



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB2403

Introduced 2/16/2005, by Rep. Mark H. Beaubien, Jr.

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. Effective immediately.

LRB094 08679 LCB 38890 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;

24 (4) court costs, attorney's fees and other expenses and
25 fees on other judicial proceedings if the matter primarily
26 concerns the income interest, unless the court directs
27 otherwise;

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

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

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

4 (8) one-half of the interest on all estate,
5 inheritance, and generation-skipping transfer taxes
6 apportioned to the trust and one-half of the interest on
7 any penalties on those taxes.

8 (a-5) A reasonable allowance for depreciation on property
9 that is subject to depreciation under generally accepted
10 accounting principles may be charged by the trustee, but no
11 allowance shall be made for depreciation of that portion of any
12 real property used by a beneficiary as a residence. Such an
13 allowance shall be charged only against the income from the
14 property subject to depreciation and shall not accrue from year
15 to year.

16 (b) If charges against income are of an unusual amount, the
17 trustee may by means of reserves or other reasonable means
18 charge them over a reasonable period of time and withhold from
19 distribution sufficient sums to regularize distributions.

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

21 (1) one-half of the regular compensation of the
22 trustee, attorney, investment counsel, custodian or
23 accountant, subject to subsection (d), shall be paid out of
24 principal, provided that, if in the judgment of the
25 trustee, the charging of a part or all of that portion of
26 such compensation to principal is impracticable because of
27 the lack of sufficient principal cash and readily
28 marketable intangible personal property, or inadvisable
29 because of the nature of the assets, that part or all of
30 such compensation shall be paid out of income. The decision
31 of the trustee to pay a larger portion or all of such
32 compensation out of income shall be conclusive, and the
33 income of the trust shall not be entitled to reimbursement
34 from principal at any subsequent time or times;

35 (2) special compensation and expenses of or incurred by
36 the trustee in connection with principal, trustee's

1 compensation computed on principal as an acceptance,
2 distribution or termination fee, and, unless the court
3 directs otherwise, court costs, attorney's fees and other
4 expenses and fees in judicial proceedings primarily
5 concerning matters of principal or in any action to
6 construe the trust or protect it or the property or assure
7 the title to any trust property;

8 (3) charges not provided for in subsection (a),
9 including the cost of investing and reinvesting principal,
10 the payments on principal of an indebtedness (including a
11 mortgage amortized by periodic payments of principal), and
12 expenses for preparation of property for rental or sale;

13 (4) extraordinary repairs or expenses incurred in
14 making a capital improvement to principal, including
15 special assessments;

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

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

32 (6) any tax, including interest and penalties thereon,
33 levied upon amounts not actually received by the trustee
34 before the date the tax is payable, including extensions,
35 notwithstanding the denomination of the tax as an income
36 tax by the taxing authority, except that if, in the

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

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

22 (8) a net loss in any fiscal or calendar year from the
23 operation of a business or an agricultural or farming
24 operation, to be repaid from income as available in the
25 succeeding year or years;

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

27 (d) If, in the judgment of the trustee, the charging of all
28 or part of the compensation provided for in item (6) of
29 subsection (a) is impractical because of the lack of sufficient
30 income cash or in item (1) of subsection (c) is impractical
31 because of the lack of sufficient principal cash and readily
32 marketable intangible personal property, or inadvisable
33 because of the nature of the assets, such part or all of such
34 compensation shall be paid out of income or principal as the
35 trustee determines. The decision of the trustee to pay a larger
36 portion or all of such compensation out of income or principal

1 shall be conclusive, and neither the income nor principal of
2 the trust shall be entitled to reimbursement at any subsequent
3 time or times. The provisions of this subsection (d) shall not
4 apply to the extent that they would cause a trust otherwise
5 qualifying for a federal or State tax benefit or other benefit
6 not to so qualify for that benefit. This subsection (d) is
7 available to trusts in existence on the effective date of this
8 amendatory Act of the 94th General Assembly or created after
9 that date.

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

11 Section 99. Effective date. This Act takes effect upon
12 becoming law.