

FIRST REGULAR SESSION

HOUSE BILL NO. 398

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE DIEHL.

0558L.02I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 404.710, 456.3-301, 456.8-813, 469.411, 469.437, and 469.459, RSMo, and to enact in lieu thereof six new sections relating to fiduciaries.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 404.710, 456.3-301, 456.8-813, 469.411, 469.437, and 469.459, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 404.710, 456.3-301, 456.8-813, 469.411, 469.437, and 469.459, to read as follows:

404.710. 1. A principal may delegate to an attorney in fact in a power of attorney general powers to act in a fiduciary capacity on the principal's behalf with respect to all lawful subjects and purposes or with respect to one or more express subjects or purposes. A power of attorney with general powers may be durable or not durable.

2. If the power of attorney states that general powers are granted to the attorney in fact and further states in substance that it grants power to the attorney in fact to act with respect to all lawful subjects and purposes or that it grants general powers for general purposes or does not by its terms limit the power to the specific subject or purposes set out in the instrument, then the authority of the attorney in fact acting under the power of attorney shall extend to and include each and every action or power which an adult who is nondisabled and nonincapacitated may carry out through an agent specifically authorized in the premises, with respect to any and all matters whatsoever, except as provided in subsections 6 and 7 of this section. When a power of attorney grants general powers to an attorney in fact to act with respect to all lawful subjects and purposes, the enumeration of one or more specific subjects or purposes does not limit the general authority granted by that power of attorney, unless otherwise provided in the power of attorney.

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 3. If the power of attorney states that general powers are granted to an attorney in fact
17 with respect to one or more express subjects or purposes for which general powers are conferred,
18 then the authority of the attorney in fact acting under the power of attorney shall extend to and
19 include each and every action or power, but only with respect to the specific subjects or purposes
20 expressed in the power of attorney that an adult who is nondisabled and nonincapacitated may
21 carry out through an agent specifically authorized in the premises, with respect to any and all
22 matters whatsoever, except as provided in subsections 6 and 7 of this section.

23 4. Except as provided in subsections 6 and 7 of this section, an attorney in fact with
24 general powers has, with respect to the subjects or purposes for which the powers are conferred,
25 all rights, power and authority to act for the principal that the principal would have with respect
26 to his or her own person or property, including property owned jointly or by the entirety with
27 another or others, as a nondisabled and nonincapacitated adult; and without limiting the
28 foregoing has with respect to the subjects or purposes of the power complete discretion to make
29 a decision for the principal, to act or not act, to consent or not consent to, or withdraw consent
30 for, any act, and to execute and deliver or accept any deed, bill of sale, bill of lading, assignment,
31 contract, note, security instrument, consent, receipt, release, proof of claim, petition or other
32 pleading, tax document, notice, application, acknowledgment or other document necessary or
33 convenient to implement or confirm any act, transaction or decision. An attorney in fact with
34 general powers, whether power to act with respect to all lawful subjects and purposes, or only
35 with respect to one or more express subjects or purposes, shall have the power, unless
36 specifically denied by the terms of the power of attorney, to make, execute and deliver to or for
37 the benefit of or at the request of a third person, who is requested to rely upon an action of the
38 attorney in fact, an agreement indemnifying and holding harmless any third person or persons
39 from any liability, claims or expenses, including legal expenses, incurred by any such third
40 person by reason of acting or refraining from acting pursuant to the request of the attorney in
41 fact, and such indemnity agreement shall be binding upon the principal who has executed such
42 power of attorney and upon the principal's successor or successors in interest. No such
43 indemnity agreement shall protect any third person from any liability, claims or expenses
44 incurred by reason of the fact that, and to the extent that, the third person has honored the power
45 of attorney for actions outside the scope of authority granted by the power of attorney. In
46 addition, the attorney in fact has complete discretion to employ and compensate real estate
47 agents, brokers, attorneys, accountants and subagents of all types to represent and act for the
48 principal in any and all matters, including tax matters involving the United States government
49 or any other government or taxing entity, including, but not limited to, the execution of
50 supplemental or additional powers of attorney in the name of the principal in form that may be
51 required or preferred by any such taxing entity or other third person, and to deal with any or all

52 third persons in the name of the principal without limitation. No such supplemental or additional
53 power of attorney shall broaden the scope of authority granted to the attorney in fact in the
54 original power of attorney executed by the principal.

55 5. An attorney in fact, who is granted general powers for all subjects and purposes or
56 with respect to any express subjects or purposes, shall exercise the powers conferred according
57 to the principal's instructions, in the principal's best interest, in good faith, prudently and in
58 accordance with sections 404.712 and 404.714.

59 6. Any power of attorney, whether durable or not durable, and whether or not it grants
60 general powers for all subjects and purposes or with respect to express subjects or purposes, shall
61 be construed to grant power or authority to an attorney in fact to carry out any of the actions
62 described in this subsection if the actions are expressly enumerated and authorized in the power
63 of attorney. Any power of attorney may grant power of authority to an attorney in fact to carry
64 out any of the following actions if the actions are expressly authorized in the power of attorney:

65 (1) To execute, amend or revoke any trust agreement; **provided, however, it shall not**
66 **be necessary for a power of attorney granting general powers with respect to all lawful**
67 **subjects and purposes to expressly authorize the attorney in fact to amend or revoke a trust**
68 **agreement, if the trust agreement itself expressly authorizes the attorney in fact to amend**
69 **or revoke the agreement;**

70 (2) To fund with the principal's assets any trust not created by the principal;

71 (3) To make or revoke a gift of the principal's property in trust or otherwise;

72 (4) To disclaim a gift or devise of property to or for the benefit of the principal;

73 (5) To create or change survivorship interests in the principal's property or in property
74 in which the principal may have an interest; provided, however, that the inclusion of the
75 authority set out in this [paragraph] **subdivision** shall not be necessary in order to grant to an
76 attorney in fact acting under a power of attorney granting general powers with respect to all
77 lawful subjects and purposes the authority to withdraw funds or other property from any account,
78 contract or other similar arrangement held in the names of the principal and one or more other
79 persons with any financial institution, brokerage company or other depository to the same extent
80 that the principal would be authorized to do if the principal were present, not disabled or
81 incapacitated, and seeking to act in the principal's own behalf;

82 (6) To designate or change the designation of beneficiaries to receive any property,
83 benefit or contract right on the principal's death;

84 (7) To give or withhold consent to an autopsy or postmortem examination;

85 (8) To make [a] **an anatomical** gift of, or decline to make [a] **an anatomical** gift of, **all**
86 **or part of** the principal's body [parts] under the **Revised** Uniform Anatomical Gift Act **or to**
87 **exercise the right of sepulcher over the principal's body under section 194.119;**

88 (9) To nominate a guardian or conservator for the principal; and if so stated in the power
89 of attorney, the attorney in fact may nominate himself as such;

90 (10) To give consent to or prohibit any type of health care, medical care, treatment or
91 procedure to the extent authorized by sections 404.800 to 404.865, **including, but not limited**
92 **to exercising and giving consent to a do-not-resuscitate order on behalf of the principal;**
93 or

94 (11) To designate one or more substitute or successor or additional attorneys in fact.

95 7. No power of attorney, whether durable or not durable, and whether or not it delegates
96 general powers, may delegate or grant power or authority to an attorney in fact to do or carry out
97 any of the following actions for the principal:

98 (1) To make, publish, declare, amend or revoke a will for the principal;

99 (2) To make, execute, modify or revoke a living will declaration for the principal;

100 (3) To require the principal, against his or her will, to take any action or to refrain from
101 taking any action; or

102 (4) To carry out any actions specifically forbidden by the principal while not under any
103 disability or incapacity.

104 8. A third person may freely rely on, contract and deal with an attorney in fact delegated
105 general powers with respect to the subjects and purposes encompassed or expressed in the power
106 of attorney without regard to whether the power of attorney expressly identifies the specific
107 property, account, security, storage facility or matter as being within the scope of a subject or
108 purpose contained in the power of attorney, and without regard to whether the power of attorney
109 expressly authorizes the specific act, transaction or decision by the attorney in fact.

110 9. It is the policy of this state that an attorney in fact acting pursuant to the provisions
111 of a power of attorney granting general powers shall be accorded the same rights and privileges
112 with respect to the personal welfare, property and business interests of the principal, and if the
113 power of attorney enumerates some express subjects or purposes, with respect to those subjects
114 or purposes, as if the principal himself or herself were personally present and acting or seeking
115 to act; and any provision of law and any purported waiver, consent or agreement executed or
116 granted by the principal to the contrary shall be void and unenforceable.

117 10. Sections 404.700 to 404.735 shall not be construed to preclude any person or
118 business enterprise from providing in a contract with the principal as to the procedure that
119 thereafter must be followed by the principal or the principal's attorney in fact in order to give a
120 valid notice to the person or business enterprise of any modification or termination of the
121 appointment of an attorney in fact by the principal; and any such contractual provision for notice
122 shall be valid and binding on the principal and the principal's successors so long as such
123 provision is reasonably capable of being carried out.

456.3-301. 1. Notice to a person who may represent and bind another person under sections 456.3-301 to 456.3-305 has the same effect as if notice were given directly to the other person.

2. The consent of a person who may represent and bind another person under sections 456.3-301 to 456.3-305 is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective. **Except that, such consent is binding on the person represented regardless of whether the person represented objects pursuant to this subsection, if the person who may represent and bind is:**

(1) The holder of a testamentary power of appointment described in section 456.3-302 and the interests of the person represented are subject to the power;

(2) The conservator, conservator ad litem, or guardian described in subdivisions (1), (2), or (3) of section 456.3-303 and the person represented is disabled; or

(3) A parent described in subdivision (4) of section 456.3-303 and the person represented is a minor or unborn child of the parent.

3. Except as otherwise provided in sections 456.4A-411 and 456.6-602, a person who under sections 456.3-301 to 456.3-305 may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

4. A settlor may not represent and bind a beneficiary under sections 456.3-301 to 456.3-305 with respect to the termination or modification of a trust under section 456.4A-411.

456.8-813. 1. (1) A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. A trustee shall be presumed to have fulfilled this duty if the trustee complies with the notice and information requirements prescribed in subsections 2 to 7 of this section.

(2) Unless unreasonable under the circumstances, a trustee shall promptly respond to a beneficiary's request for information related to the administration of the trust.

2. A trustee:

(1) upon request of a beneficiary, shall promptly furnish to the beneficiary a copy of the trust instrument;

(2) within [60] **one hundred and twenty** days after accepting a trusteeship, shall notify the qualified beneficiaries of the acceptance and of the trustee's name, address, and telephone number;

(3) within [sixty] **one hundred and twenty** days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or

17 otherwise, shall notify the qualified beneficiaries of the trust's existence, of the identity of the
18 settlor or settlors, of the right to request a copy of the trust instrument, and of the right to a
19 trustee's report as provided in subsection 3 of this section; and

20 (4) shall notify the qualified beneficiaries in advance of any change in the method or rate
21 of the trustee's compensation.

22 3. A trustee shall send to the permissible distributees of trust income or principal, and
23 to other beneficiaries who request it, at least annually and at the termination of the trust, a report
24 of the trust property, liabilities, receipts, and disbursements, including the source and amount of
25 the trustee's compensation, a listing of the trust assets and, if feasible, their respective market
26 values. Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a report must be
27 sent to the qualified beneficiaries by the former trustee. A personal representative, conservator,
28 or guardian may send the qualified beneficiaries a report on behalf of a deceased or incapacitated
29 trustee.

30 4. A beneficiary may waive the right to a trustee's report or other information otherwise
31 required to be furnished under this section. A beneficiary, with respect to future reports and
32 other information, may withdraw a waiver previously given.

33 5. A trustee may charge a reasonable fee to a beneficiary for providing information under
34 this section.

35 6. The request of any beneficiary for information under any provision of this section shall
36 be with respect to a single trust that is sufficiently identified to enable the trustee to locate the
37 records of the trust.

38 7. If the trustee is bound by any confidentiality restrictions with respect to an asset of a
39 trust, any beneficiary who is eligible to receive information pursuant to this section about such
40 asset shall agree to be bound by the confidentiality restrictions that bind the trustee before
41 receiving such information from the trustee.

42 8. This section does not apply to a trust created under a trust instrument that became
43 irrevocable before January 1, 2005, and the law in effect prior to January 1, 2005, regarding the
44 subject matter of this section shall continue to apply to those trusts.

469.411. 1. If the provisions of this section apply to a trust, the unitrust amount [shall
2 be determined as follows:] **determined for each accounting year of the trust shall be a**
3 **percentage between three and five percent of the average net fair market value of the trust,**
4 **as of the first day of the trust's current accounting year. The percentage applicable to a**
5 **trust shall be that percentage specified by the terms of the governing instrument or by the**
6 **election made in accordance with subdivision (2) of subsection 5 of this section.**

7 (1) [For the first three accounting periods of the trust, the unitrust amount for a current
8 valuation year of the trust shall be a percentage between three and five percent that is specified

9 by the terms of the governing instrument or by the election made in accordance with subdivision
10 (2) of subsection 5 of this section, of the net fair market values of the assets held in the trust on
11 the first business day of the current valuation year;

12 (2) Beginning with the fourth accounting period of the trust, the unitrust amount for a
13 current valuation year of the trust shall be a percentage between three and five percent that is
14 specified by the terms of the governing instrument or by the election made in accordance with
15 subdivision (2) of subsection 5 of this section, of the average of the net fair market values of the
16 assets held in the trust on the first business day of the current valuation year and the net fair
17 market values of the assets held in the trust on the first business day of each prior valuation year,
18 regardless of whether this section applied to the ascertainment of net income for all valuation
19 years;

20 (3) The unitrust amount for the current [valuation] **accounting** year computed pursuant
21 to [subdivision (1) or (2) of this subsection] **this section** shall be proportionately reduced for any
22 distributions, in whole or in part, other than distributions of the unitrust amount, and for any
23 payments of expenses, including debts, disbursements and taxes, from the trust within a current
24 [valuation] **accounting** year that the trustee determines to be material and substantial, and shall
25 be proportionately increased for the receipt, other than a receipt that represents a return on
26 investment, of any additional property into the trust within a current [valuation] **accounting** year;

27 [(4)] (2) For purposes of [subdivision (2) of this subsection] **this section**, the net fair
28 market values of the assets held in the trust on the first business day of a prior [valuation year]
29 **accounting quarter** shall be adjusted to reflect any reduction, in the case of a distribution or
30 payment, or increase, in the case of a receipt, for the prior [valuation] **accounting** year pursuant
31 to subdivision [(3)] (1) of this subsection, as if the distribution, payment or receipt had occurred
32 on the first day of the prior [valuation] **accounting** year;

33 [(5)] (3) In the case of a short accounting period, the trustee shall prorate the unitrust
34 amount on a daily basis;

35 [(6)] (4) In the case where the net fair market value of an asset held in the trust has been
36 incorrectly determined [either in a current valuation year or in a prior valuation year] **in any**
37 **quarter**, the unitrust amount shall be increased in the case of an undervaluation, or be decreased
38 in the case of an overvaluation, by an amount equal to the difference between the unitrust amount
39 determined based on the correct valuation of the asset and the unitrust amount originally
40 determined.

41 2. As used in this section, the following terms mean:

42 (1) "Average net fair market value", a rolling average of the fair market value of
43 the assets held in the trust on the first business day of the lessor of the number of
44 accounting quarters of the trust from the date of inception of the trust to the determination

45 **of the trust's average net fair market value, or twelve accounting quarters of the trust,**
46 **regardless of whether this section applied to the ascertainment of net income for all**
47 **valuation quarters;**

48 (2) "Current [valuation] **accounting** year", the accounting period of the trust for which
49 the unitrust amount is being determined[;

50 (2) "Prior valuation year", each of the two accounting periods of the trust immediately
51 preceding the current valuation year].

52 3. In determining the [sum of the] **average** net fair market [values] **value** of the assets
53 held in the trust [for purposes of subdivisions (1) and (2) of subsection 1 of this section], there
54 shall not be included the value of:

55 (1) Any residential property or any tangible personal property that, as of the first business
56 day of the current valuation year, one or more income beneficiaries of the trust have or had the
57 right to occupy, or have or had the right to possess or control, other than in a capacity as trustee,
58 and instead the right of occupancy or the right to possession or control shall be deemed to be the
59 unitrust amount with respect to the residential property or the tangible personal property; or

60 (2) Any asset specifically given to a beneficiary under the terms of the trust and the
61 return on investment on that asset, which return on investment shall be distributable to the
62 beneficiary.

63 4. In determining the **average** net fair market value of [each asset] **the assets** held in the
64 trust pursuant to [subdivisions (1) and (2) of] subsection 1 of this section, the trustee shall, not
65 less often than annually, determine the fair market value of each asset of the trust that consists
66 primarily of real property or other property that is not traded on a regular basis in an active
67 market by appraisal or other reasonable method or estimate, and that determination, if made
68 reasonably and in good faith, shall be conclusive as to all persons interested in the trust. Any
69 claim based on a determination made pursuant to this subsection shall be barred if not asserted
70 in a judicial proceeding brought by any beneficiary with any interest whatsoever in the trust
71 within two years after the trustee has sent a report to all qualified beneficiaries that adequately
72 discloses the facts constituting the claim. The rules set forth in subsection 2 of section 469.409
73 shall apply to the barring of claims pursuant to this subsection.

74 5. This section shall apply to the following trusts:

75 (1) Any trust created after August 28, 2001, with respect to which the terms of the trust
76 clearly manifest an intent that this section apply;

77 (2) Any trust created under an instrument that became irrevocable on, before, or after
78 August 28, 2001, if the trustee, in the trustee's discretion, elects to have this section apply unless
79 the instrument creating the trust specifically prohibits an election under this subdivision. The
80 trustee shall deliver notice to all qualified beneficiaries and the settlor of the trust, if he or she

81 is then living, of the trustee's intent to make such an election at least sixty days before making
82 that election. The trustee shall have sole authority to make the election. Section 469.402 shall
83 apply for all purposes of this subdivision. An action or order by any court shall not be required.
84 The election shall be made by a signed writing delivered to the settlor of the trust, if he or she
85 is then living, and to all qualified beneficiaries. The election is irrevocable, unless revoked by
86 order of the court having jurisdiction of the trust. The election may specify the percentage used
87 to determine the unitrust amount pursuant to this section, provided that such percentage is
88 between three and five percent, or if no percentage is specified, then that percentage shall be
89 three percent. In making an election pursuant to this subsection, the trustee shall be subject to
90 the same limitations and conditions as apply to an adjustment between income and principal
91 pursuant to subsections 3 and 4 of section 469.405; **and**

92 (3) No action of any kind based on an election made by a trustee pursuant to subdivision
93 (2) of this subsection shall be brought against the trustee by any beneficiary of that trust three
94 years from the effective date of that election[;

95 (4) If this section is made applicable under this subdivision to an institutional
96 endowment fund, as defined in section 402.130, the restrictions contained in section 402.134
97 shall not apply to the extent payment of a unitrust amount would otherwise be prohibited].

98 **6. Once the provisions of this section become applicable to a trust, the net income**
99 **of the trust shall be the unitrust amount.**

100 (1) **Unless otherwise provided by the governing instrument, the unitrust amount**
101 **distributed each year shall be paid from the following sources for that year up to the full**
102 **value of the unitrust amount in the following order:**

103 (a) **Net income as determined if the trust were not a unitrust;**

104 (b) **Other ordinary income as determined for federal income tax purposes;**

105 (c) **Assets of the trust principal for which there is a readily available market value;**

106 **and**

107 (d) **Other trust principal.**

108 (2) **Additionally, the trustee may allocate to trust income for each taxable year of**
109 **the trust, or portion thereof:**

110 (a) **Net short-term capital gain described in the Internal Revenue Code, 26 U.S.C.**
111 **s. 1222(5), for such year, or portion thereof, but only to the extent that the amount so**
112 **allocated together with all other amounts to trust income, as determined under the**
113 **provisions of this chapter without regard to this section, for such year, or portion thereof,**
114 **does not exceed the unitrust amount for such year, or portion thereof;**

115 (b) **Net long-term capital gain described in the Internal Revenue Code, 26 U.S.C.**
116 **s. 1222(7), for such year, or portion thereof, but only to the extent that the amount so**

117 **allocated together with all other amounts, including amounts described in paragraph (a),**
118 **allocated to trust income for such year, or portion thereof, does not exceed the unitrust**
119 **amount for such year, or portion thereof.**

120 **7. A trust with respect to which this section applies on August 28, 2011, may**
121 **calculate the unitrust amount in accordance with the provisions of this section, as it existed**
122 **either before or after such date, as the trustee of such trust shall determine in a writing**
123 **kept with the records of the trust in the trustee's discretion.**

469.437. 1. As used in this section, the following terms mean:

2 (1) "Payment", an amount that is:

3 (a) Received or withdrawn from a plan; or

4 (b) One of a series of distributions that have been or will be received over a fixed
5 number of years or during the life of one or more individuals under any contractual or other
6 arrangement, or is a single payment from a plan that the trustee could have received over a fixed
7 number of years or during the life of one or more individuals;

8 (2) "Plan", a contractual, custodial, trust or other arrangement that provides for
9 distributions to the trust, including, but not limited to, qualified retirement plans, Individual
10 Retirement Accounts, Roth Individual Retirement Accounts, public and private annuities, and
11 deferred compensation, including payments received directly from an entity as defined in section
12 469.423 regardless of whether or not such distributions are made from a specific fund or account.

13 2. If any portion of a payment is characterized as a distribution to the trustee of interest,
14 dividends or a dividend equivalent, the trustee shall allocate the portion so characterized to
15 income. The trustee shall allocate the balance of that payment to principal.

16 3. If no part of a payment is allocated to income pursuant to subsection 2 of this section,
17 then for each accounting period of the trust that any payment is received by the trust with respect
18 to the trust's interest in a plan, the trustee shall allocate to income that portion of the aggregate
19 value of all payments received by the trustee in that accounting period equal to the amount of
20 plan income attributable to the trust's interest in the plan for that calendar year. The trustee shall
21 allocate the balance of that payment to principal.

22 4. For purposes of this section, if a payment is received from a plan that maintains a
23 separate account or fund for its participants or account holders, including, but not limited to,
24 defined contribution retirement plans, Individual Retirement Accounts, Roth Individual
25 Retirement Accounts, and some types of deferred compensation plans, the phrase "plan income"
26 shall mean either the amount of the plan account or fund held for the benefit of the trust that, if
27 the plan account or fund were a trust, would be allocated to income pursuant to sections 469.401
28 to 469.467 for that accounting period, or four percent of the value of the plan account or fund
29 on the first day of that accounting period. The method of determining plan income pursuant to

30 this subsection shall be chosen by the trustee in the trustee's discretion. The trustees may change
31 the method of determining plan income pursuant to this subsection for any future accounting
32 period.

33 5. For purposes of this section if the payment is received from a plan that does not
34 maintain a separate account or fund for its participants or account holders, including by way of
35 example and not limitation defined benefit retirement plans and some types of deferred
36 compensation plans, the term "plan income" shall mean four percent of the total present value
37 of the trust's interest in the plan as of the first day of the accounting period, based on reasonable
38 actuarial assumptions as determined by the trustee.

39 **6. Notwithstanding subsections 1 to 5 of this section, with respect to a trust where**
40 **an election to qualify for a marital deduction under Section 2056(b)(7) or Section 2523(f)**
41 **of the Internal Revenue Code of 1986, as amended, has been made, or a trust that qualified**
42 **for the marital deduction under either Section 2056(b)(5) or Section 2523(e) of the Internal**
43 **Revenue Code of 1986, as amended, a trustee shall determine the plan income for the**
44 **accounting period as if the plan were a trust subject to sections 469.401 to 469.467. Upon**
45 **request of the surviving spouse, the trustee shall demand that the person administering the**
46 **plan distribute the plan income to the trust. The trustee shall allocate a payment from the**
47 **plan to income to the extent of the plan income and distribute that amount to the surviving**
48 **spouse. The trustee shall allocate the balance of the payment to principal. Upon request**
49 **of the surviving spouse, the trustee shall allocate principal to income to the extent the plan**
50 **income exceeds payments made from the plan to the trust during the accounting period.**

51 7. If, to obtain an estate or gift tax marital deduction for a trust, a trustee shall allocate
52 more of a payment to income than provided for by this section, the trustee shall allocate to
53 income the additional amount necessary to obtain the marital deduction.

469.459. 1. A tax required to be paid by a trustee based on receipts allocated to income
2 shall be paid from income.

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

5 3. A tax required to be paid by a trustee on the trust's share of an entity's taxable income
6 shall be paid [proportionately]:

7 (1) From income to the extent that receipts from the entity are allocated to income; and

8 (2) From principal to the extent that[:

9 (a)] receipts from the entity are allocated **only** to principal[: and

10 (b) The trust's share of the entity's taxable income exceeds the total receipts described
11 in subdivision (1) of this subsection and paragraph (a) of this subdivision].

12 4. [For purposes of this section, receipts allocated to principal or income shall be reduced
13 by the amount distributed to a beneficiary from principal or income for which the trust receives
14 a deduction in calculating the tax] **After applying subsections 1 to 3 of this section, the trustee**
15 **shall adjust income or principal receipts to the extent that the trust's taxes are reduced**
16 **because the trust receives a deduction for payment made to a beneficiary.**

T