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§ 61-101. Short title.**§ 61-102. Definitions.**

In this chapter:

(1) "Accounting period" means a calendar year unless another 12-month period is selected by a fiduciary. The term includes a portion of a calendar year or other 12-month period that begins when an income interest begins or ends when an income interest ends.

(2) "Beneficiary" includes, in the case of a decedent's estate, an heir, a next of kin, a legatee and devisee and, in the case of a trust, an income beneficiary and a remainder beneficiary.

(3) "Fiduciary" means a personal representative or a trustee. The term includes an executor, administrator, successor personal representative, special administrator, and a person performing substantially the same function.

(4) "Income" means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in subchapter IV of this chapter.

(5) "Income beneficiary" means a person to whom net income of a trust is or may be payable.

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

(7) "Mandatory income interest" means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.

(8) "Net income" means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under this chapter to or from income during the period.

(9) "Person" means an individual, corporation, statutory trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(10) "Principal" means property held in trust for distribution to a remainder beneficiary when the trust terminates.

(11) "Remainder beneficiary" means a person entitled to receive principal when an income interest ends.

(12) "Terms of a trust" means the manifestation of the intent of a settlor with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct. The term "settlor" may include a decedent.

(13) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court, and an adviser described in § 3313 of this title.

77 Del. Laws, c. 99, § 1.; 77 Del. Laws, c. 330, § 19.;

§ 61-103. Fiduciary duties; general principles.

(a) In allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of subchapters II and III of this chapter, a fiduciary:

(1) 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 this chapter;

(2) May administer a trust or estate by the exercise of a discretionary power of administration, which shall include a power to allocate between principal and income, given to the fiduciary by the terms of the trust or the will or by local law including, but not limited to, § 3325(23) of this title, even if the exercise of the power produces a result different from a result required or permitted by this chapter;

(3) Shall administer a trust or estate in accordance with this chapter 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

(4) Shall add a receipt or charge a disbursement to principal to the extent that the terms of the trust and this chapter do not provide a rule for allocating the receipt or disbursement to or between principal and income.

(b) In exercising the power to adjust under § 61-104(a) of this title or a discretionary power of administration regarding a matter within the scope of this chapter, whether granted by the terms of a trust, a will, or this chapter, 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 1 or more of the beneficiaries. A determination in accordance with this chapter is presumed to be fair and reasonable to all of the beneficiaries.

77 Del. Laws, c. 99, § 1.; 77 Del. Laws, c. 330, § 20.;

§ 61-104. Trustee's power to adjust.

(a) A trustee may adjust between principal and income to the extent the trustee considers necessary if the trustee invests and manages trust assets as a prudent investor, the terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust's income, and the trustee determines, after applying the rules in § 61-103(a) of this title, that the trustee is otherwise unable to comply with § 61-103(b) of this title.

(b) In deciding whether and to what extent to exercise the power conferred by subsection (a) 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:

- (1) The nature, purpose, and expected duration of the trust;
- (2) The intent of the settlor;
- (3) The identity and circumstances of the beneficiaries;
- (4) The needs for liquidity, regularity of income, and preservation and appreciation of capital;
- (5) The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor;
- (6) The net amount allocated to income under the other sections of this chapter, 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) Whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;
- (8) The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and
- (9) The anticipated tax consequences of an adjustment.

(c) A trustee may not make an adjustment:

- (1) That diminishes the income interest in a trust that requires all

of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment;

(2) That reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;

(3) That changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

(4) If the adjustment is from any amount that is permanently set aside for charitable purposes under the governing instrument and for which a federal estate or gift tax deduction has been taken unless both income and principal are so set aside;

(5) If possessing or exercising the power to make an adjustment causes an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;

(6) If possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment;

(7) If the trustee is a beneficiary of the trust; or

(8) If the trustee is not a beneficiary, but the adjustment would benefit the trustee directly or indirectly.

(d) If paragraph (c)(5), (6), (7), or (8) of this section applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.

(e) A trustee may release the entire power conferred by subsection (a) of this section or may release only the power to adjust from income to principal or the power to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result described in paragraph (c)(1) through (6) or (c)(8) of this section or if the trustee determines that possessing or exercising the power will or might deprive the trust of a tax benefit or impose a tax burden not described in subsection (c) of this section. The release may be permanent or for a specified period, including a period measured by the life of an individual.

(f) Terms of a trust that limit the power of a trustee to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power of adjustment conferred by subsection (a) of this section.

(g) This section shall have no application to trusts governed by §§ 61-106 and 61-107 of this title. This section shall be construed as pertaining to the administration of a trust.

(h) Following the exercise of the power conferred by subsection (a) of this section to adjust principal to income, the trustee:

(1) Shall consider as ordinary income the amount so adjusted that is not capital gain net income described in paragraph (h)(2) of this section as paid from trust accounting income;

(2) After calculating the trust's capital gain net income described in § 1222(9) (26 U.S.C. § 1222(9)) of the Internal Revenue Code of 1986, as amended, may consider the amount so adjusted as paid from net short-term capital gain described in § 1222(5) (26 U.S.C. § 1222(5)) of the Internal Revenue Code of 1986, as amended, and then from net long-term capital gain described in § 1222(7) (26 U.S.C. § 1222(7)) of the Internal Revenue Code of 1986, as amended; and

(3) Shall then consider any remaining amount so adjusted as paid from the principal of the trust.

77 Del. Laws, c. 99, § 1.; 77 Del. Laws, c. 330, § 21.;

§ 61-105. Judicial control of discretionary power.

(a) In any proceeding that involves a fiduciary's decision to exercise or refrain from the exercise of a discretionary power conferred upon the fiduciary by this chapter, the fiduciary's decision shall be changed by the court only if the court determines that the decision was an abuse of the fiduciary's discretion. A fiduciary's decision is not an abuse of discretion merely because the court would have exercised the power in a different manner or would not have exercised the power.

(b) The decisions to which subsection (a) of this section applies include:

(1) A decision under § 61-104(a) of this title as to whether and to what extent an amount should be transferred from principal to income or from income to principal.

(2) A decision regarding the factors that are relevant to the trust and its beneficiaries, the extent to which the factors are relevant, and the weight, if any, to be given to those factors, in deciding whether and to

what extent to exercise the discretionary power conferred by § 61-104(a) of this title.

(c) If the court determines that a fiduciary has abused the fiduciary's discretion, the court may place the income and remainder beneficiaries in the positions they would have occupied if the discretion had not been abused, according to the following rules:

(1) To the extent that the abuse of discretion has resulted in no distribution to a beneficiary or in a distribution that is too small, the court shall order the fiduciary to distribute from the trust to the beneficiary an amount that the court determines will restore the beneficiary, in whole or in part, to the beneficiary's appropriate position.

(2) To the extent that the abuse of discretion has resulted in a distribution to a beneficiary that is too large, the court shall place the beneficiaries, the trust, or both, in whole or in part, in their appropriate positions by ordering the fiduciary to withhold an amount from one or more future distributions to the beneficiary who received the distribution that was too large or ordering that beneficiary to return some or all of the distribution to the trust.

(3) To the extent that the court is unable, after applying paragraphs (c)(1) and (2) of this section, to place the beneficiaries, the trust, or both, in the positions they would have occupied if the discretion had not been abused, the court may order the fiduciary to pay an appropriate amount from its own funds to 1 or more of the beneficiaries or the trust or both.

(d) In a proceeding brought by a fiduciary under this section, the court is to determine in accordance with the provisions of this section whether a proposed exercise or nonexercise by the fiduciary of a discretionary power conferred by this chapter will result in an abuse of the fiduciary's discretion. If the petition or other pleading to the court describes the proposed exercise or nonexercise of the power and contains sufficient information to inform the beneficiaries of the reasons for the proposal, the facts upon which the fiduciary relies, and an explanation of how the income and remainder beneficiaries will be affected by the proposed exercise or nonexercise of the power, a beneficiary who challenges the proposed exercise or nonexercise has the burden of establishing that it will result in an abuse of discretion.

77 Del. Laws, c. 99, § 1.;

§ 61-106. Total return unitrusts.

(a) In this section:

(1) "Disinterested person" means a person who is not a "related or subordinate party" (as defined in § 672(c) of the Internal Revenue Code [26 U.S.C. § 672(c)] or any successor provision thereof (hereinafter

referred to in this section as the "I.R.C.") with respect to the person then acting as trustee of the trust and excludes the trustor of the trust and any interested trustee.

(2) "Income trust" means a trust, created by either an inter vivos or a testamentary instrument, which directs or permits the trustee to distribute the net income of the trust to 1 or more persons, either in fixed proportions or in amounts or proportions determined by the trustee and regardless of whether the trust directs or permits the trustee to distribute the principal of the trust to 1 or more such persons.

(3) "Interested distributee" means a person to whom distributions of income or principal can currently be made who has the power to remove the existing trustee and designate as successor a person who may be a "related or subordinate party" (as defined in I.R.C. § 672(c) [26 U.S.C. § 672(c)]) with respect to such distributee.

(4) "Interested trustee" means :

a. An individual trustee to whom the net income or principal of the trust can currently be distributed or would be distributed if the trust were then to terminate and be distributed,

b. Any trustee who may be removed and replaced by an interested distributee and/or

c. An individual trustee whose legal obligation to support a beneficiary may be satisfied by distributions of income and principal of the trust.

(5) "Total return unitrust" means an income trust that has been converted under this section or the laws of any other jurisdiction that permits an income trust to be converted to a trust in which a unitrust amount is treated as the net income of the trust.

(6) "Trustee" means all persons acting as trustee of the trust (except where expressly noted otherwise), whether acting in their discretion or on the direction of 1 or more persons acting in a fiduciary capacity.

(7) "Trustor" means an individual who created an inter vivos or a testamentary trust.

(8) "Unitrust amount" means an amount computed as a percentage of the fair market value of the trust.

(b) A trustee, other than an interested trustee, or where 2 or more persons are acting as trustee, a majority of the trustees who are not an interested trustee (in either case hereafter "trustee"), may, in its sole discretion and without the approval of the Court of Chancery:

(1) Convert an income trust to a total return unitrust;

(2) In the case of a total return unitrust converted under this section or the laws of any other jurisdiction, reconvert a total return unitrust to an income trust; or

(3) In the case of a total return unitrust converted under this section or the laws of any other jurisdiction, change the percentage used to calculate the unitrust amount and/or the method used to determine the fair market value of the trust if:

a. The trustee adopts a written policy for the trust providing:

1. In the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income;

2. In the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income rather than unitrust amounts; or

3. That the percentage used to calculate the unitrust amount and/or the method used to determine the fair market value of the trust will be changed as stated in the policy;

b. The trustee sends written notice of its intention to take such action, along with copies of such written policy and this section, to:

1. The trustor of the trust, if living;

2. All living persons who are currently receiving or eligible to receive distributions of income of the trust;

3. Without regard to the exercise of any power of appointment, all living persons who would receive principal of the trust if the trust were to terminate at the time of the giving of such notice and all living persons who would receive or be eligible to receive distributions of income or principal of the trust if the interests of all of the beneficiaries currently eligible to receive income under paragraph (b)(3)b.2. of this section were to terminate at the time of the giving of such notice; and

4. All persons acting as adviser or protector of the trust;

c. At least 1 person receiving notice under each of paragraphs (b)(3)b.2. and (b)(3)b.3. of this section above is legally competent; and

d. No person receiving such notice objects, by written instrument delivered to the trustee, to the proposed action of the trustee within 30 days of receipt of such notice.

(c) If there is no trustee of the trust other than an interested trustee,

the interested trustee or, where two or more persons are acting as trustee and are interested trustees, a majority of such interested trustees may, in its sole discretion and without the approval of the Court of Chancery:

- (1) Convert an income trust to a total return unitrust;
- (2) Reconvert a total return unitrust to an income trust; or
- (3) Change the percentage used to calculate the unitrust amount and/or the method used to determine the fair market value of the trust if:

a. The trustee adopts a written policy for the trust providing:

1. In the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income;

2. In the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income rather than unitrust amounts; or

3. That the percentage used to calculate the unitrust amount and/or the method used to determine the fair market value of the trust will be changed as stated in the policy;

b. The trustee appoints a disinterested person who, in its sole discretion but acting in a fiduciary capacity, determines for the trustee:

1. The percentage to be used to calculate the unitrust amount;

2. The method to be used in determining the fair market value of the trust; and

3. Which assets, if any, are to be excluded in determining the unitrust amount;

c. The trustee sends written notice of its intention to take such action, along with copies of such written policy and this section, and the determinations of the disinterested person to:

1. The trustor of the trust, if living;

2. All living persons who are currently receiving or eligible to receive distributions of income of the trust;

3. Without regard to the exercise of any power of appointment, all living persons who would receive principal of the trust if the trust were to terminate at the time of the giving of such notice and all living persons who would receive or be eligible to receive distributions of

income or principal of the trust if the interests of all of the beneficiaries currently eligible to receive income under paragraph (c)(3)c.2. of this section were to terminate at the time of the giving of such notice; and

4. All persons acting as adviser or protector of the trust;

d. At least 1 person receiving notice under each of paragraphs (c)(3)c.2. and (c)(3)c.3. of this section is legally competent; and

e. No person receiving such notice objects, by written instrument delivered to the trustee, to the proposed action or the determinations of the disinterested person within 30 days of receipt of such notice.

(d) If any trustee desires to (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount and/or the method used to determine the fair market value of the trust but does not have the ability to or elects not to do it under the provisions of subsection (b) or (c) of this section above, the trustee may petition the Court of Chancery for such order as the trustee deems appropriate. In the event, however, there is only 1 trustee of such trust and such trustee is an interested trustee or in the event there are 2 or more trustees of such trust and a majority of them are interested trustees, the Court, in its own discretion or on the petition of such trustee or trustees or any person interested in the trust, may appoint a disinterested person who, acting in a fiduciary capacity, shall present such information to the Court as shall be necessary to enable the Court to make its determinations hereunder.

(e) The fair market value of the trust shall be determined at least annually, using such valuation date or dates or averages of valuation dates as are deemed appropriate. Assets for which a fair market value cannot be readily ascertained shall be valued using such valuation methods as are deemed reasonable and appropriate. Assets used by a trust beneficiary, such as a residence property or tangible personal property, may be excluded from fair market value for computing the unitrust amount.

(f) The percentage to be used in determining the unitrust amount shall be a reasonable current return from the trust, in any event not less than 3 percent nor more than 5 percent, taking into account the intentions of the trustor of the trust as expressed in the governing instrument, the needs of the beneficiaries, general economic conditions, projected current earnings and appreciation for the trust, and projected inflation and its impact on the trust.

(g) A trustee may act pursuant to subsection (b) or subsection (c) of this section with respect to a trust for which both income and principal have been permanently set aside for charitable purposes under the governing instrument and for which a federal estate or gift tax deduction has been taken, provided, that:

(1) Instead of sending written notice to the persons described in paragraphs (b)(3)b.2. and (b)(3)b.3. of this section or paragraphs (c)(3)c.2. and (c)(3)c.3. of this section, as the case may be, the trustee shall send such written notice to the named charity or charities then entitled to receive income of the trust and, if no named charity or charities are entitled to receive all of such income, to the Attorney General of this State;

(2) Paragraph (b)(3)c. of this section or paragraph (c)(3)d. of this section, as the case may be, shall not apply to such action; and

(3) In each taxable year, the trustee shall distribute the greater of the unitrust amount and the amount required by I.R.C. § 4942 [26 U.S.C. § 4942].

(h) Following the conversion of an income trust to a total return unitrust, the trustee:

(1) Shall consider the unitrust amount as paid from net accounting income determined as if the trust were not a unitrust;

(2) Shall then consider the unitrust amount as paid from ordinary income not allocable to net accounting income;

(3) After calculating the trust's capital gain net income described in I.R.C. § 1222(9) [26 U.S.C. § 1222(9)], may consider the unitrust amount as paid from net short-term capital gain described in I.R.C. § 1222(5) [26 U.S.C. § 1222(5)] and then from net long-term capital gain described in I.R.C. § 1222(7) [26 U.S.C. § 1222(7)]; and

(4) Shall then consider the unitrust amount as coming from the principal of the trust.

(i) In administering a total return unitrust, the trustee may, in its sole discretion but subject to the provisions of the governing instrument, determine:

(1) The effective date of the conversion;

(2) The timing of distributions (including provisions for prorating a distribution for a short year in which a beneficiary's right to payments commences or ceases);

(3) Whether distributions are to be made in cash or in kind or partly in cash and partly in kind;

(4) If the trust is reconverted to an income trust, the effective date of such reconversion; and

(5) Such other administrative issues as may be necessary or appropriate to carry out the purposes of this section.

(j) Conversion to a total return unitrust under the provisions of this section shall not affect any other provision of the governing instrument, if any, regarding distributions of principal.

(k) In the case of a trust for which a marital deduction has been taken for federal tax purposes under I.R.C. § 2056 or § 2523 [26 U.S.C. § 2056 or § 2523], the spouse otherwise entitled to receive the net income of the trust shall have the right, by written instrument delivered to the trustee, to compel the reconversion during that spouse's lifetime of the trust from a total return unitrust to an income trust, notwithstanding anything in this section to the contrary.

(l) This section shall be construed as pertaining to the administration of a trust and shall be available to any trust including a trust initially converted to a total return unitrust under the laws of another jurisdiction that is administered in Delaware under Delaware law or to any trust, regardless of its place of administration, whose governing instrument provides that Delaware law governs matters of construction or administration unless:

(1) The governing instrument reflects an intention that the current beneficiary or beneficiaries are to receive an amount other than a reasonable current return from the trust;

(2) The trust is a pooled income fund described in I.R.C. § 642(c)(5) (26 U.S.C. § 642(c)(5)) or a charitable-remainder trust described in I.R.C. § 664(d) (26 U.S.C. § 664(d));

(3) The governing instrument expressly prohibits use of this section by specific reference to the section or expressly states the trustor's intent that net income not be calculated as a unitrust amount. A provision in the governing instrument that "The provisions of 12 Del. C. § 61-106, as amended, or any corresponding provision of future law, shall not be used in the administration of this trust." or "My trustee shall not determine the distributions to the income beneficiary as a unitrust amount." or similar words reflecting such intent shall be sufficient to preclude the use of this section.

(4) [Deleted.]

(m) Any trustee or disinterested person who in good faith takes or fails to take any action under this section shall not be liable to any person affected by such action or inaction, regardless of whether such person received written notice as provided in this section and regardless of whether such person was under a legal disability at the time of the delivery of such notice. Such person's exclusive remedy shall be to obtain an order of the Court directing the trustee to convert an income trust to a total return unitrust, to reconvert from a total return unitrust to an income trust or to change the percentage used to calculate the unitrust amount.

(n) This section shall be effective June 21, 2001, and shall be available to trusts in existence June 21, 2001, or created thereafter.

73 Del. Laws, c. 48, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 270, §§ 1-12; 75 Del. Laws, c. 97, § 17; 77 Del. Laws, c. 98, §§ 8-11; 77 Del. Laws, c. 330, § 10.;

§ 61-107. Express total return unitrusts.

(a) The following provisions shall apply to a trust that, by its governing instrument, requires or permits the distribution, at least annually, of a unitrust amount equal to a fixed percentage of not less than 3 nor more than 5 percent per year of the fair market value of the trust's assets, valued at least annually, such trust to be referred to in this section as an "express total return unitrust."

(b) The unitrust amount for an express total return unitrust may be determined by reference to the fair market value of the trust's assets in 1 year or more than 1 year.

(c) Distribution of such a fixed percentage unitrust amount is considered a distribution of all of the income of the express total return unitrust.

(d) An express total return unitrust may or may not provide a mechanism for changing the unitrust percentage similar to the mechanism provided under § 61-106 of this title, based upon the factors noted therein, and may or may not provide for a conversion from a unitrust to an income trust and/or a reconversion of an income trust to a unitrust similar to the mechanism under § 61-106 of this title.

(e) If an express total return unitrust does not specifically or by reference to § 61-106 of this title deny a power to change the unitrust percentage or to convert to an income trust, then the trustee shall have such power and the express total return unitrust shall be deemed to be a "total return unitrust" within the meaning of § 61-106 of this title for purposes of applying § 61-106 of this title to the trust.

(f) The distribution of a fixed percentage of not less than 3 percent nor more than 5 percent reasonably apportions the total return of an express total return unitrust.

(g) The trust instrument may grant discretion to the trustee to adopt a consistent practice of treating capital gains as part of the unitrust distribution, to the extent that the unitrust distribution exceeds the net accounting income, or it may specify the ordering of such classes of income.

(h) Unless the terms of the trust specifically provide otherwise, a distribution of the unitrust amount from an express total return unitrust shall be considered to have been made from the following sources in order of priority:

(1) From net accounting income determined as if the trust were not a unitrust;

(2) From ordinary income not allocable to net accounting income;

(3) After calculating the trust's capital gain net income as described in Internal Revenue Code ("I.R.C.") § 1222(9) [26 U.S.C. § 1222(9)], from net realized short-term capital gain as described in I.R.C. § 1222(5) [26 U.S.C. § 1222(5)] and then from net realized long-term capital gain described in I.R.C. § 1222(7) [26 U.S.C. § 1222(7)]; and

(4) From the principal of the trust.

(i) The trust instrument may provide that:

(1) Assets for which a fair market value cannot be readily ascertained shall be valued using such valuation methods as are deemed reasonable and appropriate; and

(2) Assets used by a trust beneficiary, such as a residence property or tangible personal property, may be excluded from the net fair market value for computing the unitrust amount.

74 Del. Laws, c. 270, § 13; 77 Del. Laws, c. 98, § 12; 77 Del. Laws, c. 330, § 10.;