

**§ 37A-1-104.25. Determination of character of unitrust amount.**

Unless the terms of the governing instrument of the express total return unitrust specifically provide otherwise, the trustee:

- (1) Shall consider the unitrust amount as paid from net accounting income determined as if the trust were not a unitrust;
- (2) Shall then consider the unitrust amount as paid from ordinary income not allocable to net accounting income;
- (3) May, in the trustee's discretion, consider the unitrust amount as paid from net short-term gain described in section 1222(5) of the Code and then from net long-term capital gain described in section 1222(7) of the Code so long as this discretionary power is exercised consistently and in a reasonable and impartial manner, but the amount so paid from net capital gains may not be greater than the excess of the unitrust amount over the amount of distributable net income as defined in section 643(a) of the Code without regard to section 1.643(a)-3(b) of the treasury regulations; and
- (4) Shall then consider the unitrust amount as coming from the principal of the trust. (2005-244, s. 6.)