY THE POWER TO ADJUST
22 FROM PRINCIPAL TO INCOME IF THE TRUSTEE IS UNCERTAIN ABOUT WHETHER
23 POSSESSING OR EXERCISING THE POWER WILL CAUSE A RESULT DESCRIBED IN
24 SUBSECTION (C)(1), (2), (3), (4), (5), (6), (8), OR (9) OF THIS SECTION OR IF THE TRUSTEE
25 DETERMINES THAT POSSESSING OR EXERCISING THE POWER WILL OR MAY DEPRIVE
26 THE TRUST OF A TAX BENEFIT OR IMPOSE A TAX BURDEN NOT DESCRIBED IN
27 SUBSECTION (C) OF THIS SECTION.

28 (2) THE RELEASE AUTHORIZED UNDER PARAGRAPH (1) OF THIS
29 SUBSECTION MAY BE PERMANENT OR FOR A SPECIFIED PERIOD, INCLUDING A
30 PERIOD MEASURED BY THE LIFE OF AN INDIVIDUAL.

31 (F) THE TERMS OF A TRUST THAT LIMIT THE POWER OF A TRUSTEE TO MAKE
32 AN ADJUSTMENT BETWEEN PRINCIPAL AND INCOME DO NOT AFFECT THE
33 APPLICATION OF THIS SECTION UNLESS IT IS CLEAR FROM THE TERMS OF THE
34 TRUST THAT THE TERMS ARE INTENDED TO DENY THE TRUSTEE THE POWER OF
35 ADJUSTMENT CONFERRED BY SUBSECTION (A) OF THIS SECTION.

36 15-502.2.

37 (A) (1) IN THIS SECTION, "QUALIFIED BENEFICIARY" MEANS A PERSON
38 WHO, ON THE DATE THAT NOTICE IS GIVEN BY THE TRUSTEE IN ACCORDANCE WITH
39 SUBSECTION (B) OF THIS SECTION:

1 (I) IS A DISTRIBUTE OR PERMISSIBLE DISTRIBUTE OF THE
2 INCOME OR PRINCIPAL OF THE TRUST ESTATE;

3 (II) WOULD BE A DISTRIBUTE OR PERMISSIBLE DISTRIBUTE OF
4 THE INCOME OR PRINCIPAL OF THE TRUST ESTATE IF THE INTERESTS OF THE
5 DISTRIBUTES DESCRIBED IN ITEM (I) OF THIS PARAGRAPH TERMINATED ON THE
6 DATE THAT NOTICE IS GIVEN BY THE TRUSTEE; OR

7 (III) WOULD BE A DISTRIBUTE OR PERMISSIBLE DISTRIBUTE OF
8 THE INCOME OR PRINCIPAL OF THE TRUST ESTATE IF THE TRUST WERE TO
9 TERMINATE ON THE DATE THAT NOTICE IS GIVEN BY THE TRUSTEE.

10 (2) "QUALIFIED BENEFICIARY" INCLUDES:

11 (I) IF THE BENEFICIARY IS A MINOR, THE BENEFICIARY'S
12 NATURAL OR LEGAL GUARDIAN; AND

13 (II) IF THE BENEFICIARY IS A DISABLED PERSON, AS DEFINED IN §
14 13-101 OF THIS ARTICLE, ANY PERSON ACTING ON BEHALF OF THE BENEFICIARY
15 UNDER A GUARDIANSHIP, CONSERVATORSHIP, OR COMMITTEE.

16 (B) A TRUSTEE SHALL GIVE NOTICE OF A PROPOSED DECISION REGARDING
17 THE EXERCISE OR NONEXERCISE OF THE DISCRETIONARY POWER CONFERRED
18 UNDER § 15-502.1(A) OF THIS SUBTITLE TO ADJUST BETWEEN PRINCIPAL AND
19 INCOME.

20 (C) THE TRUSTEE SHALL MAIL THE NOTICE REQUIRED UNDER SUBSECTION
21 (B) OF THIS SECTION TO ALL QUALIFIED BENEFICIARIES, EXCEPT THAT NOTICE OF
22 THE PROPOSED DECISION NEED NOT BE GIVEN TO ANY QUALIFIED BENEFICIARY
23 WHO CONSENTS IN WRITING TO THE PROPOSED DECISION AT ANY TIME BEFORE ~~OR~~
24 ~~AFTER THE PROPOSED DECISION IS TAKEN~~ THE NOTICE IS MAILED.

25 (D) THE NOTICE OF PROPOSED DECISION SHALL STATE THAT IT IS GIVEN IN
26 ACCORDANCE WITH THIS SECTION AND SHALL STATE THE FOLLOWING:

27 (1) THE NAME AND MAILING ADDRESS OF THE TRUSTEE, TOGETHER
28 WITH THE NAME AND TELEPHONE NUMBER OF A PERSON WHO MAY BE CONTACTED
29 FOR ADDITIONAL INFORMATION;

30 (2) A DESCRIPTION OF THE DECISION PROPOSED TO BE TAKEN;

31 (3) THE TIME WITHIN WHICH WRITTEN OBJECTIONS OR CONSENTS TO
32 THE PROPOSED DECISION MAY BE MADE TO THE TRUSTEE, WHICH SHALL BE AT
33 LEAST 30 DAYS AFTER THE MAILING OF THE NOTICE OF PROPOSED DECISION; AND

34 (4) THE DATE ON OR AFTER WHICH THE PROPOSED DECISION MAY BE
35 TAKEN OR IS EFFECTIVE, WHICH SHALL BE AFTER THE END OF THE TIME WITHIN
36 WHICH OBJECTIONS OR CONSENTS TO THE PROPOSED DECISION MAY BE MADE TO
37 THE TRUSTEE.

~~(E) ANY QUALIFIED BENEFICIARY WHO OBJECTS IN WRITING TO THE PROPOSED DECISION MAY FILE, WITHIN 60 DAYS AFTER THE TRUSTEE RECEIVES THE QUALIFIED BENEFICIARY'S WRITTEN OBJECTION, A COMPLAINT TO REVIEW THE PROPOSED DECISION IN THE CIRCUIT COURT FOR THE COUNTY IN WHICH THE TRUSTEE RESIDES IN THIS STATE, IF THE TRUSTEE IS AN INDIVIDUAL, OR IN WHICH THE PRINCIPAL PLACE OF BUSINESS OF THE TRUSTEE IS LOCATED IN THIS STATE.~~

~~(E) (1) IF EACH QUALIFIED BENEFICIARY CONSENTS IN WRITING TO A PROPOSED DECISION TO EXERCISE THE POWER TO ADJUST BETWEEN PRINCIPAL AND INCOME, THE TRUSTEE SHALL FILE, WITHIN 60 DAYS AFTER THE TRUSTEE RECEIVES THE WRITTEN CONSENTS, A PETITION TO REVIEW THE PROPOSED DECISION TO EXERCISE THE POWER TO ADJUST BETWEEN PRINCIPAL AND INCOME IN THE CIRCUIT COURT FOR THE COUNTY IN WHICH THE TRUSTEE RESIDES IN THIS STATE, IF THE TRUSTEE IS AN INDIVIDUAL, OR IN WHICH THE PRINCIPAL PLACE OF BUSINESS OF THE TRUSTEE IS LOCATED IN THIS STATE.~~

~~(2) IF A TRUSTEE GIVES NOTICE OF A PROPOSED DECISION NOT TO EXERCISE THE POWER TO ADJUST BETWEEN PRINCIPAL AND INCOME, AND EACH QUALIFIED BENEFICIARY OBJECTS IN WRITING TO THE PROPOSED DECISION, THE TRUSTEE SHALL FILE, WITHIN 60 DAYS AFTER THE TRUSTEE RECEIVES THE WRITTEN OBJECTIONS, A PETITION TO REVIEW THE PROPOSED DECISION TO NOT EXERCISE THE POWER TO ADJUST BETWEEN PRINCIPAL AND INCOME IN THE CIRCUIT COURT FOR THE COUNTY IN WHICH THE TRUSTEE RESIDES IN THIS STATE, IF THE TRUSTEE IS AN INDIVIDUAL, OR IN WHICH THE PRINCIPAL PLACE OF BUSINESS OF THE TRUSTEE IS LOCATED IN THIS STATE.~~

~~(F) (1) IN A PROCEEDING UNDER SUBSECTION (E) OF THIS SECTION, A QUALIFIED BENEFICIARY OBJECTING TO THE PROPOSED DECISION HAS THE BURDEN OF PROVING THAT THE TRUSTEE'S PROPOSED DECISION SHOULD NOT BE TAKEN.~~

~~(F) (1) IN A PROCEEDING UNDER SUBSECTION (E) OF THIS SECTION, A TRUSTEE HAS THE BURDEN OF PROVING THAT THE TRUSTEE'S PROPOSED DECISION SHOULD BE TAKEN.~~

~~(2) THE SOLE REMEDY IN THE PROCEEDING IS TO DIRECT, DENY, OR REVISE AN ADJUSTMENT BETWEEN PRINCIPAL AND INCOME.~~

~~(3) NOTICE OF THE PROCEEDING SHALL BE GIVEN TO BY THE TRUSTEE AND TO ALL QUALIFIED BENEFICIARIES TO WHOM NOTICE OF THE PROPOSED DECISION WAS ORIGINALLY SENT.~~

~~(G) (1) A TRUSTEE IS NOT LIABLE TO ANY QUALIFIED BENEFICIARY FOR A DECISION REGARDING THE EXERCISE OR NONEXERCISE OF THE DISCRETIONARY POWER CONFERRED UNDER § 15 502.1(A) OF THIS SUBTITLE TO ADJUST BETWEEN PRINCIPAL AND INCOME IF THE QUALIFIED BENEFICIARY DOES NOT OBJECT BY FILING A COMPLAINT TO REVIEW THE PROPOSED DECISION AND THE OTHER REQUIREMENTS OF THIS SECTION ARE SATISFIED.~~

1 (2) ~~IF NO QUALIFIED BENEFICIARY OBJECTS WITHIN THE APPLICABLE~~
2 ~~PERIOD, THE TRUSTEE IS NOT LIABLE TO ANY PERSON HAVING A PRESENT OR~~
3 ~~FUTURE INTEREST IN THE TRUST, VESTED OR CONTINGENT, INCLUDING ANY~~
4 ~~UNBORN OR UNASCERTAINED BENEFICIARY.~~

5 (G) (1) A TRUSTEE WHO MEETS THE REQUIREMENTS OF THIS SECTION IS
6 NOT LIABLE, FOR A DECISION TO EXERCISE THE POWER TO ADJUST BETWEEN
7 PRINCIPAL AND INCOME, TO:

8 (I) A QUALIFIED BENEFICIARY WHO FILED A WRITTEN CONSENT
9 TO A PROPOSED DECISION TO EXERCISE THE POWER TO ADJUST BETWEEN
10 PRINCIPAL AND INCOME; OR

11 (II) ANY PERSON WHO HAS A PRESENT OR FUTURE INTEREST IN
12 THE TRUST, VESTED OR CONTINGENT, INCLUDING ANY UNBORN OR
13 UNASCERTAINED BENEFICIARY, IF A COURT APPROVES THE TRUSTEE'S PETITION TO
14 REVIEW THE PROPOSED DECISION.

15 (2) A TRUSTEE WHO MEETS THE REQUIREMENTS OF THIS SECTION IS
16 NOT LIABLE, FOR A DECISION TO NOT EXERCISE THE POWER TO ADJUST BETWEEN
17 PRINCIPAL AND INCOME, TO:

18 (I) A QUALIFIED BENEFICIARY WHO DID NOT FILE A WRITTEN
19 OBJECTION TO A PROPOSED DECISION TO NOT EXERCISE THE POWER TO ADJUST
20 BETWEEN PRINCIPAL AND INCOME; OR

21 (II) ANY PERSON WHO HAS A PRESENT OR FUTURE INTEREST IN
22 THE TRUST, VESTED OR CONTINGENT, INCLUDING ANY UNBORN OR
23 UNASCERTAINED BENEFICIARY, IF A COURT APPROVES THE TRUSTEE'S PETITION TO
24 REVIEW THE PROPOSED DECISION.

25 15-515.

26 If a trustee determines that an allocation between principal and income
27 required by § 15-516, § 15-517, § 15-518, § 15-519, or § 15-522 of this subtitle is
28 insubstantial, the trustee may allocate the entire amount to principal UNLESS ONE
29 OF THE CIRCUMSTANCES DESCRIBED IN § 15-502.1(C) OF THIS SUBTITLE APPLIES TO
30 THE ALLOCATION. THIS POWER MAY BE EXERCISED BY A COTRUSTEE IN THE
31 CIRCUMSTANCES DESCRIBED IN § 15.502.1(D) OF THIS SUBTITLE, AND MAY BE
32 RELEASED FOR THE REASONS AND IN THE MANNER DESCRIBED IN § 15-502.1(E) OF
33 THIS SUBTITLE. An allocation is presumed to be insubstantial if:

34 (1) The amount of the allocation would increase or decrease net income
35 in an accounting period, as determined before the allocation, by less than 10 percent;
36 or

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

1 15-520.

2 (a) If a marital deduction is allowed for all or part of a trust whose assets
3 consist substantially of property that does not provide the spouse with sufficient
4 income from or use of the trust assets, AND IF THE AMOUNTS THAT THE TRUSTEE
5 TRANSFERS FROM PRINCIPAL TO INCOME UNDER § 15-502.1(A) OF THIS SUBTITLE
6 AND DISTRIBUTES TO THE SPOUSE FROM PRINCIPAL PURSUANT TO THE TERMS OF
7 THE TRUST ARE INSUFFICIENT TO PROVIDE THE SPOUSE WITH THE BENEFICIAL
8 ENJOYMENT REQUIRED TO OBTAIN THE MARITAL DEDUCTION, the spouse may
9 require the trustee to make property productive of income, [or] convert property
10 within a reasonable time, OR THE SPOUSE MAY REQUEST, UNDER § 15-502.1 OF THIS
11 SUBTITLE, THAT THE TRUSTEE EXERCISE THE POWER CONFERRED BY § 15-502.1(A)
12 OF THIS SUBTITLE. The trustee may decide which action or combination of actions to
13 take.

14 (b) In cases not governed by subsection (a) of this section, proceeds from the
15 sale or other disposition of an asset are principal without regard to the amount of
16 income the asset produces during any accounting period.

17 15-528.

18 (a) A fiduciary may make adjustments between principal and income to offset
19 the shifting of economic interests or tax benefits between income beneficiaries and
20 remainder beneficiaries which arise from:

21 (1) Elections and decisions, other than those described in subsection (b)
22 of this section, that the fiduciary makes from time to time regarding tax matters;

23 (2) An income tax or any other tax that is imposed upon the fiduciary or
24 a beneficiary as a result of a transaction involving or a distribution from the estate or
25 trust; or

26 (3) The ownership by an estate or trust of an interest in an entity whose
27 taxable income, whether or not distributed, is includable in the taxable income of the
28 estate, trust, or a beneficiary, EXCEPT THAT A TRUSTEE SHALL MAKE AN
29 ADJUSTMENT FROM PRINCIPAL TO INCOME TO COMPENSATE AN INCOME
30 BENEFICIARY FOR TAXES PAID OR PAYABLE BY THE INCOME BENEFICIARY IN
31 RESPECT OF THE TAXABLE INCOME OF AN ENTITY THAT IS TAXABLE TO THE INCOME
32 BENEFICIARY BUT THAT IS DISTRIBUTED TO THE TRUSTEE AND ALLOCATED TO
33 PRINCIPAL.

34 (b) If the amount of an estate tax marital deduction or charitable contribution
35 deduction is reduced because a fiduciary deducts an amount paid from principal for
36 income tax purposes instead of deducting it for estate tax purposes, and as a result
37 estate taxes paid from principal are increased and income taxes paid by an estate,
38 trust, or beneficiary are decreased, each estate, trust, or beneficiary that benefits
39 from the decrease in income tax shall reimburse the principal from which the
40 increase in estate tax is paid. The total reimbursement must equal the increase in the
41 estate tax to the extent that the principal used to pay the increase would have
42 qualified for a marital deduction or charitable contribution deduction but for the

1 payment. The proportionate share of the reimbursement for each estate, trust, or
2 beneficiary whose income taxes are reduced must be the same as its proportionate
3 share of the total decrease in income tax. An estate or trust shall reimburse principal
4 from income.

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act applies to each
6 trust or decedent's estate existing on or after the effective date of this Act.

7 ~~SECTION 2. 3.~~ AND BE IT FURTHER ENACTED, That this Act shall take
8 effect October 1, 2001.