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HOUSE BILL 734

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

R. David Pederson

FOR THE COURTS, CORRECTIONS AND CRIMINAL JUSTICE COMMITTEE

AN ACT

RELATING TO FINANCE; ENACTING THE UNIFORM PRINCIPAL AND INCOME
ACT; REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

ARTICLE 1

DEFINITIONS AND FIDUCIARY DUTIES

Section 101. SHORT TITLE. -- This act may be cited as the
"Uniform Principal and Income Act".

Section 102. DEFINITIONS. -- As used in the Uniform
Principal and Income Act:

(1) "accounting period" means a calendar year
unless another twelve-month period is selected by a fiduciary.
The term includes a portion of a calendar year or other
twelve-month period that begins when an income interest begins
or ends when an income interest ends;

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1 (2) "beneficiary" includes, in the case of a
2 decedent's estate, an heir and devisee and, in the case of a
3 trust, an income beneficiary and a remainder beneficiary;

4 (3) "fiduciary" means a personal
5 representative or a trustee. The term includes an executor,
6 administrator, successor personal representative, special
7 administrator and a person performing substantially the same
8 function;

9 (4) "income" means money or property that a
10 fiduciary receives as current return from a principal asset.
11 The term includes a portion of receipts from a sale, exchange
12 or liquidation of a principal asset, to the extent provided in
13 Article 4;

14 (5) "income beneficiary" means a person to
15 whom net income of a trust is or may be payable;

16 (6) "income interest" means the right of an
17 income beneficiary to receive all or part of net income,
18 whether the terms of the trust require it to be distributed or
19 authorize it to be distributed in the trustee's discretion;

20 (7) "mandatory income interest" means the
21 right of an income beneficiary to receive net income that the
22 terms of the trust require the fiduciary to distribute;

23 (8) "net income" means the total receipts
24 allocated to income during an accounting period minus the
25 disbursements made from income during the period, plus or

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1 minus transfers under the Uniform Principal and Income Act to
2 or from income during the period;

3 (9) "person" means an individual,
4 corporation, business trust, estate, trust, partnership,
5 limited liability company, association, joint venture,
6 government; governmental subdivision, agency or
7 instrumentality; public corporation; or any other legal or
8 commercial entity;

9 (10) "principal" means property held in trust
10 for distribution to a remainder beneficiary when the trust
11 terminates;

12 (11) "remainder beneficiary" means a person
13 entitled to receive principal when an income interest ends;

14 (12) "terms of a trust" means the
15 manifestation of the intent of a settlor or decedent with
16 respect to the trust, expressed in a manner that admits of its
17 proof in a judicial proceeding, whether by written or spoken
18 words or by conduct; and

19 (13) "trustee" includes an original,
20 additional or successor trustee, whether or not appointed or
21 confirmed by a court.

22 Section 103. FIDUCIARY DUTIES--GENERAL PRINCIPLES.--

23 (a) In allocating receipts and disbursements to or
24 between principal and income, and with respect to any matter
25 within the scope of Articles 2 and 3, a fiduciary:

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1 (1) shall administer a trust or estate in
2 accordance with the terms of the trust or the will, even if
3 there is a different provision in the Uniform Principal and
4 Income Act;

5 (2) may administer a trust or estate by the
6 exercise of a discretionary power of administration given to
7 the fiduciary by the terms of the trust or the will, even if
8 the exercise of the power produces a result different from a
9 result required or permitted by the Uniform Principal and
10 Income Act;

11 (3) shall administer a trust or estate in
12 accordance with the Uniform Principal and Income Act if the
13 terms of the trust or the will do not contain a different
14 provision or do not give the fiduciary a discretionary power
15 of administration; and

16 (4) shall add a receipt or charge a
17 disbursement to principal to the extent that the terms of the
18 trust and the Uniform Principal and Income Act do not provide
19 a rule for allocating the receipt or disbursement to or
20 between principal and income.

21 (b) In exercising the power to adjust under
22 Section 104(a) or a discretionary power of administration
23 regarding a matter within the scope of the Uniform Principal
24 and Income Act, whether granted by the terms of a trust, a
25 will, or the Uniform Principal and Income Act, a fiduciary

1 shall administer a trust or estate impartially, based on what
2 is fair and reasonable to all of the beneficiaries, except to
3 the extent that the terms of the trust or the will clearly
4 manifest an intention that the fiduciary shall or may favor
5 one or more of the beneficiaries. A determination in
6 accordance with the Uniform Principal and Income Act is
7 presumed to be fair and reasonable to all of the
8 beneficiaries.

9 ARTICLE 2

10 DECEDENT'S ESTATE OR

11 TERMINATING INCOME INTEREST

12 Section 201. DETERMINATION AND DISTRIBUTION OF NET
13 INCOME. --After a decedent dies, in the case of an estate or
14 after an income interest in a trust ends, the following rules
15 apply:

16 (1) A fiduciary of an estate or of a
17 terminating income interest shall determine the amount of net
18 income and net principal receipts received from property
19 specifically given to a beneficiary under the rules in
20 Articles 3 through 5 which apply to trustees and the rules in
21 paragraph (5). The fiduciary shall distribute the net income
22 and net principal receipts to the beneficiary who is to
23 receive the specific property.

24 (2) A fiduciary shall determine the remaining
25 net income of a decedent's estate or a terminating income

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1 interest under the rules in Articles 3 through 5 which apply
2 to trustees and by:

3 (A) including in net income all income
4 from property used to discharge liabilities;

5 (B) paying from income or principal, in
6 the fiduciary's discretion, fees of attorneys, accountants and
7 fiduciaries; court costs and other expenses of administration;
8 and interest on death taxes, but the fiduciary may pay those
9 expenses from income of property passing to a trust for which
10 the fiduciary claims an estate tax marital or charitable
11 deduction only to the extent that the payment of those
12 expenses from income will not cause the reduction or loss of
13 the deduction; and

14 (C) paying from principal all other
15 disbursements made or incurred in connection with the
16 settlement of a decedent's estate or the winding up of a
17 terminating income interest, including debts, funeral
18 expenses, disposition of remains, family allowances and death
19 taxes and related penalties that are apportioned to the estate
20 or terminating income interest by the will, the terms of the
21 trust or applicable law.

22 (3) A fiduciary shall distribute to a
23 beneficiary who receives a pecuniary amount outright the
24 interest or any other amount provided by the will, the terms
25 of the trust or applicable law from net income determined

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1 under paragraph (2) or from principal to the extent that net
2 income is insufficient. If a beneficiary is to receive a
3 pecuniary amount outright from a trust after an income
4 interest ends and no interest or other amount is provided for
5 by the terms of the trust or applicable law, the fiduciary
6 shall distribute the interest or other amount to which the
7 beneficiary would be entitled under applicable law if the
8 pecuniary amount were required to be paid under a will.

9 (4) A fiduciary shall distribute the net
10 income remaining after distributions required by paragraph (3)
11 in the manner described in Section 202 to all other
12 beneficiaries, including a beneficiary who receives a
13 pecuniary amount in trust, even if the beneficiary holds an
14 unqualified power to withdraw assets from the trust or other
15 presently exercisable general power of appointment over the
16 trust.

17 (5) A fiduciary may not reduce principal or
18 income receipts from property described in paragraph (1)
19 because of a payment described in Section 501 or 502 to the
20 extent that the will, the terms of the trust or applicable law
21 requires the fiduciary to make the payment from assets other
22 than the property or to the extent that the fiduciary recovers
23 or expects to recover the payment from a third party. The net
24 income and principal receipts from the property are determined
25 by including all of the amounts the fiduciary receives or pays

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1 with respect to the property, whether those amounts accrued or
2 became due before, on or after the date of a decedent's death
3 or an income interest's terminating event, and by making a
4 reasonable provision for amounts that the fiduciary believes
5 the estate or terminating income interest may become obligated
6 to pay after the property is distributed.

7 Section 202. DISTRIBUTION TO RESIDUARY AND REMAINDER
8 BENEFICIARIES. --

9 (a) Each beneficiary described in Section 201(4)
10 is entitled to receive a portion of the net income equal to
11 the beneficiary's fractional interest in undistributed
12 principal assets, using values as of the distribution date.
13 If a fiduciary makes more than one distribution of assets to
14 beneficiaries to whom this section applies, each beneficiary,
15 including one who does not receive part of the distribution,
16 is entitled, as of each distribution date, to the net income
17 the fiduciary has received after the date of death or
18 terminating event or earlier distribution date but has not
19 distributed as of the current distribution date.

20 (b) In determining a beneficiary's share of net
21 income, the following rules apply:

22 (1) The beneficiary is entitled to receive a
23 portion of the net income equal to the beneficiary's
24 fractional interest in the undistributed principal assets
25 immediately before the distribution date, including assets

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1 that later may be sold to meet principal obligations.

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

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

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

15 (c) If a fiduciary does not distribute all of the
16 collected but undistributed net income to each person as of a
17 distribution date, the fiduciary shall maintain appropriate
18 records showing the interest of each beneficiary in that net
19 income.

20 (d) A fiduciary may apply the rules in this
21 section, to the extent that the fiduciary considers it
22 appropriate, to net gain or loss realized after the date of
23 death or terminating event or earlier distribution date from
24 the disposition of a principal asset if this section applies
25 to the income from the asset.

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ARTICLE 3
APPORTIONMENT AT BEGINNING
AND END OF INCOME INTEREST

Section 301. WHEN RIGHT TO INCOME BEGINS AND ENDS. --

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

(b) An asset becomes subject to a trust:

(1) on the date it is transferred to the trust in the case of an asset that is transferred to a trust during the transferor's life;

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

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

(c) An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under subsection (d), even if there is an intervening period of administration to wind up the preceding

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1 income interest.

2 (d) An income interest ends on the day before an
3 income beneficiary dies or another terminating event occurs,
4 or on the last day of a period during which there is no
5 beneficiary to whom a trustee may distribute income.

6 Section 302. APPORTIONMENT OF RECEIPTS AND DISBURSEMENTS
7 WHEN DECEDENT DIES OR INCOME INTEREST BEGINS. --

8 (a) A trustee shall allocate an income receipt or
9 disbursement other than one to which Section 201(1) applies to
10 principal if its due date occurs before a decedent dies in the
11 case of an estate or before an income interest begins in the
12 case of a trust or successive income interest.

13 (b) A trustee shall allocate an income receipt or
14 disbursement to income if its due date occurs on or after the
15 date on which a decedent dies or an income interest begins and
16 it is a periodic due date. An income receipt or disbursement
17 must be treated as accruing from day to day if its due date is
18 not periodic or it has no due date. The portion of the
19 receipt or disbursement accruing before the date on which a
20 decedent dies or an income interest begins must be allocated
21 to principal and the balance must be allocated to income.

22 (c) An item of income or an obligation is due on
23 the date the payer is required to make a payment. If a
24 payment date is not stated, there is no due date for the
25 purposes of the Uniform Principal and Income Act.

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1 Distributions to shareholders or other owners from an entity
2 to which Section 401 applies are deemed to be due on the date
3 fixed by the entity for determining who is entitled to receive
4 the distribution or, if no date is fixed, on the declaration
5 date for the distribution. A due date is periodic for
6 receipts or disbursements that must be paid at regular
7 intervals under a lease or an obligation to pay interest or if
8 an entity customarily makes distributions at regular
9 intervals.

10 Section 303. APPORTIONMENT WHEN INCOME INTEREST ENDS. --

11 (a) In this section, "undistributed income" means
12 net income received before the date on which an income
13 interest ends. The term does not include an item of income or
14 expense that is due or accrued or net income that has been
15 added or is required to be added to principal under the terms
16 of the trust.

17 (b) When a mandatory income interest ends, the
18 trustee shall pay to a mandatory income beneficiary who
19 survives that date, or the estate of a deceased mandatory
20 income beneficiary whose death causes the interest to end, the
21 beneficiary's share of the undistributed income that is not
22 disposed of under the terms of the trust unless the
23 beneficiary has an unqualified power to revoke more than five
24 percent of the trust immediately before the income interest
25 ends. In the latter case, the undistributed income from the

1 portion of the trust that may be revoked must be added to
2 principal.

3 (c) When a trustee's obligation to pay a fixed
4 annuity or a fixed fraction of the value of the trust's assets
5 ends, the trustee shall prorate the final payment if and to
6 the extent required by applicable law to accomplish a purpose
7 of the trust or its settlor relating to income, gift, estate
8 or other tax requirements.

9 ARTICLE 4

10 ALLOCATION OF RECEIPTS DURING

11 ADMINISTRATION OF TRUST

12 PART 1

13 RECEIPTS FROM ENTITIES

14 Section 401. CHARACTER OF RECEIPTS. --

15 (a) As used in this section, "entity" means a
16 corporation, partnership, limited liability company, regulated
17 investment company, real estate investment trust, common trust
18 fund or any other organization in which a trustee has an
19 interest other than a trust or estate to which Section 402
20 applies, a business or activity to which Section 403 applies
21 or an asset-backed security to which Section 415 applies.

22 (b) Except as otherwise provided in this section,
23 a trustee shall allocate to income money received from an
24 entity.

25 (c) A trustee shall allocate the following

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1 receipts from an entity to principal:

2 (1) property other than money;

3 (2) money received in one distribution or a
4 series of related distributions in exchange for part or all of
5 a trust's interest in the entity;

6 (3) money received in total or partial
7 liquidation of the entity; and

8 (4) money received from an entity that is a
9 regulated investment company or a real estate investment trust
10 if the money distributed is a capital gain dividend for
11 federal income tax purposes.

12 (d) Money is received in partial liquidation:

13 (1) to the extent that the entity, at or near
14 the time of a distribution, indicates that it is a
15 distribution in partial liquidation; or

16 (2) if the total amount of money and property
17 received in a distribution or series of related distributions
18 is greater than twenty percent of the entity's gross assets,
19 as shown by the entity's year-end financial statements
20 immediately preceding the initial receipt.

21 (e) Money is not received in partial liquidation,
22 nor may it be taken into account under subsection (d)(2), to
23 the extent that it does not exceed the amount of income tax
24 that a trustee or beneficiary must pay on taxable income of
25 the entity that distributes the money.

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1 (f) A trustee may rely upon a statement made by an
2 entity about the source or character of a distribution if the
3 statement is made at or near the time of distribution by the
4 entity's board of directors or other person or group of
5 persons authorized to exercise powers to pay money or transfer
6 property comparable to those of a corporation's board of
7 directors.

8 Section 402. DISTRIBUTION FROM TRUST OR ESTATE. -- A
9 trustee shall allocate to income an amount received as a
10 distribution of income from a trust or an estate in which the
11 trust has an interest other than a purchased interest, and
12 shall allocate to principal an amount received as a
13 distribution of principal from such a trust or estate. If a
14 trustee purchases an interest in a trust that is an investment
15 entity, or a decedent or donor transfers an interest in such a
16 trust to a trustee, Section 401 or 415 applies to a receipt
17 from the trust.

18 Section 403. BUSINESS AND OTHER ACTIVITIES CONDUCTED BY
19 TRUSTEE. --

20 (a) If a trustee who conducts a business or other
21 activity determines that it is in the best interest of all the
22 beneficiaries to account separately for the business or
23 activity instead of accounting for it as part of the trust's
24 general accounting records, the trustee may maintain separate
25 accounting records for its transactions, whether or not its

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1 assets are segregated from other trust assets.

2 (b) A trustee who accounts separately for a
3 business or other activity may determine the extent to which
4 its net cash receipts must be retained for working capital,
5 the acquisition or replacement of fixed assets and other
6 reasonably foreseeable needs of the business or activity, and
7 the extent to which the remaining net cash receipts are
8 accounted for as principal or income in the trust's general
9 accounting records. If a trustee sells assets of the business
10 or other activity, other than in the ordinary course of the
11 business or activity, the trustee shall account for the net
12 amount received as principal in the trust's general accounting
13 records to the extent the trustee determines that the amount
14 received is no longer required in the conduct of the business.

15 (c) Activities for which a trustee may maintain
16 separate accounting records include:

- 17 (1) retail, manufacturing, service and other
18 traditional business activities;
- 19 (2) farming;
- 20 (3) raising and selling livestock and other
21 animals;
- 22 (4) management of rental properties;
- 23 (5) extraction of minerals and other natural
24 resources;
- 25 (6) timber operations; and

1 (7) activities to which Section 414 applies.

2 PART 2

3 RECEIPTS NOT NORMALLY APPORTIONED

4 Section 404. PRINCIPAL RECEIPTS. A trustee shall
5 allocate to principal:

6 (1) to the extent not allocated to income
7 under the Uniform Principal and Income Act, assets received
8 from a transferor during the transferor's lifetime, a
9 decedent's estate, a trust with a terminating income interest
10 or a payer under a contract naming the trust or its trustee as
11 beneficiary;

12 (2) money or other property received from the
13 sale, exchange, liquidation or change in form of a principal
14 asset, including realized profit, subject to Article 4;

15 (3) amounts recovered from third parties to
16 reimburse the trust because of disbursements described in
17 Section 502(a)(7) or for other reasons to the extent not based
18 on the loss of income;

19 (4) proceeds of property taken by eminent
20 domain, but a separate award made for the loss of income with
21 respect to an accounting period during which a current income
22 beneficiary had a mandatory income interest is income;

23 (5) net income received in an accounting
24 period during which there is no beneficiary to whom a trustee
25 may or must distribute income; and

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1 (6) other receipts as provided in Part 3.

2 Section 405. RENTAL PROPERTY.--To the extent that a
3 trustee accounts for receipts from rental property pursuant to
4 this section, the trustee shall allocate to income an amount
5 received as rent of real or personal property, including an
6 amount received for cancellation or renewal of a lease. An
7 amount received as a refundable deposit, including a security
8 deposit or a deposit that is to be applied as rent for future
9 periods, must be added to principal and held subject to the
10 terms of the lease and is not available for distribution to a
11 beneficiary until the trustee's contractual obligations have
12 been satisfied with respect to that amount.

13 Section 406. OBLIGATION TO PAY MONEY.--

14 (a) An amount received as interest, whether
15 determined at a fixed, variable or floating rate, on an
16 obligation to pay money to the trustee, including an amount
17 received as consideration for prepaying principal, must be
18 allocated to income without any provision for amortization of
19 premi um.

20 (b) A trustee shall allocate to principal an
21 amount received from the sale, redemption or other disposition
22 of an obligation to pay money to the trustee more than one
23 year after it is purchased or acquired by the trustee,
24 including an obligation whose purchase price or value when it
25 is acquired is less than its value at maturity. If the

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1 obligation matures within one year after it is purchased or
2 acquired by the trustee, an amount received in excess of its
3 purchase price or its value when acquired by the trust must be
4 allocated to income.

5 (c) This section does not apply to an obligation
6 to which Section 409, 410, 411, 412, 414 or 415 applies.

7 Section 407. INSURANCE POLICIES AND SIMILAR CONTRACTS. --

8 (a) Except as otherwise provided in subsection
9 (b), a trustee shall allocate to principal the proceeds of a
10 life insurance policy or other contract in which the trust or
11 its trustee is named as beneficiary, including a contract that
12 insures the trust or its trustee against loss for damage to,
13 destruction of or loss of title to a trust asset. The trustee
14 shall allocate dividends on an insurance policy to income if
15 the premiums on the policy are paid from income and to
16 principal if the premiums are paid from principal.

17 (b) A trustee shall allocate to income proceeds of
18 a contract that insures the trustee against loss of occupancy
19 or other use by an income beneficiary, loss of income or,
20 subject to Section 403, loss of profits from a business.

21 (c) This section does not apply to a contract to
22 which Section 409 applies.

23 PART 3

24 RECEIPTS NORMALLY APPORTIONED

25 Section 408. INSUBSTANTIAL ALLOCATIONS NOT REQUIRED. -- If

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1 a trustee determines that an allocation between principal and
2 income required by Section 409, 410, 411, 412 or 415 is
3 insubstantial, the trustee may allocate the entire amount to
4 principal unless one of the circumstances described in Section
5 104(c) applies to the allocation. This power may be exercised
6 by a cotrustee in the circumstances described in Section
7 104(d) and may be released for the reasons and in the manner
8 described in Section 104(e). An allocation is presumed to be
9 insubstantial if:

10 (1) the amount of the allocation would
11 increase or decrease net income in an accounting period, as
12 determined before the allocation, by less than ten percent; or

13 (2) the value of the asset producing the
14 receipt for which the allocation would be made is less than
15 ten percent of the total value of the trust's assets at the
16 beginning of the accounting period.

17 Section 409. DEFERRED COMPENSATION, ANNUITIES AND
18 SIMILAR PAYMENTS. --

19 (a) As used in this section, "payment" means a
20 payment that a trustee may receive over a fixed number of
21 years or during the life of one or more individuals because of
22 services rendered or property transferred to the payer in
23 exchange for future payments. The term includes a payment
24 made in money or property from the payer's general assets or
25 from a separate fund created by the payer, including a private

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1 or commercial annuity, an individual retirement account and a
2 pension, profit-sharing, stock-bonus or stock-ownership plan.

3 (b) To the extent that a payment is characterized
4 as interest or a dividend or a payment made in lieu of
5 interest or a dividend, a trustee shall allocate it to income.
6 The trustee shall allocate to principal the balance of the
7 payment and any other payment received in the same accounting
8 period that is not characterized as interest, a dividend or an
9 equivalent payment.

10 (c) If no part of a payment is characterized as
11 interest, a dividend or an equivalent payment, and all or part
12 of the payment is required to be made, a trustee shall
13 allocate to income ten percent of the part that is required to
14 be made during the accounting period and the balance to
15 principal. If no part of a payment is required to be made or
16 the payment received is the entire amount to which the trustee
17 is entitled, the trustee shall allocate the entire payment to
18 principal. For purposes of this subsection, a payment is not
19 "required to be made" to the extent that it is made because
20 the trustee exercises a right of withdrawal.

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

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1 (e) This section does not apply to payments to
2 which Section 410 applies.

3 Section 410. LIQUIDATING ASSET. --

4 (a) As used in this section, "liquidating asset"
5 means an asset whose value will diminish or terminate because
6 the asset is expected to produce receipts for a period of
7 limited duration. The term includes a leasehold, patent,
8 copyright, royalty right and right to receive payments during
9 a period of more than one year under an arrangement that does
10 not provide for the payment of interest on the unpaid balance.
11 The term does not include a payment subject to Section 409,
12 resources subject to Section 411, timber subject to Section
13 412, an activity subject to Section 414, an asset subject to
14 Section 415 or any asset for which the trustee establishes a
15 reserve for depreciation under Section 503.

16 (b) A trustee shall allocate to income ten percent
17 of the receipts from a liquidating asset and the balance to
18 principal.

19 Section 411. MINERALS, WATER AND OTHER NATURAL
20 RESOURCES. --

21 (a) To the extent that a trustee accounts for
22 receipts from an interest in minerals or other natural
23 resources pursuant to this section, the trustee shall allocate
24 them as follows:

25 (1) If received as nominal delay rental or

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1 nominal annual rent on a lease, a receipt must be allocated to
2 income.

3 (2) If received from a production payment, a
4 receipt must be allocated to income if and to the extent that
5 the agreement creating the production payment provides a
6 factor for interest or its equivalent. The balance must be
7 allocated to principal.

8 (3) If an amount received as a royalty, shut-
9 in-well payment, take-or-pay payment, bonus or delay rental is
10 more than nominal, ninety percent must be allocated to
11 principal and the balance to income.

12 (4) If an amount is received from a working
13 interest or any other interest not provided for in paragraph
14 (1), (2) or (3), ninety percent of the net amount received
15 must be allocated to principal and the balance to income.

16 (b) An amount received on account of an interest
17 in water that is renewable must be allocated to income. If
18 the water is not renewable, ninety percent of the amount must
19 be allocated to principal and the balance to income.

20 (c) The Uniform Principal and Income Act applies
21 whether or not a decedent or donor was extracting minerals,
22 water or other natural resources before the interest became
23 subject to the trust.

24 (d) If a trust owns an interest in minerals, water
25 or other natural resources on the effective date of the

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1 Uniform Principal and Income Act, the trustee may allocate
2 receipts from the interest as provided in that act or in the
3 manner used by the trustee before the effective date of that
4 act. If the trust acquires an interest in minerals, water or
5 other natural resources after the effective date of the
6 Uniform Principal and Income Act, the trustee shall allocate
7 receipts from the interest as provided in that act.

8 Section 412. TIMBER. --

9 (a) To the extent that a trustee accounts for
10 receipts from the sale of timber and related products pursuant
11 to this section, the trustee shall allocate the net receipts:

12 (1) to income to the extent that the amount
13 of timber removed from the land does not exceed the rate of
14 growth of the timber during the accounting periods in which a
15 beneficiary has a mandatory income interest;

16 (2) to principal to the extent that the
17 amount of timber removed from the land exceeds the rate of
18 growth of the timber or the net receipts are from the sale of
19 standing timber;

20 (3) to or between income and principal if the
21 net receipts are from the lease of timberland or from a
22 contract to cut timber from land owned by a trust, by
23 determining the amount of timber removed from the land under
24 the lease or contract and applying the rules in paragraphs (1)
25 and (2); or

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1 (4) to principal to the extent that advance
2 payments, bonuses and other payments are not allocated
3 pursuant to paragraph (1), (2) or (3).

4 (b) In determining net receipts to be allocated
5 pursuant to subsection (a), a trustee shall deduct and
6 transfer to principal a reasonable amount for depletion.

7 (c) The Uniform Principal and Income Act applies
8 whether or not a decedent or transferor was harvesting timber
9 from the property before it became subject to the trust.

10 (d) If a trust owns an interest in timberland on
11 the effective date of the Uniform Principal and Income Act,
12 the trustee may allocate net receipts from the sale of timber
13 and related products as provided in that act or in the manner
14 used by the trustee before the effective date of that act. If
15 the trust acquires an interest in timberland after the
16 effective date of the Uniform Principal and Income Act, the
17 trustee shall allocate net receipts from the sale of timber
18 and related products as provided in that act.

19 Section 413. PROPERTY NOT PRODUCTIVE OF INCOME. --

20 (a) If a marital deduction is allowed for all or
21 part of a trust whose assets consist substantially of property
22 that does not provide the spouse with sufficient income from
23 or use of the trust assets, and if the amounts that the
24 trustee transfers from principal to income under Section 104
25 and distributes to the spouse from principal pursuant to the

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1 terms of the trust are insufficient to provide the spouse with
2 the beneficial enjoyment required to obtain the marital
3 deduction, the spouse may require the trustee to make property
4 productive of income, convert property within a reasonable
5 time or exercise the power conferred by Section 104(a). The
6 trustee may decide which action or combination of actions to
7 take.

8 (b) In cases not governed by subsection (a),
9 proceeds from the sale or other disposition of an asset are
10 principal without regard to the amount of income the asset
11 produces during any accounting period.

12 Section 414. DERIVATIVES AND OPTIONS. --

13 (a) As used in this section, "derivative" means a
14 contract or financial instrument or a combination of contracts
15 and financial instruments which gives a trust the right or
16 obligation to participate in some or all changes in the price
17 of a tangible or intangible asset or group of assets, or
18 changes in a rate, an index of prices or rates, or other
19 market indicator for an asset or a group of assets.

20 (b) To the extent that a trustee does not account
21 under Section 403 for transactions in derivatives, the trustee
22 shall allocate to principal receipts from and disbursements
23 made in connection with those transactions.

24 (c) If a trustee grants an option to buy property
25 from the trust, whether or not the trust owns the property

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1 when the option is granted, grants an option that permits
2 another person to sell property to the trust or acquires an
3 option to buy property for the trust or an option to sell an
4 asset owned by the trust, and the trustee or other owner of
5 the asset is required to deliver the asset if the option is
6 exercised, an amount received for granting the option must be
7 allocated to principal. An amount paid to acquire the option
8 must be paid from principal. A gain or loss realized upon the
9 exercise of an option, including an option granted to a
10 settlor of the trust for services rendered, must be allocated
11 to principal.

12 Section 415. ASSET-BACKED SECURITIES. --

13 (a) As used in this section, "asset-backed
14 security" means an asset whose value is based upon the right
15 it gives the owner to receive distributions from the proceeds
16 of financial assets that provide collateral for the security.
17 The term includes an asset that gives the owner the right to
18 receive from the collateral financial assets only the interest
19 or other current return or only the proceeds other than
20 interest or current return. The term does not include an
21 asset to which Section 401 or 409 applies.

22 (b) If a trust receives a payment from interest or
23 other current return and from other proceeds of the collateral
24 financial assets, the trustee shall allocate to income the
25 portion of the payment which the payer identifies as being

1 from interest or other current return and shall allocate the
2 balance of the payment to principal.

3 (c) If a trust receives one or more payments in
4 exchange for the trust's entire interest in an asset-backed
5 security in one accounting period, the trustee shall allocate
6 the payments to principal. If a payment is one of a series of
7 payments that will result in the liquidation of the trust's
8 interest in the security over more than one accounting period,
9 the trustee shall allocate ten percent of the payment to
10 income and the balance to principal.

11 ARTICLE 5

12 ALLOCATION OF DISBURSEMENTS DURING 13 ADMINISTRATION OF TRUST

14 Section 501. DISBURSEMENTS FROM INCOME. -- A trustee
15 shall make the following disbursements from income to the
16 extent that they are not disbursements to which Section
17 201(2)(B) or (C) applies:

18 (1) one-half of the regular compensation of
19 the trustee and of any person providing investment advisory or
20 custodial services to the trustee;

21 (2) one-half of all expenses for accountings,
22 judicial proceedings or other matters that involve both the
23 income and remainder interests;

24 (3) all of the other ordinary expenses
25 incurred in connection with the administration, management or

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1 preservation of trust property and the distribution of income,
2 including interest, ordinary repairs, regularly recurring
3 taxes assessed against principal and expenses of a proceeding
4 or other matter that concerns primarily the income interest;
5 and

6 (4) recurring premiums on insurance covering
7 the loss of a principal asset or the loss of income from or
8 use of the asset.

9 Section 502. DISBURSEMENTS FROM PRINCIPAL. --

10 (a) A trustee shall make the following
11 disbursements from principal:

12 (1) the remaining one-half of the
13 disbursements described in Section 501(1) and (2);

14 (2) all of the trustee's compensation
15 calculated on principal as a fee for acceptance, distribution
16 or termination, and disbursements made to prepare property for
17 sale;

18 (3) payments on the principal of a trust
19 debt;

20 (4) expenses of a proceeding that concerns
21 primarily principal, including a proceeding to construe the
22 trust or to protect the trust or its property;

23 (5) premiums paid on a policy of insurance
24 not described in Section 501(4) of which the trust is the
25 owner and beneficiary;

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1 (6) estate, inheritance and other transfer
2 taxes, including penalties, apportioned to the trust; and

3 (7) disbursements related to environmental
4 matters, including reclamation, assessing environmental
5 conditions, remedying and removing environmental
6 contamination, monitoring remedial activities and the release
7 of substances, preventing future releases of substances,
8 collecting amounts from persons liable or potentially liable
9 for the costs of those activities, penalties imposed under
10 environmental laws or regulations and other payments made to
11 comply with those laws or regulations, statutory or common law
12 claims by third parties and defending claims based on
13 environmental matters.

14 (b) If a principal asset is encumbered with an
15 obligation that requires income from that asset to be paid
16 directly to the creditor, the trustee shall transfer from
17 principal to income an amount equal to the income paid to the
18 creditor in reduction of the principal balance of the
19 obligation.

20 SECTION 503. TRANSFERS FROM INCOME TO PRINCIPAL FOR
21 DEPRECIATION.

22 (a) As used in this section, "depreciation" means
23 a reduction in value due to wear, tear, decay, corrosion or
24 gradual obsolescence of a fixed asset having a useful life of
25 more than one year.

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1 (b) A trustee may transfer to principal a
2 reasonable amount of the net cash receipts from a principal
3 asset that is subject to depreciation, but may not transfer
4 any amount for depreciation:

5 (1) of that portion of real property used or
6 available for use by a beneficiary as a residence or of
7 tangible personal property held or made available for the
8 personal use or enjoyment of a beneficiary;

9 (2) during the administration of a decedent's
10 estate; or

11 (3) under this section if the trustee is
12 accounting under Section 403 for the business or activity in
13 which the asset is used.

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

16 Section 504. TRANSFERS FROM INCOME TO REIMBURSE
17 PRINCIPAL. --

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

23 (b) Principal disbursements to which subsection
24 (a) applies include the following, but only to the extent that
25 the trustee has not been and does not expect to be reimbursed

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1 by a third party:

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

5 (2) a capital improvement to a principal
6 asset, whether in the form of changes to an existing asset or
7 the construction of a new asset, including special
8 assessments;

9 (3) disbursements made to prepare property
10 for rental, including tenant allowances, leasehold
11 improvements and broker's commissions;

12 (4) periodic payments on an obligation
13 secured by a principal asset to the extent that the amount
14 transferred from income to principal for depreciation is less
15 than the periodic payments; and

16 (5) disbursements described in Section
17 502(a)(7).

18 (c) If the asset whose ownership gives rise to the
19 disbursements becomes subject to a successive income interest
20 after an income interest ends, a trustee may continue to
21 transfer amounts from income to principal as provided in
22 subsection (a).

23 Section 505. INCOME TAXES. --

24 (a) A tax required to be paid by a trustee based
25 on receipts allocated to income must be paid from income.

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1 (b) A tax required to be paid by a trustee based
2 on receipts allocated to principal must be paid from
3 principal, even if the tax is called an income tax by the
4 taxing authority.

5 (c) A tax required to be paid by a trustee on the
6 trust's share of an entity's taxable income must be paid
7 proportionately:

8 (1) from income to the extent that receipts
9 from the entity are allocated to income; and

10 (2) from principal to the extent that:

11 (A) receipts from the entity are
12 allocated to principal; and

13 (B) the trust's share of the entity's
14 taxable income exceeds the total receipts described in
15 paragraphs (1) and (2)(A).

16 (d) For purposes of this section, receipts
17 allocated to principal or income must be reduced by the amount
18 distributed to a beneficiary from principal or income for
19 which the trust receives a deduction in calculating the tax.

20 Section 506. ADJUSTMENTS BETWEEN PRINCIPAL AND INCOME
21 BECAUSE OF TAXES. --

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

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1 (1) elections and decisions, other than those
2 described in subsection (b), that the fiduciary makes from
3 time to time regarding tax matters;

4 (2) an income tax or any other tax that is
5 imposed upon the fiduciary or a beneficiary as a result of a
6 transaction involving or a distribution from the estate or
7 trust; or

8 (3) the ownership by an estate or trust of an
9 interest in an entity whose taxable income, whether or not
10 distributed, is includable in the taxable income of the
11 estate, trust or a beneficiary.

12 (b) If the amount of an estate tax marital
13 deduction or charitable contribution deduction is reduced
14 because a fiduciary deducts an amount paid from principal for
15 income tax purposes instead of deducting it for estate tax
16 purposes, and as a result estate taxes paid from principal are
17 increased and income taxes paid by an estate, trust or
18 beneficiary are decreased, each estate, trust or beneficiary
19 that benefits from the decrease in income tax shall reimburse
20 the principal from which the increase in estate tax is paid.
21 The total reimbursement must equal the increase in the estate
22 tax to the extent that the principal used to pay the increase
23 would have qualified for a marital deduction or charitable
24 contribution deduction but for the payment. The proportionate
25 share of the reimbursement for each estate, trust or

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

4 ARTICLE 6

5 MISCELLANEOUS PROVISIONS

6 Section 601. UNIFORMITY OF APPLICATION AND
7 CONSTRUCTION. -- In applying and construing the Uniform
8 Principal and Income Act, consideration must be given to the
9 need to promote uniformity of the law with respect to its
10 subject matter among states that enact it.

11 Section 602. SEVERABILITY CLAUSE. -- If any provision of
12 the Uniform Principal and Income Act or its application to any
13 person or circumstance is held invalid, the invalidity does
14 not affect other provisions or applications of the act which
15 can be given effect without the invalid provision or
16 application, and to this end the provisions of the act are
17 severable.

18 Section 603. APPLICATION OF THE UNIFORM PRINCIPAL AND
19 INCOME ACT TO EXISTING TRUSTS AND ESTATES. -- The Uniform
20 Principal and Income Act applies to every trust or decedent's
21 estate existing on the effective date of that act, except as
22 otherwise expressly provided in the will or terms of the trust
23 or in that act.

24 Section 604. REPEAL. -- Sections 46-3-1 through 46-3-15
25 NMSA 1978 (being Laws 1969, Chapter 239, Sections 1 through

. 127833. 1ms

1 15) are repealed.

2 Section 605. EFFECTIVE DATE.--The effective date of the
3 provisions of this act is July 1, 1999.

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1 FORTY-FOURTH LEGISLATURE
2 FIRST SESSION, 1999
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6 February 27, 1999
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8 Mr. Speaker:
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10 Your JUDICIARY COMMITTEE, to whom has been referred
11

12 HOUSE BILL 734
13

14 has had it under consideration and reports same with
15 recommendation that it DO PASS.
16

17 Respectfully submitted,
18

19
20 _____
21 R. David Pederson, Chairman
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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HJC/HB 734

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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 8 For 2 Against

Yes: 8

No: Mallory, T. Taylor

Excused: Luna, Sanchez

Absent: None

J:\99BillsWP\H0734

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