

CHAPTER 169

PROBATE, TRUSTS, AND FIDUCIARIES

HOUSE BILL 09-1241

BY REPRESENTATIVE(S) Roberts, Ferrandino, Kerr J., McGihon, Tipton, Waller, Loper, Swalm;
also SENATOR(S) Morse.

AN ACT

CONCERNING TITLE 15 OF THE COLORADO REVISED STATUTES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 15-1-401, Colorado Revised Statutes, is amended to read:

15-1-401. Short title. ~~This~~ SUBPARTS 1 THROUGH 6 OF THIS part 4 shall be known and may be cited as the "Uniform Principal and Income Act".

SECTION 2. 15-1-403, Colorado Revised Statutes, is amended to read:

15-1-403. Fiduciary duties - general principles. (1) In allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of subparts 2 and 3 of this part 4, a fiduciary:

(a) Shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in SUBPARTS 1 THROUGH 6 OF this part 4;

(b) May administer a trust or estate by the exercise of a discretionary power of administration given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by SUBPARTS 1 THROUGH 6 OF this part 4;

(c) Shall administer a trust or estate in accordance with SUBPARTS 1 THROUGH 6 OF this part 4 if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration; and

(d) Shall add a receipt or charge a disbursement to principal to the extent that the

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

terms of the trust and SUBPARTS 1 THROUGH 6 OF this part 4 do not provide a rule for allocating the receipt or disbursement to or between principal and income.

(2) In exercising the power to adjust under section 15-1-404 (1) or a discretionary power of administration regarding a matter within the scope of SUBPARTS 1 THROUGH 6 OF this part 4, whether granted by the terms of a trust, a will, or SUBPARTS 1 THROUGH 6 OF this part 4, a fiduciary shall administer a trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an intention that the fiduciary shall or may favor one or more of the beneficiaries. A determination in accordance with SUBPARTS 1 THROUGH 6 OF this part 4 is presumed to be fair and reasonable to all of the beneficiaries.

(3) The terms and conditions of a trust or a will shall govern all actions taken by a fiduciary with respect to any matter within the scope of SUBPARTS 1 THROUGH 6 OF this part 4. The provisions of SUBPARTS 1 THROUGH 6 OF this part 4 are default provisions and may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust or a will. The provisions of SUBPARTS 1 THROUGH 6 OF this part 4 shall govern the administration of a trust or will by a fiduciary only if such trust or will contains no conflicting provision.

(4) Nothing in SUBPARTS 1 THROUGH 6 OF this part 4 shall be construed to limit or restrict a maker of a trust or will from making provisions in such trust or will that are different from the provisions in SUBPARTS 1 THROUGH 6 OF this part 4.

SECTION 3. 15-1-404 (2) (f) and (7), Colorado Revised Statutes, are amended to read:

15-1-404. Trustee's power to adjust. (2) In deciding whether and to what extent to exercise the power conferred by subsection (1) of this section, a trustee shall consider all factors relevant to the trust and its beneficiaries, including the following factors to the extent they are relevant:

(f) The net amount allocated to income under the other sections of SUBPARTS 1 THROUGH 6 OF this part 4 and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;

(7) Nothing in this section or in SUBPARTS 1 THROUGH 6 OF this part 4 is intended to create or imply a duty to make an adjustment, and a trustee is not liable for not considering whether to make an adjustment or for choosing not to make an adjustment. In a proceeding with respect to a trustee's exercise or nonexercise of the power to make an adjustment under this section, the sole remedy is to direct, deny, or revise an adjustment between principal and income.

SECTION 4. 15-1-404.5 (4) (e) and (13) (b) (II), Colorado Revised Statutes, are amended to read:

15-1-404.5. Conversion - unitrusts - administration. (4) **Administration of a unitrust.** During the time that a trust is a unitrust, the trustee shall administer the trust in accordance with the provisions of this subsection (4) as follows, unless

otherwise expressly provided by the terms of the trust:

(e) A change in the method of determining a reasonable current return by converting to a unitrust in accordance with this section and substituting the distribution amount for net trust accounting income is a proper change in the definition of trust income and shall be given effect notwithstanding any contrary provision of SUBPARTS 1 THROUGH 6 OF this part 4. The distribution amount shall in all cases be deemed a reasonable current return that fairly apportions the total return of a unitrust.

(13) **Application.** (b) This section shall be construed to apply to the administration of a trust that is administered in Colorado under Colorado law or that is governed by Colorado law with respect to the meaning and effect of its terms unless:

(II) The governing instrument expressly prohibits the use of this section by specific reference to one or more provisions of SUBPARTS 1 THROUGH 6 OF this part 4;

SECTION 5. 15-1-405 (1), Colorado Revised Statutes, is amended to read:

15-1-405. Notice of action. (1) A trustee may give a notice of proposed action regarding a matter governed by SUBPARTS 1 THROUGH 6 OF this part 4 as provided in this section. For the purpose of this section, a proposed action includes a course of action and a decision not to take action.

SECTION 6. 15-1-409 (3), Colorado Revised Statutes, is amended to read:

15-1-409. Apportionment of receipts and disbursements when decedent dies or income interest begins. (3) An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of SUBPARTS 1 THROUGH 6 OF this part 4. Distributions to shareholders or other owners from an entity to which section 15-1-411 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.

SECTION 7. 15-1-414 (1) (a), Colorado Revised Statutes, is amended to read:

15-1-414. Principal receipts. (1) A trustee shall allocate to principal:

(a) To the extent not allocated to income under SUBPARTS 1 THROUGH 6 OF this part 4, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest, or a payer under a contract naming the trust or its trustee as beneficiary;

SECTION 8. 15-1-421 (3) and (4), Colorado Revised Statutes, are amended to read:

15-1-421. Minerals, water, and other natural resources. (3) SUBPARTS 1 THROUGH 6 OF this part 4 ~~applies~~ APPLY whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

(4) If a trust owns an interest in minerals, water, or other natural resources on July 1, 2001, the trustee may allocate receipts from the interest as provided in SUBPARTS 1 THROUGH 6 OF this part 4 or in the manner used by the trustee before July 1, 2001. If the trust acquires an interest in minerals, water, or other natural resources after July 1, 2001, the trustee shall allocate receipts from the interest as provided in SUBPARTS 1 THROUGH 6 OF this part 4.

SECTION 9. Part 4 of article 1 of title 15, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

15-1-421.5. Disposition of natural resources. (1) IF ANY PART OF THE PRINCIPAL CONSISTS OF A RIGHT TO RECEIVE ROYALTIES, OVERRIDING OR LIMITED ROYALTIES, WORKING INTERESTS, PRODUCTION PAYMENTS, NET PROFIT INTERESTS, OR OTHER INTERESTS IN MINERALS OR OTHER NATURAL RESOURCES IN, ON, OR UNDER LAND, THE RECEIPTS FROM TAKING THE NATURAL RESOURCES FROM THE LAND SHALL BE ALLOCATED AS FOLLOWS:

(a) IF RECEIVED AS RENT ON A LEASE OR EXTENSION PAYMENTS ON A LEASE, THE RECEIPTS ARE INCOME;

(b) IF RECEIVED FROM A PRODUCTION PAYMENT, THE RECEIPTS ARE INCOME TO THE EXTENT OF ANY FACTOR FOR INTEREST OR ITS EQUIVALENT PROVIDED IN THE GOVERNING INSTRUMENT. THERE SHALL BE ALLOCATED TO PRINCIPAL THE FRACTION OF THE BALANCE OF THE RECEIPTS THAT THE UNRECOVERED COST OF THE PRODUCTION PAYMENT BEARS TO THE BALANCE OWED ON THE PRODUCTION PAYMENT, EXCLUSIVE OF ANY FACTOR FOR INTEREST OR ITS EQUIVALENT. THE RECEIPTS NOT ALLOCATED TO PRINCIPAL ARE INCOME.

(c) IF RECEIVED AS A ROYALTY, OVERRIDING OR LIMITED ROYALTY, OR BONUS, OR FROM A WORKING, NET PROFIT, OR ANY OTHER INTEREST IN MINERALS OR OTHER NATURAL RESOURCES, RECEIPTS NOT PROVIDED FOR IN PARAGRAPH (a) OR (b) OF THIS SUBSECTION (1) SHALL BE APPORTIONED ON A YEARLY BASIS IN ACCORDANCE WITH THIS PARAGRAPH (c) REGARDLESS OF WHETHER ANY NATURAL RESOURCE WAS BEING TAKEN FROM THE LAND AT THE TIME THE TRUST WAS ESTABLISHED. FIFTEEN PERCENT OF THE GROSS RECEIPTS, BUT NOT TO EXCEED FIFTY PERCENT OF THE NET RECEIPTS REMAINING AFTER PAYMENT OF ALL EXPENSES, DIRECT AND INDIRECT, COMPUTED WITHOUT ALLOWANCE FOR DEPLETION, SHALL BE ADDED TO PRINCIPAL AS AN ALLOWANCE FOR DEPLETION. THE BALANCE OF THE GROSS RECEIPTS AFTER PAYMENT THEREFROM OF ALL EXPENSES, DIRECT AND INDIRECT, IS INCOME.

(2) IF A TRUSTEE, ON THE EFFECTIVE DATE OF THIS SECTION, HELD AN ITEM OF DEPLETABLE PROPERTY OF A TYPE SPECIFIED IN THIS SECTION, HE OR SHE SHALL ALLOCATE RECEIPTS FROM THE PROPERTY IN THE MANNER USED BEFORE THE EFFECTIVE DATE OF THIS SECTION, BUT AS TO ALL DEPLETABLE PROPERTY ACQUIRED AFTER THE EFFECTIVE DATE OF THIS SECTION BY AN EXISTING OR NEW TRUST, THE METHOD OF ALLOCATION PROVIDED HEREIN SHALL BE USED.

(3) THIS SECTION DOES NOT APPLY TO TIMBER, WATER, SOIL, SOD, DIRT, TURF, OR MOSSES.

SECTION 10. 15-1-422 (3) and (4), Colorado Revised Statutes, are amended to read:

15-1-422. Timber. (3) SUBPARTS 1 THROUGH 6 OF this part 4 ~~applies~~ APPLY whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.

(4) If a trust owns an interest in timberland on July 1, 2001, the trustee may allocate net receipts from the sale of timber and related products as provided in SUBPARTS 1 THROUGH 6 OF this part 4 or in the manner used by the trustee before July 1, 2001. If the trust acquires an interest in timberland after July 1, 2001, the trustee shall allocate net receipts from the sale of timber and related products as provided in SUBPARTS 1 THROUGH 6 OF this part 4.

SECTION 11. 15-1-433, Colorado Revised Statutes, is amended to read:

15-1-433. Severability. If any provision of SUBPARTS 1 THROUGH 6 OF this part 4 or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of SUBPARTS 1 THROUGH 6 OF this part 4 that can be given effect without the invalid provision or application, and to this end the provisions of SUBPARTS 1 THROUGH 6 OF this part 4 are severable.

SECTION 12. 15-1-434 (1), (2), and (3), Colorado Revised Statutes, are amended to read:

15-1-434. Effective date - application to existing trusts and estates - election.

(1) SUBPARTS 1 THROUGH 6 OF this part 4 shall take effect July 1, 2001.

(2) Subparts 1 through 6 of this part 4 shall apply to every trust or decedent's estate existing on and after July 1, 2001, except as otherwise expressly provided in the will or terms of the trust or in SUBPARTS 1 THROUGH 6 OF this part 4. For each trust established under a will or trust agreement existing and irrevocable on July 1, 2001, the trustee may elect to apply the "Uniform Principal and Income Act" of this state in effect on June 30, 2001. The trustee shall make such election by July 1, 2002.

(3) Notwithstanding the provisions of subsection (2) of this section, SUBPARTS 1 THROUGH 6 OF this part 4 shall not apply to any trust or decedent's estate existing on July 1, 2001, in which no trustee has the authority to act under section 15-1-404 unless the trustees elect to apply SUBPARTS 1 THROUGH 6 OF this part 4. The trustees may make this election at any time.

SECTION 13. Part 4 of article 1 of title 15, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

15-1-435. Application of certain provisions - notice of election. (1) SECTION 15-1-421.5 SHALL APPLY TO ALL TRUSTS AND ESTATES EXECUTED ON OR AFTER JULY 1, 2009, UNLESS THE QUALIFIED BENEFICIARIES ELECT NOT TO APPLY SAID SECTION.

(2) THE PROVISIONS OF SECTION 15-1-421.5 SHALL NOT APPLY TO THE DETERMINATION OF INCOME FROM THE DISPOSITION OF NATURAL RESOURCES IN A TRUST OR ESTATE CREATED BEFORE JULY 1, 2009, UNLESS THE QUALIFIED BENEFICIARIES ELECT TO APPLY SECTION 15-1-421.5 AS PROVIDED IN THIS SECTION.

(3) IF THE QUALIFIED BENEFICIARIES ELECT UNDER SUBSECTION (1) OR (2) OF THIS SECTION, NOTICE OF THE ELECTION TO APPLY OR NOT TO APPLY SECTION 15-1-421.5 SHALL BE GIVEN BY THE TRUSTEE IN ACCORDANCE WITH SECTION 15-1-405, AND THE PROVISIONS OF SUCH SECTION SHALL APPLY TO THE ELECTION.

(4) AN ELECTION TO APPLY SECTION 15-1-421.5 IS IRREVOCABLE.

SECTION 14. Part 4 of article 1 of title 15, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBPART to read:

SUBPART 7
UNIFORM PRINCIPAL AND INCOME ACT OF 1955

15-1-451. Short title. THIS SUBPART 7 SHALL BE KNOWN AND MAY BE CITED AS THE "UNIFORM PRINCIPAL AND INCOME ACT OF 1955".

15-1-452. Source and prior enactment - uniform application. (1) THIS SUBPART 7 IS DERIVED FROM THE "UNIFORM PRINCIPAL AND INCOME ACT" PROMULGATED IN 1931 BY THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS AND ENACTED IN THIS STATE EFFECTIVE SEPTEMBER 1, 1955. THE REENACTMENT OF SUCH ACT IN THIS SUBPART 7 INCLUDES THE AMENDMENTS TO SUCH ACT ENACTED IN THIS STATE THROUGH JUNE 30, 2001, AND ADDITIONAL AMENDMENTS TO ACCOMMODATE ITS REENACTMENT.

(2) THIS SUBPART 7 SHALL BE CONSTRUED AND INTERPRETED AS TO EFFECTUATE THE GENERAL PURPOSE OF THE ACT AS PROMULGATED BY SUCH COMMISSIONERS TO MAKE UNIFORM THE LAW OF THOSE JURISDICTIONS WHICH ENACTED SUCH ACT TAKING INTO ACCOUNT THE CASE LAW OF SUCH JURISDICTIONS WITH RESPECT TO SUCH ACT.

15-1-453. Definitions - construction of terms. (1) AS USED IN THIS SUBPART 7, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "EXECUTOR" MEANS THE EXECUTOR NAMED IN A WILL AND ANY SUCCESSOR EXECUTOR AND INCLUDES AN ADMINISTRATOR WITH THE WILL ANNEXED.

(b) "INCOME" MEANS THE RETURN DERIVED FROM PRINCIPAL.

(c) "NET PROBATE INCOME" MEANS THE INCOME DERIVED FROM PROPERTY PASSING TO THE EXECUTOR BY WILL OR BY THE EXECUTION OF A POWER OF APPOINTMENT OR FROM ANY SUBSTITUTE FOR SUCH PROPERTY ACQUIRED BY PURCHASE, EXCHANGE, OR OTHERWISE, INCLUDING INCOME DERIVED FROM PROPERTY WHICH IS USED TO DISCHARGE LIABILITIES OF THE TESTATOR OR OF THE EXECUTOR IN HIS OR HER REPRESENTATIVE CAPACITY, AND LEGACIES PAYABLE IN MONEY, LESS ANY INCOME TAXES PAID BY THE EXECUTOR WHICH ARE ATTRIBUTABLE TO SUCH INCOME AND LESS THAT SHARE OF ADMINISTRATION

EXPENSES PROPERLY CHARGEABLE TO INCOME.

(d) "PRINCIPAL" MEANS ANY REALTY OR PERSONALTY WHICH HAS BEEN SO SET ASIDE OR LIMITED BY THE OWNER THEREOF OR A PERSON THERETO LEGALLY EMPOWERED THAT IT AND ANY SUBSTITUTIONS FOR IT ARE EVENTUALLY TO BE CONVEYED, DELIVERED, OR PAID TO A PERSON, WHILE THE RETURN THEREFROM OR USE THEREOF OR ANY PART OF SUCH RETURN OR USE IS IN THE MEANTIME TO BE TAKEN OR RECEIVED BY OR HELD FOR ACCUMULATION FOR THE SAME OR ANOTHER PERSON.

(e) "REMAINDERMAN" MEANS THE PERSON ULTIMATELY ENTITLED TO THE PRINCIPAL, WHETHER NAMED OR DESIGNATED BY THE TERMS OF THE TRANSACTION BY WHICH THE PRINCIPAL WAS ESTABLISHED OR DETERMINED BY OPERATION OF LAW.

(f) "TENANT" MEANS THE PERSON TO WHOM INCOME IS PRESENTLY OR CURRENTLY PAYABLE OR FOR WHOM IT IS ACCUMULATED OR WHO IS ENTITLED TO THE BENEFICIAL USE OF THE PRINCIPAL PRESENTLY AND FOR A TIME PRIOR TO ITS DISTRIBUTION.

(g) "TRUSTEE" INCLUDES THE ORIGINAL TRUSTEE OF ANY TRUST TO WHICH THE PRINCIPAL MAY BE SUBJECT AND ALSO ANY SUCCEEDING OR ADDED TRUSTEE.

(2) THIS SECTION SHALL BE EFFECTIVE WITH RESPECT TO WILLS THE TESTATORS OF WHICH DIE ON OR AFTER APRIL 18, 1961, TO REVOCABLE INTER VIVOS TRUSTS THE SETTLORS OF WHICH DIE AFTER SAID DATE, AND TO IRREVOCABLE INTER VIVOS TRUSTS WHICH ARE CREATED AFTER SAID DATE.

15-1-454. Applicability. (1) EXCEPT AS SPECIFICALLY PROVIDED BY THE PERSON ESTABLISHING THE PRINCIPAL, THIS SUBPART 7 SHALL APPLY:

(a) TO LIFE ESTATES, ESTATES FOR A TERM, REMAINDERS, REVERSIONS, AND OTHER LEGAL ESTATES CREATED BEFORE JULY 1, 2001, OR AFTER JULY 1, 2010;

(b) EXCEPT AS PROVIDED IN PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION, TO TRUSTS IN EXISTENCE BEFORE JULY 1, 2001, THAT HAVE ELECTED:

(I) NOT TO HAVE SUBPARTS 1 THROUGH 6 OF THIS PART 4 APPLY TO SUCH TRUST, IN ACCORDANCE WITH SECTION 15-1-434 (2); OR

(II) TO HAVE THE PRIOR LAWS APPLY IN ACCORDANCE WITH SECTION 15-1-434 (3); AND

(c) TO TRUSTS IN EXISTENCE BEFORE JULY 1, 2001, THAT ARE SUBJECT TO SECTION 15-1-434 (3) AND THAT HAVE NOT ELECTED TO HAVE SUBPARTS 1 THROUGH 6 OF THIS PART 4 APPLY TO THE TRUST, IN ACCORDANCE WITH SECTION 15-1-434 (3).

(2) (a) THIS SUBPART 7 SHALL APPLY RETROACTIVELY TO A LIFE ESTATE OR ESTATE FOR TERM IN PRINCIPAL, WHICH ESTATE WAS CREATED DURING THE PERIOD BEGINNING ON JULY 1, 2001, AND BEFORE JULY 1, 2010, AND ALSO TO THE REMAINDER OR REVERSION THAT COMMENCES IN POSSESSION UPON THE TERMINATION OF SUCH LIFE ESTATE OR ESTATE FOR A TERM UNLESS A TENANT OR A

REMAINDERMAN OF SUCH PRINCIPAL, OR ANY PART OF SUCH PRINCIPAL, ELECTS TO APPLY AND COMPLIES WITH THE PROVISIONS OF SUBSECTION (3) OF THIS SECTION.

(b) THIS SUBPART 7 SHALL APPLY RETROACTIVELY TO TRUSTS DESCRIBED IN PARAGRAPHS (b) AND (c) OF SUBSECTION (1) OF THIS SECTION BEGINNING ON JULY 1, 2001, UNLESS THE QUALIFIED BENEFICIARIES OF THE TRUST ELECT TO APPLY AND COMPLY WITH THE PROVISIONS OF SECTION 15-1-405.

(3) (a) A TENANT OR A REMAINDERMAN OF PRINCIPAL, OR ANY PART OF SUCH PRINCIPAL, MAY MAKE AND DELIVER AND, IF REQUIRED, RECORD A NOTICE OF ELECTION AS PROVIDED IN THIS SUBSECTION (3) ON OR BEFORE JULY 1, 2009.

(b) THE NOTICE OF ELECTION SHALL BE A WRITTEN STATEMENT OF THE ELECTION BY SUCH TENANT OR REMAINDERMAN, AGAINST THE RETROACTIVE APPLICATION OF THIS SUBPART 7 TO SUCH ESTATES IN SUCH PRINCIPAL. THE NOTICE OF ELECTION SHALL INCLUDE A REFERENCE TO THIS SUBSECTION (3); THE DATES OF THE INSTRUMENTS CREATING THE PRESENT AND FUTURE LEGAL ESTATES IN SUCH PRINCIPAL; THE NAMES OF THE PERSONS CREATING SUCH ESTATES; A DESCRIPTION OF THE PRINCIPAL, INCLUDING THE LOCATION OF SUCH PRINCIPAL; A DESCRIPTION OF SUCH ESTATES AND THE NAMES OR DESCRIPTIONS OF THE PERSONS WHO ARE TENANTS AND REMAINDERMEN OF SUCH PRINCIPAL; IDENTIFICATION OF WHICH SUCH PERSONS ARE TENANTS AND WHICH ARE REMAINDERMEN; AND THE NAME AND ADDRESS OF THE PERSON MAKING THE ELECTION. THE NOTICE OF ELECTION SHALL BE SIGNED AND ACKNOWLEDGED BY THE PERSON MAKING THE ELECTION.

(c) (I) IN THE CASE OF AN ELECTION MADE BY A TENANT, NOTICE SHALL BE DELIVERED TO THE OTHER TENANTS AND TO THE REMAINDERMEN OF THE PRINCIPAL. IN THE CASE OF AN ELECTION MADE BY A REMAINDERMAN, NOTICE SHALL BE DELIVERED TO THE OTHER REMAINDERMEN AND TO THE TENANTS OF THE PRINCIPAL.

(II) IF THE ESTATE OF THE REMAINDERMAN IS UNVESTED, NOTICE MAY BE MADE BY OR DELIVERED TO THE PERSONS THEN LIVING OR IN EXISTENCE WHO WOULD, IF THEN LIVING OR IN EXISTENCE, SUCCEED TO THE PRINCIPAL UPON THE TERMINATION OF THE LIFE ESTATE OR ESTATE FOR A TERM IN THE PRINCIPAL.

(III) IN THE CASE OF A CHILD UNDER THE AGE OF EIGHTEEN YEARS, SUCH NOTICE MAY BE MADE BY OR DELIVERED TO A CONSERVATOR, GUARDIAN, OR PARENT OF SUCH CHILD. IN THE CASE OF A PERSON WHO IS NOT COMPETENT TO MANAGE HIS OR HER AFFAIRS, SUCH NOTICE MAY BE MADE BY OR DELIVERED TO THE CONSERVATOR, GUARDIAN, OR PERSON ACTING UNDER A GENERAL POWER OF ATTORNEY WITH RESPECT TO THE BUSINESS OR FINANCIAL AFFAIRS OF SUCH INDIVIDUAL.

(IV) THE NOTICE OF ELECTION SHALL BE CONSIDERED DELIVERED TO THE PERSON TO WHOM DELIVERY IS REQUIRED TO BE MADE WHEN THE NOTICE OF ELECTION OR A COPY THEREOF IS DELIVERED IN PERSON OR WHEN MAILED BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO SUCH PERSON.

(V) THE RECORDING OF NOTICE AS PROVIDED IN PARAGRAPH (d) OF THIS SUBSECTION (3) SHALL FULFILL THE REQUIREMENT OF DELIVERY OF SUCH NOTICE IN THE CASE OF ANY UNBORN, UNASCERTAINED, OR UNKNOWN PERSON AND IN THE CASE OF A CHILD WHO IS UNDER THE AGE OF EIGHTEEN YEARS OR AN INDIVIDUAL

WHO IS NOT COMPETENT TO MANAGEMENT HIS OR HER AFFAIRS AND FOR WHOM THERE IS NO PERSON AUTHORIZED BY SUBPARAGRAPH (III) OF THIS PARAGRAPH (c) TO RECEIVE SUCH NOTICE.

(d) (I) IN THE CASE THAT THE PRINCIPAL IS REALTY, A COPY OF THE NOTICE OF ELECTION WITH AN ADDITIONAL STATEMENT MADE AS REQUIRED BY THIS SUBPARAGRAPH (I) SHALL BE RECORDED WITH THE RECORDER OF THE COUNTY WHERE SUCH REALTY IS LOCATED. THE ADDITIONAL STATEMENT SHALL STATE TO WHOM, WHEN, AND BY WHAT MEANS THE NOTICE WAS MAILED OR OTHERWISE DELIVERED AND BE SIGNED BY THE PERSON MAKING THE ELECTION.

(II) IN THE CASE THAT THE PRINCIPAL IS NOT REALTY, A COPY OF THE NOTICE WITH SUCH ADDITIONAL STATEMENT MAY BE RECORDED WITH THE RECORDER OF THE COUNTY WHERE THE PRINCIPAL IS LOCATED OR, IF THE PRINCIPAL IS INTANGIBLE PERSONALTY, WHERE THE ADDRESS OF THE TENANT IN POSSESSION OF SUCH PRINCIPAL IS LOCATED. IF SUCH LOCATION IS NOT WITHIN THIS STATE, THEN SUCH COPY AND STATEMENT SHALL BE RECORDED WITH THE RECORDER OF THE CITY AND COUNTY OF DENVER.

(III) SUCH COPY OF THE NOTICE AND ADDITIONAL STATEMENT WHEN RECORDED AS PROVIDED IN THIS PARAGRAPH (d) ARE PRIMA FACIE EVIDENCE OF THE FACTS THEREIN STATED.

(e) NO FIDUCIARY FOR ANY TRUST, ESTATE, INDIVIDUAL, OR OTHER PERSON WITH AN INTEREST, RIGHT, OR POWER AFFECTED BY THE RETROACTIVE APPLICATION OF SUCH AMENDMENTS SHALL BE REQUIRED TO MAKE SUCH ELECTION, NOR SHALL SUCH FIDUCIARY BE HELD RESPONSIBLE FOR NOT MAKING SUCH ELECTION.

15-1-455. Application of this subpart 7 - powers of settlor. (1) THIS SUBPART 7 SHALL GOVERN THE ASCERTAINMENT OF INCOME AND PRINCIPAL AND THE APPORTIONMENT OF RECEIPTS AND EXPENSES BETWEEN TENANTS AND REMAINDERMEN IN ALL CASES WHERE A PRINCIPAL HAS BEEN ESTABLISHED WITH OR, UNLESS OTHERWISE STATED IN THIS SUBPART 7, WITHOUT THE INTERPOSITION OF A TRUST; EXCEPT THAT, IN THE ESTABLISHMENT OF THE PRINCIPAL, PROVISION MAY BE MADE TOUCHING ALL MATTERS COVERED BY THIS SUBPART 7, AND THE PERSON ESTABLISHING THE PRINCIPAL MAY HIMSELF OR HERSELF DIRECT THE MANNER OF ASCERTAINMENT OF INCOME AND PRINCIPAL AND THE APPORTIONMENT OF RECEIPTS AND EXPENSES OR GRANT DISCRETION TO THE TRUSTEE OR OTHER PERSON TO DO SO, AND SUCH PROVISION AND DIRECTION, WHERE NOT OTHERWISE CONTRARY TO LAW, SHALL CONTROL NOTWITHSTANDING THIS SUBPART 7.

(2) IF NEITHER THIS SUBPART 7 NOR THE DIRECTION OF THE PERSON ESTABLISHING THE PRINCIPAL STATES AN APPLICABLE RULE, INCOME AND PRINCIPAL SHALL BE DETERMINED IN ACCORDANCE WITH WHAT IS REASONABLE AND EQUITABLE IN VIEW OF THE INTERESTS OF THOSE ENTITLED TO INCOME AS WELL AS THOSE ENTITLED TO PRINCIPAL AND IN VIEW OF THE MANNER IN WHICH PERSONS OF ORDINARY PRUDENCE, DISCRETION, AND JUDGMENT WOULD DETERMINE SUCH MATTERS. IF THE PERSON ESTABLISHING THE PRINCIPAL GRANTS THE TRUSTEE OR OTHER PERSON DISCRETION IN CREDITING A RECEIPT OR CHARGING AN EXPENDITURE TO INCOME OR PRINCIPAL OR PARTLY TO EACH, NO INFERENCE OF IMPRUDENCE OR PARTIALITY ARISES FROM THE FACT THAT THE TRUSTEE OR OTHER PERSON HAS MADE AN

ALLOCATION CONTRARY TO THE PROVISIONS OF THIS SUBPART 7.

15-1-456. Income and principal - disposition. (1) ALL RECEIPTS OF MONEY OR OTHER PROPERTY PAID OR DELIVERED AS RENT OF REALTY OR HIRE OF PERSONALTY OR DIVIDENDS ON CORPORATE SHARES PAYABLE OTHER THAN IN SHARES OF THE CORPORATION ITSELF, OR INTEREST ON MONEY LOANED, OR INTEREST ON OR THE RENTAL OR USE VALUE OF PROPERTY WRONGFULLY WITHHELD OR TORTIOUSLY DAMAGED, OR OTHERWISE IN RETURN FOR THE USE OF PRINCIPAL, SHALL BE DEEMED INCOME UNLESS OTHERWISE EXPRESSLY PROVIDED IN THIS SUBPART 7.

(2) ALL RECEIPTS OF MONEY OR OTHER PROPERTY PAID OR DELIVERED AS THE CONSIDERATION FOR THE SALE OR OTHER TRANSFER, NOT A LEASING OR LETTING, OF PROPERTY FORMING A PART OF THE PRINCIPAL, OR AS A REPAYMENT OF LOANS, OR IN LIQUIDATION OF THE ASSETS OF A CORPORATION, OR AS THE PROCEEDS OF PROPERTY TAKEN ON EMINENT DOMAIN PROCEEDINGS WHERE SEPARATE AWARDS TO TENANT AND REMAINDERMAN ARE NOT MADE, OR AS PROCEEDS OF INSURANCE UPON PROPERTY FORMING A PART OF THE PRINCIPAL EXCEPT WHERE SUCH INSURANCE HAS BEEN ISSUED FOR THE BENEFIT OF EITHER TENANT OR REMAINDERMAN ALONE, OR OTHERWISE AS A REFUND OR REPLACEMENT OR CHANGE IN FORM OF PRINCIPAL, SHALL BE DEEMED PRINCIPAL, UNLESS OTHERWISE EXPRESSLY PROVIDED IN THIS SUBPART 7. ANY PROFIT OR LOSS RESULTING UPON ANY CHANGE IN FORM OF PRINCIPAL SHALL INURE TO OR FALL UPON PRINCIPAL.

(3) ALL INCOME AFTER PAYMENT OF EXPENSES PROPERLY CHARGEABLE TO IT SHALL BE PAID AND DELIVERED TO THE TENANT OR RETAINED BY HIM OR HER IF ALREADY IN HIS OR HER POSSESSION OR HELD FOR ACCUMULATION WHERE LEGALLY SO DIRECTED BY THE TERMS OF THE TRANSACTION BY WHICH THE PRINCIPAL WAS ESTABLISHED; EXCEPT THAT THE PRINCIPAL SHALL BE HELD FOR ULTIMATE DISTRIBUTION AS DETERMINED BY THE TERMS OF THE TRANSACTION BY WHICH IT WAS ESTABLISHED OR BY LAW.

15-1-457. Apportionment of income. (1) WHENEVER A TENANT SHALL HAVE THE RIGHT TO INCOME FROM PERIODIC PAYMENTS, WHICH SHALL INCLUDE RENT, INTEREST ON LOANS, AND ANNUITIES, BUT SHALL NOT INCLUDE DIVIDENDS ON CORPORATE SHARES, AND SUCH RIGHT SHALL CEASE AND DETERMINE BY DEATH OR IN ANY OTHER MANNER AT A TIME OTHER THAN THE DATE WHEN SUCH PERIODIC PAYMENTS SHOULD BE PAID, THE TENANT OR HIS OR HER PERSONAL REPRESENTATIVE SHALL BE ENTITLED TO THAT PORTION OF ANY SUCH INCOME NEXT PAYABLE WHICH AMOUNTS TO THE SAME PERCENTAGE THEREOF AS THE TIME ELAPSED FROM THE LAST DUE DATE OF SUCH PERIODIC PAYMENTS TO AND INCLUDING THE DAY OF THE DETERMINATION OF HIS OR HER RIGHT IS OF THE TOTAL PERIOD DURING WHICH SUCH INCOME WOULD NORMALLY ACCRUE.

(2) THE REMAINING INCOME SHALL BE PAID TO THE PERSON NEXT ENTITLED TO INCOME BY THE TERMS OF THE TRANSACTION BY WHICH THE PRINCIPAL WAS ESTABLISHED. BUT NO ACTION SHALL BE BROUGHT BY THE TRUSTEE OR TENANT TO RECOVER SUCH APPORTIONED INCOME OR ANY PORTION THEREOF UNTIL AFTER THE DAY ON WHICH IT WOULD HAVE BECOME DUE TO THE TENANT BUT FOR THE DETERMINATION OF THE RIGHT OF THE TENANT ENTITLED THERETO.

(3) THE PROVISIONS OF THIS SECTION SHALL APPLY REGARDLESS OF WHETHER AN

ULTIMATE REMAINDERMAN IS SPECIFICALLY NAMED. LIKewise, WHEN THE RIGHT OF THE FIRST TENANT ACCRUES AT A TIME OTHER THAN THE PAYMENT DATES OF SUCH PERIODIC PAYMENTS, HE OR SHE SHALL ONLY RECEIVE THAT PORTION OF SUCH INCOME WHICH AMOUNTS TO THE SAME PERCENTAGE THEREOF AS THE TIME DURING WHICH HE OR SHE HAS BEEN SO ENTITLED IS OF THE TOTAL PERIOD DURING WHICH SUCH INCOME WOULD NORMALLY ACCRUE. THE BALANCE SHALL BE A PART OF THE PRINCIPAL.

15-1-458. Corporate dividends and share rights. (1) ALL DIVIDENDS ON SHARES OF A CORPORATION FORMING A PART OF THE PRINCIPAL, WHICH SHARES ARE PAYABLE IN THE IDENTICAL CLASS OF THE SHARES OF THE CORPORATION AS THE STOCK ON WHICH THE DIVIDEND IS PAID, SHALL BE DEEMED PRINCIPAL. SUBJECT TO THE PROVISIONS OF THIS SECTION, ALL DIVIDENDS PAYABLE OTHERWISE THAN IN SUCH IDENTICAL CLASS OF THE SHARES OF THE CORPORATION ITSELF, INCLUDING ORDINARY AND EXTRAORDINARY DIVIDENDS AND DIVIDENDS PAYABLE IN OTHER SHARES OR IN OTHER SECURITIES OR IN OBLIGATIONS OF CORPORATIONS OTHER THAN THE DECLARING CORPORATION, SHALL BE DEEMED INCOME. EXCEPT WITH RESPECT TO INVESTMENT TRUSTS, REGULATED INVESTMENT COMPANIES, AND TRUSTS QUALIFYING AND ELECTING TO BE TAXED UNDER FEDERAL LAW AS REAL ESTATE INVESTMENT TRUSTS, WHERE THE TRUSTEES HAVE THE OPTION OF RECEIVING A DIVIDEND EITHER IN CASH OR IN THE SHARES OF THE DECLARING CORPORATION, IT SHALL BE CONSIDERED AS A CASH DIVIDEND AND DEEMED INCOME, IRRESPECTIVE OF THE CHOICE MADE BY THE TRUSTEE. DISTRIBUTIONS MADE FROM ORDINARY INCOME BY AN INVESTMENT TRUST, BY A REGULATED INVESTMENT COMPANY, OR BY A TRUST QUALIFYING AND ELECTING TO BE TAXED UNDER FEDERAL LAWS AS A REAL ESTATE INVESTMENT TRUST SHALL BE DEEMED INCOME. ALL OTHER DISTRIBUTIONS MADE BY THE COMPANY OR TRUST, INCLUDING DISTRIBUTIONS FROM CAPITAL GAINS, DEPRECIATION, OR DEPLETION, WHETHER IN THE FORM OF CASH OR AN OPTION TO TAKE NEW STOCK OR CASH OR AN OPTION TO PURCHASE ADDITIONAL SHARES, SHALL BE DEEMED PRINCIPAL.

(2) ALL RIGHTS TO SUBSCRIBE TO THE SHARES OR OTHER SECURITIES OR OBLIGATIONS OF A CORPORATION ACCRUING ON ACCOUNT OF THE OWNERSHIP OF SHARES OR OTHER SECURITIES IN SUCH CORPORATION AND THE PROCEEDS OF ANY SALE OF SUCH RIGHTS SHALL BE DEEMED PRINCIPAL. ALL RIGHTS TO SUBSCRIBE TO THE SHARES OR OTHER SECURITIES OR OBLIGATIONS OF A CORPORATION ACCRUING ON ACCOUNT OF THE OWNERSHIP OF SHARES OR OTHER SECURITIES IN ANOTHER CORPORATION, AND THE PROCEEDS OF ANY SALE OF SUCH RIGHTS, SHALL BE DEEMED INCOME.

(3) WHERE THE ASSETS OF A CORPORATION ARE WHOLLY OR PARTIALLY LIQUIDATED, AMOUNTS PAID UPON CORPORATE SHARES AS CASH DIVIDENDS DECLARED BEFORE SUCH LIQUIDATION OCCURRED OR AS ARREARS OF PREFERRED OR GUARANTEED DIVIDENDS SHALL BE DEEMED INCOME; ALL OTHER AMOUNTS PAID UPON CORPORATE SHARES ON DISBURSEMENT OF THE CORPORATE ASSETS TO THE STOCKHOLDERS SHALL BE DEEMED PRINCIPAL.

(4) IF A CORPORATION SUCCEEDS ANOTHER BY MERGER, CONSOLIDATION, OR REORGANIZATION OR OTHERWISE ACQUIRES ITS ASSETS AND THE CORPORATE SHARES OF THE SUCCEEDING CORPORATION ARE ISSUED TO THE SHAREHOLDERS OF THE ORIGINAL CORPORATION IN LIKE PROPORTION TO, OR IN SUBSTITUTION FOR, THEIR

SHARES OF THE ORIGINAL CORPORATION, THE TWO CORPORATIONS SHALL BE CONSIDERED A SINGLE CORPORATION IN APPLYING THE PROVISIONS OF THIS SECTION, BUT TWO CORPORATIONS SHALL NOT BE CONSIDERED A SINGLE CORPORATION UNDER THIS SECTION MERELY BECAUSE ONE OWNS CORPORATE SHARES OF OR OTHERWISE CONTROLS OR DIRECTS THE OTHER.

(5) IN APPLYING THIS SECTION, THE DATE WHEN A DIVIDEND ACCRUES TO THE PERSON WHO IS ENTITLED TO IT SHALL BE HELD TO BE THE DATE SPECIFIED BY THE CORPORATION AS THE ONE ON WHICH THE STOCKHOLDERS ENTITLED THERETO ARE DETERMINED, OR, IN DEFAULT THEREOF, THE DATE OF DECLARATION OF THE DIVIDEND.

(6) ALL DISBURSEMENTS OF CORPORATE ASSETS TO THE STOCKHOLDERS, WHENEVER MADE, WHICH ARE DESIGNATED BY THE CORPORATION AS A RETURN OF CAPITAL OR DIVISION OF CORPORATE PROPERTY SHALL BE DEEMED PRINCIPAL.

(7) ANY DISTRIBUTION OF SHARES OR OTHER SECURITIES OR OBLIGATIONS OF A CORPORATION, OTHER THAN THE DISTRIBUTING CORPORATION, OR THE PROCEEDS OF SALE OR OTHER DISPOSITION THEREOF, MADE AS A RESULT OF A COURT DECREE OR FINAL ADMINISTRATIVE ORDER BY A GOVERNMENTAL AGENCY ORDERING THE DISTRIBUTING CORPORATION TO DIVEST ITSELF OF THE SHARES, SECURITIES, OR OTHER OBLIGATIONS, SHALL BE DEEMED PRINCIPAL UNLESS THE DISTRIBUTING CORPORATION DESIGNATES THAT THE DISTRIBUTION IS WHOLLY OR PARTLY IN LIEU OF AN ORDINARY CASH DIVIDEND, IN WHICH CASE THE DISTRIBUTION, TO THE EXTENT THAT IT IS IN LIEU OF THE ORDINARY CASH DIVIDEND, SHALL BE DEEMED INCOME. THE PROVISIONS OF THIS SUBSECTION (7) SHALL TAKE EFFECT ON OR AFTER MARCH 13, 1963, AND SHALL APPLY TO ALL ESTATES OF TENANTS OR REMAINDERMEN THEN LEGALLY EFFECTIVE, WHENEVER CREATED, AS WELL AS TO ALL ESTATES OF TENANTS OR REMAINDERMEN WHICH BECOME LEGALLY EFFECTIVE THEREAFTER.

15-1-459. Premium and discount bonds. WHERE ANY PART OF THE PRINCIPAL CONSISTS OF BONDS OR OTHER OBLIGATIONS FOR THE PAYMENT OF MONEY, THEY SHALL BE DEEMED PRINCIPAL AT THEIR INVENTORY VALUE, WHICH IN THE CASE OF A TESTAMENTARY TRUST, UNLESS A CONTRARY INTENTION APPEARS FROM THE WILL, SHALL BE THE VALUE AT THE DATE OF DEATH, OR IN DEFAULT THEREOF AT THEIR MARKET VALUE AT THE TIME THE PRINCIPAL WAS ESTABLISHED, OR AT THEIR COST WHERE PURCHASED LATER, REGARDLESS OF THEIR PAR OR MATURITY VALUE, AND, UPON THEIR RESPECTIVE MATURITIES OR UPON THEIR SALE, ANY LOSS OR GAIN REALIZED THEREON SHALL FALL UPON OR INURE TO THE PRINCIPAL. IF, HOWEVER, ANY OF SUCH BONDS OR OBLIGATIONS BEARS NO STATED INTEREST BUT IS REDEEMABLE AT MATURITY OR AT A FUTURE TIME AT AN AMOUNT IN EXCESS OF THE AMOUNT IN CONSIDERATION OF WHICH IT WAS ISSUED, SUCH ACCRETION, AS AND WHEN REALIZED OR REALIZABLE, SHALL BE INCOME.

15-1-460. Principal used in business. (1) WHENEVER A TRUSTEE OR A TENANT IS AUTHORIZED BY THE TERMS OF THE TRANSACTION BY WHICH THE PRINCIPAL WAS ESTABLISHED, OR BY LAW, TO USE ANY PART OF THE PRINCIPAL IN THE CONTINUANCE OF A BUSINESS THAT THE ORIGINAL OWNER OF THE PROPERTY COMPRISING THE PRINCIPAL HAD CARRIED ON, THE NET PROFITS OF SUCH BUSINESS ATTRIBUTABLE TO SUCH PRINCIPAL SHALL BE DEEMED INCOME.

(2) IF SUCH BUSINESS CONSISTS OF BUYING AND SELLING PROPERTY, THE NET PROFITS FOR ANY PERIOD SHALL BE ASCERTAINED BY DEDUCTING, FROM THE GROSS RETURNS DURING AND THE INVENTORY VALUE OF THE PROPERTY AT THE END OF SUCH PERIOD, THE EXPENSES DURING THE INVENTORY VALUE OF THE PROPERTY AT THE BEGINNING OF SUCH PERIOD.

(3) IF SUCH BUSINESS DOES NOT CONSIST OF BUYING AND SELLING PROPERTY, THE NET INCOME SHALL BE COMPUTED IN ACCORDANCE WITH THE CUSTOMARY PRACTICE OF SUCH BUSINESS, BUT NOT IN SUCH A WAY AS TO DECREASE THE PRINCIPAL.

(4) ANY INCREASE IN THE VALUE OF THE PRINCIPAL USED IN SUCH BUSINESS SHALL BE DEEMED PRINCIPAL, AND ALL LOSSES IN ANY ONE CALENDAR YEAR, AFTER THE INCOME FROM SUCH BUSINESS FOR THAT YEAR HAS BEEN EXHAUSTED, SHALL FALL UPON THE PRINCIPAL.

15-1-461. Principal comprising animals. IF ANY PART OF THE PRINCIPAL CONSISTS OF ANIMALS EMPLOYED IN BUSINESS, THE PROVISIONS OF SECTION 15-1-460 SHALL APPLY; AND, IN OTHER CASES WHERE THE ANIMALS ARE HELD AS A PART OF THE PRINCIPAL PARTLY OR WHOLLY BECAUSE OF THE OFFSPRING OR INCREASE WHICH THEY ARE EXPECTED TO PRODUCE, ALL OFFSPRING OR INCREASE SHALL BE DEEMED PRINCIPAL TO THE EXTENT NECESSARY TO MAINTAIN THE ORIGINAL NUMBER OF SUCH ANIMALS, AND THE REMAINDER SHALL BE DEEMED INCOME; AND IN ALL OTHER CASES SUCH OFFSPRING OR INCREASE SHALL BE DEEMED INCOME.

15-1-462. Principal subject to depletion. IF ANY PART OF THE PRINCIPAL CONSISTS OF PROPERTY OTHER THAN NATURAL RESOURCES, SUBJECT TO DEPLETION, SUCH AS LEASEHOLDS, PATENTS, COPYRIGHTS, AND ROYALTY RIGHTS, AND THE TRUSTEE OR TENANT IN POSSESSION IS NOT UNDER A DUTY TO CHANGE THE FORM OF THE INVESTMENT OF THE PRINCIPAL, THE FULL AMOUNT OF RENTS, ROYALTIES, OR RETURN FROM THE PROPERTY SHALL BE INCOME TO THE TENANT; EXCEPT THAT, WHERE THE TRUSTEE OR TENANT IS UNDER A DUTY, ARISING EITHER BY LAW OR BY THE TERMS OF THE TRANSACTION BY WHICH THE PRINCIPAL WAS ESTABLISHED, TO CHANGE THE FORM OF THE INVESTMENT, EITHER AT ONCE OR AS SOON AS IT MAY BE DONE WITHOUT LOSS, THEN THE RETURN FROM SUCH PROPERTY NOT IN EXCESS OF FOUR PERCENT PER ANNUM OF ITS FAIR INVENTORY VALUE, WHICH IN THE CASE OF A TESTAMENTARY TRUST, UNLESS A CONTRARY INTENTION APPEARS FROM THE WILL, SHALL BE THE VALUE AT DATE OF DEATH, OR, IN DEFAULT OF SAME, ITS MARKET VALUE AT THE TIME THE PRINCIPAL WAS ESTABLISHED, OR AT ITS COST WHERE PURCHASED LATER, SHALL BE DEEMED INCOME AND THE REMAINDER PRINCIPAL.

15-1-463. Unproductive estate. (1) IF ANY PART OF A PRINCIPAL IN THE POSSESSION OF A TRUSTEE CONSISTS OF REALTY OR PERSONALTY THAT FOR MORE THAN A YEAR AND UNTIL DISPOSED OF AS STATED IN THIS SECTION HAS NOT PRODUCED AN AVERAGE NET INCOME OF AT LEAST ONE PERCENT PER ANNUM OF ITS FAIR INVENTORY VALUE, WHICH IN THE CASE OF A TESTAMENTARY TRUST, UNLESS A CONTRARY INTENTION APPEARS FROM THE WILL, SHALL BE THE VALUE AT DATE OF DEATH, OR, IN DEFAULT THEREOF, ITS MARKET VALUE AT THE TIME THE PRINCIPAL WAS ESTABLISHED OR OF ITS COST WHERE PURCHASED LATER, AND THE TRUSTEE IS UNDER A DUTY TO CHANGE THE FORM OF THE INVESTMENT AS SOON AS IT MAY BE DONE WITHOUT SACRIFICE OF VALUE AND SUCH CHANGE IS DELAYED, BUT IS MADE

BEFORE THE PRINCIPAL IS FINALLY DISTRIBUTED, THEN THE TENANT, OR, IN CASE OF HIS OR HER DEATH, HIS OR HER PERSONAL REPRESENTATIVE, SHALL BE ENTITLED TO SHARE IN THE NET PROCEEDS RECEIVED FROM THE PROPERTY AS DELAYED INCOME TO THE EXTENT STATED IN THIS SECTION.

(2) SUCH INCOME SHALL BE THE DIFFERENCE BETWEEN THE NET PROCEEDS RECEIVED FROM THE PROPERTY AND THE AMOUNT WHICH, HAD IT BEEN PLACED AT SIMPLE INTEREST AT THE RATE OF FOUR PERCENT PER ANNUM FOR THE PERIOD DURING WHICH THE CHANGE WAS DELAYED, WOULD HAVE PRODUCED THE NET PROCEEDS AT THE TIME OF CHANGE, BUT IN NO EVENT SHALL SUCH INCOME BE MORE THAN THE AMOUNT BY WHICH THE NET PROCEEDS EXCEED THE FAIR INVENTORY VALUE OF THE PROPERTY, WHICH IN THE CASE OF A TESTAMENTARY TRUST, UNLESS A CONTRARY INTENTION APPEARS FROM THE WILL, SHALL BE THE VALUE AT THE DATE OF DEATH, OR, IN DEFAULT THEREOF, ITS MARKET VALUE AT THE TIME THE PRINCIPAL WAS ESTABLISHED OR ITS COST WHERE PURCHASED LATER. THE NET PROCEEDS SHALL CONSIST OF THE GROSS PROCEEDS RECEIVED FROM THE PROPERTY LESS ANY EXPENSES INCURRED IN DISPOSING OF IT AND LESS ALL CARRYING CHARGES WHICH HAVE BEEN PAID OUT OF PRINCIPAL DURING THE PERIOD WHILE IT HAS BEEN UNPRODUCTIVE.

(3) THE TIME THE CHANGE IS DELAYED STARTS WHEN THE DUTY TO MAKE IT FIRST AROSE, WHICH SHALL BE PRESUMED, IN THE ABSENCE OF EVIDENCE TO THE CONTRARY, TO BE:

(a) ONE YEAR AFTER THE TRUSTEE FIRST RECEIVED THE PROPERTY IF THE PROPERTY WAS UNPRODUCTIVE AT THAT TIME; OR

(b) ONE YEAR AFTER THE PROPERTY BECAME UNPRODUCTIVE.

(4) IF THE TENANT HAS RECEIVED ANY INCOME FROM THE PROPERTY OR HAS HAD ANY BENEFICIAL USE THEREOF DURING THE PERIOD WHILE THE CHANGE HAS BEEN DELAYED, HIS OR HER SHARE OF THE DELAYED INCOME SHALL BE REDUCED BY THE AMOUNT OF SUCH INCOME RECEIVED OR THE VALUE OF THE USE HAD.

(5) IN THE CASE OF SUCCESSIVE TENANTS, THE DELAYED INCOME SHALL BE DIVIDED AMONG THEM OR THEIR REPRESENTATIVES ACCORDING TO THE LENGTH OF THE PERIOD FOR WHICH EACH WAS ENTITLED TO INCOME.

15-1-464. Disposition of natural resources. (1) IF ANY PART OF THE PRINCIPAL CONSISTS OF PROPERTY IN LANDS FROM WHICH MAY BE TAKEN TIMBER, MINERALS, OILS, GAS, OR OTHER NATURAL RESOURCES, AND THE TRUSTEE OR TENANT IS AUTHORIZED BY LAW OR BY THE TERMS OF THE TRANSACTION BY WHICH THE PRINCIPAL WAS ESTABLISHED TO SELL, LEASE, OR OTHERWISE DEVELOP SUCH NATURAL RESOURCES, AND NO PROVISION IS MADE FOR THE DISPOSITION OF THE NET PROCEEDS THEREOF AFTER THE PAYMENT OF EXPENSES AND CARRYING CHARGES ON SUCH PROPERTY, SUCH NET PROCEEDS, IF RECEIVED AS RENT ON A LEASE, SHALL BE DEEMED INCOME BUT, IF RECEIVED AS CONSIDERATION, WHETHER AS ROYALTIES OR OTHERWISE, FOR THE PERMANENT SEVERANCE OF SUCH NATURAL RESOURCES FROM THE LANDS, SHALL BE DEEMED, TO THE EXTENT PROVIDED IN THIS SECTION, PRINCIPAL TO BE INVESTED TO PRODUCE INCOME, AND THE REMAINDER OF SUCH NET PROCEEDS SHALL BE DEEMED INCOME. OF THE NET PROCEEDS RECEIVED DURING

ANY PERIOD AS CONSIDERATION FOR PERMANENT SEVERANCE OF A NATURAL RESOURCE, THE AMOUNT TO BE CONSIDERED AS PRINCIPAL FOR THAT PERIOD SHALL BE THE GREATER OF THE FOLLOWING:

(a) THE AMOUNT THAT BEARS THE SAME RATIO TO THE FAIR INVENTORY VALUE OF SUCH NATURAL RESOURCE, WHICH IN THE CASE OF A TESTAMENTARY TRUST, UNLESS A CONTRARY INTENTION APPEARS IN THE WILL, SHALL BE THE VALUE AT DATE OF DEATH, OR, IN DEFAULT THEREOF, ITS MARKET VALUE AT THE TIME THE PRINCIPAL WAS ESTABLISHED, OR ITS COST IF PURCHASED LATER, AS THE NUMBER OF UNITS OF THE NATURAL RESOURCE SEVERED DURING THE PERIOD BEARS TO THE TOTAL NUMBER OF SEVERABLE UNITS OF THE NATURAL RESOURCE ESTIMATED AS HAVING EXISTED AT THE TIME THE PRINCIPAL WAS ESTABLISHED;

(b) THE AMOUNT THAT BEARS THE SAME RATIO TO THE ESTIMATED VALUE OF THE NATURAL RESOURCE AT THE TIME OF COMMENCEMENT OF SEVERANCE AS THE NUMBER OF UNITS OF THE NATURAL RESOURCES SEVERED DURING THE PERIOD BEARS TO THE TOTAL NUMBER OF SEVERABLE UNITS OF THE NATURAL RESOURCE ESTIMATED AS HAVING EXISTED AT THE TIME OF COMMENCEMENT OF SUCH SEVERANCE;

(c) AN AMOUNT EQUAL TO THAT PERCENTAGE OF THE NET PROCEEDS RECEIVED AS CONSIDERATION FOR SUCH PERMANENT SEVERANCE THAT IS ALLOWABLE AS A DEDUCTION FROM GROSS INCOME FOR DEPLETION PURPOSE UNDER THE FEDERAL INCOME TAX LAW THEN IN EFFECT AT THE TIME OF SEVERANCE OR, IF THE FEDERAL INCOME TAX LAW THEN IN EFFECT MAKES NO PROVISION FOR THE DEDUCTION OF ANY STATED PERCENTAGE FOR DEPLETION, OR FOR ANY REASON IS NOT APPLICABLE TO SUCH NATURAL RESOURCE, THEN FIFTEEN PERCENT OF SUCH NET PROCEEDS. SUCH DISPOSITION OF NET PROCEEDS SHALL APPLY WHETHER PERMANENT SEVERANCE COMMENCED BEFORE OR AFTER THE TIME THE PRINCIPAL WAS ESTABLISHED AND WITHOUT REGARD TO THE TIME WHEN THE INSTRUMENT UNDER WHICH SEVERANCE IS BEING MADE WAS EXECUTED.

(2) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO ABROGATE OR EXTEND ANY RIGHT WHICH MAY OTHERWISE HAVE ACCRUED BY LAW TO A TENANT TO DEVELOP OR WORK SUCH NATURAL RESOURCES FOR HIS OR HER OWN BENEFIT.

15-1-464.5. Disposition of natural resources - special applicability. (1) IF ANY PART OF THE PRINCIPAL CONSISTS OF A RIGHT TO RECEIVE ROYALTIES, OVERRIDING OR LIMITED ROYALTIES, WORKING INTERESTS, PRODUCTION PAYMENTS, NET PROFIT INTERESTS, OR OTHER INTERESTS IN MINERALS OR OTHER NATURAL RESOURCES IN, ON, OR UNDER LAND, THE RECEIPTS FROM TAKING THE NATURAL RESOURCES FROM THE LAND SHALL BE ALLOCATED AS FOLLOWS:

(a) IF RECEIVED AS RENT ON A LEASE OR EXTENSION PAYMENTS ON A LEASE, THE RECEIPTS ARE INCOME;

(b) IF RECEIVED FROM A PRODUCTION PAYMENT, THE RECEIPTS ARE INCOME TO THE EXTENT OF ANY FACTOR FOR INTEREST OR ITS EQUIVALENT PROVIDED IN THE GOVERNING INSTRUMENT. THERE SHALL BE ALLOCATED TO PRINCIPAL THE FRACTION OF THE BALANCE OF THE RECEIPTS THAT THE UNRECOVERED COST OF THE PRODUCTION PAYMENT BEARS TO THE BALANCE OWED ON THE PRODUCTION

PAYMENT, EXCLUSIVE OF ANY FACTOR FOR INTEREST OR ITS EQUIVALENT. THE RECEIPTS NOT ALLOCATED TO PRINCIPAL ARE INCOME.

(c) IF RECEIVED AS A ROYALTY, OVERRIDING OR LIMITED ROYALTY, OR BONUS, OR FROM A WORKING, NET PROFIT, OR ANY OTHER INTEREST IN MINERALS OR OTHER NATURAL RESOURCES, RECEIPTS NOT PROVIDED FOR IN PARAGRAPH (a) OR (b) OF THIS SUBSECTION (1) SHALL BE APPORTIONED ON A YEARLY BASIS IN ACCORDANCE WITH THIS PARAGRAPH (c) REGARDLESS OF WHETHER ANY NATURAL RESOURCE WAS BEING TAKEN FROM THE LAND AT THE TIME THE TRUST WAS ESTABLISHED. FIFTEEN PERCENT OF THE GROSS RECEIPTS, BUT NOT TO EXCEED FIFTY PERCENT OF THE NET RECEIPTS REMAINING AFTER PAYMENT OF ALL EXPENSES, DIRECT AND INDIRECT, COMPUTED WITHOUT ALLOWANCE FOR DEPLETION, SHALL BE ADDED TO PRINCIPAL AS AN ALLOWANCE FOR DEPLETION. THE BALANCE OF THE GROSS RECEIPTS AFTER PAYMENT THEREFROM OF ALL EXPENSES, DIRECT AND INDIRECT, IS INCOME.

(2) IF A TRUSTEE, ON THE EFFECTIVE DATE OF THIS SECTION, HELD AN ITEM OF DEPLETABLE PROPERTY OF A TYPE SPECIFIED IN THIS SECTION, HE OR SHE SHALL ALLOCATE RECEIPTS FROM THE PROPERTY IN THE MANNER USED BEFORE THE EFFECTIVE DATE OF THIS SECTION, BUT AS TO ALL DEPLETABLE PROPERTY ACQUIRED AFTER THE EFFECTIVE DATE OF THIS SECTION BY AN EXISTING OR NEW TRUST, THE METHOD OF ALLOCATION PROVIDED HEREIN SHALL BE USED.

(3) THIS SECTION DOES NOT APPLY TO TIMBER, WATER, SOIL, SOD, DIRT, TURF, OR MOSSES.

(4) (a) EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (4), THIS SECTION APPLIES TO A TRUST OR ESTATE THAT IS SUBJECT TO THIS SUBPART 7 AND SHALL CONTROL OVER THE OTHER PROVISIONS OF THIS SUBPART 7 TO THE EXTENT THAT ANY INCONSISTENCY EXISTS BETWEEN SUCH PROVISIONS AND THIS SECTION.

(b) (I) IN THE CASE OF A TRUST OR A PROBATE ESTATE, THE TRUSTEE OR THE PERSONAL REPRESENTATIVE MAY ELECT TO HAVE THIS SECTION NOT APPLY TO THE TRUST OR THE PROBATE ESTATE BY GIVING NOTICE OF SUCH ELECTION TO THE BENEFICIARIES OF THE TRUST OR THE PROBATE ESTATE AS PROVIDED IN SUBSECTION (5) OF THIS SECTION.

(II) IN THE CASE OF AN ESTATE OTHER THAN A TRUST, A LIFE TENANT OR THE REMAINDERMAN MAY ELECT TO HAVE THIS SECTION NOT APPLY TO THE ESTATE BY GIVING NOTICE OF SUCH ELECTION IN THE SAME TIME AND MANNER AS PROVIDED IN SECTION 15-1-454 (3) FOR AN ELECTION OUT OF THE APPLICATION OF THIS SUBPART 7 TO THE ESTATE.

(5) (a) IF A TRUSTEE OR A PERSONAL REPRESENTATIVE MAKES AN ELECTION UNDER THIS SECTION, HE OR SHE SHALL SATISFY THE REQUIREMENTS SET FORTH IN SECTION 15-1-405 FOR PROVIDING NOTICE OF THE ELECTION.

(b) IF A LIFE TENANT OR A REMAINDERMAN MAKES AN ELECTION UNDER THIS SECTION, HE OR SHE SHALL SATISFY THE REQUIREMENTS SET FORTH IN SECTION 15-1-454 (3) FOR PROVIDING NOTICE OF THE ELECTION AND RECORDING THE ELECTION.

15-1-465. Expenses - trust estates. (1) ALL ORDINARY EXPENSES INCURRED IN CONNECTION WITH THE TRUST ESTATE OR WITH ITS ADMINISTRATION AND MANAGEMENT, INCLUDING REGULARLY RECURRING TAXES ASSESSED AGAINST ANY PORTION OF THE PRINCIPAL, WATER RATES, PREMIUMS ON INSURANCE TAKEN UPON THE ESTATES OF BOTH TENANT AND REMAINDERMAN, INTEREST ON MORTGAGES ON THE PRINCIPAL, ORDINARY REPAIRS, A REASONABLE PORTION, BUT NOT LESS THAN ONE-HALF, OF THE TRUSTEES' COMPENSATION FOR CURRENT MANAGEMENT OF PRINCIPAL AND APPLICATION OF INCOME TO THE USE OF TENANT, COMPENSATION OF ASSISTANTS, AND COURT COSTS AND ATTORNEYS' AND OTHER FEES ON REGULAR ACCOUNTINGS SHALL BE PAID OUT OF INCOME, BUT SUCH EXPENSES WHERE INCURRED IN DISPOSING OF, OR AS CARRYING CHARGES ON, AN UNPRODUCTIVE ESTATE, AS DEFINED IN SECTION 15-1-463, SHALL BE PAID OUT OF PRINCIPAL, SUBJECT TO THE PROVISIONS OF SECTION 15-1-463 (2).

(2) ALL OTHER EXPENSES, INCLUDING TRUSTEES' COMMISSIONS AT TRUST INCEPTION AND TERMINATION AND NOT MORE THAN ONE-HALF OF TRUSTEES' COMPENSATION FOR CURRENT MANAGEMENT OF PRINCIPAL AND APPLICATION OF INCOME TO THE USE OF THE TENANT, COST OF INVESTING OR REINVESTING PRINCIPAL, ATTORNEYS' FEES AND OTHER COSTS INCURRED IN MAINTAINING OR DEFENDING ANY ACTION TO CONSTRUE THE TRUST OR PROTECT IT OR THE PROPERTY OR ASSURE THE TITLE THEREOF, UNLESS DUE TO THE FAULT OR CAUSE OF THE TENANT, AND COSTS OF, OR ASSESSMENTS FOR, IMPROVEMENTS TO PROPERTY FORMING PART OF THE PRINCIPAL, SHALL BE PAID OUT OF PRINCIPAL. ANY TAX LEVIED BY ANY AUTHORITY, FEDERAL, STATE, OR FOREIGN, UPON PROFIT OR GAIN DEFINED AS PRINCIPAL UNDER THE TERMS OF SECTION 15-1-466 (2) SHALL BE PAID OUT OF PRINCIPAL, NOTWITHSTANDING THAT SAID TAX MAY BE DENOMINATED A TAX UPON INCOME BY THE TAXING AUTHORITY.

(3) EXPENSES PAID OUT OF INCOME ACCORDING TO SUBSECTION (1) OF THIS SECTION THAT REPRESENT REGULARLY RECURRING CHARGES SHALL BE CONSIDERED TO HAVE ACCRUED FROM DAY TO DAY AND SHALL BE APPORTIONED ON THAT BASIS WHENEVER THE RIGHT OF THE TENANT BEGINS OR ENDS AT SOME DATE OTHER THAN THE PAYMENT DATE OF THE EXPENSES. IF THE EXPENSES TO BE PAID OUT OF INCOME ARE OF AN UNUSUAL AMOUNT, THE TRUSTEE MAY DISTRIBUTE THEM THROUGHOUT AN ENTIRE YEAR OR PART THEREOF OR THROUGHOUT A SERIES OF YEARS. AFTER SUCH DISTRIBUTION, IF THE RIGHT OF THE TENANT ENDS DURING THE PERIOD, THE EXPENSES SHALL BE APPORTIONED BETWEEN TENANT AND REMAINDERMAN ON THE BASIS OF SUCH DISTRIBUTION.

(4) IF THE COSTS OF, OR SPECIAL TAXES OR ASSESSMENTS FOR, AN IMPROVEMENT REPRESENTING AN ADDITION OF VALUE TO PROPERTY HELD BY THE TRUSTEE AS PART OF PRINCIPAL ARE PAID OUT OF PRINCIPAL, AS PROVIDED IN SUBSECTION (2) OF THIS SECTION, THE TRUSTEE SHALL RESERVE OUT OF INCOME AND ADD TO THE PRINCIPAL EACH YEAR A SUM EQUAL TO THE COST OF THE IMPROVEMENT DIVIDED BY THE NUMBER OF YEARS OF THE REASONABLY EXPECTED DURATION OF THE IMPROVEMENT.

15-1-466. Expenses - nontrust estates. (1) THE PROVISIONS OF SECTION 15-1-465, SO FAR AS APPLICABLE AND EXCEPTING THOSE PROVISIONS CONCERNING COSTS OF, OR SPECIAL TAXES OR ASSESSMENTS FOR, IMPROVEMENTS TO PROPERTY, SHALL GOVERN THE APPORTIONMENT OF EXPENSES BETWEEN TENANTS AND

REMAINDERMEN WHERE NO TRUST HAS BEEN CREATED; EXCEPT THAT SUCH APPORTIONMENT SHALL BE SUBJECT TO ANY LEGAL AGREEMENT OF THE PARTIES OR ANY SPECIFIC DIRECTION OF THE TAXING OR OTHER STATUTES. IF EITHER TENANT OR REMAINDERMAN HAS INCURRED AN EXPENSE FOR THE BENEFIT OF HIS OR HER OWN ESTATE AND WITHOUT THE CONSENT OR AGREEMENT OF THE OTHER, HE OR SHE SHALL PAY SUCH EXPENSE IN FULL.

(2) SUBJECT TO THE EXCEPTIONS DESCRIBED IN SUBSECTION (1) OF THIS SECTION, THE COST OF, OR SPECIAL TAXES OR ASSESSMENTS FOR, AN IMPROVEMENT REPRESENTING AN ADDITION OF VALUE TO PROPERTY FORMING PART OF THE PRINCIPAL SHALL BE PAID BY THE TENANT, IF SUCH IMPROVEMENT CANNOT REASONABLY BE EXPECTED TO OUTLAST THE ESTATE OF THE TENANT. IN ALL OTHER CASES, A PORTION THEREOF ONLY SHALL BE PAID BY THE TENANT, WHILE THE REMAINDER SHALL BE PAID BY THE REMAINDERMAN. SUCH PORTION SHALL BE ASCERTAINED BY TAKING THAT PERCENTAGE OF THE TOTAL THAT IS FOUND BY DIVIDING THE PRESENT VALUE OF THE TENANT'S ESTATE BY THE PRESENT VALUE OF AN ESTATE OF THE SAME FORM AS THAT OF THE TENANT; EXCEPT THAT, IT IS LIMITED FOR A PERIOD CORRESPONDING TO THE REASONABLY EXPECTED DURATION OF THE IMPROVEMENT. THE COMPUTATION OF PRESENT VALUES OF THE ESTATES SHALL BE MADE ON THE EXPECTANCY BASIS SET FORTH IN THE AMERICAN EXPERIENCE TABLES OF MORTALITY, AND NO OTHER EVIDENCE OF DURATION OR EXPECTANCY SHALL BE CONSIDERED.

15-1-467. Disposition of net probate income. (1) SUBJECT TO THE PROVISIONS OF SECTION 15-1-455, AN EXECUTOR SHALL, AT THE TIME OF DISTRIBUTION, PAY OVER TO THE TRUSTEE OF ANY TRUST, OR TO ANY OTHER LEGATEE TO WHOM SPECIFIC PROPERTY OTHER THAN MONEY IS BEQUEATHED OR DEVISED, THE NET PROBATE INCOME OF SUCH PROPERTY AND SHALL PAY OVER ALL OTHER NET PROBATE INCOME TO:

(a) THE TRUSTEE OF ANY TRUST CREATED OUT OF RESIDUE OR TO WHICH ANY PORTION OF RESIDUE IS ADDED;

(b) ANY LEGATEE FOR LIFE OR YEARS OF ANY PORTION OF THE RESIDUE;

(c) ANY LEGATEE OF A PRESENT, LEGAL, POSSESSORY INTEREST IN ANY PORTION OF THE RESIDUE; AND

(d) ANY TRUSTEE OF A SUM OF MONEY UNDER A TRUST CREATED OR ADDED TO BY THE WILL BUT NOT PAYABLE OUT OF THE RESIDUE, IN PRO RATA SHARES, IN ACCORDANCE WITH THE RESPECTIVE VALUES OF THE PROPERTY BEQUEATHED OR DEVISED OUTRIGHT OR IN TRUST. THE VALUES SHALL BE THOSE FINALLY DETERMINED FOR FEDERAL ESTATE TAX PURPOSES, OR, IF NO SUCH DETERMINATION IS MADE, THE VALUES SHALL BE THOSE AT DATE OF DEATH AS DETERMINED BY THE EXECUTOR. NOTHING IN THIS SUBSECTION (1) SHALL PREVENT A COURT FROM ORDERING DISTRIBUTION OF ANY NET PROBATE INCOME DIRECTLY TO THE BENEFICIARY OF A TRUST.

(2) IF AN EXECUTOR MAKES A PARTIAL DISTRIBUTION OF PROPERTY TO ANY LEGATEE OR TRUSTEE, THE RECIPIENT OF SUCH PARTIAL DISTRIBUTION SHALL SHARE IN THE NET PROBATE INCOME COLLECTED TO THE DATE OF DISTRIBUTION, BUT HIS OR

HER SHARE IN THE NET PROBATE INCOME LATER COLLECTED BY THE EXECUTOR SHALL BE REDUCED ACCORDINGLY.

(3) THE AMOUNT OF ANY NET PROBATE INCOME DISTRIBUTED BY THE EXECUTOR TO EACH TRUSTEE OR OTHER DISTRIBUTEES SHALL BE STATED IN ANY ORDER OF DISTRIBUTION.

(4) A TRUSTEE WHO RECEIVES NET PROBATE INCOME FROM AN EXECUTOR SHALL TREAT IT AS INCOME OF THE TRUST FOR WHICH HE OR SHE IS ACTING.

(5) IF NET PROBATE INCOME, WITH RESPECT TO WHICH INCOME TAXES HAVE BEEN PAID BY THE EXECUTOR, IS DISTRIBUTED, AND ANY OF THE DISTRIBUTEES IS A CHARITABLE OR OTHER TAX-EXEMPT ORGANIZATION, AND A CHARITABLE DEDUCTION WAS ALLOWABLE ON THE INCOME TAX RETURN OF THE EXECUTOR FOR THE TAXABLE YEAR OF THE EXECUTOR IN WHICH THE INCOME WAS RECEIVED OR ACCRUED, SUCH INCOME TAXES PAID BY THE EXECUTOR SHALL BE ALLOCATED AMONG THE DISTRIBUTEES SO THAT THE DIMINUTION IN SUCH TAXES RESULTING FROM THE CHARITABLE DEDUCTION ALLOWABLE TO THE EXECUTOR WILL INURE TO THE BENEFIT OF SUCH CHARITABLE OR EXEMPT ORGANIZATION.

(6) IF NET PROBATE INCOME WITH RESPECT TO WHICH INCOME TAXES HAVE BEEN PAID BY THE EXECUTOR IS DISTRIBUTED AND INCLUDES TAX-EXEMPT OR PARTIALLY TAX-EXEMPT INCOME OR INCOME WITH RESPECT TO WHICH A CREDIT OR SPECIAL DEDUCTION IS ALLOWABLE AND THE WILL REQUIRES SUCH TAX-EXEMPT OR PARTIALLY TAX-EXEMPT INCOME OR INCOME WITH RESPECT TO WHICH A CREDIT OR SPECIAL DEDUCTION IS ALLOWABLE TO BE DISTRIBUTED OTHER THAN PROPORTIONATELY TO THE DISTRIBUTEES OF NET PROBATE INCOME, SUCH INCOME TAXES SHALL BE ALLOCATED AMONG THE DISTRIBUTEES SO THAT THE BENEFIT OF SUCH TAX EXEMPTION, PARTIAL TAX EXEMPTION, CREDIT, OR SPECIAL DEDUCTION WILL INURE TO THE BENEFIT OF THE DISTRIBUTEES OF SUCH TAX-EXEMPT OR PARTIALLY TAX-EXEMPT INCOME OR OF THE INCOME WITH RESPECT TO WHICH A CREDIT OR SPECIAL DEDUCTION IS ALLOWABLE.

(7) IF A TRUST, WHETHER INTER VIVOS OR TESTAMENTARY, CONTAINS PROVISIONS WHEREBY, ON THE HAPPENING OR THE FAILURE TO HAPPEN OF AN EVENT, A GIFT IS MADE OF MONEY IN TRUST, OR OF SPECIFIC PROPERTY OTHER THAN MONEY, IN TRUST OR OUTRIGHT, OR OF ANY PORTION OF THE RESIDUE OF SUCH TRUST IN FURTHER TRUST, OR FOR LIFE OR YEARS, THE INCOME OF SUCH TRUST FOR THE PERIOD FOLLOWING THE HAPPENING OR FAILURE TO HAPPEN OF SUCH EVENT SHALL BE DISPOSED OF BY THE TRUSTEE THEREOF IN THE MANNER, SO FAR AS APPLICABLE, THAT WOULD PREVAIL IF THE TRUSTEE OF SUCH TRUST WERE AN EXECUTOR ACTING UNDER THE PROVISIONS OF THIS SECTION.

(8) THIS SECTION SHALL BE EFFECTIVE WITH RESPECT TO WILLS THE TESTATORS OF WHICH DIE ON OR AFTER APRIL 18, 1961, TO REVOCABLE INTER VIVOS TRUSTS THE SETTLORS OF WHICH DIE AFTER SAID DATE, AND TO IRREVOCABLE INTER VIVOS TRUSTS WHICH ARE CREATED AFTER SAID DATE.

SECTION 15. 15-10-111 (1) (b) and (2) (b), Colorado Revised Statutes, are amended to read:

15-10-111. Entry into safe deposit box of decedent - definitions. (1) (b) If a person described in subparagraph (I) or (II) of paragraph (a) of this subsection (1) desires access to a safe deposit box but does not possess a key to the box, the custodian shall drill the safe deposit box at the person's expense. ~~The custodian shall retain, in a secure location at the person's expense, the contents of the box other than the purported will, deed to a burial plot, or burial instructions. The expenses~~ IN THE CASE OF A PERSON DESCRIBED IN SUBPARAGRAPH (I) OF PARAGRAPH (a) OF THIS SUBSECTION (1), THE CUSTODIAN SHALL DELIVER THE CONTENTS OF THE BOX, OTHER THAN A PURPORTED WILL, DEED TO A BURIAL PLOT, AND BURIAL INSTRUCTIONS, TO THE PERSON IN ACCORDANCE WITH SECTION 15-12-1201. IN THE CASE OF A PERSON DESCRIBED IN SUBPARAGRAPH (II) OF PARAGRAPH (a) OF THIS SUBSECTION (1), THE CUSTODIAN SHALL RETAIN, IN A SECURE LOCATION AT THE PERSON'S EXPENSE, THE CONTENTS OF THE BOX OTHER THAN A PURPORTED WILL, DEED TO A BURIAL PLOT, AND BURIAL INSTRUCTIONS. A CUSTODIAN SHALL DELIVER A PURPORTED WILL AS DESCRIBED IN PARAGRAPH (c) OF SUBSECTION (2) OF THIS SECTION. A DEED TO A BURIAL PLOT AND BURIAL INSTRUCTIONS THAT ARE NOT PART OF A PURPORTED WILL MAY BE REMOVED BY A PERSON DESCRIBED IN SUBPARAGRAPH (I) OF PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION PURSUANT TO PARAGRAPH (d) OF SUBSECTION (2) OF THIS SECTION, AND THE CUSTODIAN SHALL NOT PREVENT THE REMOVAL. EXPENSES INCURRED BY A CUSTODIAN PURSUANT TO THIS SECTION shall be considered an estate administration expense.

(2) (b) ~~The representative of the custodian may copy the purported will at the expense of the person or persons authorized to have access to the safe deposit box under the provisions of subsection (1) of this section and may deliver the copy of the purported will to the person or to the person's agent or attorney. In copying the purported will, the representative of the custodian shall not remove any staples or other fastening devices or disassemble the purported will in any way.~~ AT THE REQUEST OF THE PERSON OR PERSONS AUTHORIZED TO HAVE ACCESS TO THE SAFE DEPOSIT BOX UNDER THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION, THE REPRESENTATIVE OF THE CUSTODIAN SHALL COPY EACH PURPORTED WILL OF THE DECEDENT, AT THE EXPENSE OF THE REQUESTING PERSON, AND SHALL DELIVER THE COPY OF EACH PURPORTED WILL TO THE PERSON, OR IF DIRECTED BY THE PERSON, TO THE PERSON'S AGENT OR ATTORNEY. IN COPYING ANY PURPORTED WILL, THE REPRESENTATIVE OF THE CUSTODIAN SHALL NOT REMOVE ANY STAPLES OR OTHER FASTENING DEVICES OR DISASSEMBLE THE PURPORTED WILL IN ANY WAY.

SECTION 16. 15-10-403 (5), Colorado Revised Statutes, is amended to read:

15-10-403. Pleadings - when parties bound by others - notice. (5) At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, PROTECTED, unborn, or unascertained person, or a person whose identity or address is unknown, if the court determines that a need for such representation appears. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding.

SECTION 17. 15-12-709, Colorado Revised Statutes, is amended to read:

15-12-709. Duty of personal representative - possession of estate. Except as otherwise provided by a decedent's will, every personal representative has a right to, and shall take possession or control of, the decedent's property; except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled thereto unless or until, in the judgment of the personal representative, possession of the property by ~~such person~~ THE PERSONAL REPRESENTATIVE will be necessary for the purposes of administration. The request by a personal representative for delivery of any property possessed by an heir or devisee is conclusive evidence, in any action against the heir or devisee for possession thereof, that the possession of the property by the personal representative is necessary for the purposes of administration. The personal representative shall pay taxes on and take all steps reasonably necessary for the management, protection, and preservation of the estate in such representative's possession. The personal representative may maintain an action to recover possession of the property or to determine the title thereto. If the personal representative incurs expenses necessary for the protection or disposition of property not subject to such representative's administration, such as those incurred to fix the amount of death taxes thereon, or to compel the contribution contemplated in section 15-11-204 or 15-12-916 (4), the court may fix such liability for the same as it determines to be equitable against any person entitled to or wrongfully withholding the property.

SECTION 18. 15-14-202 (1), Colorado Revised Statutes, is amended to read:

15-14-202. Testamentary appointment of guardian - appointment by written instrument. (1) A guardian may be appointed by will or other signed writing by a parent for any minor child the parent has or may have in the future. A guardian may also be appointed by will or other signed writing by a guardian of a minor child. ~~The other signed writing shall be signed by the parent or guardian and at least two witnesses and all signatures shall be notarized.~~ The appointment may specify the desired limitations on the powers to be given to the guardian. A guardian may not appoint a surviving parent who has no parental rights to be a successor guardian. The appointing parent or guardian may revoke or amend the appointment before confirmation by the court.

SECTION 19. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 22, 2009