Title

The seemingly endless succession of trust principal and income acts: To what end when we have a robust equity jurisprudence?

Text

Trust law is best fine-tuned judicially though application of general principles to given situations. *See* Heydon, *Does statutory reform stultify trusts law analysis?,* 6 Tr. Q. Rev., Issue 3, at 28 (2008). Codification "deadens and stultifies" that process. *Id*. Still, "[t]he silent waters of equity run deep—often too deep for legislation to obstruct." *Id.*

Take, for example, the challenges of sorting income from principal when it comes to entrusted *liquidating assets*. There are four principal and income acts: (1) Uniform Principal and Income Act 1931 (the "1931 Act"), (2) Uniform Principal and Income Act 1962 (the "1962 Act"), (3) Uniform Principal and Income Act (1997) (the "1997 Act"), and Uniform Fiduciary Income and Principal Act (2018) (the "2018 Act"). The 1997 Act, specifically §410(a), defines a "liquidating asset" as "an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration." Examples of liquidating assets are leaseholds, patents, copyrights, and royalty rights. The 1997 Act broke new ground by providing that ten percent of a liquidating asset receipt is allocated to income, and the balance to principal. See its § 410(b). The 1962 Act had allocated receipts from "property subject to depletion" to income in an amount "not in excess of 5%" of the asset's inventory value," with the balance of each year's receipts being added to principal. The 1931 Act had had a similar 5-percent rule that applied when the trustee was under a duty to change the form of the investment. The 2018 Act , specifically § 410, "restores a variation of the…[pre-1997…] annuity approach, with the range of 3 to 5 percent of the value of the asset consistent with other provisions in the act, and retains the 10-percent-of-the-receipt rule for cases where the fiduciary cannot determine the value of the asset." See the comment to § 410 of the 2018 Act.

Or take *nonmonetary receipts* from entrusted entities. The 1962 Act contains an "unwieldly" catalogue of types of property that would be principal if distributed by a corporation. The 2018 Act, specifically §401(d)(1), discards the catalogue and replaces it with a general principle that has an equity flavor to it. The accompanying official commentary explains that the catalogue became "unwieldy" in a section that applied to both corporations and other entities: "By stating that the distribution of any property other than money is generally allocated to principal, subsection (d)(1) embraces all of the items enumerated in Section 6 of 1962 Act as well as any other form of nonmonetary distribution not specifically mentioned in that act."

It would seem self-evident that "a system of judge-made law resting on principles of stare decisis has a degree of stability; but it teems with life, and is inherently capable of change in light of experience," that legislation, on the other hand, is inherently inflexible and unstable. See Heydon, *supra*. Certainly the seemingly endless succession of trust principal and income acts would not suggest otherwise. For a general discussion of principal-income apportionment issues in the trust context see *Loring and Rounds: A Trustee's Handbook* (2020) §6.2.4.3, which section, with revisions, is reproduced in its entirety in the appendix immediately below.

§6.2.4.3 What Receipts Are Apportioned Between the Income and Principal Accounts? [from *Loring and Rounds: A Trustee's Handbook* (2020), with revisions].

The concept of apportionment. At common law, interest earned generally accrued daily to the one who was entitled to it, say, for life. Take the income-only nondiscretionary trust for the benefit of C for life. Upon the death of C, C's probate estate was entitled to undistributed net trust investment interest accrued to the date of C's death, but not to what was left over, if any. Some other trust beneficiary was entitled to that. In other words, the accumulated and undistributed interest income at the time of C's death had to be "apportioned" by B, the trustee. On the other hand, rents would accrue on rent days and ordinary dividends on record dates. Thus, if C died just before a rent day or a record date, his probate estate was out of luck as to the particular income receipt, unless the terms of the trust provided otherwise. The rent or the dividend, as the case may be, went somewhere else, perhaps to C2, or perhaps into the trust's principal account for ultimate distribution to D. There was no apportionment of the rent payment or the dividend payment between or among the various equitable property interests extant incident to the trust relationship. Then, in 1931, default apportionment doctrine suddenly got complicated and volatile:

> Modern statutes (including the 1931 and 1962 versions of the Uniform Principal and Income Act) liberalized these common-law rules, directing that certain periodic payments (including both interest and rent, but not dividends) be apportioned between successive owners on the basis of a day-to-day accrual. Reversing this development, the most recent and widely-adopted version of the Uniform Principal and...[Income]...Act (the 1997 Act) restricts apportionment of trust income even more narrowly than does the common law. The 1997 Uniform Act determines entitlement to any periodic payment (including interest) by its date of receipt, disregarding any prior date of accrual or due date.[551]

The Restatement (Third) of Restitution and Unjust Enrichment, specifically in the commentary to §47, suggests that trust receipt apportionment doctrine is little more than a specific application of general unjust enrichment doctrine: "Allocation and apportionment between competing claims of ownership...reflect the same principles of unjust enrichment that underlie the rule of the present section, even though the claimant does not literally seek 'restitution' unless the defendant has been paid money to which the claimant was entitled inter se."[552] Here is §47 verbatim: "If a third person makes a payment to the defendant in respect of an asset belonging to the claimant, the claimant is entitled to restitution from the defendant as necessary to prevent unjust enrichment."

Wasting or overproductive property. The money received by way of "yield" from a wasting investment presents a peculiar problem.[553] Such a yield involves a continuing dissipation of

[551]Restatement (Third) of Restitution and Unjust Enrichment §47 cmt. f.

[552]Restatement (Third) of Restitution and Unjust Enrichment §47 cmt. c.

[553]A *wasting asset* is one whose value will depreciate or be destroyed in time, thus favoring the life beneficiary at the expense of the remainderman who is left with an asset of little or no value. *See generally* 3A Scott on Trusts §239; Bogert §827; Revised Unif. Principal & Income Act §§9–11.

principal to the economic detriment of the remainderman.[554] In order to be impartial, therefore, the trustee should set aside some part of the yield to protect the remainderman from this gradual loss,[555] unless the interests of the remainderman can better be protected in some other way[556] or the terms of the trust call for the income beneficiary to be favored.[557] "Wasting or overproductive property consists of property interests that terminate or tend to depreciate over the course of time."[558] Examples of wasting or overproductive investments are "leaseholds; royalties, whether from books or inventions or from leases of mineral or timber lands; patent rights; interests in things the substance of which is consumed, such as mines, oil and gas wells, quarries, and timber lands; and interests in things that are subject to obsolescence, are consumed in the using, or are worn out by use, such as buildings, furniture, machinery, and equipment."[559]

The trustee's default authority under the Uniform Principal and Income Act (1997), specifically under §503, to transfer some trust-accounting income to trust-accounting principal in order to mitigate the adverse economic effects of a real depreciation in the value of a principal item is discretionary.[560] It is a discretion that must be exercised in a way that is fair and reasonable to all categories of beneficiary.[561] In other words, the discretion is governed by background equitable principles. A charge against income for a notional "depreciation" in the value of a particular parcel of entrusted land, for example, would likely not be needed to protect the remainder beneficiaries *if the real market value of the land is actually appreciating*.[562] Thus, such a charge could well be a breach of trust, absent either special facts or an express direction in the terms of the trust to make the charge.

The apportionment of wasting assets is purely a matter of calculation. It may be done by fixing the value of the property at the time of creation of the trust and paying the life tenant from time to time that part of the yield which would equal the usual rate of return in trust investments.[563] It also may be done by apportioning the proceeds of sale when the property is sold.[564] The decisions in cases involving mining operations, quarries, and oil wells are numerous and diverse in their holdings.[565] Obviously if the instrument shows that the life beneficiary is to enjoy all benefits of wasting property, neither amortization of receipts nor apportionment of proceeds is necessary.[566]

The practice of amortizing bond premiums traditionally worked this way: When a trustee purchases a bond (or other fixed-income obligation) for the principal account at a premium, *i.e.*,

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[554]*See* 4 Scott & Ascher §20.7; 3A Scott on Trusts §239; Restatement (Third) of Trusts §239.

[555]4 Scott & Ascher §20.7; 3A Scott on Trusts §239; Restatement (Third) of Trusts §239. The Revised Unif. Principal & Income Act sets specific guidelines for apportioning receipts from wasting assets such as minerals and other natural resources, timber, royalties, patents, and so forth. *See* Revised Unif. Principal & Income Act §§9–11; Restatement (Third) of Trusts §239.

[556]4 Scott & Ascher §20.7.

[557]4 Scott & Ascher §20.7.1 (Terms of the Trust).

[558]4 Scott & Ascher §20.7.

[559]4 Scott & Ascher §20.7. *See generally* 3A Scott on Trusts §239.

[560]Unif. Principal & Income Act (1997) §503, cmt.

[561]Unif. Principal & Income Act (1997) §103(b).

[562]Unif. Principal & Income Act (1997) §503, cmt.

[563]*See* 3A Scott on Trusts §239 n.4, §241.4.

[564]*See* 3A Scott on Trusts. §239 n.4, §241.4.

[565]For a general discussion of the wide range of holdings among the jurisdictions in this area, *see* 3A Scott on Trusts §239.3.

[566]*See generally* 4 Scott & Ascher §20.7.1; 3A Scott on Trusts. §239.1.

at a price in excess of its value at maturity, the trustee deducts over time from the income stream such sums as are necessary to reimburse the principal account for the premium.[567] This is done particularly if the trustee expects to hold the bond to maturity, as its market value at the time of purchase will inevitably decline over time to face value.[568] Moreover, it is likely that the purchase price exceeds the face value because the bond's interest rate is a particularly generous one. Thus, absent some adjustments over time, the income account is advantaged over time at the expense of the principal account. The bond would be characterized on a trust accounting report or statement as an "amortized investment."

The concept of apportioning accretions, on the other hand, works this way: Where a trustee purchases a bond (or other fixed-income obligation) bearing no stated interest that is redeemable at a future time for an amount in excess of its purchase price, the accretion belongs to the income account. In this case, the bond would be characterized as an "accreted investment."

Under the common law, the trustee had a duty to the remainderman to amortize bond premiums.[569] Thus, the purchase of a bond at a price in excess of its face amount called for the allocation of some of the bond income, as it was received, to the principal account.[570] "*[A]ll three versions of the...[Uniform Principal and Income Act]...have eliminated any duty on the part of a trustee to amortize bond premiums*."[571] The Uniform Fiduciary Income and Principal Act (2018) has as well.[1] It should be noted that for purposes of tax accounting premiums on purchases on tax-exempt bonds must be amortized.[572]

Minerals, water, and other natural resources. The 1997 revision of the Uniform Principal and Income Act, specifically § 411, called for an allocation of 90 percent of most receipts from mineral interests to principal.[573] This was a radical departure from past practice. Under the prior version of the Act, 27{[fraction denom="2" numer="1"]} percent was allocated to principal.[574] The Uniform Fiduciary Income and Principal Act (2018) (UFIPA), specifically §411, is "similar" to § 411 of the 1997 revision, "except that it does not provide for a default 10-percent allocation to income, but provides that the allocation should be made 'equitably,' and then provides, in subsection (c), that an allocation to principal of the amount allowed by the Internal Revenue Code as a depletion deduction is presumed to be equitable."[2]

Timber. In the case of timber harvesting on entrusted land, the proceeds attributable to "annual growth" are apportioned to income, and the balance to principal.[575] The Uniform Fiduciary

[567]4 Scott & Ascher §20.7.2 (Bonds Purchased at Premium).

[568]4 Scott & Ascher §20.7.2.

[569]4 Scott & Ascher §20.7.2; 3A Scott on Trusts. §239.2.

[570]4 Scott & Ascher §20.7.2 (Bonds Purchased at Premium).

[571]4 Scott & Ascher §20.7.2.

[1] UFIPA § 406(b).

[572]For the federal tax treatment of premiums paid in purchasing tax-exempt bonds, *see* I.R.C. §171 (1992).

[573]4 Scott & Ascher §20.7.3 (referring to Unif. Principal & Income Act §411(a)(1) (1997)).

[574]4 Scott & Ascher §20.7.3 (referring to Unif. Principal & Income Act §9(a)(3) (1962)).

[2] UFIPA §411 cmt.

[575]4 Scott & Ascher §20.7.4 (referring to Unif. Principal & Income Act §412 (1997)).

Income and Principal Act (2018) (UFIPA) is substantially in accord.[3] *Depreciation*. Sometimes, the trust property includes equipment and/or a building that generates income. Should a trustee apportion some of this income over time to principal to establish a depreciation reserve? Such items "tend, over time, to decline in value, not only due to physical deterioration but also as they become less well-suited to their original purposes."[576] Under the 1997 revision of the Uniform Principal and Income Act, the trustee has a discretionary power to set aside a depreciation reserve.[577] It will depend upon the particular facts and circumstances whether he has a fiduciary duty to do so.

Liquidating assets. The 1997 revision of the Uniform Principal and Income Act defines a "liquidating asset" as "an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration."[578] Examples of liquidating assets are leaseholds, patents, copyrights, and royalty rights. The 1997 revision broke new ground by providing that ten percent of a liquidating asset receipt is allocated to income, and the balance to principal.[579] The 1962 Act had allocated receipts from "property subject to depletion" to income in an amount "not in excess of 5%" of the asset's inventory value," with the balance of each year's receipts being added to principal. The 1931 Act had had a similar 5-percent rule that applied when the trustee was under a duty to change the form of the investment.

The Uniform Fiduciary Income and Principal Act (2018) (UFIPA), specifically § 410, "restores a variation of the…[pre-1997…] annuity approach, with the range of 3 to 5 percent of the value of the asset consistent with other provisions in the act, and retains the 10-percent-of-the-receipt rule for cases where the fiduciary cannot determine the value of the asset."[4]

Deferred compensation, annuity, or similar payment; marital deduction trusts. The 1997 revision of the Uniform Principal and Income Act, specifically §409, provides that the portion of a deferred compensation or annuity payment that has been characterized *by the payor* as (or in lieu of) interest or a dividend is income.[580] The balance is principal.[581] A payment of the entire account balance is principal, as is that portion of a payment that is attributable to the exercise by the trustee of a right of withdrawal.[582] "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,' the trustee is to allocate to income 10 percent of the part that is required to be made during the accounting period, and the balance to principal."[583]

Because the revision's allocation and apportionment rules for deferred compensation, annuities, and similar payments are so arcane, the trustee is advised not to rely on a paraphrase of

[3] *See* UFIPA § 412.
[576] 4 Scott & Ascher §20.7.5.
[577] 4 Scott & Ascher §20.7.5 (referring to Unif. Principal & Income Act §503(b) (1997)).
[578] Unif. Principal & Income Act §410(a) (1997).
[579] Unif. Principal & Income Act §410(b) (1997).
[4] UFIPA (2018) § 410 cmt.
[580] Unif. Principal & Income Act §409(b) (1997).
[581] Unif. Principal & Income Act §409(b) (1997).
[582] Unif. Principal & Income Act §409(c) (1997).
[583] 4 Scott & Ascher §20.7.6 (Liquidating Assets) (referring to Unif. Principal & Income Act §409(c) (1997)).

what they are.[5] Rather, the trustee faced with administering such a payment is advised to download a copy of § 409 of the 1997 revision of the Uniform Principal and Income Act (or the Uniform Fiduciary Income and Principal Act (2018) (UFIPA)'s version of § 409) from the web and endeavor to parse the actual text that is intended to govern the given situation..[584] After doing so, if the trustee is still in reasonable doubt as to whether the receipt is entirely income or entirely principal, or whether it is to be apportioned somehow between the two accounts, trust counsel should be asked to characterize the receipt in a written opinion, which then should be placed in the trust's permanent file.

Section 409's history. Section 409 of the 1997 revision of the Uniform Principal and Income Act was substantially amended in 2008 in response to concerns expressed by the Internal Revenue Service about the eligibility of a transfer of an individual retirement account (IRA) or other qualified retirement benefit to a marital trust intended to qualify for an estate tax marital deduction.[6] The Uniform Fiduciary Income and Principal Act (2018) (UFIPA) further "revises" and "simplifies" § 409.[7]

Unproductive or underproductive property. On the other hand, unproductive property can work a hardship on the income beneficiary.[585] Thus, upon the sale of such property, an appropriate portion of the proceeds traditionally was required to be allocated to the income account,[586] unless the terms of the trust suggested that the settlor intended otherwise.[587] Likewise, the proceeds from the settlement of a note long in default were required to be appropriately apportioned between both

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[5] Section 409 of the Uniform Fiduciary Income and Principal Act (UFIPA) (2018) provides that a "separate" fund for its purposes shall *include* a private or commercial annuity, an individual retirement account, and pension, profit-sharing, stock-bonus, or stock-ownership plan.

[584]The full text is available at <https://www.uniformlaws.org/viewdocument/final-act-with-comments-91?CommunityKey=193ff839-7955-4846-8f3c-ce74ac23938d&tab=librarydocuments>;.

[6] *See* Revenue Ruling 2006-26, 2006-22 Internal Revenue Bulletin 939.

[7] UFIPA § 409 cmt.

[585]Restatement (Third) of Trusts §240 (provisional); 4 Scott & Ascher §20.6.7 (Undistributed Earnings).

[586]4 Scott & Ascher §20.8 (Unproductive or Underproductive Property).

[587]*See generally* 4 Scott & Ascher §20.8.1 (Terms of the Trust). Section 241 (provisional) of the Restatement (Third) of Trusts provides a methodology for apportioning the net proceeds from the sale of unproductive property between income and principal. The portion of the proceeds allocable to principal we will call the principal amount. The principal amount is that which when added to what that amount would earn in interest at the current rate of return on trust investments for the period the unproductive asset was in the trust equals the net proceeds. The net proceeds minus the principal amount is then what is allocated to income. For an algebraic depiction of the methodology, *see* Jesse Dukeminier & Stanley M. Johanson, Wills, Trusts, and Estates 937 (2000). On the other hand, the income account receives no portion of proceeds from the sale of unproductive property that the trustee, in the governing instrument, is directed or specifically authorized to retain. *See* Restatement (Third) of Trusts §241. *See also* Bogert §824; 4 Scott & Ascher §20.6.7 (noting that under the 1997 version of the Uniform Principal and Income Act, upon the sale of stock in a company that has distributed none of its earnings, the trustee would have the discretionary power to make an adjustment from principal to income in order to avoid any unfairness to the income beneficiary); Restatement (Second) of Trusts §241(2). *Cf.* Revised Unif. Principal & Income Act §12 (income should be determined as if principal had been invested to yield 4 percent per annum).

accounts.[588] When the proceeds were brought into the hands of the trustee, a calculation was made which attempted to award to the life tenant the income that would have been received if the unproductive property actually had produced at a current rate of return.[589] In the case of unproductive property, an income allocation was appropriate even when a particular investment has resulted in a capital loss.[590]

Unless the terms of the trust provided otherwise,[591] a trustee traditionally was under a duty to the income beneficiary to sell unproductive property within a reasonable time.[592] The rules expressed herein also applied to underproductive property.[593] Thus if property that produced income substantially less than the current rate of return on trust investments was held, the trustee, absent a contrary intention, was required to make an appropriate apportionment when the property was sold.[594]

The 1997 Uniform Principal and Income Act modifies the asset-by-asset approach of its predecessor acts when it comes to allocating to income a portion of the proceeds from the delayed sale of an unproductive or underproductive asset.[595] The 1997 Act allocates proceeds from the sale or other disposition of an asset to principal "without regard to the amount of income the asset produces during any accounting period."[596] In other words, it abolishes the apportionment rule in favor of bestowing on the trustee a discretionary power to make equitable adjustments between the income and principal accounts.[597] Now, in determining the trustee's duty to make an item of property productive of income, it is the performance of the portfolio as a whole and the trustee's practice of making principal distributions to the income beneficiary that are the primary considerations.[598] While trustees will continue to have under the Prudent Investor Rule a duty to diversify trust investments, a trustee with an equitable power of adjustment[599] should no longer feel obliged to dispose of a particular unproductive or underproductive stock position "just to plump up the income stream."[600]

Separate accounting of entrusted businesses. The 1997 version of the Uniform Principal and

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[588] A default in interest payment on a bond may be an example of a productive asset that becomes nonproductive. *See generally* 3A Scott on Trusts §§240.3, 241.3–241.3A; 4 Scott & Ascher §20.9.1 (Mortgages in Default).

[589] *See generally* 4 Scott & Ascher §20.9 (discussing the mathematics of determining what portion of the proceeds from the delayed sale of unproductive property should be allocable to income).

[590] Restatement (Third) of Trusts §241 cmt. b.

[591] 4 Scott & Ascher §20.8.1 (Terms of the Trust).

[592] 4 Scott & Ascher §20.6.7; 3A Scott on Trusts §240; Restatement (Third) of Trusts §240 (provisional).

[593] *See* 4 Scott & Ascher §20.9; 3A Scott on Trusts §240; Restatement (Third) of Trusts §240 cmt. b (provisional).

[594] The trustee, when allocating proceeds from the sale of underproductive property, must modify the general rule for allocating proceeds from the sale of unproductive property to account for the small income received as well as for the associated carrying charges of the underproductive asset. *See* 4 Scott & Ascher §20.9; 3A Scott on Trusts §241.1.

[595] 4 Scott & Ascher §20.9.

[596] *See* Unif. Principal & Income Act (1997) §413(b).

[597] 4 Scott & Ascher §20.9.

[598] Unif. Principal & Income Act (1997) §413(b) cmt., paragraph 2.

[599] *See generally* 4 Scott & Ascher §20.10 (Equitable Adjustments).

[600] 4 Scott & Ascher §20.8.

Income Act had made two important departures from past practices. Under the 1997 version, the trustee who controls and runs an entrusted business had now been granted broad discretion in allocating the profits between income and principal,[601] subject, of course, to his overarching duty to act solely in the interests *of the trust beneficiaries.*[602] The Uniform Fiduciary Income and Principal Act (2018) (UFIPA) is in accord with this departure.[8]

U.S. Savings Bonds and the like. The 1997 version's second departure from past practices related to "non-interest-bearing securities, such as U.S. savings bonds, that are payable or redeemable under a fixed schedule of appreciation."[603] The 1997 version, unless the maturity of the security was less than one year, had allocated all such appreciation in value to principal.[604] The Uniform Fiduciary Income and Principal Act (2018) (UFIPA), on the other hand, has repudiated the 1997 version's second departure by returning to the *status quo ante* as codified in §7(b) of the Uniform Principal and Income Act Revised 1962 Act. Bottom line: We are back to booking all such appreciation to income.[9]

The 1997 version endorsed the general rule that gain realized upon the maturity or other disposition of discount bonds is principal.[605] UFIPA does as well.[10]

Entrusted derivatives and options; asset-backed securities. The Uniform Principal and Income Act (1997), specifically § 414, provided that all transaction receipts and disbursements from entrusted derivatives and options were to be allocated to principal. Under the Uniform Fiduciary Income and Principal Act (2018) (UFIPA), however, this default rule has morphed into one of apportionment: 10 percent of such a receipt or disbursement shall be allocated to income and 90 percent to principal.[11] A receipt in exchange for the trustee's interest in an asset-backed security, such as a receipt incident to a liquidation or redemption of the security, would be similarly apportioned.[12]

Apportionment and the power to adjust. The Uniform Fiduciary Income and Principal Act (UFIPA) (2018), when all else fails, defaults to the power to adjust regulated in §203 of the Act and taken up in §6.2.4 of this handbook. Take, for example, the trustee who determines that a part of an entity distribution is a capital distribution but is in doubt about the exact amount. The trustee properly allocates the amount in doubt to principal and distributes that which has not been booked to principal to the current beneficiary. The innocent trustee then receives additional information to

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[601]*See generally* 4 Scott & Ascher §20.2.1 (Receipts).

[602]*See generally* §3.5.3.1(a) of this handbook (noting that the trustee of an entrusted business owes an overarching duty to the trust beneficiaries, though the trustee himself is the shareholder of record). The fiduciary duties that the trustee may simultaneously owe to the minority corporate shareholders, if any, is beyond the scope of this handbook. Whether there is a satisfactory harmonization of these potentially conflicting sets of fiduciary duties may well depend upon the quality of coordination between trust and corporate counsel. *See generally* §8.25 of this handbook (which American law schools still require Trusts).

[8] *See* UFIPA § 403.

[603]4 Scott & Ascher §20.2.1 (Receipts).

[604]*See generally* 4 Scott & Ascher §20.2.1.

[9] *See* UFIPA § 406(c).

[605]4 Scott & Ascher §20.8.2 (Discount Bonds).

[10] *See* UFIPA § 406(c).

[11] *See* UFIPA § 414.

[12] *See* UFIPA § 415.

the effect that there has been an over-distribution to the current beneficiary. The trustee is not required to recover the over-payment but may address the situation via an exercise of the power to adjust under § 203 of UFIPA.[13]

[13] *See* UFIPA § 401(i).