

SENATE BILL 641

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2002 Regular Session
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By: **Senator Baker**
Introduced and read first time: February 1, 2002
Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments
Senate action: Adopted
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CHAPTER _____

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~~ persons of certain
7 proposed decisions regarding the power to convert a trust to a unitrust or to
8 adjust 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; defining a certain term; providing
12 for the application of this Act; and generally relating to allocations between
13 principal and income of estates and trusts.

14 BY adding to
15 Article - Estates and Trusts
16 Section 15-501(o), 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)

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

3 **Article - Estates and Trusts**

4 15-501.

5 (O) "UNITRUST" MEANS A TRUST FROM WHICH THE INCOME BENEFICIARY IS
6 ENTITLED TO RECEIVE ANNUALLY A FIXED PERCENTAGE OF THE FAIR MARKET
7 VALUE OF THE TRUST'S ASSETS.

8 15-502.1.

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

11 (1) THE TRUSTEE RECEIVES A WRITTEN REQUEST FROM A BENEFICIARY
12 TO EXERCISE THE POWER CONFERRED BY THIS SUBSECTION TO CONVERT TO A
13 UNITRUST;

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

16 (3) THE TRUSTEE DETERMINES THAT THE CONVERSION WILL ENABLE
17 THE TRUSTEE TO BETTER CARRY OUT THE INTENT OF THE PERSON WHO CREATED
18 THE TRUST AND THE PURPOSES OF THE TRUST; AND

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

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

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

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

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

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

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

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

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

14 (8) THE ANTICIPATED TAX CONSEQUENCES OF ~~AN ADJUSTMENT A~~
15 UNITRUST CONVERSION.

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

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

24 (I) THE 3 PRECEDING YEARS; OR

25 (II) THE PERIOD DURING WHICH THE TRUST HAS BEEN IN
26 EXISTENCE;

27 (2) EXPENSES THAT WOULD BE DEDUCTED FROM INCOME IF THE TRUST
28 WERE NOT A UNITRUST MAY NOT BE DEDUCTED FROM THE UNITRUST
29 DISTRIBUTION;

30 (3) ANY PROVISION IN THE GOVERNING INSTRUMENT DIRECTING OR
31 AUTHORIZING THE TRUSTEE TO DISTRIBUTE PRINCIPAL OR AUTHORIZING A
32 BENEFICIARY TO WITHDRAW A PORTION OR ALL OF THE PRINCIPAL MAY NOT BE
33 AFFECTED BY THE CONVERSION TO A UNITRUST;

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

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

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

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

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

11 (D) THE TRUSTEE SHALL DETERMINE:

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

14 (2) HOW FREQUENTLY TO VALUE NONLIQUID ASSETS AND WHETHER TO
15 ESTIMATE THEIR VALUE; AND

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

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

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

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

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

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

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

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

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

6 (4) POSSESSING OR EXERCISING THE POWER TO CONVERT WOULD
7 CAUSE AN INDIVIDUAL TO BE TREATED AS THE OWNER OF ALL OR PART OF THE
8 TRUST FOR FEDERAL INCOME TAX PURPOSES AND THE INDIVIDUAL WOULD NOT BE
9 TREATED AS THE OWNER IF THE TRUSTEE DID NOT POSSESS THE POWER TO
10 CONVERT;

11 (5) POSSESSING OR EXERCISING THE POWER TO CONVERT WOULD
12 CAUSE ALL OR PART OF THE TRUST ASSETS TO BE SUBJECT TO ESTATE OR GIFT TAX
13 WITH RESPECT TO AN INDIVIDUAL AND THE ASSETS WOULD NOT BE SUBJECT TO
14 ESTATE OR GIFT TAX WITH RESPECT TO THE INDIVIDUAL IF THE TRUSTEE DID NOT
15 POSSESS THE POWER TO CONVERT; OR

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

17 (G) (1) IF SUBSECTION (F)(4), (5), OR (6) OF THIS SECTION APPLIES TO A
18 TRUSTEE AND THERE IS MORE THAN ONE TRUSTEE, A COTRUSTEE TO WHOM THE
19 PROVISION DOES NOT APPLY MAY CONVERT THE TRUST TO A UNITRUST UNDER
20 SUBSECTION (A) OF THIS SECTION, UNLESS EXERCISE OF THE POWER BY THE
21 REMAINING TRUSTEE OR TRUSTEES IS PROHIBITED BY THE GOVERNING
22 INSTRUMENT.

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

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

28 (I) THE TRUSTEE IS UNCERTAIN ABOUT WHETHER POSSESSING
29 OR EXERCISING THE POWER WILL CAUSE A RESULT DESCRIBED IN SUBSECTION (F)
30 (4), (5), OR (6) OF THIS SECTION; OR

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

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

37 (I) IF THE TRUSTEE RECEIVES A WRITTEN REQUEST FROM A BENEFICIARY
38 TO RECONVERT A TRUST FROM A UNITRUST, THE TRUSTEE MAY RECONVERT A
39 TRUST FROM A UNITRUST IF:

1 (1) THE TRUSTEE COMPLIES WITH THE NOTICE REQUIREMENTS OF §
2 ~~15-202.3~~ 15-502.3 OF THIS SUBTITLE AND ALL QUALIFIED BENEFICIARIES CONSENT
3 TO RECONVERT FROM A UNITRUST; OR

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

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

11 15-502.2.

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

14 (1) THE TRUSTEE RECEIVES A WRITTEN REQUEST FROM A BENEFICIARY
15 TO EXERCISE THE POWER CONFERRED BY THIS SUBSECTION TO MAKE AN
16 ADJUSTMENT;

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

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

21 (4) THE TRUSTEE DETERMINES, AFTER APPLYING THE RULES IN §
22 15-502(A) OF THIS SUBTITLE, THAT THE TRUSTEE IS UNABLE TO COMPLY WITH §
23 15-502(B) OF THIS SUBTITLE;

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

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

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

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

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

- 1 (2) THE INTENT OF THE CREATOR OF THE TRUST;
- 2 (3) THE IDENTITY AND CIRCUMSTANCES OF THE BENEFICIARIES;
- 3 (4) THE NEEDS FOR LIQUIDITY, REGULARITY OF INCOME, AND
4 PRESERVATION AND APPRECIATION OF CAPITAL;
- 5 (5) THE ASSETS HELD IN THE TRUST AND:
- 6 (I) THE EXTENT TO WHICH THEY CONSIST OF FINANCIAL ASSETS,
7 INTERESTS IN CLOSELY HELD ENTERPRISES, TANGIBLE AND INTANGIBLE PERSONAL
8 PROPERTY, OR REAL PROPERTY;
- 9 (II) THE EXTENT TO WHICH AN ASSET IS USED BY A BENEFICIARY;
10 AND
- 11 (III) WHETHER AN ASSET WAS ACQUIRED BY THE TRUSTEE OR
12 RECEIVED FROM THE CREATOR OF THE TRUST;
- 13 (6) THE NET AMOUNT ALLOCATED TO INCOME UNDER OTHER
14 PROVISIONS OF THIS SUBTITLE AND THE INCREASE OR DECREASE IN THE VALUE OF
15 THE PRINCIPAL ASSETS, WHICH THE TRUSTEE MAY ESTIMATE AS TO ASSETS FOR
16 WHICH MARKET VALUES ARE NOT READILY AVAILABLE;
- 17 (7) WHETHER AND TO WHAT EXTENT THE TERMS OF THE TRUST GIVE
18 THE TRUSTEE THE POWER TO INVADE PRINCIPAL OR ACCUMULATE INCOME AND
19 THE EXTENT TO WHICH THE TRUSTEE HAS EXERCISED A POWER FROM TIME TO TIME
20 TO INVADE PRINCIPAL OR ACCUMULATE INCOME;
- 21 (8) THE ACTUAL AND ANTICIPATED EFFECT OF ECONOMIC CONDITIONS
22 ON PRINCIPAL AND INCOME AND THE EFFECTS OF INFLATION AND DEFLATION; AND
- 23 (9) THE ANTICIPATED TAX CONSEQUENCES OF AN ADJUSTMENT.
- 24 (C) UNLESS AUTHORIZED BY A COURT ORDER IN ACCORDANCE WITH A
25 PETITION FILED UNDER § 15-502.3 OF THIS SUBTITLE, A TRUSTEE MAY NOT MAKE AN
26 ADJUSTMENT UNDER SUBSECTION (A) OF THIS SECTION IN ANY ACCOUNTING
27 PERIOD IF THE ADJUSTMENT RESULTS IN A DISTRIBUTION OF NET INCOME TO THE
28 INCOME BENEFICIARY:
- 29 (1) THAT IS GREATER THAN 4% OF THE NET FAIR MARKET VALUE OF
30 THE TRUST ASSETS ON THE FIRST BUSINESS DAY OF THAT ACCOUNTING PERIOD, IF
31 THE NET INCOME FOR THAT ACCOUNTING PERIOD IS LESS THAN 4% AS DETERMINED
32 UNDER THIS SUBTITLE BEFORE APPLICATION OF THE PROVISIONS OF SUBSECTION
33 (A) OF THIS SECTION; OR
- 34 (2) THAT IS LESS THAN 4% OF THE NET FAIR MARKET VALUE OF THE
35 TRUST ASSETS ON THE FIRST BUSINESS DAY OF THAT ACCOUNTING PERIOD, IF THE
36 NET INCOME FOR THAT ACCOUNTING PERIOD IS GREATER THAN 4% AS DETERMINED

1 UNDER THIS SUBTITLE BEFORE APPLICATION OF THE PROVISIONS OF SUBSECTION
2 (A) OF THIS SECTION.

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

5 (1) THAT DIMINISHES THE INCOME INTEREST IN A TRUST THAT
6 REQUIRES ALL OF THE INCOME TO BE PAID AT LEAST ANNUALLY TO A SPOUSE AND
7 FOR WHICH AN ESTATE TAX OR GIFT TAX MARITAL DEDUCTION WOULD BE
8 ALLOWED, IN WHOLE OR IN PART, IF THE TRUSTEE DID NOT HAVE THE POWER TO
9 MAKE THE ADJUSTMENT;

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

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

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

18 (5) IF POSSESSING OR EXERCISING THE POWER TO MAKE AN
19 ADJUSTMENT CAUSES AN INDIVIDUAL TO BE TREATED AS THE OWNER OF ALL OR
20 PART OF THE TRUST FOR INCOME TAX PURPOSES, AND THE INDIVIDUAL WOULD NOT
21 BE TREATED AS THE OWNER IF THE TRUSTEE DID NOT POSSESS THE POWER TO
22 MAKE AN ADJUSTMENT;

23 (6) IF POSSESSING OR EXERCISING THE POWER TO MAKE AN
24 ADJUSTMENT CAUSES ALL OR PART OF THE TRUST ASSETS TO BE SUBJECT TO
25 ESTATE OR GIFT TAX WITH RESPECT TO THE INDIVIDUAL AND THE ASSETS WOULD
26 NOT BE SUBJECT TO ESTATE OR GIFT TAX WITH RESPECT TO THE INDIVIDUAL IF THE
27 TRUSTEE DID NOT POSSESS THE POWER TO MAKE AN ADJUSTMENT;

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

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

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

36 (F) (1) A TRUSTEE MAY RELEASE THE ENTIRE POWER CONFERRED BY
37 SUBSECTION (A) OF THIS SECTION OR MAY RELEASE ONLY THE POWER TO ADJUST
38 FROM PRINCIPAL TO INCOME IF THE TRUSTEE IS UNCERTAIN ABOUT WHETHER
39 POSSESSING OR EXERCISING THE POWER WILL CAUSE A RESULT DESCRIBED IN

1 SUBSECTION (D)(1), (2), (3), (4), (5), OR (6) OF THIS SECTION OR IF THE TRUSTEE
 2 DETERMINES THAT POSSESSING OR EXERCISING THE POWER WILL OR MAY DEPRIVE
 3 THE TRUST OF A TAX BENEFIT OR IMPOSE A TAX BURDEN NOT DESCRIBED IN
 4 SUBSECTION (D) OF THIS SECTION.

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

8 (G) THE TERMS OF A TRUST THAT LIMIT THE POWER OF A TRUSTEE TO MAKE
 9 AN ADJUSTMENT BETWEEN PRINCIPAL AND INCOME DO NOT AFFECT THE
 10 APPLICATION OF THIS SECTION UNLESS IT IS CLEAR FROM THE TERMS OF THE
 11 TRUST THAT THE TERMS ARE INTENDED TO DENY THE TRUSTEE THE POWER OF
 12 ADJUSTMENT CONFERRED BY SUBSECTION (A) OF THIS SECTION.

13 15-502.3.

14 (A) ~~(1)~~ IN THIS SECTION, "QUALIFIED BENEFICIARY" MEANS:

15 (1) A PERSON WHO, ON THE DATE THAT NOTICE IS GIVEN BY THE
 16 TRUSTEE IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION:

17 (I) IS A DISTRIBUTEE OR PERMISSIBLE DISTRIBUTEE OF THE
 18 INCOME OR PRINCIPAL OF THE TRUST ESTATE;

19 (II) WOULD BE A DISTRIBUTEE OR PERMISSIBLE DISTRIBUTEE OF
 20 THE INCOME OR PRINCIPAL OF THE TRUST ESTATE IF THE INTERESTS OF THE
 21 DISTRIBUTEES DESCRIBED IN ITEM (I) OF THIS PARAGRAPH TERMINATED ON THE
 22 DATE THAT NOTICE IS GIVEN BY THE TRUSTEE; OR

23 (III) WOULD BE A DISTRIBUTEE OR PERMISSIBLE DISTRIBUTEE OF
 24 THE INCOME OR PRINCIPAL OF THE TRUST ESTATE IF THE TRUST WERE TO
 25 TERMINATE ON THE DATE THAT NOTICE IS GIVEN BY THE TRUSTEE- AND NO POWERS
 26 OF APPOINTMENT WERE EXERCISED;

27 ~~(2)~~ "QUALIFIED BENEFICIARY" INCLUDES:

28 ~~(1)~~ (2) IF ~~THE QUALIFIED BENEFICIARY AN INDIVIDUAL~~
 29 DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION IS A MINOR, THE QUALIFIED
 30 BENEFICIARY'S INDIVIDUAL'S NATURAL OR LEGAL GUARDIAN; AND OR

31 ~~(1)~~ (3) IF ~~THE QUALIFIED BENEFICIARY AN INDIVIDUAL~~
 32 DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION IS A DISABLED PERSON, AS
 33 DEFINED IN § 13-101 OF THIS ARTICLE, ANY PERSON ACTING ON BEHALF OF THE
 34 QUALIFIED BENEFICIARY INDIVIDUAL UNDER A GUARDIANSHIP,
 35 CONSERVATORSHIP, OR COMMITTEE.

36 (B) A TRUSTEE SHALL GIVE NOTICE OF A PROPOSED DECISION REGARDING
 37 THE EXERCISE OR NONEXERCISE OF THE DISCRETIONARY POWER CONFERRED
 38 UNDER:

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

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

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

7 (C) THE TRUSTEE SHALL MAIL THE NOTICE REQUIRED UNDER SUBSECTION
8 (B) OF THIS SECTION TO:

9 (1) ALL QUALIFIED BENEFICIARIES, EXCEPT THAT NOTICE OF THE
10 PROPOSED DECISION NEED NOT BE GIVEN TO ANY QUALIFIED BENEFICIARY WHO
11 CONSENTS IN WRITING TO THE PROPOSED DECISION AT ANY TIME BEFORE THE
12 NOTICE IS MAILED; AND

13 (2) THE CREATOR OF THE TRUST, IF LIVING.

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

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

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

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

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

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

33 (F) IF ANY QUALIFIED BENEFICIARY DOES NOT CONSENT TO THE PROPOSED
34 DECISION, OR IF THE PROPOSED DECISION INCLUDES AN ACTION THAT REQUIRES
35 AN ORDER OF A COURT UNDER § 15-502.1 OR § 15-502.2 OF THIS SUBTITLE, THEN THE
36 TRUSTEE OR ANY QUALIFIED BENEFICIARY MAY FILE A PETITION TO REVIEW THE
37 PROPOSED DECISION IN THE CIRCUIT COURT FOR THE COUNTY IN WHICH THE

1 TRUSTEE RESIDES IN THIS STATE, IF THE TRUSTEE IS AN INDIVIDUAL, OR IN WHICH
2 THE PRINCIPAL PLACE OF BUSINESS OF THE TRUSTEE IS LOCATED IN THIS STATE.

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

4 (I) WITH RESPECT TO THE POWER TO CONVERT TO A UNITRUST
5 UNDER § 15-502.1(A) OF THIS SUBTITLE OR TO RECONVERT FROM A UNITRUST UNDER
6 § 15-502.1(I) OF THIS SUBTITLE, THE SOLE REMEDY IN THE PROCEEDING IS TO
7 DIRECT, DENY, OR REVISE THE CONVERSION TO A UNITRUST OR RECONVERSION
8 FROM A UNITRUST; AND

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

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

15 (H) ANY ACTION TAKEN OR NOT TAKEN IN ACCORDANCE WITH THE
16 PROVISIONS OF THIS SECTION SHALL BE BINDING ON THE TRUSTEE, ALL QUALIFIED
17 BENEFICIARIES, AND ANY OTHER PERSON WHO HAS A PRESENT OR FUTURE
18 INTEREST IN THE TRUST, VESTED OR CONTINGENT, INCLUDING ANY UNBORN OR
19 UNASCERTAINED BENEFICIARY, AND THE TRUSTEE IS NOT LIABLE TO ANY PERSON
20 FOR THAT ACTION TAKEN OR NOT TAKEN.

21 15-515.

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

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

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

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

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

1 15-520.

2 (a) (1) 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 § 15-502.2(A) OF THIS SUBTITLE
6 AND DISTRIBUTES TO THE SPOUSE FROM PRINCIPAL IN ACCORDANCE WITH THE
7 TERMS OF THE TRUST ARE INSUFFICIENT TO PROVIDE THE SPOUSE WITH THE
8 BENEFICIAL ENJOYMENT REQUIRED TO OBTAIN THE MARITAL DEDUCTION, the
9 spouse may require the trustee to make property productive of income, [or] convert
10 property within a reasonable time, OR MAY REQUEST THE TRUSTEE EXERCISE THE
11 POWER CONFERRED BY § 15-502.2(A) OF THIS SUBTITLE.

12 (2) 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] SUBJECT TO SUBSECTION (B) OF THIS SECTION, THE
27 ownership by an estate or trust of an interest in an entity whose taxable income,
28 whether or not distributed, is includable in the taxable income of the estate, trust, or
29 a beneficiary.

30 (B) A TRUSTEE SHALL MAKE AN ADJUSTMENT FROM PRINCIPAL TO INCOME
31 TO COMPENSATE AN INCOME BENEFICIARY FOR TAXES PAID OR PAYABLE BY THE
32 INCOME BENEFICIARY IN RESPECT OF THE TAXABLE INCOME OF AN ENTITY THAT IS
33 TAXABLE TO THE INCOME BENEFICIARY BUT THAT IS DISTRIBUTED TO THE
34 TRUSTEE AND ALLOCATED TO PRINCIPAL.

35 [(b)] (C) (1) If the amount of an estate tax marital deduction or charitable
36 contribution deduction is reduced because a fiduciary deducts an amount paid from
37 principal for income tax purposes instead of deducting it for estate tax purposes, and
38 as a result estate taxes paid from principal are increased and income taxes paid by an
39 estate, trust, or beneficiary are decreased, each estate, trust, or beneficiary that

1 benefits from the decrease in income tax shall reimburse the principal from which the
2 increase in estate tax is paid.

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

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

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

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