



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB0365

Introduced 2/7/2007, by Sen. Randall "Randy" M. Hultgren

SYNOPSIS AS INTRODUCED:

760 ILCS 15/14

from Ch. 30, par. 514

Amends the Principal and Income Act. Provides that if, in the judgment of the trustee, the charging of the required part of the compensation due to the trustee, attorney, investment counsel, custodian, or accountant is (i) impractical because of the lack of sufficient income cash or principal cash and readily marketable intangible property or (ii) inadvisable because of the nature of the asset, then the trustee may pay the compensation out of the principal or income as the trustee sees fit. Provides that the decision to pay compensation out of the income or principal is conclusive and neither the income nor the principal is entitled to reimbursement. Makes other changes.

LRB095 04733 AJO 24792 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Principal and Income Act is amended by
5 changing Section 14 as follows:

6 (760 ILCS 15/14) (from Ch. 30, par. 514)

7 Sec. 14. Charges against income and principal.

8 (a) The following charges shall be made against income:

9 (1) ordinary expenses, other than compensation as
10 provided in paragraph (6) of this subsection (a), incurred
11 by the trustee in connection with the administration or
12 protection of the trust property, including regularly
13 recurring taxes assessed against any portion of the
14 principal, water rates, premiums on insurance taken upon
15 the interests of the income beneficiary, remainderman, or
16 trustee, interest paid by the trustee (except interest on
17 taxes as provided in paragraphs (7) and (8) of this
18 subsection and paragraphs (5), (6), and (7) of subsection
19 (c)), ordinary repairs and maintenance;

20 (2) (blank);

21 (3) one-half of court costs, attorney's fees and other
22 expenses and fees on any judicial accounting, unless the
23 court directs otherwise;

1 (4) court costs, attorney's fees and other expenses and
2 fees on other judicial proceedings if the matter primarily
3 concerns the income interest, unless the court directs
4 otherwise;

5 (5) special compensation and expenses of or incurred by
6 the trustee in connection with income;

7 (6) one-half of the regular compensation of the
8 trustee, attorney, investment counsel, custodian or
9 accountant, subject to ~~paragraph (1) of subsection (d) (e);~~

10 (7) any tax, including interest and penalties thereon,
11 levied upon receipts defined as income under this Act or
12 the trust instrument and payable by the trustee;

13 (8) one-half of the interest on all estate,
14 inheritance, and generation-skipping transfer taxes
15 apportioned to the trust and one-half of the interest on
16 any penalties on those taxes.

17 (a-5) A reasonable allowance for depreciation on property
18 that is subject to depreciation under generally accepted
19 accounting principles may be charged by the trustee, but no
20 allowance shall be made for depreciation of that portion of any
21 real property used by a beneficiary as a residence. Such an
22 allowance shall be charged only against the income from the
23 property subject to depreciation and shall not accrue from year
24 to year.

25 (b) If charges against income are of an unusual amount, the
26 trustee may by means of reserves or other reasonable means

1 charge them over a reasonable period of time and withhold from
2 distribution sufficient sums to regularize distributions.

3 (c) The following charges shall be made against principal:

4 (1) one-half of the regular compensation of the
5 trustee, attorney, investment counsel, custodian or
6 accountant, ~~subject to subsection (d) shall be paid out of~~
7 ~~principal, provided that, if in the judgment of the~~
8 ~~trustee, the charging of a part or all of that portion of~~
9 ~~such compensation to principal is impracticable because of~~
10 ~~the lack of sufficient principal cash and readily~~
11 ~~marketable intangible personal property, or inadvisable~~
12 ~~because of the nature of the assets, that part or all of~~
13 ~~such compensation shall be paid out of income. The decision~~
14 ~~of the trustee to pay a larger portion or all of such~~
15 ~~compensation out of income shall be conclusive, and the~~
16 ~~income of the trust shall not be entitled to reimbursement~~
17 ~~from principal at any subsequent time or times;~~

18 (2) special compensation and expenses of or incurred by
19 the trustee in connection with principal, trustee's
20 compensation computed on principal as an acceptance,
21 distribution or termination fee, and, unless the court
22 directs otherwise, court costs, attorney's fees and other
23 expenses and fees in judicial proceedings primarily
24 concerning matters of principal or in any action to
25 construe the trust or protect it or the property or assure
26 the title to any trust property;

1 (3) charges not provided for in subsection (a),
2 including the cost of investing and reinvesting principal,
3 the payments on principal of an indebtedness (including a
4 mortgage amortized by periodic payments of principal), and
5 expenses for preparation of property for rental or sale;

6 (4) extraordinary repairs or expenses incurred in
7 making a capital improvement to principal, including
8 special assessments;

9 (4.5) costs and disbursements related to environmental
10 matters, including reclamation, assessing environmental
11 conditions, remedying and removing environmental
12 contamination, monitoring remedial activities and the
13 release of substances, preventing future releases of
14 substances, collecting amounts from persons liable or
15 potentially liable for the costs of those activities,
16 penalties imposed under environmental laws or regulations
17 and other payments made to comply with those laws or
18 regulations, statutory or common law claims by third
19 parties, and defending claims based on environmental
20 matters;

21 (5) any tax, including interest and penalties thereon,
22 levied upon profit, gain, or other receipts allocated to
23 principal notwithstanding denomination of the tax as an
24 income tax by the taxing authority;

25 (6) any tax, including interest and penalties thereon,
26 levied upon amounts not actually received by the trustee

1 before the date the tax is payable, including extensions,
2 notwithstanding the denomination of the tax as an income
3 tax by the taxing authority, except that if, in the
4 judgment of the trustee, the charging against principal of
5 part or all of the tax is impracticable because of a lack
6 of sufficient principal cash and readily marketable
7 intangible personal property or inadvisable because of the
8 nature of the assets that part or all of the tax shall be
9 charged against income. The decision of the trustee to
10 charge part or all of the tax against income shall be
11 conclusive, and the income of the trust shall not be
12 entitled to reimbursement from principal at any subsequent
13 time or times. If any part or all of the amount on which
14 tax was previously paid and charged against principal is
15 later received by the trustee and if the receipt is
16 otherwise credited to income, then when the amount is
17 received the portion of the tax previously paid and charged
18 against principal attributable to the amount so received
19 shall be deducted from the amount and credited to
20 principal;

21 (7) all estate, inheritance, and generation-skipping
22 transfer taxes and any penalties on the taxes apportioned
23 to the trust and one-half of the interest on those taxes
24 and penalties;

25 (8) a net loss in any fiscal or calendar year from the
26 operation of a business or an agricultural or farming

1 operation, to be repaid from income as available in the
2 succeeding year or years;

3 (9) monies paid for the purchase of options.

4 (d) If, in the judgment of the trustee, the charging of all
5 or part of the compensation provided for in item (6) of
6 subsection (a) is impractical because of the lack of sufficient
7 income cash or in item (1) of subsection (c) is impractical
8 because of the lack of sufficient principal cash and readily
9 marketable intangible personal property, or inadvisable
10 because of the nature of the assets, such part or all of such
11 compensation shall be paid out of income or principal as the
12 trustee determines. The decision of the trustee to pay a larger
13 portion or all of such compensation out of income or principal
14 shall be conclusive, and neither the income nor principal of
15 the trust shall be entitled to reimbursement at any subsequent
16 time or times. The provisions of this subsection (d) shall not
17 apply to the extent that they would cause a trust otherwise
18 qualifying for a federal or State tax benefit or other benefit
19 not to so qualify for that benefit. This subsection (d) is
20 available to trusts in existence on the effective date of this
21 amendatory Act of the 95th General Assembly or created after
22 that date.

23 (Source: P.A. 91-923, eff. 7-7-00.)