

1 A bill to be entitled
2 An act relating to the Florida Uniform Principal and
3 Income Act; amending s. 738.102, F.S.; defining the
4 term "carrying value"; amending s. 738.103, F.S.;
5 providing application; amending s. 738.104, F.S.;
6 deleting a provision authorizing a trustee to release
7 the power to adjust between principal and income if
8 the trustee desires to convert the form of certain
9 trusts; limiting the power to adjust a trust; deleting
10 a provision that provides construction and application
11 relating to the administration of trusts in this state
12 or under this state's law; amending s. 738.1041, F.S.;
13 defining the term "average fair market value" and
14 revising the term "unitrust amount"; deleting a
15 duplicative provision relating to conclusive
16 determinations of the terms of a unitrust; revising
17 provisions relating to an express total return
18 unitrust; amending s. 738.105, F.S.; substituting the
19 term "trustee" for "fiduciary" with respect to
20 judicial control of discretionary powers; amending s.
21 738.201, F.S.; revising provisions relating to the
22 determination and distribution of net income; amending
23 s. 738.202, F.S.; revising provisions relating to
24 distributions to residuary and remainder
25 beneficiaries; amending ss. 738.301, 738.302, and
26 738.303, F.S.; substituting the term "fiduciary" for
27 "trustee" to clarify that provisions apply to all
28 fiduciaries; amending s. 738.401, F.S.; substituting

29 | the term "fiduciary" for "trustee" to clarify that
30 | provisions apply to all fiduciaries; revising how
31 | distributions from entities are allocated between
32 | income and principal; amending ss. 738.402, 738.403,
33 | 738.501, 738.502, 738.503, 738.504, and 738.601, F.S.;
34 | substituting the term "fiduciary" for "trustee" to
35 | clarify that provisions apply to all fiduciaries;
36 | amending s. 738.602, F.S.; substituting the term
37 | "fiduciary" for "trustee" to clarify that provisions
38 | apply to all fiduciaries; revising provisions relating
39 | to allocations to trusts; amending s. 738.603, F.S.;
40 | substituting the term "fiduciary" for "trustee" to
41 | clarify that provisions apply to all fiduciaries;
42 | revising provisions relating to the allocation between
43 | income and principal when liquidating assets; amending
44 | ss. 738.604, 738.605, 738.606, 738.607, 738.608,
45 | 738.701, 738.702, 738.703, and 738.704, F.S.;
46 | substituting the term "fiduciary" for "trustee" to
47 | clarify that provisions apply to all fiduciaries;
48 | amending s. 738.705, F.S.; substituting the term
49 | "fiduciary" for "trustee" to clarify that provisions
50 | apply to all fiduciaries; revising the method for
51 | allocating income taxes between income and principal;
52 | amending s. 738.801, F.S.; clarifying the
53 | apportionment of expenses between tenants and
54 | remaindermen; providing an effective date.

55 |
56 | Be It Enacted by the Legislature of the State of Florida:

57
58 Section 1. Present subsections (3) through (13) of section
59 738.102, Florida Statutes, are renumbered as subsections (4)
60 through (14), respectively, and a new subsection (3) is added to
61 that section, to read:

62 738.102 Definitions.—As used in this chapter, the term:
63 (3) "Carrying value" means the fair market value at the
64 time the assets are received by the fiduciary. For the estates
65 of decedents and trusts described in s. 733.707(3), after the
66 grantor's death, the assets are considered received as of the
67 date of death. If there is a change in fiduciaries, a majority
68 of the continuing fiduciaries may elect to adjust the carrying
69 values to reflect the fair market value of the assets at the
70 beginning of their administration. If such election is made, it
71 must be reflected on the first accounting filed after the
72 election. For assets acquired during the administration of the
73 estate or trust, the carrying value is equal to the acquisition
74 costs of the asset.

75 Section 2. Subsection (3) is added to section 738.103,
76 Florida Statutes, to read:

77 738.103 Fiduciary duties; general principles.—
78 (3) Except as provided in s. 738.1041(9), this chapter
79 pertains to the administration of a trust and is applicable to
80 any trust that is administered in this state or under its law.
81 This chapter also applies to any estate that is administered in
82 this state unless the provision is limited in application to a
83 trustee, rather than a fiduciary.

84 Section 3. Subsections (5) and (11) of section 738.104,

85 Florida Statutes, are amended to read:

86 738.104 Trustee's power to adjust.—

87 (5) (a) ~~A trustee may release the entire power to adjust~~
 88 ~~conferred by subsection (1) if the trustee desires to convert an~~
 89 ~~income trust to a total return unitrust pursuant to s. 738.1041.~~

90 ~~(b)~~ A trustee may release the entire power to adjust
 91 conferred by subsection (1) or may release only the power to
 92 adjust from income to principal or the power to adjust from
 93 principal to income if the trustee is uncertain about whether
 94 possessing or exercising the power will cause a result described
 95 in paragraphs (3) (a)-(e) or paragraph (3) (g) or if the trustee
 96 determines that possessing or exercising the power will or may
 97 deprive the trust of a tax benefit or impose a tax burden not
 98 described in subsection (3).

99 ~~(b)(e)~~ A release under this subsection may be permanent or
 100 for a specified period, including a period measured by the life
 101 of an individual. ~~Notwithstanding anything contrary to this~~
 102 ~~subsection, a release of the power to adjust pursuant to~~
 103 ~~paragraph (a) shall remain effective only for as long as the~~
 104 ~~trust is administered as a unitrust pursuant to s. 738.1041.~~

105 ~~(11) This section shall be construed as pertaining to the~~
 106 ~~administration of a trust and is applicable to any trust that is~~
 107 ~~administered either in this state or under Florida law.~~

108 Section 4. Section 738.1041, Florida Statutes, is amended
 109 to read:

110 738.1041 Total return unitrust.—

111 (1) For purposes of this section, the term:

112 (a) "Average fair market value" means the average of the

113 fair market values of assets held by the trust at the beginning
114 of the current and each of the 2 preceding years, or for the
115 entire term of the trust if there are less than 2 preceding
116 years, and adjusted as follows:

117 1. If assets have been added to the trust during the years
118 used to determine the average, the amount of each addition is
119 added to all years in which such addition was not included.

120 2. If assets have been distributed from the trust during
121 the years used to determine the average, other than in
122 satisfaction of the unitrust amount, the amount of each
123 distribution is subtracted from all years in which such
124 distribution was not included.

125 (b)-(a) "Disinterested person" means a person who is not a
126 "related or subordinate party" ~~as defined in s. 672(c) of the~~
127 ~~United States Internal Revenue Code, 26 U.S.C. ss. 1 et seq., or~~
128 ~~any successor provision thereof,~~ with respect to the person then
129 acting as trustee of the trust and excludes the grantor and any
130 interested trustee.

131 (c)-(b) "Fair market value" means the fair market value of
132 the assets held by the trust as otherwise determined under this
133 chapter, reduced by all known noncontingent liabilities.

134 (d)-(e) "Income trust" means a trust, created by ~~either~~ an
135 inter vivos or a testamentary instrument, which directs or
136 permits the trustee to distribute the net income of the trust to
137 one or more persons, ~~either~~ in fixed proportions or in amounts
138 or proportions determined by the trustee and regardless of
139 whether the trust directs or permits the trustee to distribute
140 the principal of the trust to one or more such persons.

CS/HB 823

2012

141 (e) ~~(d)~~ "Interested distributee" means a person to whom
142 distributions of income or principal can currently be made and
143 who has the power to remove the existing trustee and designate
144 as successor a person who may be a "related or subordinate
145 party," ~~as defined in the Internal Revenue Code, 26 U.S.C. s.~~
146 ~~672(e)~~, with respect to such distributee.

147 (f) ~~(e)~~ "Interested trustee" means an individual trustee to
148 whom the net income or principal of the trust can currently be
149 distributed or would be distributed if the trust were ~~then~~ to
150 terminate and be distributed, any trustee whom an interested
151 distributee has the power to remove and replace with a related
152 or subordinate party ~~as defined in paragraph (d)~~, or an
153 individual trustee whose legal obligation to support a
154 beneficiary may be satisfied by distributions of income and
155 principal of the trust.

156 (g) "Related or subordinate party" has the same meaning as
157 provided in 26 U.S.C. s. 672(c) of the Internal Revenue Code, or
158 any successor provision thereof.

159 (h) ~~(f)~~ "Unitrust amount" means the amount determined by
160 multiplying the average fair market value of the assets as
161 calculated ~~defined~~ in paragraph (a) ~~(b)~~ by the percentage
162 calculated under paragraph (2) (b).

163 (2) A trustee may, without court approval, convert an
164 income trust to a total return unitrust, reconvert a total
165 return unitrust to an income trust, or change the percentage
166 used to calculate the unitrust amount or the method used to
167 determine the fair market value of the trust if:

168 (a) The trustee adopts a written statement regarding trust

169 distributions which ~~that~~ provides:

170 1. In the case of a trust being administered as an income
 171 trust, that future distributions from the trust will be unitrust
 172 amounts rather than net income, and indicates the manner in
 173 which the unitrust amount will be calculated and the method in
 174 which the fair market value of the trust will be determined.

175 2. In the case of a trust being administered as a total
 176 return unitrust, that:

177 a. Future distributions from the trust will be net income
 178 rather than unitrust amounts; or

179 b. The percentage used to calculate the unitrust amount or
 180 the method used to determine the fair market value of the trust
 181 will be changed, and indicates the manner in which the new
 182 unitrust amount will be calculated and the method in which the
 183 new fair market value of the trust will be determined;

184 (b) The trustee determines the terms of the unitrust under
 185 one of the following methods:

186 1. A disinterested trustee determines, or if there is no
 187 trustee other than an interested trustee, the interested trustee
 188 appoints a disinterested person who, in its sole discretion but
 189 acting in a fiduciary capacity, determines for the interested
 190 trustee:

191 a. The percentage to be used to calculate the unitrust
 192 amount, provided the percentage used is not greater than 5
 193 percent nor less than 3 percent;

194 b. The method to be used in determining the fair market
 195 value of the trust; and

196 c. Which assets, if any, are to be excluded in determining

CS/HB 823

2012

197 the unitrust amount; or

198 2. The interested trustee or disinterested trustee
199 administers the trust such that:

200 a. The percentage used to calculate the unitrust amount is
201 50 percent of the ~~applicable federal~~ rate as defined in the
202 Internal Revenue Code, 26 U.S.C. s. 7520, in effect for the
203 month the conversion under this section becomes effective and
204 for each January thereafter; however, if the percentage
205 calculated exceeds 5 percent, the unitrust percentage is ~~shall~~
206 ~~be~~ 5 percent and if the percentage calculated is less than 3
207 percent, the unitrust percentage is ~~shall be~~ 3 percent; and

208 b. The fair market value of the trust shall be determined
209 at least annually on an asset-by-asset basis, reasonably and in
210 good faith, in accordance with ~~the provisions of~~ s. 738.202(5),
211 except the following property shall not be included in
212 determining the value of the trust:

213 (I) Any residential property or any tangible personal
214 property that, as of the first business day of the current
215 valuation year, one or more current beneficiaries of the trust
216 have or have had the right to occupy, or have or have had the
217 right to possess or control, other than in his or her capacity
218 ~~as trustee of the trust~~, and instead the right of occupancy or
219 the right to possession and control is ~~shall be deemed to be~~ the
220 unitrust amount with respect to such property; however, the
221 unitrust amount must ~~shall~~ be adjusted to take into account
222 partial distributions from or receipt into the trust of such
223 property during the valuation year;-

224 (II) Any asset specifically given to a beneficiary and the

225 | return on investment on such property, which return on
 226 | investment shall be distributable to the ~~such~~ beneficiary; ~~or~~.

227 | (III) Any asset ~~while~~ held in a decedent's ~~testator's~~
 228 | estate;

229 | (c) The trustee sends written notice of its intention to
 230 | take such action, along with copies of the ~~such~~ written
 231 | statement regarding trust distributions and this section, and,
 232 | if applicable, the determinations of ~~either~~ the trustee or the
 233 | disinterested person to:

- 234 | 1. The grantor of the trust, if living.
- 235 | 2. All living persons who are currently receiving or
 236 | eligible to receive distributions of income from ~~of~~ the trust.
- 237 | 3. All living persons who would receive distributions of
 238 | principal of the trust if the trust were to terminate at the
 239 | time of ~~the~~ giving ~~of~~ such notice ~~(without regard to the~~
 240 | exercise of any power of appointment,~~)~~ or, if the trust does not
 241 | provide for its termination, all living persons who would
 242 | receive or be eligible to receive distributions of income or
 243 | principal of the trust if the persons identified in subparagraph
 244 | 2. were deceased.
- 245 | 4. All persons acting as advisers or protectors of the
 246 | trust.

247 |
 248 | Notice under this paragraph shall be served informally~~r~~ in the
 249 | manner provided in the Florida Rules of Civil Procedure relating
 250 | to service of pleadings subsequent to the initial pleading.
 251 | Notice may be served on a legal representative or natural
 252 | guardian of a person without ~~the~~ filing ~~of~~ any proceeding or

253 approval of any court;

254 (d) At least one person receiving notice under each of
 255 subparagraphs (c)2. and 3. is legally competent; and

256 (e) No person receiving such notice objects, by written
 257 instrument delivered to the trustee, to the proposed action of
 258 the trustee or the determinations of the disinterested person
 259 within 60 days after service of such notice. An objection ~~under~~
 260 ~~this section~~ may be executed by a legal representative or
 261 natural guardian of a person without ~~the~~ filing ~~of~~ any
 262 proceeding or approval of any court.

263 (3) If a trustee desires to convert an income trust to a
 264 total return unitrust, reconvert a total return unitrust to an
 265 income trust, or change the percentage used to calculate the
 266 unitrust amount or the method used to determine a fair market
 267 value of the trust but does not have the ability to or elects
 268 not to do it under subsection (2), the trustee may petition the
 269 circuit court for such order as the trustee deems appropriate.
 270 In that event, the court, in its own discretion or on the
 271 petition of such trustee or any person having an income or
 272 remainder interest in the trust, may appoint a disinterested
 273 person who, acting in a fiduciary capacity, shall present such
 274 information to the court as is ~~shall be~~ necessary for the court
 275 to make a determination hereunder.

276 ~~(4) All determinations made pursuant to sub-subparagraph~~
 277 ~~(2)(b)2.b. shall be conclusive if reasonable and made in good~~
 278 ~~faith. Such determination shall be conclusively presumed to have~~
 279 ~~been made reasonably and in good faith unless proven otherwise~~
 280 ~~in a proceeding commenced by or on behalf of a person interested~~

281 ~~in the trust within the time provided in s. 736.1008. The burden~~
282 ~~will be on the objecting interested party to prove that the~~
283 ~~determinations were not made reasonably and in good faith.~~

284 (4)~~(5)~~ Following the conversion of an income trust to a
285 total return unitrust, the trustee:

286 (a) Shall treat the unitrust amount as if it were net
287 income of the trust for purposes of determining the amount
288 available, from time to time, for distribution from the trust.

289 (b) May allocate to trust income for each taxable year of
290 the trust, or portion thereof:

291 1. Net short-term capital gain described in the Internal
292 Revenue Code, 26 U.S.C. s. 1222(5), for such year, or portion
293 thereof, but only to the extent that the amount so allocated
294 together with all other amounts allocated to trust income, as
295 determined under the provisions of this chapter without regard
296 to this section and s. 738.104, for such year, or portion
297 thereof, does not exceed the unitrust amount for such year, or
298 portion thereof.

299 2. Net long-term capital gain described in the Internal
300 Revenue Code, 26 U.S.C. s. 1222(7), for such year, or portion
301 thereof, but only to the extent that the amount so allocated
302 together with all other amounts, including amounts described in
303 subparagraph 1., allocated to trust income for such year, or
304 portion thereof, does not exceed the unitrust amount for such
305 year, or portion thereof.

306 (5)~~(6)~~ In administering a total return unitrust, the
307 trustee may, in its sole discretion but subject to the
308 provisions of the governing instrument, determine:

309 (a) The effective date of the conversion.

310 (b) The timing of distributions, including provisions for
 311 prorating a distribution for a short year in which a
 312 beneficiary's right to payments commences or ceases.

313 (c) Whether distributions are to be made in cash or in
 314 kind or partly in cash and partly in kind.

315 (d) If the trust is reconverted to an income trust, the
 316 effective date of such reconversion.

317 (e) Such other administrative issues as may be necessary
 318 or appropriate to carry out the purposes of this section.

319 (6)~~(7)~~ Conversion to a total return unitrust under ~~the~~
 320 ~~provisions of~~ this section does ~~shall~~ not affect any other
 321 provision of the governing instrument, if any, regarding
 322 distributions of principal.

323 (7)~~(8)~~ Any trustee or disinterested person who in good
 324 faith takes or fails to take any action under this section is
 325 ~~shall~~ not be liable to any person affected by such action or
 326 inaction, regardless of whether such person received written
 327 notice as provided in this section or ~~and regardless of whether~~
 328 such person was under a legal disability at the time of the
 329 delivery of such notice. Such person's exclusive remedy is ~~shall~~
 330 ~~be~~ to obtain, under subsection (8) ~~(9)~~, an order of the court
 331 directing the trustee to convert an income trust to a total
 332 return unitrust, to reconvert from a total return unitrust to an
 333 income trust, or to change the percentage used to calculate the
 334 unitrust amount. If a court determines that the trustee or
 335 disinterested person has not acted in good faith in taking or
 336 failing to take any action under this section, ~~the provisions of~~

337 s. 738.105(3) applies ~~apply~~.

338 ~~(8)(9)~~ If a majority in interest of ~~either~~ the income or
 339 remainder beneficiaries of an income trust has delivered to the
 340 trustee a written objection to the amount of the income
 341 distributions of the trust, and, if the trustee has failed to
 342 resolve the objection to the satisfaction of the objecting
 343 beneficiaries within 6 months after ~~from the~~ receipt of such
 344 written objection, ~~then~~ the objecting beneficiaries may petition
 345 the court in accordance with subsection (3).

346 ~~(9)(10)~~ This section pertains ~~shall be construed as~~
 347 ~~pertaining~~ to the administration of a trust and is applicable to
 348 any trust that is administered ~~either~~ in this state or under
 349 Florida law unless:

350 (a) The governing instrument reflects an intention that
 351 the current beneficiary or beneficiaries are to receive an
 352 amount other than a reasonable current return from the trust;

353 (b) The trust is a trust described in the Internal Revenue
 354 Code, 26 U.S.C. s. 170(f)(2)(B), s. 642(c)(5), s. 664(d), s.
 355 2702(a)(3), or s. 2702(b);

356 (c) One or more persons to whom the trustee could
 357 distribute income have a power of withdrawal over the trust:

358 1. That is not subject to an ascertainable standard under
 359 the Internal Revenue Code, 26 U.S.C. s. 2041 or s. 2514, and
 360 exceeds in any calendar year the amount set forth in the
 361 Internal Revenue Code, 26 U.S.C. s. 2041(b)(2) or s. 2514(e); or

362 2. A power of withdrawal over the trust that can be
 363 exercised to discharge a duty of support he or she possesses; or

364 (d) The governing instrument expressly prohibits use of

365 | this section by specific reference to the section. A provision
 366 | in the governing instrument that, "The provisions of section
 367 | 738.1041, Florida Statutes, as amended, or any corresponding
 368 | provision of future law, may ~~shall~~ not be used in the
 369 | administration of this trust," or similar words reflecting such
 370 | intent are ~~shall be~~ sufficient to preclude the use of this
 371 | section; ~~or~~

372 | ~~(c) The trust is a trust with respect to which a trustee~~
 373 | ~~currently possesses the power to adjust under s. 738.104.~~

374 | (10) ~~(11)~~ The grantor of a trust may create an express
 375 | total return unitrust that ~~which~~ will be ~~become~~ effective as
 376 | provided in the trust instrument ~~document~~ without requiring a
 377 | conversion under this section.

378 | (a) An express total return unitrust created by the
 379 | grantor of the trust is ~~shall be~~ treated as a unitrust under
 380 | ~~this section~~ only if the terms of the trust instrument ~~document~~
 381 | contain all of the following provisions:

382 | 1. ~~(a)~~ That distributions from the trust will be unitrust
 383 | amounts and the manner in which the unitrust amount will be
 384 | calculated; and the method in which the fair market value of the
 385 | ~~trust will be determined.~~

386 | 2. ~~(b)~~ The percentage to be used to calculate the unitrust
 387 | amount, provided the percentage used is not greater than 5
 388 | percent nor less than 3 percent.

389 | (b) The trust instrument may also contain provisions
 390 | specifying:

391 | 1. ~~(c)~~ The method to be used in determining the fair market
 392 | value of the trust, including whether to use an average fair

393 market value or the fair market value of the assets held by the
 394 trust at the beginning of the current year; or-

395 2.(d) Which assets, if any, are to be excluded in
 396 determining the unitrust amount.

397 (c) This section establishes the method of determining the
 398 fair market value of the trust if the trust instrument is silent
 399 as to subparagraph (b)1., and to specify those assets, if any,
 400 which are to be excluded in determining the unitrust amount if
 401 the trust instrument is silent as to subparagraph (b)2.

402 Section 5. Subsections (1), (3), and (4) of section
 403 738.105, Florida Statutes, are amended to read:

404 738.105 Judicial control of discretionary powers.-

405 (1) A court may ~~shall~~ not change a trustee's fiduciary's
 406 decision to exercise or not to exercise a discretionary power
 407 conferred by this chapter unless the court determines that the
 408 decision was an abuse of the trustee's fiduciary's discretion. A
 409 court may ~~shall~~ not determine that a trustee fiduciary abused
 410 its discretion merely because the court would have exercised the
 411 discretion in a different manner or would not have exercised the
 412 discretion.

413 (3) If a court determines that a trustee fiduciary has
 414 abused its discretion, the remedy is ~~shall be~~ to restore the
 415 income and remainder beneficiaries to the positions they would
 416 have occupied if the trustee fiduciary had not abused its
 417 discretion, in accordance with ~~according to~~ the following rules:

418 (a) To the extent the abuse of discretion has resulted in
 419 no distribution to a beneficiary or a distribution that is too
 420 small, the court shall require the trustee fiduciary to

CS/HB 823

2012

421 distribute from the trust to the beneficiary an amount the court
422 determines will restore the beneficiary, in whole or in part, to
423 his or her appropriate position.

424 (b) To the extent the abuse of discretion has resulted in
425 a distribution to a beneficiary that is too large, the court
426 shall restore the beneficiaries, the trust, or both, in whole or
427 in part, to their appropriate positions by requiring the trustee
428 ~~fiduciary~~ to withhold an amount from one or more future
429 distributions to the beneficiary who received the distribution
430 that was too large or requiring that beneficiary to return some
431 or all of the distribution to the trust.

432 (c) To the extent the court is unable, after applying
433 paragraphs (a) and (b), to restore the beneficiaries or, the
434 trust, or both, to the positions they would have occupied if the
435 trustee ~~fiduciary~~ had not abused its discretion, the court may
436 require the trustee ~~fiduciary~~ to pay an appropriate amount from
437 its own funds to one or more of the beneficiaries or the trust
438 or both.

439 (4) Upon the filing of a petition by the trustee
440 ~~fiduciary~~, the court having jurisdiction over the trust or
441 estate shall determine whether a proposed exercise or
442 nonexercise by the trustee ~~fiduciary~~ of a discretionary power
443 conferred by this chapter will result in an abuse of the
444 trustee's ~~fiduciary's~~ discretion. If the petition describes the
445 proposed exercise or nonexercise of the power and contains
446 sufficient information to inform the beneficiaries of the
447 reasons for the proposal, the facts upon which the trustee
448 ~~fiduciary~~ relies, and an explanation of how the income and

449 remainder beneficiaries will be affected by the proposed
 450 exercise or nonexercise of the power, a beneficiary who
 451 challenges the proposed exercise or nonexercise has the burden
 452 of establishing that such exercise or nonexercise will result in
 453 an abuse of discretion.

454 Section 6. Subsections (1) through (4) of section 738.201,
 455 Florida Statutes, are amended to read:

456 738.201 Determination and distribution of net income.—
 457 After a decedent dies, in the case of an estate, or after an
 458 income interest in a trust ends, the following rules apply:

459 (1) A fiduciary of an estate or of a terminating income
 460 interest shall determine the amount of net income and net
 461 principal receipts received from property specifically given to
 462 a beneficiary under ~~the rules in ss. 738.301-738.706 which apply~~
 463 ~~to trustees and the rules in~~ subsection (5). The fiduciary shall
 464 distribute the net income and net principal receipts to the
 465 beneficiary who is to receive the specific property.

466 (2) A fiduciary shall determine the remaining net income
 467 of a decedent's estate or a terminating income interest under
 468 ~~the rules in ss. 738.301-738.706 which apply to trustees~~ and by:

469 (a) Including in net income all income from property used
 470 to discharge liabilities.

471 (b) Paying from income or principal, in the fiduciary's
 472 discretion, fees of attorneys, accountants, and fiduciaries;
 473 court costs and other expenses of administration; and interest
 474 on death taxes, ~~but~~ but The fiduciary may pay those expenses from
 475 income of property passing to a trust for which the fiduciary
 476 claims an estate tax marital or charitable deduction under the

477 Internal Revenue Code or comparable law of any state only to the
 478 extent the payment of those expenses from income will not cause
 479 the reduction or loss of the deduction.

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

487 (3) If A fiduciary shall distribute to a beneficiary who
 488 receives a pecuniary ~~devise~~ amount outright is also entitled to
 489 receive ~~the~~ interest or any other amount on the devise under the
 490 terms of ~~provided by~~ the will or, the terms of the trust, the
 491 fiduciary shall distribute the interest or other amount
 492 ~~applicable law~~ from net income determined under subsection (2)
 493 or from principal to the extent net income is insufficient. ~~If a~~
 494 ~~beneficiary is to receive a pecuniary amount outright from a~~
 495 ~~trust after an income interest ends and no interest or other~~
 496 ~~amount is provided for by the terms of the trust or applicable~~
 497 ~~law, the fiduciary shall distribute the interest or other amount~~
 498 ~~to which the beneficiary would be entitled under applicable law~~
 499 ~~if the pecuniary amount were required to be paid under a will.~~

500 (4) A fiduciary shall distribute the net income remaining
 501 after distributions required under subsections (1)-(3) by
 502 ~~subsection (3)~~ in the manner described in s. 738.202 to all
 503 other beneficiaries, including a beneficiary who receives a
 504 pecuniary amount in trust, even if the beneficiary holds an

CS/HB 823

2012

505 unqualified power to withdraw assets from the trust or other
506 presently exercisable general power of appointment over the
507 trust.

508 Section 7. Section 738.202, Florida Statutes, is amended
509 to read:

510 738.202 Distribution to residuary and remainder
511 beneficiaries.—

512 (1) Each beneficiary described in s. 738.201(4) is
513 entitled to receive a portion of the net income remaining after
514 the application of s. 738.201(1)-(3), which is equal to the
515 beneficiary's fractional interest in undistributed principal
516 assets, using carrying values as of the distribution date. If a
517 fiduciary makes more than one distribution of assets to
518 beneficiaries to whom this section applies, each beneficiary,
519 including one who does not receive part of the distribution, is
520 entitled, as of each distribution date, to the net income the
521 fiduciary ~~has~~ received after the date of death or terminating
522 event or earlier distribution date but has not distributed as of
523 the current distribution date.

524 (2) In determining a beneficiary's share of net income,
525 the following applies ~~rules apply~~:

526 (a) The beneficiary is entitled to receive a portion of
527 the net income equal to the beneficiary's fractional interest in
528 the carrying value of the undistributed principal assets
529 immediately before the distribution date, excluding the amount
530 of unpaid liabilities ~~including assets that later may be sold to~~
531 ~~meet principal obligations.~~

532 (b) The beneficiary's fractional interest in the

CS/HB 823

2012

533 undistributed principal assets shall be calculated: ~~without~~
534 ~~regard to~~

535 1. At the time the interest began and adjusted for any
536 disproportionate distributions since the interest began;

537 2. By excluding any liabilities of the estate or trust
538 from the calculation;

539 3. By also excluding property specifically given to a
540 beneficiary and property required to pay pecuniary amounts not
541 in trust; and-

542 ~~4.(e) The beneficiary's fractional interest in the~~
543 ~~undistributed principal assets shall be calculated~~ On the basis
544 of the aggregate carrying value of those assets determined under
545 subsection (1) as of the distribution date without reducing the
546 value by any unpaid principal obligation.

547 (c) If a disproportionate distribution of principal is
548 made to any beneficiary, the respective fractional interests of
549 all beneficiaries in the remaining underlying assets shall be
550 recomputed by:

551 1. Adjusting the carrying value of the principal assets to
552 their fair market value before the distribution;

553 2. Reducing the fractional interest of the recipient of
554 the disproportionate distribution in the remaining principal
555 assets by the fair market value of the principal distribution;
556 and

557 3. Recomputing the fractional interests of all
558 beneficiaries in the remaining principal assets based upon the
559 now restated carrying values.

560 ~~(d) The distribution date for purposes of this section may~~

CS/HB 823

2012

561 ~~be the date as of which the fiduciary calculates the value of~~
562 ~~the assets if that date is reasonably near the date on which~~
563 ~~assets are actually distributed.~~

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

569 (4) A fiduciary may apply the provisions of ~~rules in~~ this
570 section, to the extent the fiduciary considers appropriate, to
571 net gain or loss realized after the date of death or terminating
572 event or earlier distribution date from the disposition of a
573 principal asset if this section applies to the income from the
574 asset.

575 (5) The carrying value or fair market value of trust
576 assets shall be determined on an asset-by-asset basis and are
577 ~~shall be~~ conclusive if reasonable and determined in good faith.
578 Determinations of fair market value based on appraisals
579 performed within 2 years before or after the valuation date are
580 ~~shall be~~ presumed reasonable. The values ~~value~~ of trust assets
581 are ~~shall be~~ conclusively presumed to be reasonable and
582 determined in good faith unless proven otherwise in a proceeding
583 commenced by or on behalf of a person interested in the trust
584 within the time provided in s. 736.1008.

585 (6) All distributions to a beneficiary shall be valued
586 based on their fair market value on the date of distribution.

587 Section 8. Subsection (4) of section 738.301, Florida
588 Statutes, is amended to read:

CS/HB 823

2012

589 738.301 When right to income begins and ends.—An income
590 beneficiary is entitled to net income from the date on which the
591 income interest begins.

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

596 Section 9. Subsections (1) and (2) of section 738.302,
597 Florida Statutes, are amended to read:

598 738.302 Apportionment of receipts and disbursements when
599 decedent dies or income interest begins.—

600 (1) A fiduciary ~~trustee~~ shall allocate an income receipt
601 or disbursement other than one to which s. 738.201(1) applies to
602 principal if the due date of the receipt or disbursement occurs
603 before a decedent dies in the case of an estate or before an
604 income interest begins in the case of a trust or successive
605 income interest.

606 (2) A fiduciary ~~trustee~~ shall allocate an income receipt
607 or disbursement to income if the due date of the receipt or
608 disbursement occurs on or after the date on which a decedent
609 dies or an income interest begins and the due date is a periodic
610 due date. An income receipt or disbursement shall be treated as
611 accruing from day to day if the due date of the receipt or
612 disbursement is not periodic or the receipt or disbursement has
613 no due date. The portion of the receipt or disbursement accruing
614 before the date on which a decedent dies or an income interest
615 begins shall be allocated to principal and the balance shall be
616 allocated to income.

CS/HB 823

2012

617 Section 10. Subsections (2) and (3) of section 738.303,
618 Florida Statutes, are amended to read:

619 738.303 Apportionment when income interest ends.—

620 (2) When a mandatory income interest ends, the fiduciary
621 ~~trustee~~ shall pay to a mandatory income beneficiary who survives
622 that date, or the estate of a deceased mandatory income
623 beneficiary whose death causes the interest to end, the
624 beneficiary's share of the undistributed income that is not
625 disposed of under the terms of the trust unless the beneficiary
626 has an unqualified power to revoke more than 5 percent of the
627 trust immediately before the income interest ends. In the latter
628 case, the undistributed income from the portion of the trust
629 that may be revoked shall be added to principal.

630 (3) When a fiduciary's ~~trustee's~~ obligation to pay a fixed
631 annuity or a fixed fraction of the value of the trust's assets
632 ends, the fiduciary ~~trustee~~ shall prorate the final payment if
633 and to the extent required by applicable law to accomplish a
634 purpose of the trust or its grantor relating to income, gift,
635 estate, or other tax requirements.

636 Section 11. Section 738.401, Florida Statutes, is amended
637 to read:

638 738.401 Character of receipts.—

639 (1) For purposes of this section, the term "entity" means
640 a corporation, partnership, limited liability company, regulated
641 investment company, real estate investment trust, common trust
642 fund, or any other organization in which a fiduciary ~~trustee~~ has
643 an interest other than a trust or estate to which s. 738.402
644 applies, a business or activity to which s. 738.403 applies, or

645 an asset-backed security to which s. 738.608 applies.

646 (2) Except as otherwise provided in this section, a
 647 fiduciary ~~trustee~~ shall allocate to income money received from
 648 an entity.

649 (3) Except as otherwise provided in this section, a
 650 fiduciary ~~trustee~~ shall allocate the following receipts from an
 651 entity to principal:

652 (a) Property other than money.

653 (b) Money received in one distribution or a series of
 654 related distributions in exchange for part or all of a trust's
 655 or estate's interest in the entity.

656 (c) Money received in total or partial liquidation of the
 657 entity.

658 (d) Money received from an entity that is a regulated
 659 investment company or a real estate investment trust if the
 660 money received ~~distributed~~ represents short-term or long-term
 661 capital gain realized within the entity.

662 (e) Money received from an entity listed on a public stock
 663 exchange during any year of the trust or estate which exceeds 10
 664 percent of the fair market value of the trust's or estate's
 665 interest in the entity on the first day of that year. The amount
 666 to be allocated to principal must be reduced to the extent that
 667 the cumulative distributions from the entity to the trust or
 668 estate allocated to income does not exceed a cumulative annual
 669 return of 3 percent of the fair market value of the interest in
 670 the entity at the beginning of each year or portion of a year
 671 for the number of years or portion of years in the period that
 672 the interest in the entity has been held by the trust or estate.

673 If a trustee has exercised a power to adjust under s. 738.104
674 during any period the interest in the entity has been held by
675 the trust, the trustee, in determining the total income
676 distributions from that entity, must take into account the
677 extent to which the exercise of that power resulted in income to
678 the trust from that entity for that period. If the income of the
679 trust for any period has been computed under s. 738.1041, the
680 trustee, in determining the total income distributions from that
681 entity for that period, must take into account the portion of
682 the unitrust amount paid as a result of the ownership of the
683 trust's interest in the entity for that period.

684 (4) If a fiduciary ~~trustee~~ elects, or continues an
685 election made by its predecessor, to reinvest dividends in
686 shares of stock of a distributing corporation or fund, whether
687 evidenced by new certificates or entries on the books of the
688 distributing entity, the new shares ~~shall~~ retain their character
689 as income.

690 (5) Money is received in partial liquidation:

691 (a) To the extent the entity, at or near the time of a
692 distribution, indicates that such money is a distribution in
693 partial liquidation; or

694 (b) To the extent ~~If~~ the total amount of money and
695 property received in a distribution or series of related
696 distributions from an entity that is not listed on a public
697 stock exchange exceeds ~~is greater than~~ 20 percent of the trust's
698 or estate's pro rata share of the entity's gross assets, as
699 shown by the entity's year-end financial statements immediately
700 preceding the initial receipt.

CS/HB 823

2012

701
702 This subsection does not apply to an entity to which subsection
703 (7) applies.

704 (6) Money may not ~~is not received in partial liquidation,~~
705 ~~nor may money~~ be taken into account in determining any excess
706 under paragraph (5) (b), to the extent that the cumulative
707 distributions from the entity to the trust or the estate
708 allocated to income do not exceed the greater of: such money
709 ~~does not exceed the amount of income tax a trustee or~~
710 ~~beneficiary must pay on taxable income of the entity that~~
711 ~~distributes the money.~~

712 (a) A cumulative annual return of 3 percent of the
713 entity's carrying value computed at the beginning of each period
714 for the number of years or portion of years that the entity was
715 held by the fiduciary. If a trustee has exercised a power to
716 adjust under s. 738.104 during any period the interest in the
717 entity has been held by the trust, the trustee, in determining
718 the total income distributions from that entity, must take into
719 account the extent to which exercise of the power resulted in
720 income to the trust from that entity for that period. If the
721 income of a trust for any period has been computed pursuant to
722 s. 738.1041, the trustee, in determining the total income
723 distributions from the entity for that period, must take into
724 account the portion of the unitrust amount paid as a result of
725 the ownership of the trust's interest in the entity for that
726 period; or

727 (b) If the entity is treated as a partnership, subchapter
728 S corporation, or a disregarded entity pursuant to the Internal

729 Revenue Code of 1986, as amended, the amount of income tax
 730 attributable to the trust's or estate's ownership share of the
 731 entity, based on its pro rata share of the taxable income of the
 732 entity that distributes the money, for the number of years or
 733 portion of years that the interest in the entity was held by the
 734 fiduciary, calculated as if all of that tax was incurred by the
 735 fiduciary.

736 (7) The following applies ~~special rules shall apply~~ to
 737 money ~~moneys~~ or property received by a private trustee as a
 738 distribution from an investment entity ~~entities~~ described in
 739 this subsection:

740 (a) The trustee shall first treat as income of the trust
 741 all of the money or property received from the investment entity
 742 in the current year which would be considered income under this
 743 chapter if the trustee had directly held the trust's pro rata
 744 share of the assets of the investment entity. For this purpose,
 745 all distributions received in the current year must be
 746 aggregated.

747 (b) The trustee shall next treat as income of the trust
 748 any additional money or property received in the current year
 749 which would have been considered income in the prior 2 years
 750 under paragraph (a) if additional money or property had been
 751 received from the investment entity in any of those prior 2
 752 years. The amount to be treated as income shall be reduced by
 753 any distributions of money or property made by the investment
 754 entity to the trust during the current and prior 2 years which
 755 were treated as income under this paragraph.

756 (c) The remainder of the distribution, if any, is treated

757 as principal.

758 (d) As used in this subsection, the term:

759 1. "Investment entity" means an entity, other than a
 760 business activity conducted by the trustee described in s.
 761 738.403 or an entity that is listed on a public stock exchange,
 762 which is treated as a partnership, subchapter S corporation, or
 763 disregarded entity pursuant to the Internal Revenue Code of
 764 1986, as amended, and which normally derives 50 percent or more
 765 of its annual cumulative net income from interest, dividends,
 766 annuities, royalties, rental activity, or other passive
 767 investments, including income from the sale or exchange of such
 768 passive investments.

769 2. "Private trustee" means a trustee who is a natural
 770 person, but only if the trustee is unable to use the power to
 771 adjust between income and principal with respect to receipts
 772 from entities described in this subsection pursuant to s.
 773 738.104. A bank, trust company, or other commercial trustee is
 774 not considered a private trustee.

775 (8) This section shall be applied before ss. 738.705 and
 776 738.706 and does not modify or change any of the provisions of
 777 those sections.

778 ~~(a) Moneys or property received from a targeted entity~~
 779 ~~that is not an investment entity which do not exceed the trust's~~
 780 ~~pro rata share of the undistributed cumulative net income of the~~
 781 ~~targeted entity during the time an ownership interest in the~~
 782 ~~targeted entity was held by the trust shall be allocated to~~
 783 ~~income. The balance of moneys or property received from a~~
 784 ~~targeted entity shall be allocated to principal.~~

785 ~~(b) If trust assets include any interest in an investment~~
786 ~~entity, the designated amount of moneys or property received~~
787 ~~from the investment entity shall be treated by the trustee in~~
788 ~~the same manner as if the trustee had directly held the trust's~~
789 ~~pro rata share of the assets of the investment entity~~
790 ~~attributable to the distribution of such designated amount.~~
791 ~~Thereafter, distributions shall be treated as principal.~~

792 ~~(c) For purposes of this subsection, the following~~
793 ~~definitions shall apply:~~

794 1. ~~"Cumulative net income" means the targeted entity's net~~
795 ~~income as determined using the method of accounting regularly~~
796 ~~used by the targeted entity in preparing its financial~~
797 ~~statements, or if no financial statements are prepared, the net~~
798 ~~book income computed for federal income tax purposes, for every~~
799 ~~year an ownership interest in the entity is held by the trust.~~
800 ~~The trust's pro rata share shall be the cumulative net income~~
801 ~~multiplied by the percentage ownership of the trust.~~

802 2. ~~"Designated amount" means moneys or property received~~
803 ~~from an investment entity during any year that is equal to the~~
804 ~~amount of the distribution that does not exceed the greater of:~~

805 a. ~~The amount of income of the investment entity for the~~
806 ~~current year, as reported to the trustee by the investment~~
807 ~~entity for federal income tax purposes; or~~

808 b. ~~The amount of income of the investment entity for the~~
809 ~~current year and the prior 2 years, as reported to the trustee~~
810 ~~by the investment entity for federal income tax purposes, less~~
811 ~~any distributions of moneys or property made by the investment~~
812 ~~entity to the trustee during the prior 2 years.~~

813 ~~3. "Investment entity" means a targeted entity that~~
814 ~~normally derives 50 percent or more of its annual cumulative net~~
815 ~~income from interest, dividends, annuities, royalties, rental~~
816 ~~activity, or other passive investments, including income from~~
817 ~~the sale or exchange of such passive investments.~~

818 ~~4. "Private trustee" means a trustee who is an individual,~~
819 ~~but only if the trustee is unable to utilize the power to adjust~~
820 ~~between income and principal with respect to receipts from~~
821 ~~entities described in this subsection pursuant to s. 738.104. A~~
822 ~~bank, trust company, or other commercial trustee shall not be~~
823 ~~considered to be a private trustee.~~

824 ~~5. "Targeted entity" means any entity that is treated as a~~
825 ~~partnership, subchapter S corporation, or disregarded entity~~
826 ~~pursuant to the Internal Revenue Code of 1986, as amended, other~~
827 ~~than an entity described in s. 738.403.~~

828 ~~6. "Undistributed cumulative net income" means the trust's~~
829 ~~pro rata share of cumulative net income, less all prior~~
830 ~~distributions from the targeted entity to the trust that have~~
831 ~~been allocated to income.~~

832 ~~(d) This subsection shall not be construed to modify or~~
833 ~~change any of the provisions of ss. 738.705 and 738.706 relating~~
834 ~~to income taxes.~~

835 ~~(8) A trustee may rely upon a statement made by an entity~~
836 ~~about the source or character of a distribution, about the~~
837 ~~amount of profits of a targeted entity, or about the nature and~~
838 ~~value of assets of an investment entity if the statement is made~~
839 ~~at or near the time of distribution by the entity's board of~~
840 ~~directors or other person or group of persons authorized to~~

CS/HB 823

2012

841 ~~exercise powers to pay money or transfer property comparable to~~
842 ~~those of a corporation's board of directors.~~

843 Section 12. Section 738.402, Florida Statutes, is amended
844 to read:

845 738.402 Distribution from trust or estate.—A fiduciary
846 ~~trustee~~ shall allocate to income an amount received as a
847 distribution of income from a trust or an estate in which the
848 trust has an interest other than a purchased interest and ~~shall~~
849 allocate to principal an amount received as a distribution of
850 principal from such a trust or estate. If a fiduciary trustee
851 purchases an interest in a trust that is an investment entity,
852 or a decedent or donor transfers an interest in such a trust to
853 a fiduciary trustee, s. 738.401 or s. 738.608 applies to a
854 receipt from the trust.

855 Section 13. Section 738.403, Florida Statutes, is amended
856 to read:

857 738.403 Business and other activities conducted by
858 fiduciary trustee.—

859 (1) If a fiduciary trustee who conducts a business or
860 other activity determines that it is in the best interest of all
861 the beneficiaries to account separately for the business or
862 activity instead of accounting for the business or activity as
863 part of the trust's general accounting records, the fiduciary
864 ~~trustee~~ may maintain separate accounting records for the
865 transactions of the ~~such~~ business or other activity, whether or
866 not the assets of such business or activity are segregated from
867 other trust assets.

868 (2) A fiduciary trustee who accounts separately for a

869 business or other activity may determine the extent to which the
 870 net cash receipts of the ~~such~~ business or activity must be
 871 retained for working capital, the acquisition or replacement of
 872 fixed assets, and other reasonably foreseeable needs of the
 873 business or activity, and the extent to which the remaining net
 874 cash receipts are accounted for as principal or income in the
 875 trust's general accounting records. If a fiduciary ~~trustee~~ sells
 876 assets of the business or other activity, other than in the
 877 ordinary course of the business or activity, the fiduciary must
 878 ~~trustee shall~~ account for the net amount received as principal
 879 in the trust's general accounting records to the extent the
 880 fiduciary ~~trustee~~ determines that the amount received is no
 881 longer required in the conduct of the business.

882 (3) Activities for which a fiduciary ~~trustee~~ may maintain
 883 separate accounting records include:

- 884 (a) Retail, manufacturing, service, and other traditional
 885 business activities.
- 886 (b) Farming.
- 887 (c) Raising and selling livestock and other animals.
- 888 (d) Management of rental properties.
- 889 (e) Extraction of minerals and other natural resources.
- 890 (f) Timber operations.
- 891 (g) Activities to which s. 738.607 ~~738.608~~ applies.

892 Section 14. Section 738.501, Florida Statutes, is amended
 893 to read:

894 738.501 Principal receipts.—A fiduciary ~~trustee~~ shall
 895 allocate to principal:

- 896 (1) To the extent not allocated to income under this

897 chapter, assets received from a transferor during the
 898 transferor's lifetime, a decedent's estate, a trust with a
 899 terminating income interest, or a payor under a contract naming
 900 the trust or its fiduciary ~~trustee~~ as beneficiary.

901 (2) Money or other property received from the sale,
 902 exchange, liquidation, or change in form of a principal asset,
 903 including realized profit, subject to this section.

904 (3) Amounts recovered from third parties to reimburse the
 905 trust because of disbursements described in s. 738.702(1)(g) or
 906 for other reasons to the extent not based on the loss of income.

907 (4) Proceeds of property taken by eminent domain; however
 908 ~~but~~ a separate award made for the loss of income with respect to
 909 an accounting period during which a current income beneficiary
 910 had a mandatory income interest is income.

911 (5) Net income received in an accounting period during
 912 which there is no beneficiary to whom a fiduciary ~~trustee~~ may or
 913 shall distribute income.

914 (6) Other receipts as provided in ss. 738.601-738.608.

915 Section 15. Section 738.502, Florida Statutes, is amended
 916 to read:

917 738.502 Rental property.—~~If To the extent~~ a fiduciary
 918 ~~trustee~~ accounts for receipts from rental property pursuant to
 919 this section, the fiduciary ~~trustee~~ shall allocate to income an
 920 amount received as rent of real or personal property, including
 921 an amount received for cancellation or renewal of a lease. An
 922 amount received as a refundable deposit, including a security
 923 deposit or a deposit that is to be applied as rent for future
 924 periods, must ~~shall~~ be added to principal and held subject to

925 the terms of the lease and is not available for distribution to
926 a beneficiary until the fiduciary's ~~trustee's~~ contractual
927 obligations have been satisfied with respect to that amount.

928 Section 16. Subsections (1), (2), and (3) of section
929 738.503, Florida Statutes, are amended to read:

930 738.503 Obligation to pay money.—

931 (1) An amount received as interest, whether determined at
932 a fixed, variable, or floating rate, on an obligation to pay
933 money to the fiduciary ~~trustee~~, including an amount received as
934 consideration for prepaying principal, shall be allocated to
935 income without any provision for amortization of premium.

936 (2) Except as otherwise provided herein, a fiduciary
937 ~~trustee~~ shall allocate to principal an amount received from the
938 sale, redemption, or other disposition of an obligation to pay
939 money to the fiduciary ~~trustee~~.

940 (3) The increment in value of a bond or other obligation
941 for the payment of money bearing no stated interest but payable
942 at a future time in excess of the price at which it was issued
943 or purchased, if purchased after issuance, is distributable as
944 income. If the increment in value accrues and becomes payable
945 pursuant to a fixed schedule of appreciation, it may be
946 distributed to the beneficiary who was the income beneficiary at
947 the ~~this~~ time of increment from the first principal cash
948 available or, if none is available, when the increment is
949 realized by sale, redemption, or other disposition. If ~~When~~
950 unrealized increment is distributed as income but out of
951 principal, the principal must ~~shall~~ be reimbursed for the
952 increment when realized. If, in the reasonable judgment of the

953 fiduciary trustee, exercised in good faith, the ultimate payment
 954 of the bond principal is in doubt, the fiduciary trustee may
 955 withhold the payment of incremental interest to the income
 956 beneficiary.

957 Section 17. Subsections (1) and (2) of section 738.504,
 958 Florida Statutes, are amended to read:

959 738.504 Insurance policies and similar contracts.—

960 (1) Except as otherwise provided in subsection (2), a
 961 fiduciary trustee shall allocate to principal the proceeds of a
 962 life insurance policy or other contract in which the trust or
 963 its fiduciary trustee is named as beneficiary, including a
 964 contract that insures the trust or its fiduciary trustee against
 965 loss for damage to, destruction of, or loss of title to a trust
 966 asset. The fiduciary trustee shall allocate dividends on an
 967 insurance policy to income if the premiums on the policy are
 968 paid from income and to principal if the premiums are paid from
 969 principal.

970 (2) A fiduciary trustee shall allocate to income the
 971 proceeds of a contract that insures the fiduciary trustee
 972 against loss of occupancy or other use by an income beneficiary,
 973 loss of income, or, subject to s. 738.403, loss of profits from
 974 a business.

975 Section 18. Section 738.601, Florida Statutes, is amended
 976 to read:

977 738.601 Insubstantial allocations not required.—If a
 978 fiduciary trustee determines that an allocation between
 979 principal and income required by s. 738.602, s. 738.603, s.
 980 738.604, s. 738.605, or s. 738.608 is insubstantial, the

CS/HB 823

2012

981 fiduciary ~~trustee~~ may allocate the entire amount to principal
 982 unless one of the circumstances described in s. 738.104(3)
 983 applies to the allocation. This power may be exercised by a
 984 cofiduciary under ~~co~~~~trustee~~ in the circumstances described in s.
 985 738.104(4) and may be released for the reasons and in the manner
 986 described in s. 738.104(5). An allocation is presumed to be
 987 insubstantial if:

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

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

995 Section 19. Section 738.602, Florida Statutes, is amended
 996 to read:

997 738.602 Payments from deferred compensation plans,
 998 annuities, and retirement plans or accounts.—

999 (1) As used in ~~For purposes of~~ this section, the term:

1000 (a) "Fund" means a private or commercial annuity, an
 1001 individual retirement account, an individual retirement annuity,
 1002 a deferred compensation plan, a pension plan, a profit-sharing
 1003 plan, a stock-bonus plan, an employee stock-ownership plan, or
 1004 another similar arrangement in which federal income tax is
 1005 deferred.

1006 (b) "Income of the fund" means income that is determined
 1007 according to subsection (2) or subsection (3).

1008 (c) "Nonseparate account" means a fund for which the value

1009 of the participant's or account owner's right to receive
 1010 benefits can be determined only by the occurrence of a date or
 1011 event as defined in the instrument governing the fund.

1012 (d) "Payment" means a distribution from a fund that a
 1013 fiduciary ~~trustee~~ may receive over a fixed number of years or
 1014 during the life of one or more individuals because of services
 1015 rendered or property transferred to the payor in exchange for
 1016 future payments. The term includes a distribution made in money
 1017 or property from the payor's general assets or from a fund
 1018 created by the payor or payee.

1019 (e) "Separate account" means a fund holding assets
 1020 exclusively for the benefit of a participant or account owner
 1021 and:

1022 1. The value of such assets or the value of the separate
 1023 account is ascertainable at any time; or

1024 2. The administrator of the fund maintains records that
 1025 show receipts and disbursements associated with such assets.

1026 (2) (a) For a fund that is a separate account, income of
 1027 the fund shall be determined:

1028 1. As if the fund were a trust subject to the provisions
 1029 of ss. 738.401-738.706; or

1030 2. As a unitrust amount calculated by multiplying the fair
 1031 market value of the fund as of the first day of the first
 1032 accounting period and, thereafter, as of the last day of the
 1033 accounting period that immediately precedes the accounting
 1034 period during which a payment is received by the percentage
 1035 determined in accordance with s. 738.1041(2)(b)2.a. The
 1036 fiduciary ~~trustee~~ shall determine such percentage as of the

1037 first month that the fiduciary's ~~trustee's~~ election to treat the
 1038 income of the fund as a unitrust amount becomes effective. For
 1039 purposes of this subparagraph, "fair market value" means the
 1040 fair market value of the assets held in the fund as of the
 1041 applicable valuation date determined as provided in this
 1042 subparagraph. The fiduciary ~~trustee~~ is not liable for good faith
 1043 reliance upon any valuation supplied by the person or persons in
 1044 possession of the fund. If the fiduciary ~~trustee~~ makes or
 1045 terminates an election under this subparagraph, the fiduciary
 1046 ~~trustee~~ shall make such disclosure in a trust disclosure
 1047 document that satisfies the requirements of s. 736.1008(4) (a).

1048 (b) The fiduciary may ~~trustee shall have discretion to~~
 1049 elect the method of determining the income of the fund pursuant
 1050 to this subsection and may change the method of determining
 1051 income of the fund for any future accounting period.

1052 (3) For a fund that is a nonseparate account, income of
 1053 the fund is a unitrust amount determined by calculating the
 1054 present value of the right to receive the remaining payments
 1055 under 26 U.S.C. s. 7520 of the Internal Revenue Code as of the
 1056 first day of the accounting period and multiplying it by the
 1057 percentage determined in accordance with s. 738.1041(2) (b)2.a.
 1058 The fiduciary ~~trustee~~ shall determine the unitrust amount as of
 1059 the first month that the fiduciary's ~~trustee's~~ election to treat
 1060 the income of the fund as a unitrust amount becomes effective.

1061 (4) Except for those trusts described in subsection (5),
 1062 the fiduciary ~~trustee~~ shall allocate to income the lesser of the
 1063 payment received from a fund or the income determined under
 1064 subsection (2) or subsection (3). Any remaining amount of the

1065 payment shall be allocated to principal ~~a payment from a fund as~~
 1066 ~~follows:~~

1067 ~~(a) That portion of the payment the payor characterizes as~~
 1068 ~~income shall be allocated to income, and any remaining portion~~
 1069 ~~of the payment shall be allocated to principal.~~

1070 ~~(b) To the extent that the payor does not characterize any~~
 1071 ~~portion of a payment as income or principal and the trustee can~~
 1072 ~~ascertain the income of the fund by the fund's account~~
 1073 ~~statements or any other reasonable source, the trustee shall~~
 1074 ~~allocate to income the lesser of the income of the fund or the~~
 1075 ~~entire payment and shall allocate to principal any remaining~~
 1076 ~~portion of the payment.~~

1077 ~~(c) If the trustee, acting reasonably and in good faith,~~
 1078 ~~determines that neither paragraph (a) nor paragraph (b) applies~~
 1079 ~~and all or part of the payment is required to be made, the~~
 1080 ~~trustee shall allocate to income 10 percent of the portion of~~
 1081 ~~the payment that is required to be made during the accounting~~
 1082 ~~period and shall allocate the balance to principal. If no part~~
 1083 ~~of a payment is required to be made or the payment received is~~
 1084 ~~the entire amount to which the trustee is entitled, the trustee~~
 1085 ~~shall allocate the entire payment to principal. For purposes of~~
 1086 ~~this paragraph, a payment is not "required to be made" to the~~
 1087 ~~extent the payment is made because the trustee exercises a right~~
 1088 ~~of withdrawal.~~

1089 (5) For a trust that ~~which~~, in order to qualify for the
 1090 estate or gift tax marital deduction under the Internal Revenue
 1091 Code or comparable law of any state, entitles the spouse to all
 1092 of the income of the trust, and the terms of the trust are

CS/HB 823

2012

1093 | silent as to the time and frequency for distribution of the
 1094 | income of the fund, ~~then:~~

1095 | (a) For a fund that is a separate account, unless the
 1096 | spouse directs the fiduciary ~~trustee~~ to leave the income of the
 1097 | fund in the fund, the fiduciary ~~trustee~~ shall withdraw and pay
 1098 | to the spouse, at least ~~no less frequently than~~ annually:

1099 | 1. All of the income of the fund determined in accordance
 1100 | with subparagraph (2) (a)1.; or

1101 | 2. The income of the fund as a unitrust amount determined
 1102 | in accordance with subparagraph (2) (a)2.

1103 | (b) For a fund that is a nonseparate account, the
 1104 | fiduciary ~~trustee~~ shall withdraw and pay to the spouse, at least
 1105 | ~~no less frequently than~~ annually, the income of the fund as a
 1106 | unitrust amount determined in accordance with subsection (3).

1107 | (6) This section does not apply to payments to which s.
 1108 | 738.603 applies.

1109 | Section 20. Section 738.603, Florida Statutes, is amended
 1110 | to read:

1111 | 738.603 Liquidating asset.—

1112 | (1) For purposes of this section, the term "liquidating
 1113 | asset" means an asset the value of which will diminish or
 1114 | terminate because the asset is expected to produce receipts for
 1115 | a period of limited duration. The term includes a leasehold,
 1116 | patent, copyright, royalty right, and right to receive payments
 1117 | for ~~during a period of~~ more than 1 year under an arrangement
 1118 | that does not provide for the payment of interest on the unpaid
 1119 | balance. The term does not include a payment subject to s.
 1120 | 738.602, resources subject to s. 738.604, timber subject to s.

CS/HB 823

2012

1121 738.605, an activity subject to s. 738.607, an asset subject to
 1122 s. 738.608, or any asset for which the fiduciary trustee
 1123 establishes a reserve for depreciation under s. 738.703.

1124 (2) A fiduciary trustee shall allocate to income 5 ~~10~~
 1125 percent of the receipts from the carrying value of a liquidating
 1126 asset and the balance to principal. Amounts allocated to
 1127 principal shall reduce the carrying value of the liquidating
 1128 asset, but not below zero. Amounts received in excess of the
 1129 remaining carrying value must be allocated to principal.

1130 Section 21. Subsections (1) and (4) of section 738.604,
 1131 Florida Statutes, are amended to read:

1132 738.604 Minerals, water, and other natural resources.—

1133 (1) ~~If To the extent~~ a fiduciary trustee accounts for
 1134 receipts from an interest in minerals or other natural resources
 1135 pursuant to this section, the fiduciary trustee shall allocate
 1136 such receipts as follows:

1137 (a) If received as nominal delay rental or nominal annual
 1138 rent on a lease, a receipt shall be allocated to income.

1139 (b) If received from a production payment, a receipt shall
 1140 be allocated to income if and to the extent the agreement
 1141 creating the production payment provides a factor for interest
 1142 or its equivalent. The balance shall be allocated to principal.

1143 (c) If an amount received as a royalty, shut-in-well
 1144 payment, take-or-pay payment, bonus, or delay rental is more
 1145 than nominal, 90 percent shall be allocated to principal and the
 1146 balance to income.

1147 (d) If an amount is received from a working interest or
 1148 any other interest not provided for in paragraph (a), paragraph

1149 (b), or paragraph (c), 90 percent of the net amount received
 1150 shall be allocated to principal and the balance to income.

1151 (4) If a trust or estate owns an interest in minerals,
 1152 water, or other natural resources on January 1, 2003, the
 1153 fiduciary ~~trustee~~ may allocate receipts from the interest as
 1154 provided in this chapter or in the manner used by the fiduciary
 1155 ~~trustee~~ before January 1, 2003. If the trust or estate acquires
 1156 an interest in minerals, water, or other natural resources after
 1157 January 1, 2003, the fiduciary ~~trustee~~ shall allocate receipts
 1158 from the interest as provided in this chapter.

1159 Section 22. Subsections (1), (2), and (4) of section
 1160 738.605, Florida Statutes, are amended to read:

1161 738.605 Timber.—

1162 (1) If ~~To the extent~~ a fiduciary ~~trustee~~ accounts for
 1163 receipts from the sale of timber and related products pursuant
 1164 to this section, the fiduciary ~~trustee~~ shall allocate such ~~the~~
 1165 net receipts as follows:

1166 (a) To income to the extent the amount of timber removed
 1167 from the land does not exceed the rate of growth of the timber
 1168 during the accounting periods in which a beneficiary has a
 1169 mandatory income interest;

1170 (b) To principal to the extent the amount of timber
 1171 removed from the land exceeds the rate of growth of the timber
 1172 or the net receipts are from the sale of standing timber;

1173 (c) To or between income and principal if the net receipts
 1174 are from the lease of timberland or from a contract to cut
 1175 timber from land owned by a trust or estate by determining the
 1176 amount of timber removed from the land under the lease or

1177 contract and applying the rules in paragraphs (a) and (b); or
 1178 (d) To principal to the extent advance payments, bonuses,
 1179 and other payments are not allocated pursuant to paragraph (a),
 1180 paragraph (b), or paragraph (c).

1181 (2) In determining net receipts to be allocated pursuant
 1182 to subsection (1), a fiduciary ~~trustee~~ shall deduct and transfer
 1183 to principal a reasonable amount for depletion.

1184 (4) If a trust or estate owns an interest in timberland on
 1185 January 1, 2003, the fiduciary ~~trustee~~ may allocate net receipts
 1186 from the sale of timber and related products as provided in this
 1187 chapter or in the manner used by the fiduciary ~~trustee~~ before
 1188 January 1, 2003. If the trust or estate acquires an interest in
 1189 timberland after January 1, 2003, the fiduciary ~~trustee~~ shall
 1190 allocate net receipts from the sale of timber and related
 1191 products as provided in this chapter.

1192 Section 23. Subsection (1) of section 738.606, Florida
 1193 Statutes, is amended to read:

1194 738.606 Property not productive of income.—

1195 (1) If a marital deduction under the Internal Revenue Code
 1196 or comparable law of any state is allowed for all or part of a
 1197 trust the income of which must ~~is required to~~ be distributed to
 1198 the grantor's spouse and the assets of which consist
 1199 substantially of property that does not provide the spouse with
 1200 sufficient income from or use of the trust assets, and if the
 1201 amounts the trustee transfers from principal to income under s.
 1202 738.104 and distributes to the spouse from principal pursuant to
 1203 the terms of the trust are insufficient to provide the spouse
 1204 with the beneficial enjoyment required to obtain the marital

CS/HB 823

2012

1205 deduction, the spouse may require the trustee to make property
 1206 productive of income, convert property within a reasonable time,
 1207 or exercise the power conferred by ss. 738.104 and 738.1041. The
 1208 trustee may decide which action or combination of actions to
 1209 take.

1210 Section 24. Subsections (2) and (3) of section 738.607,
 1211 Florida Statutes, are amended to read:

1212 738.607 Derivatives and options.—

1213 (2) To the extent a fiduciary ~~trustee~~ does not account
 1214 under s. 738.403 for transactions in derivatives, the fiduciary
 1215 ~~trustee~~ shall allocate to principal receipts from and
 1216 disbursements made in connection with those transactions.

1217 (3) If a fiduciary ~~trustee~~ grants an option to buy
 1218 property from the trust or estate whether or not the trust or
 1219 estate owns the property when the option is granted, grants an
 1220 option that permits another person to sell property to the trust
 1221 or estate, or acquires an option to buy property for the trust
 1222 or estate or an option to sell an asset owned by the trust or
 1223 estate, and the fiduciary ~~trustee~~ or other owner of the asset is
 1224 required to deliver the asset if the option is exercised, an
 1225 amount received for granting the option shall be allocated to
 1226 principal. An amount paid to acquire the option shall be paid
 1227 from principal. A gain or loss realized upon the exercise of an
 1228 option, including an option granted to a grantor of the trust or
 1229 estate for services rendered, shall be allocated to principal.

1230 Section 25. Subsections (2) and (3) of section 738.608,
 1231 Florida Statutes, are amended to read:

1232 738.608 Asset-backed securities.—

CS/HB 823

2012

1233 (2) If a trust or estate receives a payment from interest
 1234 or other current return and from other proceeds of the
 1235 collateral financial assets, the fiduciary ~~trustee~~ shall
 1236 allocate to income the portion of the payment which the payor
 1237 identifies as being from interest or other current return and
 1238 ~~shall~~ allocate the balance of the payment to principal.

1239 (3) If a trust or estate receives one or more payments in
 1240 exchange for the trust's or estate's entire interest in an
 1241 asset-backed security during a single accounting period, the
 1242 fiduciary ~~trustee~~ shall allocate the payments to principal. If a
 1243 payment is one of a series of payments that will result in the
 1244 liquidation of the trust's or estate's interest in the security
 1245 over more than a single accounting period, the fiduciary ~~trustee~~
 1246 shall allocate 10 percent of the payment to income and the
 1247 balance to principal.

1248 Section 26. Section 738.701, Florida Statutes, is amended
 1249 to read:

1250 738.701 Disbursements from income.—A fiduciary ~~trustee~~
 1251 shall make the following disbursements from income to the extent
 1252 they are not disbursements to which s. 738.201(2) ~~(a) or (c)~~
 1253 applies:

1254 (1) One-half of the regular compensation of the fiduciary
 1255 ~~trustee~~ and of any person providing investment advisory or
 1256 custodial services to the fiduciary ~~trustee~~.

1257 (2) One-half of all expenses for accountings, judicial
 1258 proceedings, or other matters that involve both the income and
 1259 remainder interests.

1260 (3) All of the other ordinary expenses incurred in

1261 connection with the administration, management, or preservation
 1262 of trust property and the distribution of income, including
 1263 interest, ordinary repairs, regularly recurring taxes assessed
 1264 against principal, and expenses of a proceeding or other matter
 1265 that concerns primarily the income interest.

1266 (4) Recurring premiums on insurance covering the loss of a
 1267 principal asset or the loss of income from or use of the asset.

1268 Section 27. Subsection (1) of section 738.702, Florida
 1269 Statutes, is amended to read:

1270 738.702 Disbursements from principal.—

1271 (1) A fiduciary trustee shall make the following
 1272 disbursements from principal:

1273 (a) The remaining one-half of the disbursements described
 1274 in s. 738.701(1) and (2).

1275 (b) All of the trustee's compensation calculated on
 1276 principal as a fee for acceptance, distribution, or termination
 1277 and disbursements made to prepare property for sale.

1278 (c) Payments on the principal of a trust debt.

1279 (d) Expenses of a proceeding that concerns primarily
 1280 principal, including a proceeding to construe the trust or will,
 1281 or to protect the trust, estate, or its property.

1282 (e) Premiums paid on a policy of insurance not described
 1283 in s. 738.701(4) of which the trust or estate is the owner and
 1284 beneficiary.

1285 (f) Estate, inheritance, and other transfer taxes,
 1286 including penalties, apportioned to the trust.

1287 (g) Disbursements related to environmental matters,
 1288 including reclamation, assessing environmental conditions,

1289 remedying and removing environmental contamination, monitoring
 1290 remedial activities and the release of substances, preventing
 1291 future releases of substances, collecting amounts from persons
 1292 liable or potentially liable for the costs of such activities,
 1293 penalties imposed under environmental laws or regulations and
 1294 other payments made to comply with those laws or regulations,
 1295 statutory or common law claims by third parties, and defending
 1296 claims based on environmental matters.

1297 (h) Payments representing extraordinary repairs or
 1298 expenses incurred in making a capital improvement to principal,
 1299 including special assessments; however, a fiduciary ~~trustee~~ may
 1300 establish an allowance for depreciation out of income to the
 1301 extent permitted by s. 738.703.

1302 Section 28. Subsection (2) of section 738.703, Florida
 1303 Statutes, is amended to read:

1304 738.703 Transfers from income to principal for
 1305 depreciation.—

1306 (2) A fiduciary ~~trustee~~ may transfer to principal a
 1307 reasonable amount of the net cash receipts from a principal
 1308 asset that is subject to depreciation but may not transfer any
 1309 amount for depreciation:

1310 (a) Of that portion of real property used or available for
 1311 use by a beneficiary as a residence or of tangible personal
 1312 property held or made available for the personal use or
 1313 enjoyment of a beneficiary;

1314 (b) During the administration of a decedent's estate; or

1315 (c) Under this section if the fiduciary ~~trustee~~ is
 1316 accounting under s. 738.403 for the business or activity in

1317 which the asset is used.

1318 Section 29. Subsections (1), (2), and (3) of section
 1319 738.704, Florida Statutes, are amended to read:

1320 738.704 Transfers from income to reimburse principal.—

1321 (1) If a fiduciary ~~trustee~~ makes or expects to make a
 1322 principal disbursement described in this section, the fiduciary
 1323 ~~trustee~~ may transfer an appropriate amount from income to
 1324 principal in one or more accounting periods to reimburse
 1325 principal or to provide a reserve for future principal
 1326 disbursements.

1327 (2) Principal disbursements to which subsection (1)
 1328 applies include the following, but only to the extent the
 1329 fiduciary ~~trustee~~ has not been and does not expect to be
 1330 reimbursed by a third party:

1331 (a) An amount chargeable to income but paid from principal
 1332 because the amount is unusually large.

1333 (b) Disbursements made to prepare property for rental,
 1334 including tenant allowances, leasehold improvements, and
 1335 broker's commissions.

1336 (c) Disbursements described in s. 738.702(1)(g).

1337 (3) If the asset the ownership of which gives rise to the
 1338 disbursements becomes subject to a successive income interest
 1339 after an income interest ends, a fiduciary ~~trustee~~ may continue
 1340 to transfer amounts from income to principal as provided in
 1341 subsection (1).

1342 Section 30. Section 738.705, Florida Statutes, is amended
 1343 to read:

1344 738.705 Income taxes.—

1345 (1) A tax required to be paid by a fiduciary ~~trustee~~ based
 1346 on receipts allocated to income shall be paid from income.

1347 (2) A tax required to be paid by a fiduciary ~~trustee~~ based
 1348 on receipts allocated to principal shall be paid from principal,
 1349 even if the tax is called an income tax by the taxing authority.

1350 (3) A tax required to be paid by a fiduciary ~~trustee~~ on
 1351 the trust's or estate's share of an entity's taxable income
 1352 shall be paid proportionately:

1353 (a) From income to the extent receipts from the entity are
 1354 allocated to income; ~~and~~

1355 (b) From principal to the extent:

1356 ~~1.~~ receipts from the entity are allocated to principal;
 1357 and

1358 ~~2. The trust's share of the entity's taxable income~~
 1359 ~~exceeds the total receipts described in paragraph (a) and~~
 1360 ~~subparagraph 1.~~

1361 (c) From principal to the extent that the income taxes
 1362 payable by the trust or estate exceed the total distributions
 1363 from the entity.

1364 (4) After applying subsections (1)-(3), the fiduciary
 1365 shall adjust income or principal receipts to the extent that the
 1366 trust's or estate's income taxes are reduced, but not
 1367 eliminated, because the trust or estate receives a deduction for
 1368 payments made to a beneficiary. The amount distributable to that
 1369 beneficiary as income as a result of this adjustment shall be
 1370 equal to the cash received by the trust or estate, reduced, but
 1371 not below zero, by the entity's taxable income allocable to the
 1372 trust or estate multiplied by the trust's or estate's income tax

1373 rate. The reduced amount shall be divided by the difference
 1374 between 1 and the trust's or estate's income tax rate in order
 1375 to determine the amount distributable to that beneficiary as
 1376 income before giving effect to other receipts or disbursements
 1377 allocable to that beneficiary's interest. ~~For purposes of this~~
 1378 ~~section, receipts allocated to principal or income shall be~~
 1379 ~~reduced by the amount distributed to a beneficiary from~~
 1380 ~~principal or income for which the trust receives a deduction in~~
 1381 ~~calculating the tax.~~

1382 Section 31. Section 738.801, Florida Statutes, is amended
 1383 to read:

1384 (Substantial rewording of section. See
 1385 s. 738.801, F.S., for present text.)

1386 738.801 Apportionment of expenses; improvements.—

1387 (1) For purposes of this section, the term:

1388 (a) "Remainderman" means the holder of the remainder
 1389 interests after the expiration of a tenant's estate in property.

1390 (b) "Tenant" means the holder of an estate for life or
 1391 term of years in real property or personal property, or both.

1392 (2) If a trust has not been created, expenses shall be
 1393 apportioned between the tenant and remainderman as follows:

1394 (a) The following expenses are allocated to and shall be
 1395 paid by the tenant:

1396 1. All ordinary expenses incurred in connection with the
 1397 administration, management, or preservation of the property,
 1398 including interest, ordinary repairs, regularly recurring taxes
 1399 assessed against the property, and expenses of a proceeding or
 1400 other matter that concerns primarily the tenant's estate or use

1401 of the property.

1402 2. Recurring premiums on insurance covering the loss of
 1403 the property or the loss of income from or use of the property.

1404 3. Any of the expenses described in subparagraph (b)3.
 1405 which are attributable to the use of the property by the tenant.

1406 (b) The following expenses are allocated to and shall be
 1407 paid by the remainderman:

1408 1. Payments on the principal of a debt secured by the
 1409 property, except to the extent the debt is for expenses
 1410 allocated to the tenant.

1411 2. Expenses of a proceeding or other matter that concerns
 1412 primarily the title to the property, other than title to the
 1413 tenant's estate.

1414 3. Except as provided in subparagraph (a)3., expenses
 1415 related to environmental matters, including reclamation,
 1416 assessing environmental conditions, remedying and removing
 1417 environmental contamination, monitoring remedial activities and
 1418 the release of substances, preventing future releases of
 1419 substances, collecting amounts from persons liable or
 1420 potentially liable for the costs of such activities, penalties
 1421 imposed under environmental laws or regulations and other
 1422 payments made to comply with those laws or regulations,
 1423 statutory or common law claims by third parties, and defending
 1424 claims based on environmental matters.

1425 4. Extraordinary repairs.

1426 (c) If the tenant or remainderman incurred an expense for
 1427 the benefit of his or her own estate without consent or
 1428 agreement of the other, he or she must pay such expense in full.

CS/HB 823

2012

1429 (d) Except as provided in paragraph (c), the cost of, or
1430 special taxes or assessments for, an improvement representing an
1431 addition of value to property forming part of the principal
1432 shall be paid by the tenant if the improvement is not reasonably
1433 expected to outlast the estate of the tenant. In all other
1434 cases, only a part shall be paid by the tenant while the
1435 remainder shall be paid by the remainderman. The part payable by
1436 the tenant is ascertainable by taking that percentage of the
1437 total that is found by dividing the present value of the
1438 tenant's estate by the present value of an estate of the same
1439 form as that of the tenant, except that it is limited for a
1440 period corresponding to the reasonably expected duration of the
1441 improvement. The computation of present values of the estates
1442 shall be made by using the rate defined in 26 U.S.C. s. 7520,
1443 then in effect and, in the case of an estate for life, the
1444 official mortality tables then in effect under 26 U.S.C. s.
1445 7520. Other evidence of duration or expectancy may not be
1446 considered.

1447 (3) This section does not apply to the extent it is
1448 inconsistent with the instrument creating the estates, the
1449 agreement of the parties, or the specific direction of the
1450 taxing or other statutes.

1451 (4) The common law applicable to tenants and remaindermen
1452 supplements this section, except as modified by this section or
1453 other laws.

1454 Section 32. This act shall take effect January 1, 2013.