

SENATE BILL 641

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2002 Regular Session  
2r1862  
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By: **Senator Baker**

Introduced and read first time: February 1, 2002

Assigned to: Judicial Proceedings

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A BILL ENTITLED

1 AN ACT concerning

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

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

14 BY adding to  
15 Article - Estates and Trusts  
16 Section 15-502.1, 15-502.2, and 15-502.3  
17 Annotated Code of Maryland  
18 (2001 Replacement Volume and 2001 Supplement)

19 BY repealing and reenacting, with amendments,  
20 Article - Estates and Trusts  
21 Section 15-515, 15-520, and 15-528  
22 Annotated Code of Maryland  
23 (2001 Replacement Volume and 2001 Supplement)

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

1 **Article - Estates and Trusts**

2 15-502.1.

3 (A) A TRUSTEE MAY CONVERT A TRUST INTO A UNITRUST AS DESCRIBED IN  
4 THIS SECTION IF:

5 (1) THE TRUSTEE RECEIVES A WRITTEN REQUEST FROM A BENEFICIARY  
6 TO EXERCISE THE POWER CONFERRED BY THIS SUBSECTION TO CONVERT TO A  
7 UNITRUST;

8 (2) THE TRUSTEE INVESTS AND MANAGES THE TRUST ASSETS IN THE  
9 MANNER SET FORTH IN § 15-114 (B) AND (C) OF THIS TITLE;

10 (3) THE TRUSTEE DETERMINES THAT THE CONVERSION WILL ENABLE  
11 THE TRUSTEE TO BETTER CARRY OUT THE INTENT OF THE PERSON WHO CREATED  
12 THE TRUST AND THE PURPOSES OF THE TRUST; AND

13 (4) (I) THE TRUSTEE COMPLIES WITH THE NOTICE REQUIREMENTS  
14 OF § 15-502.3 OF THIS SUBTITLE AND ALL QUALIFIED BENEFICIARIES CONSENT; OR

15 (II) A COURT REVIEWS A PETITION FILED UNDER § 15-502.3 OF THIS  
16 SUBTITLE AND APPROVES THE PROPOSED DECISION TO RELEASE THE POWER TO  
17 ADJUST AND TO CONVERT TO A UNITRUST.

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

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

23 (2) THE INTENT OF THE CREATOR OF THE TRUST;

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

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

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

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

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

33 (III) WHETHER AN ASSET WAS ACQUIRED BY THE TRUSTEE OR  
34 RECEIVED FROM THE CREATOR OF THE TRUST;

1           (6)     WHETHER AND TO WHAT EXTENT THE TERMS OF THE TRUST GIVE  
2 THE TRUSTEE THE POWER TO INVADE PRINCIPAL OR ACCUMULATE INCOME AND  
3 THE EXTENT TO WHICH THE TRUSTEE HAS EXERCISED A POWER FROM TIME TO TIME  
4 TO INVADE PRINCIPAL OR ACCUMULATE INCOME;

5           (7)     THE ACTUAL AND ANTICIPATED EFFECT OF ECONOMIC CONDITIONS  
6 ON PRINCIPAL AND INCOME AND THE EFFECTS OF INFLATION AND DEFLATION; AND

7           (8)     THE ANTICIPATED TAX CONSEQUENCES OF AN ADJUSTMENT.

8     (C)     AFTER A TRUST IS CONVERTED TO A UNITRUST, ALL OF THE FOLLOWING  
9 APPLY:

10           (1)     THE INCOME OF THE TRUST THAT THE INCOME BENEFICIARY IS  
11 ENTITLED TO RECEIVE UNDER THE GOVERNING INSTRUMENT SHALL BE AN ANNUAL  
12 UNITRUST DISTRIBUTION EQUAL TO A PAYOUT PERCENTAGE OF 4% OF THE NET FAIR  
13 MARKET VALUE OF THE TRUST'S ASSETS, WHETHER THOSE ASSETS WOULD BE  
14 CONSIDERED INCOME OR PRINCIPAL UNDER ANY OTHER PROVISION OF THIS  
15 SUBTITLE, AVERAGED OVER THE LESSER OF:

16                   (I)     THE 3 PRECEDING YEARS; OR

17                   (II)    THE PERIOD DURING WHICH THE TRUST HAS BEEN IN  
18 EXISTENCE;

19           (2)     EXPENSES THAT WOULD BE DEDUCTED FROM INCOME IF THE TRUST  
20 WERE NOT A UNITRUST MAY NOT BE DEDUCTED FROM THE UNITRUST  
21 DISTRIBUTION;

22           (3)     ANY PROVISION IN THE GOVERNING INSTRUMENT DIRECTING OR  
23 AUTHORIZING THE TRUSTEE TO DISTRIBUTE PRINCIPAL OR AUTHORIZING A  
24 BENEFICIARY TO WITHDRAW A PORTION OR ALL OF THE PRINCIPAL MAY NOT BE  
25 AFFECTED BY THE CONVERSION TO A UNITRUST;

26           (4)     UNLESS OTHERWISE PROVIDED BY THE GOVERNING INSTRUMENT,  
27 THE UNITRUST DISTRIBUTION SHALL BE PAID FIRST FROM NET INCOME OF THE  
28 TRUST, AS NET INCOME WOULD BE DETERMINED IF THE TRUST WERE NOT A  
29 UNITRUST, AND THEN FROM PRINCIPAL; AND

30           (5)     THE TRUSTEE MAY DETERMINE TO ACCOUNT FOR THE UNITRUST  
31 DISTRIBUTION IN ACCORDANCE WITH THE FOLLOWING RULES:

32                   (I)     TO THE EXTENT NET INCOME IS INSUFFICIENT, THE UNITRUST  
33 DISTRIBUTION SHALL BE PAID FROM NET REALIZED SHORT-TERM CAPITAL GAINS;

34                   (II)    TO THE EXTENT INCOME AND NET REALIZED SHORT-TERM  
35 CAPITAL GAINS ARE INSUFFICIENT, THE UNITRUST DISTRIBUTION SHALL BE PAID  
36 FROM NET REALIZED LONG-TERM CAPITAL GAINS; AND

1 (III) TO THE EXTENT INCOME AND NET REALIZED SHORT-TERM AND  
2 LONG-TERM CAPITAL GAINS ARE INSUFFICIENT, THE UNITRUST DISTRIBUTION  
3 SHALL BE PAID FROM THE PRINCIPAL OF THE TRUST.

4 (D) THE TRUSTEE SHALL DETERMINE:

5 (1) THE EFFECT OF OTHER PAYMENTS FROM OR CONTRIBUTIONS TO  
6 THE TRUST ON THE TRUST'S VALUATION;

7 (2) HOW FREQUENTLY TO VALUE NONLIQUID ASSETS AND WHETHER TO  
8 ESTIMATE THEIR VALUE; AND

9 (3) WHETHER TO OMIT FROM THE CALCULATIONS TRUST PROPERTY  
10 OCCUPIED OR POSSESSED BY A BENEFICIARY.

11 (E) IF AUTHORIZED BY A COURT ORDER, IN ACCORDANCE WITH A PETITION  
12 FILED UNDER § 15-502.3 OF THIS SUBTITLE, THE CONVERTED UNITRUST MAY  
13 PROVIDE THAT:

14 (1) THE PAYOUT PERCENTAGE IS DIFFERENT THAN 4%;

15 (2) A DISTRIBUTION OF NET INCOME, AS WOULD BE DETERMINED IF  
16 THE TRUST WERE NOT A UNITRUST, SHALL BE MADE IF IN EXCESS OF THE UNITRUST  
17 DISTRIBUTION AND IF THAT DISTRIBUTION IS NECESSARY TO PRESERVE A TAX  
18 BENEFIT; OR

19 (3) VALUATION OF THE TRUST'S NET ASSETS SHALL BE AVERAGED OVER  
20 A PERIOD OTHER THAN 3 YEARS.

21 (F) A TRUSTEE MAY NOT CONVERT A TRUST INTO A UNITRUST UNDER  
22 SUBSECTION (A) OF THIS SECTION IF:

23 (1) THE CONVERSION WOULD RESULT IN THE DISALLOWANCE OF AN  
24 ESTATE TAX OR GIFT TAX MARITAL DEDUCTION THAT WOULD BE ALLOWED, IN  
25 WHOLE OR IN PART, IF THE TRUSTEE DID NOT HAVE THE POWER TO CONVERT;

26 (2) PAYMENT OF THE UNITRUST DISTRIBUTION WOULD CHANGE THE  
27 AMOUNT PAYABLE TO A BENEFICIARY AS A FIXED ANNUITY OR A FIXED FRACTION  
28 OF THE VALUE OF THE TRUST ASSETS;

29 (3) THE UNITRUST DISTRIBUTION WOULD BE MADE FROM ANY AMOUNT  
30 THAT IS PERMANENTLY SET ASIDE FOR CHARITABLE PURPOSES UNDER THE  
31 GOVERNING INSTRUMENT AND FOR WHICH A FEDERAL ESTATE OR GIFT TAX  
32 DEDUCTION HAS BEEN TAKEN, UNLESS BOTH INCOME AND PRINCIPAL ARE SO SET  
33 ASIDE;

34 (4) POSSESSING OR EXERCISING THE POWER TO CONVERT WOULD  
35 CAUSE AN INDIVIDUAL TO BE TREATED AS THE OWNER OF ALL OR PART OF THE  
36 TRUST FOR FEDERAL INCOME TAX PURPOSES AND THE INDIVIDUAL WOULD NOT BE

1 TREATED AS THE OWNER IF THE TRUSTEE DID NOT POSSESS THE POWER TO  
2 CONVERT;

3 (5) POSSESSING OR EXERCISING THE POWER TO CONVERT WOULD  
4 CAUSE ALL OR PART OF THE TRUST ASSETS TO BE SUBJECT TO ESTATE OR GIFT TAX  
5 WITH RESPECT TO AN INDIVIDUAL AND THE ASSETS WOULD NOT BE SUBJECT TO  
6 ESTATE OR GIFT TAX WITH RESPECT TO THE INDIVIDUAL IF THE TRUSTEE DID NOT  
7 POSSESS THE POWER TO CONVERT; OR

8 (6) THE TRUSTEE IS A BENEFICIARY OF THE TRUST.

9 (G) (1) IF SUBSECTION (F)(4), (5), OR (6) OF THIS SECTION APPLIES TO A  
10 TRUSTEE AND THERE IS MORE THAN ONE TRUSTEE, A COTRUSTEE TO WHOM THE  
11 PROVISION DOES NOT APPLY MAY CONVERT THE TRUST TO A UNITRUST UNDER  
12 SUBSECTION (A) OF THIS SECTION, UNLESS EXERCISE OF THE POWER BY THE  
13 REMAINING TRUSTEE OR TRUSTEES IS PROHIBITED BY THE GOVERNING  
14 INSTRUMENT.

15 (2) IF SUBSECTION (F)(4), (5), OR (6) OF THIS SECTION APPLIES TO ALL  
16 THE TRUSTEES, THE TRUSTEES MAY PETITION A COURT UNDER § 15-502.3 OF THIS  
17 SUBTITLE TO DIRECT A CONVERSION UNDER SUBSECTION (A) OF THIS SECTION.

18 (H) (1) A TRUSTEE MAY RELEASE THE POWER CONFERRED BY SUBSECTION  
19 (A) OF THIS SECTION TO CONVERT TO A UNITRUST IF:

20 (I) THE TRUSTEE IS UNCERTAIN ABOUT WHETHER POSSESSING  
21 OR EXERCISING THE POWER WILL CAUSE A RESULT DESCRIBED IN SUBSECTION (F)  
22 (4), (5), OR (6) OF THIS SECTION; OR

23 (II) THE TRUSTEE DETERMINES THAT POSSESSING OR EXERCISING  
24 THE POWER WILL OR MAY DEPRIVE THE TRUST OF A TAX BENEFIT OR IMPOSE A TAX  
25 BURDEN NOT DESCRIBED IN SUBSECTION (F) OF THIS SECTION.

26 (2) A RELEASE DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION MAY  
27 BE PERMANENT OR FOR A SPECIFIED PERIOD, INCLUDING A PERIOD MEASURED BY  
28 THE LIFE OF AN INDIVIDUAL.

29 (I) IF THE TRUSTEE RECEIVES A WRITTEN REQUEST FROM A BENEFICIARY  
30 TO RECONVERT A TRUST FROM A UNITRUST, THE TRUSTEE MAY RECONVERT A  
31 TRUST FROM A UNITRUST IF:

32 (1) THE TRUSTEE COMPLIES WITH THE NOTICE REQUIREMENTS OF §  
33 15-202.3 OF THIS SUBTITLE AND ALL QUALIFIED BENEFICIARIES CONSENT TO  
34 RECONVERT FROM A UNITRUST; OR

35 (2) A COURT REVIEWS A PETITION FILED UNDER § 15-502.3 OF THIS  
36 SUBTITLE AND APPROVES THE PROPOSED DECISION TO RECONVERT FROM A  
37 UNITRUST.

1 (J) UNLESS IT IS CLEAR FROM THE TERMS OF THE TRUST THAT THE TERMS  
2 ARE INTENDED TO DENY THE TRUSTEE THE POWER CONFERRED BY SUBSECTION (A)  
3 OF THIS SECTION, THE TERMS OF A TRUST THAT LIMIT THE POWER OF A TRUSTEE TO  
4 CONVERT TO A UNITRUST DO NOT AFFECT THE APPLICATION OF THIS SECTION.

5 15-502.2.

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

8 (1) THE TRUSTEE RECEIVES A WRITTEN REQUEST FROM A BENEFICIARY  
9 TO EXERCISE THE POWER CONFERRED BY THIS SUBSECTION TO MAKE AN  
10 ADJUSTMENT;

11 (2) THE TRUSTEE INVESTS AND MANAGES THE TRUST ASSETS IN THE  
12 MANNER SET FORTH IN § 15-114 (B) AND (C) OF THIS TITLE;

13 (3) THE TERMS OF THE TRUST DESCRIBE THE AMOUNT THAT MAY OR  
14 MUST BE DISTRIBUTED TO A BENEFICIARY BY REFERRING TO THE TRUST'S INCOME;

15 (4) THE TRUSTEE DETERMINES, AFTER APPLYING THE RULES IN §  
16 15-502(A) OF THIS SUBTITLE, THAT THE TRUSTEE IS UNABLE TO COMPLY WITH §  
17 15-502(B) OF THIS SUBTITLE;

18 (5) THE TRUSTEE DETERMINES THAT CONVERSION OF THE TRUST TO A  
19 UNITRUST IN ACCORDANCE WITH § 15-502.1(A) OF THIS SUBTITLE IS AN  
20 INAPPROPRIATE METHOD TO COMPLY WITH § 15-502(B) OF THIS SUBTITLE BASED ON  
21 A REVIEW OF ALL FACTORS RELEVANT TO THE TRUST AND ITS BENEFICIARIES; AND

22 (6) (I) THE TRUSTEE COMPLIES WITH THE NOTICE REQUIREMENTS  
23 OF § 15-502.3 OF THIS SUBTITLE AND ALL QUALIFIED BENEFICIARIES CONSENT; OR

24 (II) A COURT REVIEWS A PETITION FILED UNDER 15-502.3 OF THIS  
25 SUBTITLE AND APPROVES THE ADJUSTMENT.

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

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

31 (2) THE INTENT OF THE CREATOR OF THE TRUST;

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

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

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

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

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

6 (III) WHETHER AN ASSET WAS ACQUIRED BY THE TRUSTEE OR  
7 RECEIVED FROM THE CREATOR OF THE TRUST;

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

12 (7) WHETHER AND TO WHAT EXTENT THE TERMS OF THE TRUST GIVE  
13 THE TRUSTEE THE POWER TO INVADE PRINCIPAL OR ACCUMULATE INCOME AND  
14 THE EXTENT TO WHICH THE TRUSTEE HAS EXERCISED A POWER FROM TIME TO TIME  
15 TO INVADE PRINCIPAL OR ACCUMULATE INCOME;

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

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

19 (C) UNLESS AUTHORIZED BY A COURT ORDER IN ACCORDANCE WITH A  
20 PETITION FILED UNDER § 15-502.3 OF THIS SUBTITLE, A TRUSTEE MAY NOT MAKE AN  
21 ADJUSTMENT UNDER SUBSECTION (A) OF THIS SECTION IN ANY ACCOUNTING  
22 PERIOD IF THE ADJUSTMENT RESULTS IN A DISTRIBUTION OF NET INCOME TO THE  
23 INCOME BENEFICIARY:

24 (1) THAT IS GREATER THAN 4% OF THE NET FAIR MARKET VALUE OF  
25 THE TRUST ASSETS ON THE FIRST BUSINESS DAY OF THAT ACCOUNTING PERIOD, IF  
26 THE NET INCOME FOR THAT ACCOUNTING PERIOD IS LESS THAN 4% AS DETERMINED  
27 UNDER THIS SUBTITLE BEFORE APPLICATION OF THE PROVISIONS OF SUBSECTION  
28 (A) OF THIS SECTION; OR

29 (2) THAT IS LESS THAN 4% OF THE NET FAIR MARKET VALUE OF THE  
30 TRUST ASSETS ON THE FIRST BUSINESS DAY OF THAT ACCOUNTING PERIOD, IF THE  
31 NET INCOME FOR THAT ACCOUNTING PERIOD IS GREATER THAN 4% AS DETERMINED  
32 UNDER THIS SUBTITLE BEFORE APPLICATION OF THE PROVISIONS OF SUBSECTION  
33 (A) OF THIS SECTION.

34 (D) A TRUSTEE MAY NOT MAKE AN ADJUSTMENT UNDER SUBSECTION (A) OF  
35 THIS SECTION:

36 (1) THAT DIMINISHES THE INCOME INTEREST IN A TRUST THAT  
37 REQUIRES ALL OF THE INCOME TO BE PAID AT LEAST ANNUALLY TO A SPOUSE AND  
38 FOR WHICH AN ESTATE TAX OR GIFT TAX MARITAL DEDUCTION WOULD BE

1 ALLOWED, IN WHOLE OR IN PART, IF THE TRUSTEE DID NOT HAVE THE POWER TO  
2 MAKE THE ADJUSTMENT;

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

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

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

11 (5) IF POSSESSING OR EXERCISING THE POWER TO MAKE AN  
12 ADJUSTMENT CAUSES AN INDIVIDUAL TO BE TREATED AS THE OWNER OF ALL OR  
13 PART OF THE TRUST FOR INCOME TAX PURPOSES, AND THE INDIVIDUAL WOULD NOT  
14 BE TREATED AS THE OWNER IF THE TRUSTEE DID NOT POSSESS THE POWER TO  
15 MAKE AN ADJUSTMENT;

16 (6) IF POSSESSING OR EXERCISING THE POWER TO MAKE AN  
17 ADJUSTMENT CAUSES ALL OR PART OF THE TRUST ASSETS TO BE SUBJECT TO  
18 ESTATE OR GIFT TAX WITH RESPECT TO THE INDIVIDUAL AND THE ASSETS WOULD  
19 NOT BE SUBJECT TO ESTATE OR GIFT TAX WITH RESPECT TO THE INDIVIDUAL IF THE  
20 TRUSTEE DID NOT POSSESS THE POWER TO MAKE AN ADJUSTMENT;

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

22 (8) IF THE TRUST HAS BEEN CONVERTED TO A UNITRUST IN  
23 ACCORDANCE WITH § 15-502.1 OF THIS SUBTITLE.

24 (E) IF SUBSECTION (D)(5), (6), OR (7) OF THIS SECTION APPLIES TO A TRUSTEE  
25 AND THERE IS MORE THAN ONE TRUSTEE, A COTRUSTEE TO WHOM THE PROVISION  
26 DOES NOT APPLY MAY MAKE THE ADJUSTMENT UNDER SUBSECTION (A) OF THIS  
27 SECTION UNLESS THE EXERCISE OF THE POWER BY THE REMAINING TRUSTEE OR  
28 TRUSTEES IS NOT PERMITTED BY THE TERMS OF THE TRUST.

29 (F) (1) A TRUSTEE MAY RELEASE THE ENTIRE POWER CONFERRED BY  
30 SUBSECTION (A) OF THIS SECTION OR MAY RELEASE ONLY THE POWER TO ADJUST  
31 FROM PRINCIPAL TO INCOME IF THE TRUSTEE IS UNCERTAIN ABOUT WHETHER  
32 POSSESSING OR EXERCISING THE POWER WILL CAUSE A RESULT DESCRIBED IN  
33 SUBSECTION (D)(1), (2), (3), (4), (5), OR (6) OF THIS SECTION OR IF THE TRUSTEE  
34 DETERMINES THAT POSSESSING OR EXERCISING THE POWER WILL OR MAY DEPRIVE  
35 THE TRUST OF A TAX BENEFIT OR IMPOSE A TAX BURDEN NOT DESCRIBED IN  
36 SUBSECTION (D) OF THIS SECTION.

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



1 (G) THE TERMS OF A TRUST THAT LIMIT THE POWER OF A TRUSTEE TO MAKE  
2 AN ADJUSTMENT BETWEEN PRINCIPAL AND INCOME DO NOT AFFECT THE  
3 APPLICATION OF THIS SECTION UNLESS IT IS CLEAR FROM THE TERMS OF THE  
4 TRUST THAT THE TERMS ARE INTENDED TO DENY THE TRUSTEE THE POWER OF  
5 ADJUSTMENT CONFERRED BY SUBSECTION (A) OF THIS SECTION.

6 15-502.3.

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

10 (I) IS A DISTRIBUTE OR PERMISSIBLE DISTRIBUTE OF THE  
11 INCOME OR PRINCIPAL OF THE TRUST ESTATE;

12 (II) WOULD BE A DISTRIBUTE OR PERMISSIBLE DISTRIBUTE OF  
13 THE INCOME OR PRINCIPAL OF THE TRUST ESTATE IF THE INTERESTS OF THE  
14 DISTRIBUTEES DESCRIBED IN ITEM (I) OF THIS PARAGRAPH TERMINATED ON THE  
15 DATE THAT NOTICE IS GIVEN BY THE TRUSTEE; OR

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

19 (2) "QUALIFIED BENEFICIARY" INCLUDES:

20 (I) IF THE QUALIFIED BENEFICIARY IS A MINOR, THE QUALIFIED  
21 BENEFICIARY'S NATURAL OR LEGAL GUARDIAN; AND

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

26 (B) A TRUSTEE SHALL GIVE NOTICE OF A PROPOSED DECISION REGARDING  
27 THE EXERCISE OR NONEXERCISE OF THE DISCRETIONARY POWER CONFERRED  
28 UNDER:

29 (1) SECTION 15-502.1(A) OF THIS SUBTITLE TO CONVERT A TRUST TO A  
30 UNITRUST;

31 (2) SECTION 15-502.1(I) OF THIS SUBTITLE TO RECONVERT FROM A  
32 UNITRUST; OR

33 (3) SECTION 15-502.2(A) OF THIS SUBTITLE TO ADJUST BETWEEN  
34 PRINCIPAL AND INCOME.

35 (C) THE TRUSTEE SHALL MAIL THE NOTICE REQUIRED UNDER SUBSECTION  
36 (B) OF THIS SECTION TO ALL QUALIFIED BENEFICIARIES, EXCEPT THAT NOTICE OF  
37 THE PROPOSED DECISION NEED NOT BE GIVEN TO ANY QUALIFIED BENEFICIARY

1 WHO CONSENTS IN WRITING TO THE PROPOSED DECISION AT ANY TIME BEFORE THE  
2 NOTICE IS MAILED.

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

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

8 (2) A DESCRIPTION OF THE DECISION PROPOSED TO BE TAKEN AND, IF  
9 THE PROPOSED DECISION ALSO INCLUDES AN ACTION THAT REQUIRES AN ORDER OF  
10 A COURT IN ACCORDANCE WITH § 15-502.1 OR § 15-502.2 OF THIS SUBTITLE, A  
11 DESCRIPTION OF THAT ACTION;

12 (3) THE TIME WITHIN WHICH WRITTEN CONSENTS TO THE PROPOSED  
13 DECISION MAY BE GIVEN TO THE TRUSTEE, WHICH SHALL BE AT LEAST 30 DAYS  
14 AFTER THE MAILING OF THE NOTICE OF PROPOSED DECISION; AND

15 (4) THE DATE ON OR AFTER WHICH THE PROPOSED DECISION MAY BE  
16 TAKEN OR IS EFFECTIVE, WHICH SHALL BE AFTER THE END OF THE TIME WITHIN  
17 WHICH CONSENTS TO THE PROPOSED DECISION MAY BE GIVEN TO THE TRUSTEE.

18 (E) IF THE TRUSTEE RECEIVES THE WRITTEN CONSENT OF ALL QUALIFIED  
19 BENEFICIARIES, THEN THE TRUSTEE SHALL UNDERTAKE THE PROPOSED DECISION  
20 UNLESS THE PROPOSED DECISION ALSO INCLUDES AN ACTION THAT REQUIRES AN  
21 ORDER OF A COURT IN ACCORDANCE WITH § 15-502.1 OR § 15-502.2 OF THIS SUBTITLE.

22 (F) IF ANY QUALIFIED BENEFICIARY DOES NOT CONSENT TO THE PROPOSED  
23 DECISION, OR IF THE PROPOSED DECISION INCLUDES AN ACTION THAT REQUIRES  
24 AN ORDER OF A COURT UNDER § 15-502.1 OR § 15-502.2 OF THIS SUBTITLE, THEN THE  
25 TRUSTEE OR ANY QUALIFIED BENEFICIARY MAY FILE A PETITION TO REVIEW THE  
26 PROPOSED DECISION IN THE CIRCUIT COURT FOR THE COUNTY IN WHICH THE  
27 TRUSTEE RESIDES IN THIS STATE, IF THE TRUSTEE IS AN INDIVIDUAL, OR IN WHICH  
28 THE PRINCIPAL PLACE OF BUSINESS OF THE TRUSTEE IS LOCATED IN THIS STATE.

29 (G) (1) IN A PROCEEDING UNDER SUBSECTION (F) OF THIS SECTION:

30 (I) WITH RESPECT TO THE POWER TO CONVERT TO A UNITRUST  
31 UNDER § 15-502.1(A) OF THIS SUBTITLE OR TO RECONVERT FROM A UNITRUST UNDER  
32 § 15-502.1(I) OF THIS SUBTITLE, THE SOLE REMEDY IN THE PROCEEDING IS TO  
33 DIRECT, DENY, OR REVISE THE CONVERSION TO A UNITRUST OR RECONVERSION  
34 FROM A UNITRUST; AND

35 (II) WITH RESPECT TO THE POWER TO ADJUST BETWEEN  
36 PRINCIPAL AND INCOME UNDER § 15-502.2 (A) OF THIS SUBTITLE, THE SOLE REMEDY  
37 IN THE PROCEEDING IS TO DIRECT, DENY, OR REVISE THE ADJUSTMENT BETWEEN  
38 PRINCIPAL AND INCOME.

1 (2) NOTICE OF THE PROCEEDING SHALL BE GIVEN BY THE PETITIONER  
2 TO THE TRUSTEE AND TO ALL QUALIFIED BENEFICIARIES.

3 (H) ANY ACTION TAKEN OR NOT TAKEN IN ACCORDANCE WITH THE  
4 PROVISIONS OF THIS SECTION SHALL BE BINDING ON THE TRUSTEE, ALL QUALIFIED  
5 BENEFICIARIES, AND ANY OTHER PERSON WHO HAS A PRESENT OR FUTURE  
6 INTEREST IN THE TRUST, VESTED OR CONTINGENT, INCLUDING ANY UNBORN OR  
7 UNASCERTAINED BENEFICIARY, AND THE TRUSTEE IS NOT LIABLE TO ANY PERSON  
8 FOR THAT ACTION TAKEN OR NOT TAKEN.

9 15-515.

10 (A) (1) If a trustee determines that an allocation between principal and  
11 income required by § 15-516, § 15-517, § 15-518, § 15-519, or § 15-522 of this  
12 subtitle is insubstantial, the trustee may allocate the entire amount to principal  
13 UNLESS ONE OF THE CIRCUMSTANCES DESCRIBED IN § 15-502.2(D) OF THIS SUBTITLE  
14 APPLIES TO THE ALLOCATION.

15 (2) THIS POWER MAY BE EXERCISED BY A COTRUSTEE IN THE  
16 CIRCUMSTANCES DESCRIBED IN § 15.502.2(E) OF THIS SUBTITLE, AND MAY BE  
17 RELEASED FOR THE REASONS AND IN THE MANNER DESCRIBED IN § 15-502.2(F) OF  
18 THIS SUBTITLE.

19 (B) An allocation is presumed to be insubstantial if:

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

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

26 15-520.

27 (a) (1) If a marital deduction is allowed for all or part of a trust whose assets  
28 consist substantially of property that does not provide the spouse with sufficient  
29 income from or use of the trust assets, AND IF THE AMOUNTS THAT THE TRUSTEE  
30 TRANSFERS FROM PRINCIPAL TO INCOME UNDER § 15-502.2(A) OF THIS SUBTITLE  
31 AND DISTRIBUTES TO THE SPOUSE FROM PRINCIPAL IN ACCORDANCE WITH THE  
32 TERMS OF THE TRUST ARE INSUFFICIENT TO PROVIDE THE SPOUSE WITH THE  
33 BENEFICIAL ENJOYMENT REQUIRED TO OBTAIN THE MARITAL DEDUCTION, the  
34 spouse may require the trustee to make property productive of income, [or] convert  
35 property within a reasonable time, OR MAY REQUEST THE TRUSTEE EXERCISE THE  
36 POWER CONFERRED BY § 15-502.2(A) OF THIS SUBTITLE.

37 (2) The trustee may decide which action or combination of actions to  
38 take.

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

4 15-528.

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

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

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

13 (3) [The] SUBJECT TO SUBSECTION (B) OF THIS SECTION, THE  
14 ownership by an estate or trust of an interest in an entity whose taxable income,  
15 whether or not distributed, is includable in the taxable income of the estate, trust, or  
16 a beneficiary.

17 (B) A TRUSTEE SHALL MAKE AN ADJUSTMENT FROM PRINCIPAL TO INCOME  
18 TO COMPENSATE AN INCOME BENEFICIARY FOR TAXES PAID OR PAYABLE BY THE  
19 INCOME BENEFICIARY IN RESPECT OF THE TAXABLE INCOME OF AN ENTITY THAT IS  
20 TAXABLE TO THE INCOME BENEFICIARY BUT THAT IS DISTRIBUTED TO THE  
21 TRUSTEE AND ALLOCATED TO PRINCIPAL.

22 [(b)] (C) (1) If the amount of an estate tax marital deduction or charitable  
23 contribution deduction is reduced because a fiduciary deducts an amount paid from  
24 principal for income tax purposes instead of deducting it for estate tax purposes, and  
25 as a result estate taxes paid from principal are increased and income taxes paid by an  
26 estate, trust, or beneficiary are decreased, each estate, trust, or beneficiary that  
27 benefits from the decrease in income tax shall reimburse the principal from which the  
28 increase in estate tax is paid.

29 (2) The total reimbursement must equal the increase in the estate  
30 tax to the extent that the principal used to pay the increase would have qualified for  
31 a marital deduction or charitable contribution deduction but for the payment.

32 (3) The proportionate share of the reimbursement for each estate,  
33 trust, or beneficiary whose income taxes are reduced must be the same as its  
34 proportionate share of the total decrease in income tax. An estate or trust shall  
35 reimburse principal from income.

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

38 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take  
39 effect October 1, 2002.

