

## **Idaho Statutes**

### **TITLE 68 TRUSTS AND FIDUCIARIES**

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exists without any appointed trustees or where any or all of the trustees renounce, die, or are discharged, the district court of the county where the trust property or some portion thereof is situated, must appoint another trustee to direct the execution of the trust. The court may, in its discretion, appoint the original number or any less number of trustees.

68-102. DEATH, RENUNCIATION, OR DISCHARGE OF TRUSTEE -- SURVIVAL OF TRUST. On the death, renunciation, or discharge of one (1) of the several number of trustees, the trust survives to the others.

68-103. COMPENSATION OF TRUSTEES. When a declaration of trust is silent upon the subject of compensation, the trustee is entitled to the same compensation as an executor. If it specifies the amount of his compensation, he is entitled to the amount thus specified and no more.

68-104. UNIFORM TRUSTEES' POWERS ACT -- DEFINITIONS. As used in this act:

(1) "Trust" means an express trust created by a trust instrument, including a will, whereby a trustee has the duty to administer a trust asset for the benefit of a named or otherwise described income or principal beneficiary, or both; "trust" does not include a resulting or constructive trust, a business trust which provides for certificates to be issued to the beneficiary, an investment trust, a voting trust, a security instrument, a trust created by the judgment or decree of a court, a liquidation trust, or a trust for the primary purpose of paying dividends, interests, interest coupons, salaries, wages, pensions or profits, or employee benefits of any kind, an instrument wherein a person is nominee or escrowee for another, a trust created in deposits in any financial institution, or other trust the nature of which does not admit of general trust administration;

(2) "Trustee" means an original, added, or successor trustee;

(3) "Prudent man" means a trustee whose exercise of trust powers is reasonable and equitable in view of the interests of income or principal beneficiaries, or both, and in view of the manner in which men of ordinary prudence, diligence, discretion, and judgment would act in the management of their own affairs.

68-105. POWERS OF TRUSTEE CONFERRED BY TRUST OR BY LAW. (a) The trustee has all powers conferred upon him by the provisions of this act unless limited in the trust instrument.

(b) An instrument which is not a trust under section 68-104 (1)[, Idaho Code,] may incorporate any part of this act by reference.

68-106. POWERS OF TRUSTEES CONFERRED BY THIS ACT. (a) From time of creation of the trust until final distribution of the assets of the trust, a trustee has the power to perform, without court authorization, every act which a prudent man would perform for the purposes of the trust including but not limited to the powers specified in subsection (c).

(b) In the exercise of his powers including the powers granted by this act, a trustee has a duty to act with due regard to his obligation as a fiduciary.

(c) A trustee has the power, subject to subsections (a) and (b):

(1) to collect, hold, and retain trust assets received from a trustor until, in the judgment of the trustee, disposition of the assets should be made; and the assets may be retained even though they include an asset in which the trustee is personally interested;

(2) to receive additions to the assets of the trust;

(3) to continue or participate in the operation of any business or other

- enterprise, and to effect incorporation, dissolution, or other change in the form of the organization of the business or enterprise;
- (4) to acquire an undivided interest in a trust asset in which the trustee, in any trust capacity, holds an undivided interest;
  - (5) to invest and reinvest trust assets in accordance with the provisions of the trust or as provided by law;
  - (6) to deposit trust funds in a bank, including a bank operated by the trustee;
  - (7) to acquire assets, including real estate, in the name of the trust, and to sell, convey or dispose of an asset, for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon a trust asset or any interest therein; and to encumber, mortgage, or pledge a trust asset for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the trustee;
  - (8) to make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings;
  - (9) to subdivide, develop, or dedicate land to public use; or to make or obtain the vacation of plats and adjust boundaries; or to adjust differences in valuation on exchange or partition by giving or receiving consideration; or to dedicate easements to public use without consideration;
  - (10) to enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the trust;
  - (11) to enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;
  - (12) to grant an option involving disposition of a trust asset, or to take an option for the acquisition of any asset;
  - (13) to vote a security, in person or by general or limited proxy;
  - (14) to pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;
  - (15) to sell or exercise stock subscription or conversion rights; to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;
  - (16) to hold a security in the name of a nominee or in other form without disclosure of the trust, so that title to the security may pass by delivery, but the trustee is liable for any act of the nominee in connection with the stock so held;
  - (17) to insure the assets of the trust against damage or loss, and the trustee against liability with respect to third persons;
  - (18) to borrow money to be repaid from trust assets or otherwise; to advance money for the protection of the trust, and for all expenses, losses, and liability sustained in the administration of the trust or because of the holding or ownership of any trust assets, for which advances with any interest the trustee has a lien on the trust assets as against the beneficiary;
  - (19) to pay or contest any claim; to settle a claim by or against the

trust by compromise, arbitration, or otherwise; and to release, in whole or in part, any claim belonging to the trust to the extent that the claim is uncollectible;

(20) to pay taxes, assessments, compensation of the trustee, and other expenses incurred in the collection, care, administration, and protection of the trust;

(21) to allocate items of income or expense to either trust income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties;

(22) to pay any sum distributable to a beneficiary under legal disability, without liability to the trustee, by paying the sum to the beneficiary or by paying the sum for the use of the beneficiary either to a legal representative appointed by the court, or if none, to a relative;

(23) to effect distribution of property and money in divided or undivided interests and to adjust resulting differences in valuation;

(24) to employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the trustee, to advise or assist the trustee in the performance of his administrative duties; to act without independent investigation upon their recommendations; and instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary;

(25) to prosecute or defend actions, claims, or proceedings for the protection of trust assets and of the trustee in the performance of his duties;

(26) to execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the trustee.

68-107. TRUSTEE'S OFFICE NOT TRANSFERABLE -- TRANSACTIONS UNDER CHAPTER 14, TITLE 26, IDAHO CODE, EXCEPTED. (1) The trustee shall not transfer his office to another or delegate the entire administration of the trust to a co-trustee or another.

(2) Subsection (1) of this section does not apply to any transfer permitted under chapter 14, title 26, Idaho Code.

68-108. POWER OF COURT TO PERMIT DEVIATION OR TO APPROVE TRANSACTIONS INVOLVING CONFLICT OF INTEREST. (a) This act does not effect [affect] the power of a court of competent jurisdiction for cause shown and upon petition of the trustee or affected beneficiary and upon appropriate notice to the affected parties to relieve a trustee from any restrictions on his power that would otherwise be placed upon him by the trust or by this act.

(b) If the duty of the trustee and his individual interest or his interest as trustee of another trust, conflict in the exercise of a trust power, the power may be exercised only by court authorization, except as provided in sections 68-106(c)(1), (4), (6), (18), and (24) upon petition of the trustee. Under this section, personal profit or advantage to an affiliated or subsidiary company or association is personal profit to any corporate trustee.

68-109. POWERS EXERCISABLE BY JOINT TRUSTEES -- LIABILITY. (a) Any power vested in 3 or more trustees may be exercised by a majority, but a trustee who has not joined in exercising a power is not liable to the beneficiaries or to others for the consequences of the exercise; and a dissenting trustee is not liable for the consequences of an act in which he joins at the direction of

the majority of the trustees, if he expressed his dissent in writing to any of his co-trustees at or before the time of the joinder.

(b) If 2 or more trustees are appointed to perform a trust, and if any of them is unable or refuses to accept the appointment, or, having accepted, ceases to be a trustee, the surviving or remaining trustees shall perform the trust and succeed to all the powers, duties, and discretionary authority given to the trustees jointly.

(c) This section does not excuse a co-trustee from liability for failure either to participate in the administration of the trust or to attempt to prevent a breach of trust.

68-110. **THIRD PERSONS PROTECTED IN DEALING WITH TRUSTEE.** With respect to a third person dealing with a trustee or assisting a trustee in the conduct of a transaction, the existence of trust powers and their proper exercise by the trustee may be assumed without inquiry. The third person is not bound to inquire whether the trustee has power to act or is properly exercising the power; and a third person, without actual knowledge that the trustee is exceeding his powers or improperly exercising them, is fully protected in dealing with the trustee as if the trustee possessed and properly exercised the powers he purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the trustee.

68-111. **APPLICATION OF ACT.** Except as specifically provided in the trust, the provisions of this act apply to any trust established after the effective date [May 17, 1965] of this act.

68-112. **UNIFORMITY OF INTERPRETATION.** This act shall be construed to effectuate its general purpose to make uniform the law of those states which enact it.

68-113. **SHORT TITLE.** This act may be cited as the "Uniform Trustees' Powers Act."

68-114. **PRESENTATION OF A CERTIFICATION OF TRUST IN LIEU OF THE TRUST INSTRUMENT -- EFFECT -- FORM.** (1) A trustee may present a certification of trust to any person in lieu of a copy of any trust instrument to establish the existence or terms of the trust. The trustee may present the certification voluntarily or at the request of the person with whom he is dealing. Notwithstanding any provision of this chapter to the contrary, no person is required to accept and rely solely on a certification of trust in lieu of a copy of, or excerpts from, the trust instrument itself.

(2) Such a certification must be in the form of an affidavit signed and acknowledged by all of the currently acting trustees of the trust.

68-115. **CONTENTS OF CERTIFICATION OF TRUST.** (1) A certification of trust may confirm the following facts or contain the following information:

- (a) The existence of the trust and date of execution of any trust instrument;
- (b) The identity of the settlor and each currently acting trustee;
- (c) The powers of the trustee and any restrictions imposed upon him in dealing with assets of the trust;
- (d) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke it;
- (e) If there is more than one (1) trustee, whether all of the currently acting trustees must, or less than all may, act to exercise identified powers of the trustee;

- (f) The identifying number of the trust and whether it is a social security number or an employer identification number;
- (g) The state or other jurisdiction under the laws of which the trust was established; and
- (h) The form in which title to assets of the trust is to be taken.

(2) The certification must contain a statement that the trust has not been revoked or amended to make any representations contained in the certification incorrect, and that the signatures are those of all the currently acting trustees.

#### 68-116. DISPOSITIVE PROVISIONS NOT REQUIRED -- PERSON PRESENTED WITH CERTIFICATION MAY REQUEST EXCERPTS FROM TRUST INSTRUMENT DESIGNATING TRUSTEE.

A certification of trust need not contain the dispositive provisions of the trust, but the person to whom the certification is presented may require copies of excerpts from any trust instrument which designate the trustee or confer upon him the power to act in the pending transaction.

#### 68-117. RELIANCE ON FACTS CONTAINED IN CERTIFICATION -- ENFORCEABILITY.

(1) A person who acts in reliance upon a certification of trust without knowledge that the representations contained therein are incorrect is not liable to any person for so acting. A person who does not know that the facts contained in the certification are incorrect may assume without inquiry the existence of the facts contained in the certification. Knowledge may not be inferred solely from the fact that a copy of all or part of a trust instrument is held by the person relying upon the certification.

(2) A transaction, and any lien created thereby, entered into by a trustee and a person acting in reliance upon a certification of trust is fully enforceable against the assets of the trust unless the person knows that the trustee is acting outside the scope of the trust.

#### 68-118. FAILURE TO DEMAND CERTIFICATION OR REFUSAL TO ACCEPT AND RELY ON

CERTIFICATION NOT IMPROPER ACT -- LIABILITY. A person's failure to demand a certification of trust, or his refusal to accept and rely solely on a certification of trust, may not be considered to be an improper act by him and no inference as to whether he has acted in good faith may be drawn from the failure to demand, or the refusal to accept and rely upon, a certification of trust. This section creates no implication that a person is liable for acting in reliance upon a certification of trust under circumstances where the requirements of sections 68-114 through 68-119, Idaho Code, are not satisfied.

68-119. APPLICABILITY. The provisions of sections 68-114 through 68-120, Idaho Code, shall apply to all trusts, whether established pursuant to Idaho law or established pursuant to the law of another state or jurisdiction.

68-120. DOCTRINE OF WORTHIER TITLE INAPPLICABLE. The doctrine of worthier title shall not be applied as a rule of law or as a rule of construction.

Language in a governing instrument describing the beneficiaries of a disposition as the transferor's heirs, heirs at law, next of kin, distributees, relatives or family, or language of similar import, shall not create or presumptively create a reversionary interest in the transferor.

## CHAPTER 2 ASSIGNMENTS FOR BENEFIT OF CREDITORS

## 68-201 RESIDENCE QUALIFICATION OF ASSIGNEE

68-201. RESIDENCE QUALIFICATION OF ASSIGNEE. No assignment for the benefit of creditors shall be valid unless made to a bona fide resident of this state or to a corporation duly authorized to do business in this state.

## CHAPTER 3 UNIFORM FIDUCIARIES LAW

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68-301. DEFINITION OF TERMS. In this chapter unless the context or subject-matter otherwise requires:

1. "Bank" includes any person or association of persons, whether incorporated or not, carrying on the business of banking.

"Fiduciary" includes a trustee under any trust, expressed, implied, resulting or constructive, executor, administrator, guardian, conservator, curator, receiver, trustee in bankruptcy, assignee for the benefit of creditors, partner, agent, officer of a corporation, public or private, public officer, or any other person acting in a fiduciary capacity for any person, trust or estate.

"Person" includes a corporation, partnership, or other association, or two (2) or more persons having a joint or common interest.

"Principal" includes any person to whom a fiduciary as such owes an obligation.

2. A thing is done "in good faith" within the meaning of this chapter when it is in fact done honestly, whether it be done negligently or not.

68-302. APPLICATION OF PAYMENTS MADE TO FIDUCIARIES. A person who in good faith pays or transfers to a fiduciary any money or other property which the fiduciary as such is authorized to receive, is not responsible for the proper application thereof by the fiduciary; and any right or title acquired from the fiduciary in consideration of such payment or transfer is not invalid in consequence of a misapplication by the fiduciary.

68-304. TRANSFER OF NEGOTIABLE INSTRUMENT BY FIDUCIARY. If any negotiable instrument payable or indorsed to a fiduciary as such is indorsed by the fiduciary, or if any negotiable instrument payable or indorsed to his principal is indorsed by a fiduciary empowered to indorse such instrument on behalf of his principal, the indorsee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in indorsing or delivering the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he

takes the instrument with actual knowledge of such breach or with knowledge of such facts that his action in taking the instrument amounts to bad faith. If, however, such instrument is transferred by the fiduciary in payment of or as security for a personal debt of the fiduciary to the actual knowledge of the creditor, or is transferred in any transaction known by the transferee to be for the personal benefit of the fiduciary, the creditor or other transferee is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in transferring the instrument.

68-305. CHECK DRAWN BY FIDUCIARY PAYABLE TO THIRD PERSON. If a check or other bill of exchange is drawn by a fiduciary as such, or in the name of his principal by a fiduciary empowered to draw such instrument in the name of his principal, the payee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in drawing or delivering the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual knowledge of such breach or with knowledge of such facts that his action in taking the instrument amounts to bad faith. If, however, such instrument is payable to a personal creditor of the fiduciary and delivered to the creditor in payment of or as security for a personal debt of the fiduciary to the actual knowledge of the creditor, or is drawn and delivered in any transaction known by the payee to be for the personal benefit of the fiduciary, the creditor or other payee is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the instrument.

68-306. CHECK DRAWN BY AND PAYABLE TO FIDUCIARY. If a check or other bill of exchange is drawn by a fiduciary as such or in the name of his principal by a fiduciary empowered to draw such instrument in the name of his principal, payable to the fiduciary personally, or payable to a third person and by him transferred to the fiduciary, and is thereafter transferred by the fiduciary, whether in payment of a personal debt of the fiduciary or otherwise, the transferee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in transferring the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual knowledge of such facts that his action in taking the instrument amounts to bad faith.

68-307. DEPOSIT IN NAME OF FIDUCIARY AS SUCH. If a deposit is made in a bank to the credit of a fiduciary as such, the bank is authorized to pay the amount of the deposit or any part thereof upon the check of the fiduciary, signed with the name in which such deposit is entered, without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in drawing the check or with knowledge of such facts that its action in paying the check amounts to bad faith. If, however, such a check is payable to the drawee bank and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the check.

68-308. DEPOSIT IN NAME OF PRINCIPAL. If a check is drawn upon the account of his principal in a bank by a fiduciary who is empowered to draw checks upon his principal's account, the bank is authorized to pay such check without being liable to the principal, unless the bank pays the check with



actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in drawing such check, or with knowledge of such facts that its action in paying the check amounts to bad faith. If, however, such a check is payable to the drawee bank and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the check.

68-309. DEPOSIT IN FIDUCIARY'S PERSONAL ACCOUNT. If a fiduciary makes a deposit in a bank to his personal credit of checks drawn by him upon an account in his own name as fiduciary or of the checks payable to him as fiduciary, or of checks drawn by him upon an account in the name of his principal if he is empowered to draw checks thereon, or of checks payable to his principal and indorsed by him, if he is empowered to indorse such checks, or if he otherwise makes a deposit of funds held by him as fiduciary, the bank receiving such deposit is not bound to inquire whether the fiduciary is committing thereby a breach of his obligations as fiduciary; and the bank is authorized to pay the amount of the deposit or any part thereof upon the personal check of the fiduciary without being liable to the principal, unless the bank receives the deposit or pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in making such deposit or in drawing such check, or with knowledge of such facts that its action in receiving the deposit or paying the check amounts to bad faith.

68-310. DEPOSIT IN NAMES OF TWO OR MORE TRUSTEES. When a deposit is made in a bank in the name of two (2) or more persons as trustees and a check is drawn upon the trust account by any trustee or trustees authorized by the other trustee or trustees to draw checks upon the trust account, neither the payee nor other holder nor the bank is bound to inquire whether it is a breach of trust to authorize such trustee or trustees to draw checks upon the trust account, and is not liable unless the circumstances be such that the action of the payee or other holder or the bank amounts to bad faith.

68-311. CHAPTER NOT RETROACTIVE. The provisions of this chapter shall not apply to transactions taking place prior to the time when it takes effect.

68-312. CASES NOT PROVIDED FOR IN CHAPTER. In any case not provided for in this chapter the rules of law and equity, including the law merchant and those rules of law and equity relating to trusts, agency, negotiable instruments and banking, shall continue to apply.

68-313. UNIFORMITY OF INTERPRETATION. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

68-314. SHORT TITLE. This chapter may be cited as the Uniform Fiduciaries Law.

68-315. INCONSISTENT LAWS REPEALED. All acts or parts of acts inconsistent with this chapter are hereby repealed.

#### CHAPTER 4 LEGAL INVESTMENTS

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AUTHORITY TO MAKE. The following persons, corporations, institutions and officers are hereby authorized to make such loans, secured by real property or leasehold as the federal housing administrator insures or makes a commitment to insure, and may obtain such insurance, to-wit: banks, trust companies, insurance companies, loan and building corporations, building and loan associations, savings and loan associations, and other savings and/or investment institutions, guardians, executors, administrators, trustees and other fiduciaries, and all other persons, associations and corporations subject to the laws of this state and qualified and licensed to make such loans.

68-402. SECURITIES OF FEDERAL HOUSING ADMINISTRATOR AND NATIONAL MORTGAGE

ASSOCIATIONS LEGAL INVESTMENTS. It shall be lawful for banks, trust companies, insurance companies, loan and building corporations, building and loan associations, savings and loan associations, and other savings and/or investment institutions, guardians, executors, administrators, trustees and other fiduciaries, and all other persons, associations and corporations subject to the laws of this state, qualified thereto, to invest their funds and the moneys in their custody or possession eligible for investment in notes or bonds secured by mortgage or deed of trust insured or debentures issued, by the federal housing administrator, and in securities and stocks of national mortgage associations.

68-403. OTHER LAWS DECLARED INAPPLICABLE. No law of this state, requiring securities upon which loans or investments may be made or prescribing the nature, amount or form of such security, or prescribing or limiting the period for which loans or investments may be made, shall be deemed to apply to loans or investments made pursuant to the authority granted in this act.

68-404. FEDERAL HOME LOAN BANK SECURITIES MADE LEGAL INVESTMENTS.

Executors, administrators, guardians, trustees and other fiduciaries of every kind and nature, land and building corporations, building and loan associations, savings and loan associations and other savings or investment institutions, trust companies, banks and insurance companies, incorporated under the laws of this state, are authorized, in addition to investments now authorized by laws of this state, to invest in bonds and other obligations of, or guaranteed as to interest and principal by, the United States, either directly or through securities of or other interests in any unincorporated investment company or investment trust registered under the federal investment company act of 1940, as from time to time amended, provided that the portfolio of such investment company or investment trust is limited to obligations of the United States government and its agencies and instrumentalities, the payment of which is fully guaranteed as to principal and interest by the United States government, and to repurchase agreements fully collateralized by any such obligations, provided that such investment company or investment

trust takes delivery of such collateral either directly or through an authorized custodian; bonds or debentures issued by any federal home loan bank in accordance with the provisions of the Federal Home Loan Bank Act, and amendments thereto; consolidated federal home loan bank bonds or debentures issued by the federal home loan bank board in accordance with the provisions of the Federal Home Loan Bank Act, and amendments thereto; bonds or debentures issued by the Federal Savings and Loan Insurance Corporation in accordance with the provisions of title IV of the National Housing Act, and amendments thereto; shares or accounts of land and building corporations, savings and loan associations, building and loan associations, and other savings or investment institutions, incorporated under the laws of this state, which have been insured by the Federal Savings and Loan Insurance Corporation; and shares or accounts of federal savings and loan associations incorporated under the provisions of Home Owners' Loan Act of 1933, and amendments thereto, doing business in this state, which have been insured by the Federal Savings and Loan Insurance Corporation.

68-404A. BANKS AND TRUST COMPANIES -- INVESTMENT IN MUTUAL FUNDS. (1) In addition to other investments authorized by law for the investment of funds held by a fiduciary, or by the instrument governing the fiduciary relationship, and notwithstanding any other provision of law, a bank or trust company acting as a fiduciary, agent or otherwise may, in the exercise of its investment discretion or at the direction of another person authorized to direct the investment of funds held by the bank or trust company as a fiduciary, invest and reinvest in the securities of an open-end or closed-end management investment company or investment trust registered under the federal investment company act of 1940.

(2) The fact that the bank or trust company or an affiliate of the bank or trust company provides services to the investment company or investment trust as an investment advisor, custodian, transfer agent, registrar, sponsor, distributor, manager or otherwise and is receiving reasonable remuneration for those services, shall not preclude such bank or trust company from investing or reinvesting in the securities of such investment company or investment trust.

68-405. HOUSING BONDS LEGAL INVESTMENTS. Notwithstanding any restrictions on investments contained in any laws of this state all banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking business, all insurance companies, insurance associations and other persons carrying on an insurance business, and all executors, administrators, guardians, trustees and other fiduciaries may legally invest any sinking funds, moneys or other funds belonging to them or within their control in any bonds or other obligations issued by a housing authority pursuant to the Housing Authorities Law of this state, or issued by any public housing authority or agency in the United States, when such bonds or other obligations are secured by a pledge of annual contributions to be paid by the United States government or any agency thereof; it being the purpose of this act to authorize any private persons or corporations to use any funds owned or controlled by them, including (but not limited to) sinking, insurance, investment and trust funds, and funds held on deposit, for the purchase of any such bonds or other obligations; provided, however, that nothing contained in

this act shall be construed as relieving any person, firm or corporation from any duty of exercising reasonable care in selecting securities.

68-406. LIFE, ENDOWMENT AND ANNUITY CONTRACTS -- INVESTMENT OF FUNDS.  
All

guardians, trustees and other fiduciaries may legally invest any funds administered by them in any life, endowment or annuity contracts issued by any legal reserve life insurance company authorized to do business in the state of Idaho, it being the purpose of this act to authorize any private person, bank, trust company or other institution acting as guardian, trustee or fiduciary to invest funds coming into their possession or under their control as such guardian, trustee or fiduciary in any life, endowment, or annuity contracts issued by any legal reserve insurance company authorized to do business in the state of Idaho, when, in their opinion, it will be for the best interests of their wards or trust estate, provided, however, that whenever an order of the probate court or other court has been heretofore required by law for the investment of any funds being administered by such guardian, trustee or other fiduciary, then such order shall be required in cases of investment of funds under this act.

68-407. PUBLIC AND TRUST FUNDS -- INVESTMENT IN PORT DISTRICT OBLIGATIONS. Notwithstanding the provisions of the Public Depository Law, or of any other statute of the state of Idaho to the contrary, it shall be lawful for the state of Idaho and any of its departments, institutions and agencies, municipalities, districts and political subdivisions, and for any political or public corporation of the state, and for any insurance company, savings and loan association, and for any bank, trust company or other financial institution operating under the laws of the state of Idaho, and for any executor, administrator, guardian or conservator, trustee or other fiduciary, to invest its funds or the moneys in its custody or possession eligible for investment, in any revenue bonds or warrants or general obligation bonds or general obligation refunding bonds issued by any port district of the state of Idaho.

CHAPTER 5 UNIFORM PRUDENT INVESTOR ACT

68-501 PRUDENT INVESTOR RULE

68-502 STANDARD OF CARE -- PORTFOLIO STRATEGY -- RISK AND RETURN OBJECTIVES

68-503 DIVERSIFICATION

68-504 DUTIES AT INCEPTION OF TRUSTEESHIP

68-505 LOYALTY

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68-510 LANGUAGE INVOKING STANDARD OF ACT

68-511 APPLICATION TO EXISTING TRUSTS

68-512 UNIFORMITY OF APPLICATION AND CONSTRUCTION

68-513 SHORT TITLE

68-514 GUARDIANS

68-501. PRUDENT INVESTOR RULE. (1) Except as otherwise provided in subsection (2) of this section, a trustee who invests and manages trust assets

owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this act.

(2) The prudent investor rule, a default rule, may be expanded, restricted, eliminated or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.

68-502. STANDARD OF CARE -- PORTFOLIO STRATEGY -- RISK AND RETURN OBJECTIVES. (1) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution.

(2) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(3) Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:

- (a) General economic conditions;
- (b) The possible effect of inflation or deflation;
- (c) The expected tax consequences of investment decisions or strategies;
- (d) The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;
- (e) The expected total return from income and the appreciation of capital;
- (f) Other resources of the beneficiaries;
- (g) Needs for liquidity, regularity of income and preservation or appreciation of capital; and
- (h) An asset's special relationship or special value, if any, to the purposes of the trust or to one (1) or more of the beneficiaries.

(4) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(5) A trustee may invest in any kind of property or type of investment consistent with the standards of this act.

(6) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.

68-503. DIVERSIFICATION. A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

68-504. DUTIES AT INCEPTION OF TRUSTEESHIP. Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of this act.

68-505. LOYALTY. A trustee shall invest and manage the trust assets solely in the interest of the beneficiaries.

68-506. IMPARTIALITY. If a trust has two (2) or more beneficiaries, the trustee shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.

68-507. INVESTMENT COSTS. In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the trustee.

68-508. REVIEWING COMPLIANCE. Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

68-509. DELEGATION OF INVESTMENT AND MANAGEMENT FUNCTIONS. (1) A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill and caution in:

- (a) Selecting an agent;
- (b) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
- (c) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

(2) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(3) A trustee who complies with the requirements of subsection (1) of this section is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

(4) By accepting the delegation of a trust function from the trustee of a trust that is subject to the law of the state of Idaho, an agent submits to the jurisdiction of the courts of this state.

68-510. LANGUAGE INVOKING STANDARD OF ACT. The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under this act:

"investments permissible by law for investment of trust funds," "legal investments," "authorized investments," "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital," "prudent man rule," "prudent trustee rule," "prudent person rule" and "prudent investor rule."

68-511. APPLICATION TO EXISTING TRUSTS. This act applies to trusts existing on and created after its effective date. As applied to trusts existing on its effective dates, this act governs only decisions or actions occurring after that date.

UNIFORMITY OF APPLICATION AND CONSTRUCTION. This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among the states enacting it.

SHORT TITLE. This act may be cited as the "Idaho Uniform Prudent Investor Act."

GUARDIANS. The provisions of this act shall apply to and govern any bank, trust company, or individual authorized and duly appointed, by a court of competent jurisdiction, to act as a guardian under the laws of the state of Idaho.

## CHAPTER 6 NOMINEE REGISTRATION ACT

### 68-601 ESTABLISHMENT OF NOMINEE REGISTRATION

### 68-602 CORPORATION'S DUTY TO INQUIRE INTO A TRANSFER

### 68-603 SHORT TITLE

68-601. ESTABLISHMENT OF NOMINEE REGISTRATION. Any bank or trust company acting as a fiduciary, whether alone or jointly with an individual or individuals, may, with the consent of the individual fiduciary or fiduciaries, if any (who are hereby authorized to give such consent), cause any bond, stock, mortgage, deed or other security or asset, real or personal, including a fractional interest thereof, held in any fiduciary capacity to be held in the name of a nominee or nominees of such bank or trust company without reference to or mention of the fiduciary relationship; provided, that the trust company's records for and all reports or accounts rendered concerning the fiduciary relationship clearly show the ownership of the property by the bank or trust company and that the nominee or nominees of the bank or trust company indorse in blank, or execute a conveyance or assignment to the bank or trust company for, each item of property held in its name. A bank or trust company shall be responsible for the acts of any nominee with respect to any property held in the name of a nominee.

68-602. CORPORATION'S DUTY TO INQUIRE INTO A TRANSFER. A corporation and its transfer agent shall be under no obligation to inquire into the propriety of a transfer of any stock or security held in a nominee's name unless the corporation or transfer agent has actual knowledge of a breach of fiduciary duty in connection with assets so held.

68-603. SHORT TITLE. This act may be cited as the Nominee Registration Act.

## CHAPTER 7 UNIFORM COMMON TRUST FUND ACT

### 68-701 ESTABLISHMENT OF COMMON TRUST FUNDS

### 68-702 UNIFORMITY OF INTERPRETATION

### 68-703 SHORT TITLE

68-701. ESTABLISHMENT OF COMMON TRUST FUNDS. (1) Any bank or trust company, state or national, qualified to act as fiduciary in this state may establish common trust funds for the purpose of furnishing investments to itself as fiduciary, to an affiliated bank or trust company as fiduciary, or to itself or an affiliated bank or trust company and others, as co-fiduciaries; and may, as such fiduciary, affiliate of a fiduciary or co-fiduciary, or co-fiduciary, invest funds which it lawfully holds for investment in interests in such common trust funds administered by itself or by any affiliated bank or trust company, if such investment is not prohibited by the instrument, judgment, decree, or order creating such fiduciary relationship, and if, in the case of co-fiduciaries, the bank or trust company procures the consent of its co-fiduciaries to such investment.

(2) For purposes of this section, two (2) or more banks or trust companies are affiliated if they are members of the same affiliated group, within the meaning of section 1504 of the United States internal revenue code,

as amended, whether the affiliate's principal place of business is within or without the state of Idaho.

68-702. UNIFORMITY OF INTERPRETATION. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

68-703. SHORT TITLE. This act may be cited as the Uniform Common Trust Fund Act.

## CHAPTER 8 TRANSFERS TO MINORS

68-801 DEFINITIONS

68-802 SCOPE AND JURISDICTION

68-803 NOMINATION OF CUSTODIAN

68-804 TRANSFER BY GIFT OR EXERCISE OF POWER OF APPOINTMENT

68-805 TRANSFER AUTHORIZED BY WILL OR TRUST

68-806 OTHER TRANSFER BY FIDUCIARY

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68-809 MANNER OF CREATING CUSTODIAL PROPERTY AND EFFECTING TRANSFER --  
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68-811 VALIDITY AND EFFECT OF TRANSFER

68-812 CARE OF CUSTODIAL PROPERTY

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68-815 CUSTODIAN'S EXPENSES, COMPENSATION, AND BOND

68-816 EXEMPTION OF THIRD PERSON FROM LIABILITY

68-817 LIABILITY TO THIRD PERSONS

68-818 RENUNCIATION, RESIGNATION, DEATH, OR REMOVAL OF CUSTODIAN --  
DESIGNATION OF SUCCESSOR CUSTODIAN

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68-823 UNIFORMITY OF APPLICATION AND CONSTRUCTION

68-824 SHORT TITLE

68-825 SEVERABILITY

68-801. DEFINITIONS. As used in this chapter:

(1) "Adult" means an individual who has attained the age of twenty-one (21) years.

(2) "Benefit plan" means an employer's plan for the benefit of an employee or partner.

(3) "Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.

(4) "Conservator" means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.



(5) "Court" means the district courts of the state of Idaho.

(6) "Custodial property" means (i) any interest in property transferred to a custodian under this chapter and (ii) the income from and proceeds of that interest in property.

(7) "Custodian" means a person so designated under section 68-809, Idaho Code, or a successor or substitute custodian designated under section 68-818, Idaho Code.

(8) "Financial institution" means a bank, trust company, savings and loan association, or credit union, chartered and supervised under state or federal law.

(9) "Legal representative" means an individual's personal representative or conservator.

(10) "Member of the minor's family" means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

(11) "Minor" means an individual who has not attained the age of twenty-one (21) years.

(12) "Person" means an individual, corporation, organization, or other legal entity.

(13) "Personal representative" means an executor, administrator, successor personal representative, or special administrator of a decedent's estate or a person legally authorized to perform substantially the same functions.

(14) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(15) "Transfer" means a transaction that creates custodial property under section 68-809, Idaho Code.

(16) "Transferor" means a person who makes a transfer under this chapter.

(17) "Trust company" means a financial institution, corporation, or other legal entity, authorized to exercise general trust powers.

68-802. SCOPE AND JURISDICTION. (1) This chapter applies to a transfer that refers to this chapter in the designation under section 68-809(1), Idaho Code, by which the transfer is made, if at the time of the transfer, the transferor, the minor, or the custodian is a resident of this state or the custodial property is located in this state. The custodianship so created remains subject to this chapter despite a subsequent change in residence of a transferor, the minor, or the custodian, or the removal of custodial property from this state.

(2) A person designated as custodian under this chapter is subject to personal jurisdiction in this state with respect to any matter relating to the custodianship.

(3) A transfer that purports to be made and which is valid under the Uniform Transfers to Minors Act, the Uniform Gifts to Minors Act, or a substantially similar act, of another state is governed by the law of the designated state and may be executed and is enforceable in this state if, at the time of the transfer, the transferor, the minor, or the custodian is a resident of the designated state or the custodial property is located in the designated state.

68-803. NOMINATION OF CUSTODIAN. (1) A person having the right to designate the recipient of property transferable upon the occurrence of a

future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the custodian, followed in substance by the words: "as custodian for (name of minor) under the Idaho Uniform Transfers to Minors Act." The nomination may name one or more persons as substitute custodians to whom the property must be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines, or is ineligible to serve. The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment, or in a writing designating a beneficiary of contractual rights which is registered with or delivered to the payor, issuer, or other obligor of the contractual rights.

(2) A custodian nominated under this section must be a person to whom a transfer of property of that kind may be made under section 68-809(1), Idaho Code.

(3) The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under section 68-809, Idaho Code. Unless the nomination of a custodian has been revoked, upon the occurrence of the future event, the custodianship becomes effective and the custodian shall enforce a transfer of the custodial property pursuant to section 68-809, Idaho Code.

**68-804. TRANSFER BY GIFT OR EXERCISE OF POWER OF APPOINTMENT.** A person may make a transfer by irrevocable gift to, or the irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor pursuant to section 68-809, Idaho Code.

**68-805. TRANSFER AUTHORIZED BY WILL OR TRUST.** (1) A personal representative or trustee may make an irrevocable transfer pursuant to section 68-809, Idaho Code, to a custodian for the benefit of a minor as authorized in the governing will or trust.

(2) If the testator or settlor has nominated a custodian under section 68-803, Idaho Code, to receive the custodial property, the transfer must be made to that person.

(3) If the testator or settlor has not nominated a custodian under section 68-803, Idaho Code, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, the personal representative or the trustee, as the case may be, shall designate the custodian from among those eligible to serve as custodian for property of that kind under section 68-809(1), Idaho Code.

**68-806. OTHER TRANSFER BY FIDUCIARY.** (1) Subject to subsection (3) of this section, a personal representative or trustee may make an irrevocable transfer to another adult or trust company as custodian for the benefit of a minor pursuant to section 68-809, Idaho Code, in the absence of a will or under a will or trust that does not contain an authorization to do so.

(2) Subject to subsection (3) of this section, a conservator may make an irrevocable transfer to another adult or trust company as custodian for the benefit of the minor pursuant to section 68-809, Idaho Code.

(3) A transfer under subsection (1) or (2) of this section may be made only if (i) the personal representative, trustee, or conservator considers the transfer to be in the best interest of the minor, (ii) the transfer is not prohibited by or inconsistent with provisions of the applicable will, trust

agreement, or other governing instrument, and (iii) the transfer is authorized by the court if it exceeds ten thousand dollars (\$10,000) in value.

68-807. TRANSFER BY OBLIGOR. (1) Subject to subsections (2) and (3), a person not subject to the provisions of either section 68-805 or 68-806, Idaho Code, who holds property of or owes a liquidated debt to a minor not having a conservator may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to section 68-809, Idaho Code.

(2) If a person having the right to do so under section 68-803, Idaho Code, has nominated a custodian under that section to receive the custodial property, the transfer must be made to that person.

(3) If no custodian has been nominated under section 68-803, Idaho Code, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds ten thousand dollars (\$10,000) in value.

68-808. RECEIPT FOR CUSTODIAL PROPERTY. A written acknowledgment of delivery by a custodian constitutes a sufficient receipt and discharge for custodial property transferred to the custodian pursuant to this chapter.

68-809. MANNER OF CREATING CUSTODIAL PROPERTY AND EFFECTING TRANSFER -

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DESIGNATION OF INITIAL CUSTODIAN -- CONTROL. (1) Custodial property is created and a transfer is made whenever:

(a) An uncertificated security or a certificated security in registered form is either:

1. registered in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for .....(name of minor)..... under the Idaho Uniform Transfers to Minors Act"; or

2. delivered if in certificated form, or any document necessary for the transfer of an uncertificated security is delivered, together with any necessary endorsement to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument in substantially the form set forth in subsection (2) of this section;

(b) Money is paid or delivered to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for .....(name of minor)..... under the Idaho Uniform Transfers to Minors Act";

(c) The ownership of a life or endowment insurance policy or annuity contract is either:

1. registered with the issuer in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for .....(name of minor)..... under the Idaho Uniform Transfers to Minors Act"; or

2. assigned in a writing delivered to an adult other than the transferor or to a trust company whose name in the assignment is followed in substance by the words: "as custodian for .....(name of minor)..... under the Idaho Uniform Transfers to Minors Act";

(d) An irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract is the subject of a

written notification delivered to the payor, issuer, or other obligor that the right is transferred to the transferor, an adult other than the transferor, or a trust company, whose name in the notification is followed in substance by the words: "as custodian for .....(name of minor)..... under the Idaho Uniform Transfers to Minors Act";

(e) An interest in real property is recorded in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for .....(name of minor)..... under the Idaho Uniform Transfers to Minors Act";

(f) A certificate of title issued by a department or agency of a state or of the United States which evidences title to tangible personal property is either:

1. issued in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for .....(name of minor)..... under the Idaho Uniform Transfers to Minors Act"; or

2. delivered to an adult other than the transferor or to a trust company, endorsed to that person, followed in substance by the words: "as custodian for .....(name of minor)..... under the Idaho Uniform Transfers to Minors Act"; or

(g) An interest in any property not described in paragraphs (a) through (f) is transferred to an adult other than the transferor or to a trust company by a written instrument in substantially the form set forth in subsection (2) of this section.

(2) An instrument in the following form satisfies the requirements of paragraphs (a)2. and (g) of subsection (1):

"TRANSFER UNDER THE IDAHO UNIFORM  
TRANSFERS TO MINORS ACT

I, .....(name of transferor or name and representative capacity if a fiduciary)..... hereby transfer to .....(name of custodian)....., as custodian for .....(name of minor)..... under the Idaho Uniform Transfers to Minors Act, the following: .....(insert a description of the custodial property sufficient to identify it).....

Dated:.....

.....

(Signature)

.....(name of custodian)..... acknowledges receipt of the property described above as custodian for the minor named above under the Idaho Uniform Transfers to Minors Act.

Dated:.....

.....

(Signature of Custodian)"

(3) A transferor shall place the custodian in control of the custodial property as soon as practicable.

68-810. SINGLE CUSTODIANSHIP. A transfer may be made only for one (1) minor, and only one (1) person may be the custodian. All custodial property held under this chapter by the same custodian for the benefit of the same minor constitutes a single custodianship.

68-811. VALIDITY AND EFFECT OF TRANSFER. (1) The validity of a transfer made in a manner prescribed in this chapter is not affected by:

(a) Failure of the transferor to comply with section 68-809(3), Idaho

Code, concerning possession and control;

(b) Designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under section 68-809(1), Idaho Code; or

(c) Death or incapacity of a person nominated under section 68-803, Idaho Code, or designated under section 68-809, Idaho Code, as custodian or the disclaimer of the office by that person.

(2) A transfer made pursuant to section 68-809, Idaho Code, is irrevocable, and the custodial property is indefeasibly vested in the minor, but the custodian has all the rights, powers, duties, and authority provided in this chapter, and neither the minor nor the minor's legal representative has any right, power, duty, or authority with respect to the custodial property except as provided in this chapter.

(c)[(3)] By making a transfer, the transferor incorporates in the disposition all the provisions of this chapter and grants to the custodian, and to any third person dealing with a person designated as custodian, the respective powers, rights, and immunities provided in this chapter.

68-812. CARE OF CUSTODIAL PROPERTY. (1) A custodian shall:

(a) Take control of custodial property;

(b) Register or record title to custodial property if appropriate; and

(c) Collect, hold, manage, invest, and reinvest custodial property.

(2) In dealing with custodial property, a custodian shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other statute restricting investments by fiduciaries. If a custodian has a special skill or expertise or is named custodian on the basis of representations of a special skill or expertise, the custodian shall use that skill or expertise. However, a custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain any custodial property received from a transferor.

(3) A custodian may invest in or pay premiums on life insurance or endowment policies on (i) the life of the minor only, if the minor or the minor's estate is the sole beneficiary, or (ii) the life of another person in whom the minor has an insurable interest only to the extent that the minor, the minor's estate, or the custodian in the capacity of custodian, is the irrevocable beneficiary.

(4) A custodian at all times shall keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor. Custodial property consisting of an undivided interest is so identified if the minor's interest is held as a tenant in common and is fixed. Custodial property subject to recordation is so identified if it is recorded, and custodial property subject to registration is so identified if it is either registered, or held in an account designated, in the name of the custodian, followed in substance by the words: "as a custodian for (name of minor) under the Idaho Uniform Transfers to Minors Act."

(5) A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor, if the minor has attained the age of fourteen (14) years.

68-813. POWERS OF CUSTODIAN. (1) A custodian, acting in a custodial capacity, has all the rights, powers, and authority over custodial property that unmarried adult owners have over their own property, but a custodian may exercise those rights, powers, and authority in that capacity only.

(2) The provisions of this section do not relieve a custodian from liability for breach of the provisions of section 68-812, Idaho Code.

68-814. USE OF CUSTODIAL PROPERTY. (1) A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to (i) the duty or ability of the custodian personally or of any other person to support the minor, or (ii) any other income or property of the minor which may be applicable or available for that purpose.

(2) On petition of an interested person or the minor if the minor has attained the age of fourteen (14) years, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit, so much of the custodial property as the court considers advisable for the use and benefit of the minor.

(3) A delivery, payment, or expenditure under this section is in addition to, not in substitution for, and does not affect any obligation of a person to support the minor.

68-815. CUSTODIAN'S EXPENSES, COMPENSATION, AND BOND. (1) A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

(2) Except for one who is a transferor under section 68-804, Idaho Code, a custodian has a noncumulative election during each calendar year to charge reasonable compensation for services performed during that year.

(3) Except as provided in section 68-818(6), Idaho Code, a custodian need not give a bond.

68-816. EXEMPTION OF THIRD PERSON FROM LIABILITY. A third person, in good faith and without court order, may act on the instructions of or otherwise deal with any person purporting to make a transfer or purporting to act in the capacity of a custodian and, in the absence of knowledge, is not responsible for determining:

(1) The validity of the purported custodian's designation;

(2) The propriety of, or the authority under this chapter for, any act of the purported custodian;

(3) The validity or propriety under this chapter of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian; or

(4) The propriety of the application of any property of the minor delivered to the purported custodian.

68-817. LIABILITY TO THIRD PERSONS. (1) A claim based on (i) a contract entered into by a custodian acting in a custodial capacity, (ii) an obligation arising from the ownership or control of custodial property, or (iii) a tort committed during the custodianship, may be asserted against the custodial property by proceeding against the custodian in the custodial capacity, whether or not the custodian or the minor is personally liable therefor.

(2) A custodian is not personally liable:

(a) On a contract properly entered into in the custodial capacity, unless the custodian fails to reveal that capacity and to identify the

custodianship in the contract; or

(b) For an obligation arising from control of custodial property or for a tort committed during the custodianship unless the custodian is personally at fault.

(3) A minor is not personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship, unless the minor is personally at fault.

68-818. RENUNCIATION, RESIGNATION, DEATH, OR REMOVAL OF CUSTODIAN -- DESIGNATION OF SUCCESSOR CUSTODIAN. (1) A person nominated under section 68-803, Idaho Code, or designated under section 68-809, Idaho Code, as custodian may decline to serve by delivering a valid disclaimer to the person who made the nomination or to the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing, and eligible to serve was nominated under section 68-803, Idaho Code, the person who made the nomination may nominate a substitute custodian under section 68-803, Idaho Code; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under section 68-809(1), Idaho Code. The custodian so designated has the rights of a successor custodian.

(2) A custodian, at any time, may designate a trust company or an adult other than a transferor under section 68-804, Idaho Code, as successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated, or is removed.

(3) A custodian may resign at any time by delivering written notice to the minor, if the minor has attained the age of fourteen (14) years, and to the successor custodian and by delivering the custodial property to the successor custodian.

(4) If a custodian is ineligible, dies, or becomes incapacitated without having effectively designated a successor and the minor has attained the age of fourteen (14) years, the minor may designate as successor custodian, in the manner prescribed in subsection (2) of this section, an adult member of the minor's family, a conservator of the minor, or a trust company. If the minor has not attained the age of fourteen (14) years, or fails to act with [within] sixty (60) days after the ineligibility, death, or incapacity, the conservator of the minor becomes successor custodian. If the minor has no conservator or the conservator declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family, or any other interested person, may petition the court to designate a successor custodian.

(5) A custodian who declines to serve under subsection (1) of this section or resigns under subsection (3) of this section, or the legal representative of a deceased or incapacitated custodian, as soon as practicable, shall put the custodial property and records in the possession and control of the successor custodian. The successor custodian, by action, may enforce the obligation to deliver custodial property and records and

becomes responsible for each item as received.

(6) A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the person of the minor, the conservator of the minor, or the minor, if the minor has attained the age of fourteen (14) years, may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under section 68-804, Idaho Code, or to require the custodian to give appropriate bond.

68-819. ACCOUNTING BY AND DETERMINATION OF LIABILITY OF CUSTODIAN. (1) A minor who has attained the age of fourteen (14) years, the minor's guardian of the person or legal representative, an adult member of the minor's family, a transferor, or a transferor's legal representative may petition the court (i) for an accounting by the custodian or the custodian's legal representative; or (ii) for a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property, unless the responsibility has been adjudicated in an action under section 68-817, Idaho Code, to which the minor or the minor's legal representative was a party.

(2) A successor custodian may petition the court for an accounting by the predecessor custodian.

(3) The court, in a proceeding under this chapter or in any other proceeding, may require or permit the custodian or the custodian's legal representative to account.

(4) If a custodian is removed under section 68-818(6), Idaho Code, the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

68-820. TERMINATION OF CUSTODIANSHIP. The custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:

(1) The minor's attainment of twenty-one (21) years of age with respect to custodial property transferred under section 68-804 or section 68-805, Idaho Code;

(2) The minor's attainment of eighteen (18) years of age, with respect to custodial property transferred under section 68-806 or section 68-807, Idaho Code;

The minor's death.

68-821. APPLICABILITY. The provisions of this chapter apply to a transfer within the scope of section 68-802, Idaho Code, made after its effective date if:

(1) The transfer purports to have been made under the Uniform Gifts to Minors Act of Idaho; or

(2) The instrument by which the transfer purports to have been made uses in substance the designation "as custodian under the Uniform Gifts to Minors Act" or "as custodian under the Uniform Transfers to Minors Act" of any other state, and the application of this chapter is necessary to validate the transfer.

68-822. EFFECT ON EXISTING CUSTODIANSHIPS. (1) Any transfer of custodial property as now defined in this chapter made before July 1, 1984, is validated, notwithstanding that there was no specific authority in the Uniform Gifts to Minors Act of Idaho, for the coverage of custodial property of that



kind or for a transfer from that source at the time the transfer was made.

(2) The provisions of this chapter apply to all transfers made before the effective date of this chapter, in a manner and form prescribed in the Uniform Gifts to Minors Act of Idaho, except insofar as the application impairs constitutionally vested rights or extends the duration of custodianships in existence on the effective date of this chapter.

(3) Sections 68-801 and 68-820, Idaho Code, with respect to the age of a minor for whom custodial property is held under this chapter, do not apply to custodial property held in a custodianship that terminated because of the minor's attainment of the age of eighteen (18) years after July 1, 1972 and before July 1, 1984.

68-823. UNIFORMITY OF APPLICATION AND CONSTRUCTION. The provisions of this chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

68-824. SHORT TITLE. This chapter may be cited as the "Idaho Uniform Transfers to Minors Act."

68-825. SEVERABILITY. The provisions of this chapter are hereby declared to be severable and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this chapter.

## CHAPTER 9 SIMPLIFICATION OF FIDUCIARY SECURITY TRANSFERS

### 68-901 DEFINITIONS

### 68-902 REGISTRATION IN THE NAME OF A FIDUCIARY

### 68-903 ASSIGNMENT BY A FIDUCIARY

### 68-904 EVIDENCE OF APPOINTMENT OR INCUMBENCY

### 68-905 ADVERSE CLAIMS

### 68-906 NONLIABILITY OF CORPORATION AND TRANSFER AGENT

### 68-907 NONLIABILITY OF THIRD PERSONS

### 68-908 TERRITORIAL APPLICATION

### 68-909 TAX OBLIGATIONS

### 68-910 UNIFORMITY OF INTERPRETATION

### 68-911 SHORT TITLE

68-901. DEFINITIONS. In this act, unless the context otherwise requires:

(a) "Assignment" includes any written stock power, bond power, bill of sale, deed, declaration of trust, or other instrument of transfer.

(b) "Claim of beneficial interest" includes a claim of any interest by a decedent's legatee, distributee, heir, or creditor, a beneficiary under a trust, a ward, a beneficial owner of a security registered in the name of a nominee, or a minor owner of a security registered in the name of a custodian, or a claim of any similar interest, whether the claim is asserted by the claimant or by a fiduciary or by any other authorized person on his behalf, and includes a claim that the transfer would be in breach of fiduciary duties.

(c) "Corporation" means a private or public corporation, association or trust issuing a security.

(d) "Fiduciary" means an executor, administrator, trustee, guardian, committee, conservator, curator, tutor, custodian, or nominee.

(e) "Person" includes an individual, a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two (2) or more persons having a joint or common interest, or any other legal or commercial entity.

(f) "Security" includes any share of stock, bond, debenture, note, or other security issued by a corporation which is registered as to ownership on the books of the corporation.

(g) "Transfer" means a change on the books of a corporation in the registered ownership of a security.

(h) "Transfer agent" means a person employed or authorized by a corporation to transfer securities issued by the corporation.

68-902. REGISTRATION IN THE NAME OF A FIDUCIARY. A corporation or transfer agent registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship; and thereafter the corporation and its transfer agent may assume without inquiry that the newly registered owner continues to be the fiduciary until the corporation or transfer agent receives written notice that the fiduciary is no longer acting as such with respect to the particular security.

68-903. ASSIGNMENT BY A FIDUCIARY. Except as otherwise provided in this act, a corporation or transfer agent making a transfer of a security pursuant to an assignment by a fiduciary

(a) may assume without inquiry that the assignment even though to the fiduciary himself or to his nominee, is within his authority and capacity and is not in breach of his fiduciary duties;

(b) may assume without inquiry that the fiduciary has complied with any controlling instrument and with the law of the jurisdiction governing the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

(c) is not charged with notice of and is not bound to obtain or examine any court record or any recorded or unrecorded document relating to the fiduciary relationship or the assignment, even though the record or document is in its possession.

68-904. EVIDENCE OF APPOINTMENT OR INCUMBENCY. A corporation or transfer agent making a transfer pursuant to an assignment by a fiduciary who is not the registered owner shall obtain the following evidence of appointment or incumbency:

(a) In the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within sixty (60) days before the transfer; or

(b) In any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the corporation or transfer agent to be responsible or, in the absence of such a document or certificate, other evidence reasonably deemed by the corporation or transfer agent to be appropriate. Corporations and transfer agents may adopt standards with respect to evidence of appointment or incumbency under this subsection provided such standards are not manifestly unreasonable. Neither the corporation nor transfer agent is charged with notice of the contents of any document obtained pursuant to this paragraph (b) except to the extent that the contents relate directly to the appointment or incumbency.

68-905. ADVERSE CLAIMS. (a) A person asserting a claim of beneficial interest adverse to the transfer of a security pursuant to an assignment by a fiduciary may give the corporation or transfer agent written notice of the claim. The corporation or transfer agent is not put on notice unless the written notice identifies the claimant, the registered owner, and the issue of which the security is a part, provides an address for communications directed to the claimant and is received before the transfer. Nothing in this act relieves the corporation or transfer agent of any liability for making or refusing to make the transfer after it is so put on notice, unless it proceeds in the manner authorized in subsection (b).

(b) As soon as practicable after the presentation of a security for transfer pursuant to an assignment by a fiduciary, a corporation or transfer agent which has received notice of a claim of beneficial interest adverse to the transfer may send notice of the presentation by registered or certified mail to the claimant at the address given by him. If the corporation or transfer agent so mails such a notice it shall withhold the transfer for thirty (30) days after the mailing and shall then make the transfer unless restrained by a court order.

68-906. NONLIABILITY OF CORPORATION AND TRANSFER AGENT. A corporation or transfer agent incurs no liability to any person by making a transfer or otherwise acting in a manner authorized by this act.

68-907. NONLIABILITY OF THIRD PERSONS. (a) No person who participates in the acquisition, disposition, assignment or transfer of a security by or to a fiduciary, including a person who guarantees the signature of the fiduciary, (is liable for participation in any breach of fiduciary,) is liable for participation in any breach of fiduciary duty by reason of failure to inquire whether the transaction involves a breach unless it is shown that he acted with actual knowledge that the proceeds of the transaction were being or were to be used wrongfully for the individual benefit of the fiduciary or that the transaction was otherwise in breach of duty.

(b) If a corporation or transfer agent makes a transfer pursuant to an assignment by a fiduciary, a person who guaranteed the signature of the fiduciary is not liable on the guarantee to any person to whom the corporation or transfer agent by reason of this act incurs no liability.

(c) This section does not impose any liability upon the corporation or its transfer agent.

68-908. TERRITORIAL APPLICATION. (a) The rights and duties of a corporation and its transfer agents in registering a security in the name of a fiduciary or in making a transfer of a security pursuant to an assignment by a fiduciary are governed by the law of the jurisdiction under whose laws the corporation is organized.

(b) This act applies to the rights and duties of a person other than the corporation and its transfer agents with regard to acts and omissions in this state in connection with the acquisition, disposition, assignment, or transfer of a security by or to a fiduciary and of a person who guarantees in this state the signature of a fiduciary in connection with such a transaction.

68-909. TAX OBLIGATIONS. This act does not affect any obligation of a corporation or transfer agent with respect to estate, inheritance, succession, or other taxes imposed by the laws of this state.

68-910. UNIFORMITY OF INTERPRETATION. This act shall be so construed as to effectuate its general purpose to make uniform the law of those states

which enact it.

68-911. SHORT TITLE. This act may be cited as the Uniform Act for the Simplification of Fiduciary Security Transfers.

## CHAPTER 10 UNIFORM PRINCIPAL AND INCOME ACT

PART 1. DEFINITIONS AND FIDUCIARY DUTIES

PART 2. DECEDENT'S ESTATE OR TERMINATING INCOME INTEREST

PART 3. APPORTIONMENT AT BEGINNING AND END OF INCOME INTEREST

PART 4. ALLOCATION OF RECEIPTS DURING ADMINISTRATION OF TRUST

PART 5. ALLOCATION OF DISBURSEMENTS DURING ADMINISTRATION OF TRUST

PART 6. MISCELLANEOUS PROVISIONS

PART 1. DEFINITIONS AND FIDUCIARY DUTIES

68-10-101 SHORT TITLE

68-10-102 DEFINITIONS

68-10-103 FIDUCIARY DUTIES -- GENERAL PRINCIPLES

68-10-104 TRUSTEE'S POWER TO ADJUST

68-10-105 NOTICE OF PROPOSED ACTION

68-10-101. SHORT TITLE. This chapter may be cited as the "Uniform Principal and Income Act."

68-10-102. DEFINITIONS. In this chapter:

(1) "Accounting period" means a calendar year unless another twelve (12) month period is selected by a fiduciary. The term includes a portion of a calendar year or other twelve (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 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 part 4 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, business 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 trustor or decedent 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. Nothing herein shall require a trustee to look beyond the terms of a written instrument for the manifestation of the intent of a trustor.

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

68-10-103. 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 parts 2 and 3 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 given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by this chapter, and no inference that the fiduciary has improperly exercised the discretion arises from the fact that the fiduciary has made an allocation contrary to a provision of 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 section 68-10-104(a), Idaho Code, 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 one (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.

68-10-104. 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 in accordance with the Idaho uniform prudent investor act, 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 section 68-10-103(a), Idaho Code, that the trustee is unable to comply with section 68-10-103(b), Idaho Code.

(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 trustor;
- (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 trustor;
- (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) From any amount that is permanently set aside for charitable purposes under a will or the terms of a trust 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 is the trustee or 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; or

(7) If the trustee is a beneficiary of the trust.

(d) If subsection (c)(5), (6) or (7) of this section applies to a trustee and there is more than one (1) 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 subsection (c)(1) through (6) of this section or if the trustee determines that possessing or exercising the power will or may 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) Unless a request has been made by a beneficiary that the trustee consider an adjustment, nothing in this section or in this chapter is intended to create or imply a duty to make an adjustment, and a trustee is not liable for not considering whether to make an adjustment or for choosing not to make an adjustment.

68-10-105. NOTICE OF PROPOSED ACTION. (a) A trustee may give a notice of proposed action regarding a matter governed by this chapter as provided in this section. For the purpose of this section, a proposed action includes a course of action and a decision not to take action.

(b) The trustee shall mail notice of the proposed action to all adult beneficiaries who are receiving, or are entitled to receive, income under the trust or to receive a distribution of principal if the trust were terminated at the time the notice is given. If all beneficiaries of the trust are incapacitated persons, then notice shall be mailed to each of the incapacitated person's guardians or conservators who are appointed in accordance with chapter 5, title 15, Idaho Code.

(c) Notice of proposed action need not be given to any person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.

(d) The notice of proposed action shall state that it is given pursuant to this section and shall include all of the following:

- (1) The name and mailing address of the trustee;
- (2) A copy of the trust instrument, if any;
- (3) A description of the action proposed to be taken and an explanation of the reasons for the action;
- (4) The time within which objections to the proposed action can be made, which shall be at least thirty (30) days from the mailing of the notice of proposed action;
- (5) The date on or after which the proposed action may be taken or is effective;

(6) A statement that the recipient may petition for a judicial determination of the proposed action;

(7) A form on which consent or objection to the proposed action may be indicated.

(e) A beneficiary may object or consent to the proposed action by mailing a written objection or consent to the trustee at the address stated in the notice of proposed action within the time period specified in the notice of proposed action.

(f) A trustee is not liable to a beneficiary for an action regarding a matter governed by this chapter if the trustee does not receive a written objection to the proposed action from the beneficiary within the applicable period and the other requirements of this section are satisfied. If no beneficiary entitled to notice objects under this section, the trustee is not liable to any current or future beneficiary with respect to the proposed action.

(g) If the trustee receives a written objection within the applicable period, either the trustee or a beneficiary may petition the court to have the proposed action taken as proposed, taken with modifications, or denied. In the proceeding, a beneficiary objecting to the proposed action has the burden of proving that the trustee's proposed action should not be taken. A beneficiary who has not objected is not estopped from opposing the proposed action in the proceeding. If the trustee decides not to implement the proposed action, the trustee shall notify the beneficiaries of the decision not to take the action and the reasons for the decision, and the trustee's decision not to implement the proposed action does not itself give rise to liability to any current or future beneficiary. A beneficiary may petition the court to have the action taken, and has the burden of proving that it should be taken.

## PART 2. DECEDENT'S ESTATE OR TERMINATING INCOME INTEREST

### 68-10-201 DETERMINATION AND DISTRIBUTION OF NET INCOME

### 68-10-202 DISTRIBUTION TO RESIDUARY AND REMAINDER BENEFICIARIES

68-10-201. DETERMINATION AND DISTRIBUTION OF NET INCOME. After a decedent dies, in the case of an estate, or after an income interest in a trust ends, the following rules apply:

(1) A fiduciary of an estate or of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under the rules in parts 3 through 5 of this chapter which apply to trustees and the rules in subsection (5) of this section. The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.

(2) A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the rules in parts 3 through 5 of this chapter which apply to trustees and by:

(A) Including in net income all income from property used to discharge liabilities;

(B) Paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants and fiduciaries; court costs and other expenses of administration; and interest on death taxes, but the fiduciary may pay those expenses from income of property passing to a trust for which the



fiduciary claims an estate tax marital or charitable deduction only to the extent that the payment of those expenses from income will not cause the reduction or loss of the deduction; and

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

(3) A fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright the interest or any other amount provided by the will, the terms of the trust, or applicable law from net income determined under subsection (2) of this section or from principal to the extent that net income is insufficient. If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends and no interest or other amount is provided for by the terms of the trust or applicable law, the fiduciary shall distribute the interest or other amount to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will.

(4) A fiduciary shall distribute the net income remaining after distributions required by subsection (3) of this section in the manner described in section 68-10-202, Idaho Code, to all other beneficiaries, including a beneficiary who receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

(5) A fiduciary may not reduce principal or income receipts from property described in subsection (1) of this section because of a payment described in section 68-10-501 or 68-10-502, Idaho Code, to the extent that the will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property are determined by including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts accrued or became due before, on, or after the date of a decedent's death or an income interest's terminating event, and by making a reasonable provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed.

**68-10-202. DISTRIBUTION TO RESIDUARY AND REMAINDER BENEFICIARIES. (a)**

Each beneficiary described in section 68-10-201(4), Idaho Code, is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one (1) distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

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

(1) The beneficiary is entitled to receive a portion of the net income

equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date, including assets that later may be sold to meet principal obligations.

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

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

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

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

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

### PART 3. APPORTIONMENT AT BEGINNING AND END OF INCOME INTEREST

#### 68-10-301 WHEN RIGHT TO INCOME BEGINS AND ENDS

#### 68-10-302 APPORTIONMENT OF RECEIPTS AND DISBURSEMENTS WHEN DECEDENT DIES OR INCOME INTEREST BEGINS

#### 68-10-303 APPORTIONMENT WHEN INCOME INTEREST ENDS

68-10-301. 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) of this section, even if there is an intervening period of administration to wind up the preceding income interest.

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

#### 68-10-302. APPORTIONMENT OF RECEIPTS AND DISBURSEMENTS WHEN DECEDENT DIES

OR INCOME INTEREST BEGINS. (a) A trustee shall allocate an income receipt or disbursement other than one to which section 68-10-201(1), Idaho Code, applies to principal if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

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

(c) An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of this chapter. Distributions to shareholders or other owners from an entity to which section 68-10-401, Idaho Code, applies are deemed to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

68-10-303. APPORTIONMENT WHEN INCOME INTEREST ENDS. (a) In this section, "undistributed income" means net income received before the date on which an income interest ends. The term does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.

(b) When a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust unless the beneficiary has an unqualified power to revoke more than five percent (5%) of the trust immediately before the income interest ends. In the latter case, the undistributed income from the portion of the trust that may be revoked must be added to principal.

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

#### PART 4. ALLOCATION OF RECEIPTS DURING ADMINISTRATION OF TRUST

##### 68-10-401 CHARACTER OF RECEIPTS

##### 68-10-402 DISTRIBUTION FROM TRUST OR ESTATE

##### 68-10-403 BUSINESS AND OTHER ACTIVITIES CONDUCTED BY TRUSTEE

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## CHAPTER 10 UNIFORM PRINCIPAL AND INCOME ACT

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### PART 1. DEFINITIONS AND FIDUCIARY DUTIES

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68-10-102 DEFINITIONS  
68-10-103 FIDUCIARY DUTIES -- GENERAL PRINCIPLES  
68-10-104 TRUSTEE'S POWER TO ADJUST  
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68-10-101. SHORT TITLE. This chapter may be cited as the "Uniform Principal and Income Act."

68-10-102. DEFINITIONS. In this chapter:

(1) "Accounting period" means a calendar year unless another twelve (12) month period is selected by a fiduciary. The term includes a portion of a calendar year or other twelve (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 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 part 4 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, business 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 trustor or decedent 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. Nothing herein shall require a trustee to look beyond the terms of a written instrument for the manifestation of the intent of a trustor.

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

68-10-103. 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 parts 2 and 3 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 given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by this chapter, and no inference that the fiduciary has improperly exercised the discretion arises from the fact that the fiduciary has made an allocation contrary to a provision of 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 section 68-10-104(a), Idaho Code, 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 one (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.

68-10-104. 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 in accordance with the Idaho uniform prudent investor act, 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 section 68-10-103(a), Idaho Code, that the trustee is unable to comply with section 68-10-103(b), Idaho Code.

(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 trustor;
- (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 trustor;
- (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) From any amount that is permanently set aside for charitable purposes under a will or the terms of a trust 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 is the trustee or 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; or

(7) If the trustee is a beneficiary of the trust.

(d) If subsection (c)(5), (6) or (7) of this section applies to a trustee and there is more than one (1) 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 subsection (c)(1) through (6) of this section or if the trustee determines that possessing or exercising the power will or may 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) Unless a request has been made by a beneficiary that the trustee consider an adjustment, nothing in this section or in this chapter is intended to create or imply a duty to make an adjustment, and a trustee is not liable for not considering whether to make an adjustment or for choosing not to make an adjustment.

68-10-105. NOTICE OF PROPOSED ACTION. (a) A trustee may give a notice of proposed action regarding a matter governed by this chapter as provided in this section. For the purpose of this section, a proposed action includes a course of action and a decision not to take action.

(b) The trustee shall mail notice of the proposed action to all adult beneficiaries who are receiving, or are entitled to receive, income under the trust or to receive a distribution of principal if the trust were terminated at the time the notice is given. If all beneficiaries of the trust are incapacitated persons, then notice shall be mailed to each of the incapacitated person's guardians or conservators who are appointed in accordance with chapter 5, title 15, Idaho Code.

(c) Notice of proposed action need not be given to any person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.

(d) The notice of proposed action shall state that it is given pursuant to this section and shall include all of the following:

- (1) The name and mailing address of the trustee;
- (2) A copy of the trust instrument, if any;
- (3) A description of the action proposed to be taken and an explanation of the reasons for the action;
- (4) The time within which objections to the proposed action can be made, which shall be at least thirty (30) days from the mailing of the notice of proposed action;
- (5) The date on or after which the proposed action may be taken or is effective;
- (6) A statement that the recipient may petition for a judicial determination of the proposed action;
- (7) A form on which consent or objection to the proposed action may be indicated.

(e) A beneficiary may object or consent to the proposed action by mailing a written objection or consent to the trustee at the address stated in the notice of proposed action within the time period specified in the notice of proposed action.

(f) A trustee is not liable to a beneficiary for an action regarding a matter governed by this chapter if the trustee does not receive a written objection to the proposed action from the beneficiary within the applicable period and the other requirements of this section are satisfied. If no beneficiary entitled to notice objects under this section, the trustee is not liable to any current or future beneficiary with respect to the proposed action.

(g) If the trustee receives a written objection within the applicable period, either the trustee or a beneficiary may petition the court to have the proposed action taken as proposed, taken with modifications, or denied. In the proceeding, a beneficiary objecting to the proposed action has the burden of proving that the trustee's proposed action should not be taken. A beneficiary who has not objected is not estopped from opposing the proposed action in the proceeding. If the trustee decides not to implement the proposed action, the trustee shall notify the beneficiaries of the decision not to take the action and the reasons for the decision, and the trustee's decision not to implement the proposed action does not itself give rise to liability to any current or future beneficiary. A beneficiary may petition the court to have the action taken, and has the burden of proving that it should be taken.

## PART 2. DECEDENT'S ESTATE OR TERMINATING INCOME INTEREST

### 68-10-201 DETERMINATION AND DISTRIBUTION OF NET INCOME

### 68-10-202 DISTRIBUTION TO RESIDUARY AND REMAINDER BENEFICIARIES

68-10-201. DETERMINATION AND DISTRIBUTION OF NET INCOME. After a decedent dies, in the case of an estate, or after an income interest in a trust ends, the following rules apply:

(1) A fiduciary of an estate or of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under the rules in parts 3 through 5 of this chapter which apply to trustees and the rules in subsection (5) of this section. The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.



(2) A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the rules in parts 3 through 5 of this chapter which apply to trustees and by:

(A) Including in net income all income from property used to discharge liabilities;

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

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

(3) A fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright the interest or any other amount provided by the will, the terms of the trust, or applicable law from net income determined under subsection (2) of this section or from principal to the extent that net income is insufficient. If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends and no interest or other amount is provided for by the terms of the trust or applicable law, the fiduciary shall distribute the interest or other amount to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will.

(4) A fiduciary shall distribute the net income remaining after distributions required by subsection (3) of this section in the manner described in section 68-10-202, Idaho Code, to all other beneficiaries, including a beneficiary who receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

(5) A fiduciary may not reduce principal or income receipts from property described in subsection (1) of this section because of a payment described in section 68-10-501 or 68-10-502, Idaho Code, to the extent that the will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property are determined by including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts accrued or became due before, on, or after the date of a decedent's death or an income interest's terminating event, and by making a reasonable provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed.

68-10-202. DISTRIBUTION TO RESIDUARY AND REMAINDER BENEFICIARIES. (a) Each beneficiary described in section 68-10-201(4), Idaho Code, is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the

distribution date. If a fiduciary makes more than one (1) distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

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

(1) The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date, including assets that later may be sold to meet principal obligations.

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

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

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

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

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

#### PART 4. ALLOCATION OF RECEIPTS DURING ADMINISTRATION OF TRUST

68-10-401 CHARACTER OF RECEIPTS

68-10-402 DISTRIBUTION FROM TRUST OR ESTATE

68-10-403 BUSINESS AND OTHER ACTIVITIES CONDUCTED BY TRUSTEE

68-10-404 PRINCIPAL RECEIPTS

68-10-405 RENTAL PROPERTY

68-10-406 OBLIGATION TO PAY MONEY

68-10-407 INSURANCE POLICIES AND SIMILAR CONTRACTS

68-10-408 INSUBSTANTIAL ALLOCATIONS NOT REQUIRED

68-10-409 DEFERRED COMPENSATION, ANNUITIES, AND SIMILAR PAYMENTS

68-10-410 LIQUIDATING ASSET

68-10-411 MINERALS, WATER AND OTHER NATURAL RESOURCES

68-10-412 TIMBER

68-10-413 PROPERTY NOT PRODUCTIVE OF INCOME

68-10-414 DERIVATIVES AND OPTIONS

68-10-415 ASSET-BACKED SECURITIES

68-10-401. CHARACTER OF RECEIPTS. (a) In this section, "entity" means a

corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization in which a trustee has an interest other than a trust or estate to which section 68-10-402, Idaho Code, applies, a business or activity to which section 68-10-413, Idaho Code, applies, or an asset-backed security to which section 68-10-415, Idaho Code, applies.

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

(c) A trustee shall allocate the following receipts from an entity to principal:

(1) Property other than money;

(2) Money received in one (1) distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity;

(3) Money received in total or partial liquidation of the entity; and

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

(d) Money is received in partial liquidation:

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

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

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

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

68-10-402. DISTRIBUTION FROM TRUST OR ESTATE. A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest, and shall allocate to principal an amount received as a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, section 68-10-401 or 68-10-415, Idaho Code, applies to a receipt from the trust.

68-10-403. BUSINESS AND OTHER ACTIVITIES CONDUCTED BY TRUSTEE. (a) If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

(b) A trustee who accounts separately for a business or other activity

may determine the extent to which its net cash receipts must be retained for working capital, the acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business.

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

- (1) Retail, manufacturing, service and other traditional business activities;
- (2) Farming;
- (3) Raising and selling livestock and other animals;
- (4) Management of rental properties;
- (5) Extraction of minerals and other natural resources;
- (6) Timber operations; and
- (7) Activities to which section 68-10-414, Idaho Code, applies.

68-10-404. PRINCIPAL RECEIPTS. A trustee shall allocate to principal:

- (1) To the extent not allocated to income under this chapter, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest, or a payer under a contract naming the trust or its trustee as beneficiary;
- (2) Money or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit, subject to this part;
- (3) Amounts recovered from third parties to reimburse the trust because of disbursements described in section 68-10-502(a)(7), Idaho Code, or for other reasons to the extent not based on the loss of income;
- (4) Proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income;
- (5) Net income received in an accounting period during which there is no beneficiary to whom a trustee may or must distribute income; and
- (6) Other receipts as provided in sections 68-10-408 through 68-10-415, Idaho Code.

68-10-405. RENTAL PROPERTY. To the extent that a trustee accounts for receipts from rental property pursuant to this section, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, must be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

68-10-406. OBLIGATION TO PAY MONEY. (a) An amount received as interest, whether determined at a fixed, variable or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for

prepaying principal, must be allocated to income without any provision for amortization of premium.

(b) A trustee shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the trustee more than one (1) year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity. If the obligation matures within one (1) year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust must be allocated to income.

(c) This section does not apply to an obligation to which section 68-10-409, 68-10-410, 68-10-411, 68-10-412, 68-10-414 or 68-10-415, Idaho Code, applies.

68-10-407. INSURANCE POLICIES AND SIMILAR CONTRACTS. (a) Except as otherwise provided in subsection (b) of this section, a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of, or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income, and to principal if the premiums are paid from principal.

(b) A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income or, subject to section 68-10-403, Idaho Code, loss of profits from a business.

(c) This section does not apply to a contract to which section 68-10-409, Idaho Code, applies.

68-10-408. INSUBSTANTIAL ALLOCATIONS NOT REQUIRED. If a trustee determines that an allocation between principal and income required by section 68-10-409, 68-10-410, 68-10-411, 68-10-412 or 68-10-415, Idaho Code, is insubstantial, the trustee may allocate the entire amount to principal unless one (1) of the circumstances described in section 68-10-104(c), Idaho Code, applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in section 68-10-104(d), Idaho Code, and may be released for the reasons and in the manner described in section 68-10-104(e), Idaho Code. An allocation is presumed to be insubstantial if:

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

(2) The value of the asset producing the receipt for which the allocation would be made is less than ten percent (10%) of the total value of the trust's assets at the beginning of the accounting period.

68-10-409. DEFERRED COMPENSATION, ANNUITIES, AND SIMILAR PAYMENTS. (a) In this section, "payment" means a payment that a trustee may receive over a fixed number of years or during the life of one (1) or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer, including a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus or stock-ownership plan.

(b) To the extent that a payment is characterized as interest or a

dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate it to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend or an equivalent payment.

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

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

(e) This section does not apply to payments to which section 68-10-410, Idaho Code, applies.

68-10-410. LIQUIDATING ASSET. (a) In this section, "liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right and right to receive payments during a period of more than one (1) year under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include a payment subject to section 68-10-409, Idaho Code, resources subject to section 68-10-411, Idaho Code, timber subject to section 68-10-412, Idaho Code, an activity subject to section 68-10-414, Idaho Code, an asset subject to section 68-10-415, Idaho Code, or any asset for which the trustee establishes a reserve for depreciation under section 68-10-503, Idaho Code.

(b) A trustee shall allocate to income ten percent (10%) of the receipts from a liquidating asset and the balance to principal.

68-10-411. MINERALS, WATER AND OTHER NATURAL RESOURCES. (a) To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them as follows:

- (1) If received as nominal delay rental or nominal annual rent on a lease, a receipt must be allocated to income;
- (2) If received from a production payment, a receipt must be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance must be allocated to principal;
- (3) If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, ninety percent (90%) must be allocated to principal and the balance to income;
- (4) If an amount is received from a working interest or any other interest not provided for in paragraph (1), (2) or (3) of this subsection, ninety percent (90%) of the net amount received must be allocated to principal and the balance to income.

(b) An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, ninety

percent (90%) of the amount must be allocated to principal and the balance to income.

(c) This chapter applies whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

(d) If a trust owns an interest in minerals, water or other natural resources on the effective date of this chapter, the trustee may allocate receipts from the interest as provided in this chapter or in the manner used by the trustee before the effective date of this chapter. If the trust acquires an interest in minerals, water or other natural resources after the effective date of this chapter, the trustee shall allocate receipts from the interest as provided in this chapter.

68-10-412. **TIMBER.** (a) To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts:

- (1) To income to the extent that the amount of timber removed from the land does not exceed the rate of growth of the timber during the accounting periods in which a beneficiary has a mandatory income interest;
- (2) To principal to the extent that the amount of timber removed from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;
- (3) To or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying the rules in paragraphs (1) and (2) of this subsection; or
- (4) To principal to the extent that advance payments, bonuses, and other payments are not allocated pursuant to paragraph (1), (2) or (3) of this subsection.

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

(c) This chapter applies whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.

(d) If a trust owns an interest in timberland on the effective date of this chapter, the trustee may allocate net receipts from the sale of timber and related products as provided in this chapter or in the manner used by the trustee before the effective date of this chapter. If the trust acquires an interest in timberland after the effective date of this chapter, the trustee shall allocate net receipts from the sale of timber and related products as provided in this chapter.

68-10-413. **PROPERTY NOT PRODUCTIVE OF INCOME.** (a) If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the spouse with sufficient income from or use of the trust assets, and if the amounts that the trustee transfers from principal to income under section 68-10-104, Idaho Code, and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee to make property productive of income, convert property within a reasonable time, or exercise the power conferred by section 68-10-104(a), Idaho Code. The trustee may

decide which action or combination of actions to take.

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

68-10-414. DERIVATIVES AND OPTIONS. (a) In this section, "derivative" means a contract or financial instrument or a combination of contracts and financial instruments which give a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.

(b) To the extent that a trustee does not account under section 68-10-403, Idaho Code, for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

(c) If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust, or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option must be allocated to principal. An amount paid to acquire the option must be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a trustor of the trust for services rendered, must be allocated to principal.

68-10-415. ASSET-BACKED SECURITIES. (a) In this section, "asset-backed security" means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not include an asset to which section 68-10-401 or 68-10-409, Idaho Code, applies.

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

(c) If a trust receives one (1) or more payments in exchange for the trust's entire interest in an asset-backed security in one (1) accounting period, the trustee shall allocate the payments to principal. If a payment is one (1) of a series of payments that will result in the liquidation of the trust's interest in the security over more than one (1) accounting period, the trustee shall allocate ten percent (10%) of the payment to income and the balance to principal.

## PART 5. ALLOCATION OF DISBURSEMENTS DURING ADMINISTRATION OF TRUST

68-10-501 DISBURSEMENTS FROM INCOME

68-10-502 DISBURSEMENTS FROM PRINCIPAL

68-10-503 TRANSFERS FROM INCOME TO PRINCIPAL FOR DEPRECIATION



68-10-504 TRANSFERS FROM INCOME TO REIMBURSE PRINCIPAL

68-10-505 INCOME TAXES

68-10-506 ADJUSTMENTS BETWEEN PRINCIPAL AND INCOME BECAUSE OF TAXES

68-10-501. DISBURSEMENTS FROM INCOME. A trustee shall make the following disbursements from income to the extent that they are not disbursements to which section 68-10-201(2)(B) or (2)(C), Idaho Code, applies:

- (1) One-half (1/2) of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee;
- (2) One-half (1/2) of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests;
- (3) All of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a proceeding or other matter that concerns primarily the income interest; and
- (4) Recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

68-10-502. DISBURSEMENTS FROM PRINCIPAL. (a) A trustee shall make the following disbursements from principal:

- (1) The remaining one-half (1/2) of the disbursements described in section 68-10-501(1) and (2), Idaho Code;
- (2) All of the trustee's compensation calculated on principal as a fee for acceptance, distribution or termination, and disbursements made to prepare property for sale;
- (3) Payments on the principal of a trust debt;
- (4) Expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property;
- (5) Premiums paid on a policy of insurance not described in section 68-10-501(4), Idaho Code, of which the trust is the owner and beneficiary;
- (6) Estate, inheritance and other transfer taxes, including penalties, apportioned to the trust; and
- (7) Disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws, rules or regulations and other payments made to comply with those laws, rules or regulations, statutory or common law claims by third parties, and defending claims based on environmental matters.

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

68-10-503. TRANSFERS FROM INCOME TO PRINCIPAL FOR DEPRECIATION. (a) In this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion or gradual obsolescence of a fixed asset having a useful life of more than one (1) year.

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

- (1) Of that portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary;
- (2) During the administration of a decedent's estate; or
- (3) Under this section if the trustee is accounting under section 68-10-403, Idaho Code, for the business or activity in which the asset is used.

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

68-10-504. TRANSFERS FROM INCOME TO REIMBURSE PRINCIPAL. (a) If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in one (1) or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

(b) Principal disbursements to which subsection (a) of this section applies include the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:

- (1) An amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs;
- (2) A capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments;
- (3) Disbursements made to prepare property for rental, including tenant allowances, leasehold improvements and broker's commissions;
- (4) Periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments; and
- (5) Disbursements described in section 68-10-502(a)(7), Idaho Code.

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

68-10-505. INCOME TAXES. (a) A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.

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

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

- (1) From income to the extent that receipts from the entity are allocated to income; and
- (2) From principal to the extent that:
  - (A) Receipts from the entity are allocated to principal; and
  - (B) The trust's share of the entity's taxable income exceeds the total receipts described in paragraphs (1) and (2)(A) of this subsection.

(d) For purposes of this section, receipts allocated to principal or

income must be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax.

#### 68-10-506. ADJUSTMENTS BETWEEN PRINCIPAL AND INCOME BECAUSE OF TAXES.

(a)

A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries which arise from:

- (1) Elections and decisions, other than those described in subsection (b) of this section, that the fiduciary makes from time to time regarding tax matters;
- (2) An income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving, or a distribution from, the estate or trust; or
- (3) The ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust or beneficiary.

(b) If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal are increased and income taxes paid by an estate, trust or beneficiary are decreased, each estate, trust or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement must equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust or beneficiary whose income taxes are reduced must be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.

### PART 6. MISCELLANEOUS PROVISIONS

#### 68-10-601 UNIFORMITY OF APPLICATION AND CONSTRUCTION

#### 68-10-602 SEVERABILITY CLAUSE

#### 68-10-603 [RESERVED]

#### 68-10-604 [RESERVED]

#### 68-10-605 APPLICATION OF CHAPTER TO EXISTING TRUSTS AND ESTATES

68-10-601. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

68-10-602. SEVERABILITY CLAUSE. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

[RESERVED.]

[RESERVED.]

68-10-605. APPLICATION OF CHAPTER TO EXISTING TRUSTS AND ESTATES. This chapter applies to every trust or decedent's estate existing on the effective date of this chapter except as otherwise expressly provided in the will or terms of the trust or in this chapter.

## CHAPTER 12 PRIVATE FOUNDATIONS AND CHARITABLE TRUSTS

68-1201 TRUSTS COVERED BY LAW

68-1202 PROVISIONS PROHIBITED IN TRUST INSTRUMENTS

68-1203 REQUIRED DISTRIBUTIONS

68-1204 TRUSTEE MAY AMEND GOVERNING INSTRUMENT UNDER CERTAIN CIRCUMSTANCES

68-1205 COURTS AND ATTORNEY GENERAL NOT IMPAIRED

68-1206 REFERENCES TO INTERNAL REVENUE CODE OF 1986

68-1207 TRUST INSTRUMENTS OR PRIVATE FOUNDATION ARTICLES MAY PROVIDE THAT THIS LAW WILL NOT APPLY

68-1201. TRUSTS COVERED BY LAW. This act shall apply only to trusts which are "private foundations" as defined in section 509 of the Internal Revenue Code of 1986, "charitable trusts" as described in section 4947(a)(1) of the Internal Revenue Code of 1986 and "split-interest trusts" as described in section 4947(a)(2) of the Internal Revenue Code of 1986.

68-1202. PROVISIONS PROHIBITED IN TRUST INSTRUMENTS. The trust instrument of each trust to which this act applies shall be deemed to contain provisions prohibiting the trustee from:

(a) Engaging in any act of "self-dealing" (as defined in section 4941(d) of the Internal Revenue Code of 1986), which would give rise to any liability for the tax imposed by section 4941(a) of the Internal Revenue Code of 1986;

(b) Retaining any "excess business holdings" (as defined in section 4943(c) of the Internal Revenue Code of 1986), which would give rise to any liability for the tax imposed by section 4943(a) of the Internal Revenue Code of 1986;

(c) Making any investments which would jeopardize the carrying out of any of the exempt purposes of the trust, within the meaning of section 4944 of the Internal Revenue Code of 1986, so as to give rise to any liability for the tax imposed by section 4944(a) of the Internal Revenue Code of 1986; and

(d) Making any "taxable expenditures" (as defined in section 4945(d) of the Internal Revenue Code of 1986), which would give rise to any liability for the tax imposed by section 4945(a) of the Internal Revenue Code of 1986;

Provided, that this section shall not apply either to those split-interest trusts or to amounts thereof which are not subject to the prohibitions applicable to private foundations by reason of the provisions of section 4947 of the Internal Revenue Code of 1986.

68-1203. REQUIRED DISTRIBUTIONS. The trust instrument of each trust to which this act applies, except "split-interest" trusts, shall be deemed to contain a provision requiring the trustee to distribute, for the purposes specified in the trust instrument, for each taxable year of the trust, amounts at least sufficient to avoid liability for the tax imposed by section 4942(a) of the Internal Revenue Code of 1986.

68-1204. TRUSTEE MAY AMEND GOVERNING INSTRUMENT UNDER CERTAIN CIRCUMSTANCES. The trustee of a trust may, with the prior consent of the attorney general, amend the terms of the governing instrument to the extent necessary:

(a) To assure conformity of the governing instrument with the requirements for exemption from the taxes imposed in sections 4941 to 4945 of the Internal Revenue Code of 1986, including amendments which broaden, extend, reduce or limit the charitable purposes for which the trust is administered;

(b) To terminate the status of the trust as a private foundation in a manner described in section 507(b)(1) of the Internal Revenue Code of 1986; or

(c) To terminate the trust and transfer its assets to one (1) or more entities described in section 501(c)(3) of the Internal Revenue Code of 1986 because continuation is impractical due to its small size or impractical because of changed circumstances adversely impacting its purpose or purposes.

Prior to giving consent, the attorney general shall determine that the proposed amendments are necessary or appropriate to achieve the charitable purposes of the trust. If the trust is for the exclusive benefit of one (1) or more charitable organizations, or in the event there are one (1) or more residual beneficiaries, the trustee shall also obtain the prior consent of such organizations or individuals prior to amending the terms of the governing instrument in the manner set forth in this section. Further, notwithstanding the provisions of section 68-1201, Idaho Code, this section shall additionally apply to all trusts described in section 501(c)(3) of the Internal Revenue Code of 1986.

68-1205. COURTS AND ATTORNEY GENERAL NOT IMPAIRED. Nothing in this act shall impair the rights and powers of the courts or the attorney general of this state with respect to any trust.

68-1206. REFERENCES TO INTERNAL REVENUE CODE OF 1986. All references to sections of the Internal Revenue Code of 1986 shall refer to that term as it is now and hereafter defined in section 63-3004, Idaho Code.

68-1207. TRUST INSTRUMENTS OR PRIVATE FOUNDATION ARTICLES MAY PROVIDE THAT THIS LAW WILL NOT APPLY. Nothing in this act shall limit the power of a person who creates a trust or the power of a person who has retained or has been granted the right to amend a trust to include a specific provision in the trust instrument or an amendment thereto which provides that some or all of the provisions of this act shall have no application to such trust.

## CHAPTER 13 IDAHO UNIFORM CUSTODIAL TRUST ACT

68-1301 DEFINITIONS

68-1302 CUSTODIAL TRUST -- GENERAL

68-1303 CUSTODIAL TRUSTEE FOR FUTURE PAYMENT OR TRANSFER

68-1304 FORM AND EFFECT OF RECEIPT AND ACCEPTANCE BY CUSTODIAL TRUSTEE -- JURISDICTION

68-1305 TRANSFER TO CUSTODIAL TRUSTEE BY FIDUCIARY OR OBLIGOR -- FACILITY OF PAYMENT

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68-1311 EXEMPTION OF THIRD PERSON FROM LIABILITY  
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68-1313 DECLINATION, RESIGNATION, INCAPACITY, DEATH, OR REMOVAL OF CUSTODIAL TRUSTEE -- DESIGNATION OF SUCCESSOR CUSTODIAL TRUSTEE  
68-1314 EXPENSES, COMPENSATION AND BOND OF CUSTODIAL TRUSTEE  
68-1315 REPORTING AND ACCOUNTING BY CUSTODIAL TRUSTEE -- DETERMINATION OF LIABILITY OF CUSTODIAL TRUSTEE  
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68-1319 APPLICABLE LAW  
68-1320 UNIFORMITY OF APPLICATION AND CONSTRUCTION  
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68-1322 SEVERABILITY

68-1301. DEFINITIONS. As used in this chapter:

(1) "Adult" means an individual who is at least eighteen (18) years of age.

(2) "Beneficiary" means an individual for whom property has been transferred to or held under a declaration of trust by a custodial trustee for the individual's use and benefit under this chapter.

(3) "Conservator" means a person appointed or qualified by a court to manage the estate of an individual or a person legally authorized to perform substantially the same functions.

(4) "Court" means the district court of this state.

(5) "Custodial trust property" means an interest in property transferred to or held under a declaration of trust by a custodial trustee under this chapter and the income from and proceeds of that interest.

(6) "Custodial trustee" means a person designated as trustee of a custodial trust under this chapter or a substitute or successor to the person designated.

(7) "Guardian" means a person appointed or qualified by a court as a guardian of an individual, including a limited guardian, but not a person who is only a guardian ad litem.

(8) "Incapacitated" means lacking the ability to manage property and business affairs effectively by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, disappearance, minority, or other disabling cause.

(9) "Legal representative" means a personal representative or conservator.

(10) "Member of the beneficiary's family" means a beneficiary's spouse, descendant, stepchild, parent, stepparent, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

(11) "Person" means an individual, corporation, business trust, estate, trust, partnership, joint venture, association, or any other legal or commercial entity.

(12) "Personal representative" means an executor, administrator, or special administrator of a decedent's estate, a person legally authorized to

perform substantially the same functions, or a successor to any of them.

(13) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(14) "Transferor" means a person who creates a custodial trust by transfer or declaration.

(15) "Trust company" means a financial institution, corporation, or other legal entity, authorized to exercise general trust powers.

68-1302. CUSTODIAL TRUST -- GENERAL. (1) A person may create a custodial trust of property by a written transfer of the property to another person, evidenced by registration or by other instrument of transfer, executed in any lawful manner, naming as beneficiary, an individual who may be the transferor, in which the transferee is designated, in substance, as custodial trustee under the Idaho uniform custodial trust act.

(2) A person may create a custodial trust of property by a written declaration, evidenced by registration of the property or by other instrument of declaration executed in any lawful manner, describing the property and naming as beneficiary an individual other than the declarant, in which the declarant as titleholder is designated, in substance, as custodial trustee under the Idaho uniform custodial trust act. A registration or other declaration of trust for the sole benefit of the declarant is not a custodial trust under this chapter.

(3) Title to custodial trust property is in the custodial trustee and the beneficial interest is in the beneficiary.

(4) Except as provided in subsection (5) of this section, a transferor may not terminate a custodial trust.

(5) The beneficiary, if not incapacitated, or the conservator of an incapacitated beneficiary may terminate a custodial trust by delivering to the custodial trustee a writing signed by the beneficiary or conservator declaring the termination. If not previously terminated, the custodial trust terminates on the death of the beneficiary.

(6) Any person may augment existing custodial trust property by the addition of other property pursuant to this chapter.

(7) The transferor may designate, or authorize the designation of, a successor custodial trustee in the trust instrument.

(8) This chapter does not displace or restrict other means of creating trusts. A trust whose terms do not conform to this chapter may be enforceable according to its terms under other law.

68-1303. CUSTODIAL TRUSTEE FOR FUTURE PAYMENT OR TRANSFER. (1) A person having the right to designate the recipient of property payable or transferable upon a future event may create a custodial trust upon the occurrence of the future event by designating in writing the recipient, followed in substance by: "as custodial trustee for (name of beneficiary) under the Idaho uniform custodial trust act."

(2) Persons may be designated as substitute or successor custodial trustees to whom the property must be paid or transferred in the order named if the first designated custodial trustee is unable or unwilling to serve.

(3) A designation under this section may be made in a will, a trust, a deed, a multiple-party account, an insurance policy, an instrument exercising a power of appointment, or a writing designating a beneficiary of contractual rights. Otherwise, to be effective, the designation must be registered with or delivered to the fiduciary, payor, issuer, or obligor of the future right.

68-1304. FORM AND EFFECT OF RECEIPT AND ACCEPTANCE BY CUSTODIAL TRUSTEE

-- JURISDICTION. (1) Obligations of a custodial trustee, including the obligation to follow directions of the beneficiary, arise under this chapter upon the custodial trustee's acceptance, express or implied, of the custodial trust property.

(2) The custodial trustee's acceptance may be evidenced by a writing stating in substance:

CUSTODIAL TRUSTEE'S RECEIPT AND ACCEPTANCE

I, .....(name of custodial trustee)..... acknowledge receipt of the custodial trust property described below or in the attached instrument and accept the custodial trust as custodial trustee for .....(name of beneficiary)..... under the Idaho Uniform Custodial Trust Act. I undertake to administer and distribute the custodial trust property pursuant to the Idaho Uniform Custodial Trust Act. My obligations as custodial trustee are subject to the directions of the beneficiary unless the beneficiary is designated as, is, or becomes incapacitated. The custodial trust property consists of

.....  
Dated: .....

.....  
(Signature of Custodial Trustee)

(3) Upon accepting custodial trust property, a person designated as custodial trustee under this chapter is subject to personal jurisdiction of the court with respect to any matter relating to the custodial trust.

68-1305. TRANSFER TO CUSTODIAL TRUSTEE BY FIDUCIARY OR OBLIGOR --

FACILITY OF PAYMENT. (1) Unless otherwise directed by an instrument designating a custodial trustee pursuant to section 68-1303, Idaho Code, a person including a fiduciary other than a custodial trustee, who holds property of or owes a debt to an incapacitated individual not having a conservator may make a transfer to an adult member of the beneficiary's family or to a trust company as custodial trustee for the use and benefit of the incapacitated individual. If the value of the property or the debt exceeds twenty thousand dollars (\$20,000), the transfer is not effective unless authorized by the court.

(2) A written acknowledgment of delivery, signed by a custodial trustee, is a sufficient receipt and discharge for property transferred to the custodial trustee pursuant to this section.

68-1306. MULTIPLE BENEFICIARIES -- SEPARATE CUSTODIAL TRUSTS --

SURVIVORSHIP. (1) Beneficial interests in a custodial trust created for multiple beneficiaries are deemed to be separate custodial trusts of equal undivided interests for each beneficiary. Except in a transfer or declaration for use and benefit of husband and wife, for whom survivorship is presumed, a right of survivorship does not exist unless the instrument creating the custodial trust specifically provides for survivorship or survivorship is required as to community or marital property.

(2) Custodial trust property held under this chapter by the same custodial trustee for the use and benefit of the same beneficiary may be administered as a single custodial trust.

(3) A custodial trustee of custodial trust property held for more than one (1) beneficiary shall separately account to each beneficiary pursuant to



sections 68-1307 and 68-1315, Idaho Code, for the administration of the custodial trust.

68-1307. GENERAL DUTIES OF CUSTODIAL TRUSTEE. (1) If appropriate, a custodial trustee shall register or record the instrument vesting title to custodial trust property.

(2) If the beneficiary is not incapacitated, a custodial trustee shall follow the directions of the beneficiary in the management, control, investment, or retention of the custodial trust property. In the absence of effective contrary direction by the beneficiary while not incapacitated, the custodial trustee shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other law restricting investments by fiduciaries. However, a custodial trustee, in the custodial trustee's discretion, may retain any custodial trust property received from the transferor. If a custodial trustee has a special skill or expertise or is named custodial trustee on the basis of representation of a special skill or expertise, the custodial trustee shall use that skill or expertise.

(3) Subject to subsection (2) of this section, a custodial trustee shall take control of and collect, hold, manage, invest, and reinvest custodial trust property.

(4) A custodial trustee at all times shall keep custodial trust property of which the custodial trustee has control, separate from all other property in a manner sufficient to identify it clearly as custodial trust property of the beneficiary. Custodial trust property, the title to which is subject to recordation, is so identified if an appropriate instrument so identifying the property is recorded, and custodial trust property subject to registration is so identified if it is registered, or held in an account in the name of the custodial trustee, designated in substance: "as custodial trustee for (name of beneficiary) under the Idaho uniform custodial trust act."

(5) A custodial trustee shall keep records of all transactions with respect to custodial trust property, including information necessary for the preparation of tax returns, and shall make the records and information available at reasonable times to the beneficiary or legal representative of the beneficiary.

(6) The exercise of a durable power of attorney for an incapacitated beneficiary is not effective to terminate or direct the administration or distribution of a custodial trust.

68-1308. GENERAL POWERS OF CUSTODIAL TRUSTEE. (1) A custodial trustee, acting in a fiduciary capacity, has all the rights and powers over custodial trust property which an unmarried adult owner has over individually owned property, but a custodial trustee may exercise those rights and powers in a fiduciary capacity only.

(2) The provisions of this section do not relieve a custodial trustee from liability for a violation of section 68-1307, Idaho Code.

68-1309. USE OF CUSTODIAL TRUST PROPERTY. (1) A custodial trustee shall pay to the beneficiary or expend for the beneficiary's use and benefit so much or all of the custodial trust property as the beneficiary while not incapacitated may direct from time to time.

(2) If the beneficiary is incapacitated, the custodial trustee shall expend so much or all of the custodial trust property as the custodial trustee considers advisable for the use and benefit of the beneficiary and individuals

who were supported by the beneficiary when the beneficiary became incapacitated, or who are legally entitled to support by the beneficiary. Expenditures may be made in the manner, when, and to the extent that the custodial trustee determines suitable and proper, without court order and without regard to other support, income, or property of the beneficiary.

(3) A custodial trustee may establish checking, savings, or other similar accounts of reasonable amounts under which either the custodial trustee or the beneficiary may withdraw funds from, or draw checks against, the accounts. Funds withdrawn from, or checks written against, the account by the beneficiary are distributions of custodial trust property by the custodial trustee to the beneficiary.

68-1310. DETERMINATION OF INCAPACITY -- EFFECT. (1) The custodial trustee shall administer the custodial trust as for an incapacitated beneficiary if (i) the custodial trust was created under section 68-1305, Idaho Code, (ii) the transferor has so directed in the instrument creating the custodial trust, or (iii) the custodial trustee has determined that the beneficiary is incapacitated.

(2) A custodial trustee may determine that the beneficiary is incapacitated in reliance upon (i) previous direction or authority given by the beneficiary while not incapacitated, including direction or authority pursuant to a durable power of attorney, (ii) the certificate of the beneficiary's physician, or (iii) other persuasive evidence.

(3) If a custodial trustee for an incapacitated beneficiary reasonably concludes that the beneficiary's incapacity has ceased, or that circumstances concerning the beneficiary's ability to manage property and business affairs have changed since the creation of a custodial trust directing administration as for an incapacitated beneficiary, the custodial trustee may administer the trust as for a beneficiary who is not incapacitated.

(4) On petition of the beneficiary, the custodial trustee, or other person interested in the custodial trust property or the welfare of the beneficiary, the court shall determine whether the beneficiary is incapacitated.

(5) Absent determination of incapacity of the beneficiary under subsection (2) or (4) of this section, a custodial trustee who has reason to believe that the beneficiary is incapacitated shall administer the custodial trust in accordance with the provisions of this chapter applicable to an incapacitated beneficiary.

(6) Incapacity of a beneficiary does not terminate (i) the custodial trust, (ii) any designation of a successor custodial trustee, (iii) rights or powers of the custodial trustee, or (iv) any immunities of third persons acting on instructions of the custodial trustee.

68-1311. EXEMPTION OF THIRD PERSON FROM LIABILITY. A third person in good faith and without a court order may act on instructions of, or otherwise deal with, a person purporting to make a transfer as, or purporting to act in the capacity of, a custodial trustee. In the absence of knowledge to the contrary, the third person is not responsible for determining:

- (1) The validity of the purported custodial trustee's designation;
- (2) The propriety of, or the authority under this chapter for, any action of the purported custodial trustee;
- (3) The validity or propriety of an instrument executed or instruction given pursuant to this chapter either by the person purporting to make a

transfer or declaration or by the purported custodial trustee; or

(4) The propriety of the application of property vested in the purported custodial trustee.

68-1312. LIABILITY TO THIRD PERSON. (1) A claim based on a contract entered into by a custodial trustee acting in a fiduciary capacity, an obligation arising from the ownership or control of custodial trust property, or a tort committed in the course of administering the custodial trust, may be asserted by a third person against the custodial trust property by proceeding against the custodial trustee in a fiduciary capacity, whether or not the custodial trustee or the beneficiary is personally liable.

(2) A custodial trustee is not personally liable to a third person:

(a) On a contract properly entered into in a fiduciary capacity unless the custodial trustee fails to reveal that capacity or to identify the custodial trust in the contract; or

(b) For an obligation arising from control of custodial trust property or for a tort committed in the course of the administration of the custodial trust unless the custodial trustee is personally at fault.

(3) A beneficiary is not personally liable to a third person for an obligation arising from beneficial ownership of custodial trust property or for a tort committed in the course of administration of the custodial trust unless the beneficiary is personally in possession of the custodial trust property giving rise to the liability or is personally at fault.

(4) The provisions of subsections (2) and (3) of this section do not preclude actions or proceedings to establish liability of the custodial trustee or beneficiary to the extent the person sued is protected as the insured by liability insurance.

68-1313. DECLINATION, RESIGNATION, INCAPACITY, DEATH, OR REMOVAL OF CUSTODIAL TRUSTEE -- DESIGNATION OF SUCCESSOR CUSTODIAL TRUSTEE. (1) Before

accepting the custodial trust property, a person designated as custodial trustee may decline to serve by notifying the person who made the designation, the transferor, or the transferor's legal representative. If an event giving rise to a transfer has not occurred, the substitute custodial trustee designated under section 68-1303, Idaho Code, becomes the custodial trustee, or, if a substitute custodial trustee has not been designated, the person who made the designation may designate a substitute custodial trustee pursuant to section 68-1303, Idaho Code. In other cases, the transferor or the transferor's legal representative may designate a substitute custodial trustee.

(2) A custodial trustee who has accepted the custodial trust property may resign by (i) delivering written notice to a successor custodial trustee, if any, the beneficiary and, if the beneficiary is incapacitated, to the beneficiary's conservator, if any, and (ii) transferring or registering, or recording an appropriate instrument relating to, the custodial trust property, in the name of and delivering the records to, the successor custodial trustee identified under subsection (3) of this section.

(3) If a custodial trustee or successor custodial trustee is ineligible, resigns, dies, or becomes incapacitated, the successor, designated under section 68-1302 or 68-1303, Idaho Code, becomes custodial trustee. If there is no effective provision for a successor, the beneficiary, if not

incapacitated, may designate a successor custodial trustee. If the beneficiary is incapacitated, or fails to act within ninety (90) days after the ineligibility, resignation, death, or incapacity of the custodial trustee, the beneficiary's conservator becomes the successor custodial trustee. If the beneficiary does not have a conservator or the conservator fails to act, the resigning custodial trustee may designate a successor custodial trustee.

(4) If a successor custodial trustee is not designated pursuant to subsection (3) of this section, the transferor, the legal representative of the transferor or of the custodial trustee, an adult member of the beneficiary's family, the guardian of the beneficiary, a person interested in the custodial trust property, or a person interested in the welfare of the beneficiary, may petition the court to designate a successor custodial trustee.

(5) A custodial trustee who declines to serve or resigns, or the legal representative of a deceased or incapacitated custodial trustee, as soon as practicable, shall put the custodial trust property and records in the possession and control of the successor custodial trustee. The successor custodial trustee may enforce the obligation to deliver custodial trust property and records and becomes responsible for each item as received.

(6) A beneficiary, the beneficiary's conservator, an adult member of the beneficiary's family, a guardian of the person of the beneficiary, a person interested in the custodial trust property, or a person interested in the welfare of the beneficiary, may petition the court to remove the custodial trustee for cause and designate a successor custodial trustee, to require the custodial trustee to furnish a bond or other security for the faithful performance of fiduciary duties, or for other appropriate relief.

68-1314. EXPENSES, COMPENSATION AND BOND OF CUSTODIAL TRUSTEE. Except as otherwise provided in the instrument creating the custodial trust, in an agreement with the beneficiary, or by court order, a custodial trustee:

(1) Is entitled to reimbursement from custodial trust property for reasonable expenses incurred in the performance of fiduciary services;

(2) Has a noncumulative election, to be made no later than six (6) months after the end of each calendar year, to charge a reasonable compensation for fiduciary services performed during that year; and

(3) Need not furnish a bond or other security for the faithful performance of fiduciary duties.

68-1315. REPORTING AND ACCOUNTING BY CUSTODIAL TRUSTEE -- DETERMINATION

OF LIABILITY OF CUSTODIAL TRUSTEE. (1) Upon the acceptance of custodial trust property, the custodial trustee shall provide a written statement describing the custodial trust property and shall thereafter provide a written statement of the administration of the custodial trust property (i) once each year, (ii) upon request at reasonable times by the beneficiary or the beneficiary's legal representative, (iii) upon resignation or removal of the custodial trustee, and (iv) upon termination of the custodial trust. The statements must be provided to the beneficiary or to the beneficiary's legal representative, if any. Upon termination of the beneficiary's interest, the custodial trustee shall furnish a current statement to the person to whom the custodial trustee property is to be delivered.

(2) A beneficiary, the beneficiary's legal representative, an adult

member of the beneficiary's family, a person interested in the custodial trust property, or a person interested in the welfare of the beneficiary may petition the court for an accounting by the custodial trustee or the custodial trustee's legal representative.

(3) A successor custodial trustee may petition the court for an accounting by a predecessor custodial trustee.

(4) In an action or proceeding under this chapter or in any other proceeding, the court may require or permit the custodial trustee or the custodial trustee's legal representative to account. The custodial trustee or the custodial trustee's legal representative may petition the court for approval of final accounts.

(5) If a custodial trustee is removed, the court shall require an accounting and order delivery of the custodial trust property and records to the successor custodial trustee and the execution of all instruments required for transfer of the custodial trust property.

(6) On petition of the custodial trustee or any person who could petition for an accounting, the court, after notice to interested persons, may issue instructions to the custodial trustee or review the propriety of the acts of a custodial trustee or the reasonableness of compensation determined by the custodial trustee for the services of the custodial trustee or others.

68-1316. LIMITATIONS OF ACTION AGAINST CUSTODIAL TRUSTEE. (1) Except as provided in subsection (3) of this section, unless previously barred by adjudication, consent, or limitation, a claim for relief against a custodial trustee for accounting or breach of duty is barred as to a beneficiary, a person to whom custodial trust property is to be paid or delivered, or the legal representative of an incapacitated or deceased beneficiary or payee:

- (a) Who has received a final account or statement fully disclosing the matter unless an action or proceeding to assert the claim is commenced within two (2) years after receipt of the final account or statement; or
- (b) Who has not received a final account or statement fully disclosing the matter unless an action or proceeding to assert the claim is commenced within three (3) years after the termination of the custodial trust.

(2) Except as provided in subsection (3) of this section, a claim for relief to recover from a custodial trustee for fraud, misrepresentation, or concealment related to the final settlement of the custodial trust or concealment of the existence of the custodial trust, is barred unless an action or proceeding to assert the claim is commenced within five (5) years after the termination of the custodial trust.

(3) A claim for relief is not barred by this section if the claimant:

- (a) Is a minor, until the earlier of two (2) years after the claimant becomes an adult or dies;
- (b) Is an incapacitated adult, until the earliest of two (2) years after
  - (i) the appointment of a conservator, (ii) the removal of the incapacity, or (iii) the death of the claimant; or
- (c) Was an adult, now deceased, who was not incapacitated, until two (2) years after the claimant's death.

68-1317. DISTRIBUTION ON TERMINATION. (1) Upon termination of a custodial trust, the custodial trustee shall transfer the unexpended custodial trust property:

- (a) To the beneficiary, if not incapacitated or deceased;

(b) To the conservator or other recipient designated by the court for an incapacitated beneficiary; or

(c) Upon the beneficiary's death, in the following order:

(i) As last directed in a writing signed by the deceased beneficiary while not incapacitated and received by the custodial trustee during the life of the deceased beneficiary;

(ii) To the survivor of multiple beneficiaries if survivorship is provided for pursuant to section 68-1306, Idaho Code;

(iii) As designated in the instrument creating the custodial trust; or

(iv) To the estate of the deceased beneficiary.

(2) If, when the custodial trust would otherwise terminate, the distributee is incapacitated, the custodial trust continues for the use and benefit of the distributee as beneficiary until the incapacity is removed or the custodial trust is otherwise terminated.

(3) Death of the beneficiary does not terminate the power of the custodial trustee to discharge obligations of the custodial trustee or beneficiary incurred before the termination of the custodial trust.

68-1318. METHODS AND FORMS FOR CREATING CUSTODIAL TRUSTS. (1) If a transaction, including a declaration with respect to or a transfer of specific property, otherwise satisfies applicable law, the criteria of section 68-1302, Idaho Code, are satisfied by:

(a) The execution and either delivery to the custodial trustee or recording of an instrument in substantially the following form:

TRANSFER UNDER THE IDAHO  
UNIFORM CUSTODIAL TRUST ACT

I, .....(name of transferor or name of representative capacity if a fiduciary)....., transfer to .....(name of trustee other than transferor)....., as custodial trustee for .....(name of beneficiary)..... as beneficiary and ..... as distributee on termination of the trust in absence of direction by the beneficiary under the Idaho Uniform Custodial Trust Act, the following: (insert a description of the custodial trust property legally sufficient to identify and transfer each item of property).

Dated: .....

.....

(Signature); or

(b) The execution and the recording or giving notice of its execution to the beneficiary of an instrument in substantially the following form:

DECLARATION OF TRUST UNDER THE IDAHO  
UNIFORM CUSTODIAL TRUST ACT

I, .....(name of owner of property)....., declare that henceforth I hold as custodial trustee for .....(name of beneficiary other than transferor)..... as beneficiary and ..... as distributee on termination of the trust in absence of direction by the beneficiary under the Idaho Uniform Custodial Trust Act, the following: (Insert a description of the custodial trust property legally sufficient to identify and transfer each item of property).

Dated: .....

.....

(Signature)

(2) Customary methods of transferring or evidencing ownership of property may be used to create a custodial trust, including any of the following:

- (a) Registration of a security in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in the substance "as custodial trustee for (name of beneficiary) under the Idaho Uniform Custodial Trust Act";
- (b) Delivery of a certificated security, or a document necessary for the transfer of an uncertificated security, together with any necessary endorsement, to an adult other than the transferor or to a trust company as custodial trustee accompanied by an instrument in substantially the form prescribed in subsection (1)(a) of this section;
- (c) Payment of money or transfer of a security held in the name of a broker or a financial institution or its nominee to a broker or financial institution for credit to an account in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for (name of beneficiary) under the Idaho Uniform Custodial Trust Act";
- (d) Registration of ownership of a life or endowment insurance policy or annuity contract with the issuer in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for (name of beneficiary) under the Idaho Uniform Custodial Trust Act";
- (e) Delivery of a written assignment to an adult other than the transferor or to a trust company whose name in the assignment is designated in substance by the words: "as custodial trustee for (name of beneficiary) under the Idaho Uniform Custodial Trust Act";
- (f) Irrevocable exercise of a power of appointment, pursuant to its terms, in favor of a trust company, an adult other than the donee of the power, or the donee who holds the power if the beneficiary is other than the donee, whose name in the appointment is designated in substance: "as custodial trustee for (name of beneficiary) under the Idaho Uniform Custodial Act";
- (g) Delivery of a written notification or assignment of a right to future payment under a contract to an obligor which transfers the right under the contract to a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, whose name in the notification or assignment is designated in substance: "as custodial trustee for (name of beneficiary) under the Idaho Uniform Custodial Trust Act";
- (h) Execution, delivery, and recordation of a conveyance of an interest in real property in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for (name of beneficiary) under the Idaho Uniform Custodial Trust Act";
- (i) Issuance of a certificate of title by an agency of a state or of the United States which evidences title to tangible personal property:
  - (i) Issued in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for (name of beneficiary) under the Idaho Uniform Custodial Trust Act"; or
  - (ii) Delivered to a trust company or an adult other than the

transferor or endorsed by the transferor to that person, designated in substance: "as custodial trustee for (name of beneficiary) under the Idaho Uniform Custodial Trust Act"; or

(j) Execution and delivery of an instrument of gift to a trust company or an adult other than the transferor, designated in substance: "as custodial trustee for (name of beneficiary) under the Idaho Uniform Custodial Trust Act."

68-1319. APPLICABLE LAW. (1) This chapter applies to a transfer or declaration creating a custodial trust that refers to this chapter if, at the time of the transfer or declaration, the transferor, beneficiary, or custodial trustee is a resident of or has its principal place of business in this state or custodial trust property is located in this state. The custodial trust remains subject to this chapter despite a later change in residence or principal place of business of the transferor, beneficiary, or custodial trustee, or removal of the custodial trust property from this state.

(2) A transfer made pursuant to an act of another state substantially similar to the provisions of this chapter is governed by the law of that state and may be enforced in this state.

68-1320. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

68-1321. SHORT TITLE. This chapter may be cited as the "Idaho Uniform Custodial Trust Act."

68-1322. SEVERABILITY. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

## CHAPTER 14 COURT APPROVED PAYMENTS OR AWARDS TO MINORS OR INCOMPETENT PERSONS

### 68-1401 APPLICATION

### 68-1402 ORDER DIRECTING PAYMENT OF EXPENSES, COSTS AND FEES

### 68-1403 DISPOSITION OF BALANCE

### 68-1404 INCOMPETENT PERSONS

### 68-1405 SPECIAL NEEDS TRUSTS -- REQUIREMENTS -- JURISDICTION OF COURT -- COURT ORDERS

68-1401. APPLICATION. The provisions of this chapter apply when:

(1) A court approves a compromise of a judgment on a disputed claim of a minor or incompetent person, the execution of a release of a claim or covenant not to enforce a judgment on a claim of a minor or incompetent person, a compromise of a pending action or proceeding to which a minor or incompetent person is a party, or when a court awards judgment for a minor or incompetent person; and

(2) The compromise, release, covenant or judgment provides for the payment or delivery of money or property for the benefit of the minor or incompetent person.

68-1402. ORDER DIRECTING PAYMENT OF EXPENSES, COSTS AND FEES. (1) As part



of the order approving a compromise, release, covenant or judgment pursuant to this chapter, the court shall also order that the reasonable and necessary expenses of the minor or incompetent person including, but not limited to, medical expenses, reimbursement to a parent, guardian, or conservator, and attorney's fees and costs approved by the court, shall be paid from the money or property to be paid or delivered for the benefit of the minor or incompetent person.

(2) The order for payment of expenses may be directed to the following:

(a) A parent or guardian of a minor or incompetent person or a guardianship or conservatorship of the estate of a minor or incompetent person; or

(b) The payor of money or property pursuant to the compromise, covenant, or judgment for the benefit of the minor or incompetent person.

68-1403. DISPOSITION OF BALANCE. (1) If there is no guardianship or conservatorship of the estate of the minor or incompetent person, the balance of the money or property, after payment of all expenses approved by the court pursuant to this chapter, shall be paid, delivered or deposited in the manner the court determines in its discretion is in the best interest of the minor or incompetent person, including the creation of a special needs trust.

(2) Except as provided in this section, if there is a guardianship or conservatorship of the estate of the minor or incompetent person, the balance of the money or property remaining after payment of expenses approved by the court pursuant to this chapter shall be paid or delivered to the guardian or conservator of the estate.

(3) Upon an ex parte petition filed by the guardian, conservator or any person interested in the guardianship or conservatorship estate, the court making an order or awarding judgment pursuant to this chapter may for good cause shown, order either or both of the following:

(a) That, after payment of expenses, all or part of the balance of money or property shall not become part of the guardianship or conservatorship estate and instead shall be deposited in an insured account in a financial institution in Idaho, or in a single premium deferred annuity, subject to withdrawal only when authorized by the court.

(b) If there exists a guardianship of the estate of the minor, the court may order that, after payment of expenses, all or part of the balance of money or property not become part of the guardianship estate and instead be transferred to a custodian for the benefit of the minor under the Idaho uniform transfers to minors act, chapter 8, title 68, Idaho Code.

(4) Upon a petition by the guardian, conservator, or any person interested in the guardianship or conservatorship estate, the court making an order or awarding judgment pursuant to this chapter may order that, after payment of expenses, all or part of the balance of money or property not become part of the guardianship or conservatorship estate and instead be paid to a special needs trust.

(5) Notice of the time and place of hearing on a petition filed pursuant to this section, and a copy of the petition, shall be mailed to the director of the Idaho department of health and welfare at least fifteen (15) days before the hearing.

68-1404. INCOMPETENT PERSONS. References in this chapter to "incompetent person," shall be deemed to include persons for whom a conservator may be

appointed pursuant to section 15-5-401, Idaho Code.

68-1405. SPECIAL NEEDS TRUSTS -- REQUIREMENTS -- JURISDICTION OF COURT -- COURT ORDERS.

(1) If a court orders that money of a minor or incompetent person be paid to a special needs trust, the terms of the trust shall be reviewed and approved by the court and shall satisfy the requirements of this section. The trust shall be subject to the continuing jurisdiction of the court, and is subject to court supervision to the extent determined by the court. The court may transfer jurisdiction to the court in the county where the minor or incompetent person resides.

(2) A special needs trust may be established and continued under this section only if the court determines all of the following:

- (a) That the minor or incompetent person has a disability that substantially impairs the individual's ability to provide for the individual's own care or custody and constitutes a substantial handicap;
- (b) That the minor or incompetent person is likely to have special needs that will not be met without the trust; and
- (c) That money to be paid to the trust does not exceed the amount that appears reasonably necessary to meet the special needs of the minor or incompetent person.

(3) If at any time it appears that:

- (a) Any of the requirements of this section are not satisfied or the trustee refuses without good cause to make payments from the trust for the special needs of the beneficiary; and
- (b) That the Idaho department of health and welfare or a county or city in this state has a claim against trust property, then the Idaho department of health and welfare, the county or the city may petition the court for an order terminating the trust.

(4) A court order for payment of money or property to a special needs trust shall include a provision that all statutory liens properly perfected at the time of the court's order, and in favor of the Idaho department of health and welfare or any county or city of this state, shall be satisfied first.