

House Research Act Summary

CHAPTER: 15

SESSION: 2001 Regular Session

TOPIC: Trusts; Principal and Income Allocation; Antilapse Law

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Overview

Section 1 deals with access to birth and death certificates for purposes of estate administration. Section 12 expands the use of the transfer on death (TOD) form so that more investment properties can pass without going through probate. Section 13 makes stylistic changes in the antilapse law (deals with passing property if the intended recipient dies before the person who made the will). The rest of the act deals with trustee powers to allocate between principal and income.

- 1 **Certified copy of birth or death certificate.** Adds a conservator of the subject, trustees, and attorneys to the list of persons who may receive a certified copy. Requires personal representatives and trustees to verify that they need the copy for estate or trust administration.
- 2-10 **Uniform Principal and Income Act.**
- 2 **Accounting period.** Defines this to mean a calendar year unless a trustee chooses another 12 month period. Includes a portion of a year that begins or ends when an income interest begins or ends.
- 3 **Standards for exercise.** Requires a fiduciary to administer a trust or estate impartially based on what is fair and reasonable to all of the beneficiaries, unless a trust or will clearly manifests an intention to favor particular beneficiaries.
- 4 **Principal defined.** Adds to the list of what can constitute principal: a gain or loss, including a purchase premium, from the grant of an option to buy or sell property of the trust, whether or not the trust owns the property when the option is granted.
- 5 **General rule.** Amends the statute on when a beneficiary has a right to income. Applies it to assets that become subject to a trust because of the death of any person, not just because of the death of a person who made a will.
- 6 **Income.** Modifies the statute on income earned during administration of a decedent's estate. Includes income earned after an income interest in a trust terminates. Interest on an outright

money gift under an inter vivos trust must be paid in the same manner as interest on an outright money gift under a will.

- 7 **Entity distributions.** Amends the statute that characterizes distributions from corporations as income or principal to include distributions from other entities, such as partnerships and limited liability companies. Lets fiduciaries characterize distributions from pass-through entities as income or principal based on specified considerations. Defines "entity" and "pass-through entity".
- 8 **Sole proprietorships.** Creates a new section. Partnerships are removed from here because they are placed in section 7. Lets a fiduciary establish a separate account for a business conducted as a sole proprietorship and characterize cash receipts as income or principal, as the fiduciary reasonably and equitably determines.
- 9 **Timber.** Amends law on management of timber land to provide more specific guidance in allocating receipts from timber to income or principal.
- 10 **Annuities, compensation, retirement plans.** Amends law dealing with allocation of receipts from property subject to depletion. Adds annuities and qualified and nonqualified retirement plans to the statute. Specifies how fiduciaries may characterize receipts from those assets as income or principal.
- 11 **Trustee's power to adjust.** Replaces the current statute dealing with underproductive property with new provisions dealing with the trustee's power to adjust. Replaces an "asset-by-asset" approach with a portfolio-wide approach to reallocations of principal and income.
- Subd. 1. Power to adjust.** Contains a general statement of a trustee's power to adjust.
- Subd. 2. Factors to consider.** Specifies factors to be considered by the trustee in making these decisions.
- Subd. 3. Limitation on trustee's power.** Restricts the power of the trustee to make adjustments, particularly in cases where there may be a negative tax impact.
- Subd. 4. Co-trustee may exercise power.** Allows co-trustees to exercise these powers, unless prohibited by the trust.
- Subd. 5. Release of power.** Allows a trustee to permanently or temporarily give up the power to adjust, whether entirely or only the power to adjust from income to principal or vice versa.
- Subd. 6. Power may be negated by specific reference.** Requires specific provisions in a trust in order to negate the power to adjust.
- Subd. 7. No duty to adjust; remedy.** Relieves a trustee from liability to a beneficiary for failure to make an adjustment. Provides that the sole remedy for complaints about adjusting from principal to income is to direct or deny an adjustment.
- Subd. 8. Notice of determination.** Provides notice of a proposed action regarding an allocation. Specifies the contents of the notice to beneficiaries and the procedure for beneficiaries to object.
- 12 **Definitions.** Amends the definition of "security account" in the Uniform Transfer on Death (TOD) Security Registration Act. This law lets an individual register securities or a security account in a TOD form so that it passes directly to a beneficiary and avoids probate. The definition of a security account is expanded to include an investment management or custody account with a trust company or a trust division of a bank with trust powers. Lets persons holding such investments use the TOD registration system the same as persons holding investments in brokerage or reinvestment accounts.
- 13 **Antilapse.** Governs situations where a devisee (intended recipient) under a will fails to survive the testator (person who made the will). Shortens the language of the statute without changing its effect.

Subd. 1. Deceased devisee. Provides that if a devisee who is a grandparent or lineal descendent of a grandparent of the testator does not survive the testator, the issue (descendants) of the deceased devisee who do survive will take that devisee's share.

Subd. 2. Definition. Continues current law with respect to what constitutes "words of survivorship" for purposes of overriding the antilapse statute if a testator wants to do that.

14 **Repealer.** Provisions repealed are replaced by the act.