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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/07/2012	.	
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The Committee on Banking and Insurance (Negron) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 701.04, Florida Statutes, is amended to
read:

701.04 Cancellation of mortgages, liens, and judgments.—

(1) Within 14 days after receipt of the written request of
a mortgagor, a record title owner of the property, a fiduciary
or trustee lawfully acting on behalf of a record title owner, or
any other person lawfully authorized to act on behalf of a
mortgagor or record title owner of the property, the holder of a



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13 mortgage shall deliver or cause the servicer of the mortgage to
14 deliver to the person making the request ~~mortgagor~~ at a place
15 designated in the written request an estoppel letter setting
16 forth the unpaid balance of the loan secured by the mortgage.7

17 (a) If the mortgagor, or any person lawfully authorized to
18 act on behalf of the mortgagor, makes the request, the estoppel
19 letter must include an itemization of the ~~including~~ principal,
20 interest, and any other charges properly due under or secured by
21 the mortgage and interest on a per-day basis for the unpaid
22 balance.

23 (b) If a record title owner of the property, or any person
24 lawfully authorized to act on behalf of a mortgagor or record
25 title owner of the property, makes the request:

26 1. The request must include a copy of the instrument
27 showing title in the property or lawful authorization.

28 2. The estoppel letter may include the itemization of
29 information required under paragraph (a), but must at a minimum
30 include the total unpaid balance due under or secured by the
31 mortgage on a per-day basis.

32 3. The mortgagee or servicer of the mortgagee acting in
33 accordance with a request in substantial compliance with this
34 paragraph is expressly discharged from any obligation or
35 liability to any person on account of the release of the
36 requested information, other than the obligation to comply with
37 the terms of the estoppel letter.

38 (c) A mortgage holder may provide the financial information
39 required under this subsection to a person authorized under this
40 subsection to request the financial information notwithstanding
41 s. 655.059.



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42 (2) Whenever the amount of money due on any mortgage, lien,
43 or judgment has been ~~shall be~~ fully paid to the person or party
44 entitled to the payment thereof, the mortgagee, creditor, or
45 assignee, or the attorney of record in the case of a judgment,
46 to whom the ~~such~~ payment was ~~shall have been~~ made, shall execute
47 in writing an instrument acknowledging satisfaction of the ~~said~~
48 mortgage, lien, or judgment and have the instrument ~~same~~
49 acknowledged, or proven, and duly entered ~~of record in the book~~
50 ~~provided by law for such purposes~~ in the official records of the
51 proper county. Within 60 days after ~~of~~ the date of receipt of
52 the full payment of the mortgage, lien, or judgment, the person
53 required to acknowledge satisfaction of the mortgage, lien, or
54 judgment shall send or cause to be sent the recorded
55 satisfaction to the person who has made the full payment. In the
56 case of a civil action arising out of ~~the provisions of~~ this
57 section, the prevailing party is ~~shall be~~ entitled to attorney
58 ~~attorney's~~ fees and costs.

59 (3) ~~(2)~~ Whenever a writ of execution has been issued,
60 docketed, and indexed with a sheriff and the judgment upon which
61 it was issued has been fully paid, it is ~~shall be~~ the
62 responsibility of the party receiving payment to request, in
63 writing, addressed to the sheriff, return of the writ of
64 execution as fully satisfied.

65 Section 2. Present subsections (3) through (13) of section
66 738.102, Florida Statutes, are renumbered as subsections (4)
67 through (14), respectively, and a new subsection (3) is added to
68 that section, to read:

69 738.102 Definitions.—As used in this chapter, the term:

70 (3) "Carrying value" means the fair market value at the



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71 time the assets are received by the fiduciary. For the estates
72 of decedents and trusts described in s. 733.707(3), after the
73 grantor's death, the assets are considered received as of the
74 date of death. If there is a change in fiduciaries, a majority
75 of the continuing fiduciaries may elect to adjust the carrying
76 values to reflect the fair market value of the assets at the
77 beginning of their administration. If such election is made, it
78 must be reflected on the first accounting filed after the
79 election. For assets acquired during the administration of the
80 estate or trust, the carrying value is equal to the acquisition
81 costs of the asset.

82 Section 3. Subsection (3) is added to section 738.103,
83 Florida Statutes, to read:

84 738.103 Fiduciary duties; general principles.—

85 (3) Except as provided in s. 738.1041(9), this chapter
86 pertains to the administration of a trust and is applicable to
87 any trust that is administered in this state or under its law.
88 This chapter also applies to any estate that is administered in
89 this state unless the provision is limited in application to a
90 trustee, rather than a fiduciary.

91 Section 4. Subsections (5) and (11) of section 738.104,
92 Florida Statutes, are amended to read:

93 738.104 Trustee's power to adjust.—

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

97 ~~(b)~~ A trustee may release the entire power to adjust
98 conferred by subsection (1) or may release only the power to
99 adjust from income to principal or the power to adjust from



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100 principal to income if the trustee is uncertain about whether
101 possessing or exercising the power will cause a result described
102 in paragraphs (3) (a)-(e) or paragraph (3) (g) or if the trustee
103 determines that possessing or exercising the power will or may
104 deprive the trust of a tax benefit or impose a tax burden not
105 described in subsection (3).

106 ~~(e) A release under this subsection may be permanent or for~~
107 ~~a specified period, including a period measured by the life of~~
108 ~~an individual. Notwithstanding anything contrary to this~~
109 ~~subsection, a release of the power to adjust pursuant to~~
110 ~~paragraph (a) shall remain effective only for as long as the~~
111 ~~trust is administered as a unitrust pursuant to s. 738.1041.~~

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

115 Section 5. Section 738.1041, Florida Statutes, is amended
116 to read:

117 738.1041 Total return unitrust.-

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

119 (a) "Average fair market value" means the average of the
120 fair market values of assets held by the trust at the beginning
121 of the current and each of the 2 preceding years, or for the
122 entire term of the trust if there are less than 2 preceding
123 years, and adjusted as follows:

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

127 2. If assets have been distributed from the trust during
128 the years used to determine the average, other than in



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129 satisfaction of the unitrust amount, the amount of each
130 distribution is subtracted from all years in which such
131 distribution was not included.

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

138 (c)~~(b)~~ "Fair market value" means the fair market value of
139 the assets held by the trust as otherwise determined under this
140 chapter, reduced by all known noncontingent liabilities.

141 (d)~~(e)~~ "Income trust" means a trust, created by ~~either~~ an
142 inter vivos or a testamentary instrument, which directs or
143 permits the trustee to distribute the net income of the trust to
144 one or more persons, ~~either~~ in fixed proportions or in amounts
145 or proportions determined by the trustee and regardless of
146 whether the trust directs or permits the trustee to distribute
147 the principal of the trust to one or more such persons.

148 (e)~~(d)~~ "Interested distributee" means a person to whom
149 distributions of income or principal can currently be made and
150 who has the power to remove the existing trustee and designate
151 as successor a person who may be a "related or subordinate
152 party," ~~as defined in the Internal Revenue Code, 26 U.S.C. s.~~
153 ~~672(e),~~ with respect to such distributee.

154 (f)~~(e)~~ "Interested trustee" means an individual trustee to
155 whom the net income or principal of the trust can currently be
156 distributed or would be distributed if the trust were then to
157 terminate and be distributed, any trustee whom an interested



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158 distributee has the power to remove and replace with a related
159 or subordinate party ~~as defined in paragraph (d)~~, or an
160 individual trustee whose legal obligation to support a
161 beneficiary may be satisfied by distributions of income and
162 principal of the trust.

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

166 (h) ~~(f)~~ "Unitrust amount" means the amount determined by
167 multiplying the average fair market value of the assets as
168 calculated ~~defined~~ in paragraph (a) ~~(b)~~ by the percentage
169 calculated under paragraph (2) (b).

170 (2) A trustee may, without court approval, convert an
171 income trust to a total return unitrust, reconvert a total
172 return unitrust to an income trust, or change the percentage
173 used to calculate the unitrust amount or the method used to
174 determine the fair market value of the trust if:

175 (a) The trustee adopts a written statement regarding trust
176 distributions which ~~that~~ provides:

177 1. In the case of a trust being administered as an income
178 trust, that future distributions from the trust will be unitrust
179 amounts rather than net income, and indicates the manner in
180 which the unitrust amount will be calculated and the method in
181 which the fair market value of the trust will be determined.

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

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

186 b. The percentage used to calculate the unitrust amount or



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187 the method used to determine the fair market value of the trust
188 will be changed, and indicates the manner in which the new
189 unitrust amount will be calculated and the method in which the
190 new fair market value of the trust will be determined;

191 (b) The trustee determines the terms of the unitrust under
192 one of the following methods:

193 1. A disinterested trustee determines, or if there is no
194 trustee other than an interested trustee, the interested trustee
195 appoints a disinterested person who, in its sole discretion but
196 acting in a fiduciary capacity, determines for the interested
197 trustee:

198 a. The percentage to be used to calculate the unitrust
199 amount, provided the percentage used is not greater than 5
200 percent nor less than 3 percent;

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

203 c. Which assets, if any, are to be excluded in determining
204 the unitrust amount; or

205 2. The interested trustee or disinterested trustee
206 administers the trust such that:

207 a. The percentage used to calculate the unitrust amount is
208 50 percent of the ~~applicable federal~~ rate as defined in the
209 Internal Revenue Code, 26 U.S.C. s. 7520, in effect for the
210 month the conversion under this section becomes effective and
211 for each January thereafter; however, if the percentage
212 calculated exceeds 5 percent, the unitrust percentage is ~~shall~~
213 ~~be~~ 5 percent and if the percentage calculated is less than 3
214 percent, the unitrust percentage is ~~shall be~~ 3 percent; and

215 b. The fair market value of the trust shall be determined



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216 at least annually on an asset-by-asset basis, reasonably and in
217 good faith, in accordance with ~~the provisions of~~ s. 738.202(5),
218 except the following property shall not be included in
219 determining the value of the trust:

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

231 (II) Any asset specifically given to a beneficiary and the
232 return on investment on such property, which return on
233 investment shall be distributable to ~~the such~~ the beneficiary; ~~or-~~

234 (III) Any asset while held in a decedent's ~~testator's~~
235 estate;

236 (c) The trustee sends written notice of its intention to
237 take such action, along with copies of the ~~such~~ written
238 statement regarding trust distributions and this section, and,
239 if applicable, the determinations of ~~either~~ the trustee or the
240 disinterested person to:

- 241 1. The grantor of the trust, if living.
- 242 2. All living persons who are currently receiving or
243 eligible to receive distributions of income from ~~of~~ the trust.
- 244 3. All living persons who would receive distributions of



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245 principal of the trust if the trust were to terminate at the
246 time of ~~the~~ giving ~~of~~ such notice ~~(without regard to the~~
247 exercise of any power of appointment,~~)~~ or, if the trust does not
248 provide for its termination, all living persons who would
249 receive or be eligible to receive distributions of income or
250 principal of the trust if the persons identified in subparagraph
251 2. were deceased.

252 4. All persons acting as advisers or protectors of the
253 trust.

254
255 Notice under this paragraph shall be served informally~~,~~ in the
256 manner provided in the Florida Rules of Civil Procedure relating
257 to service of pleadings subsequent to the initial pleading.
258 Notice may be served on a legal representative or natural
259 guardian of a person without ~~the~~ filing ~~of~~ any proceeding or
260 approval of any court;

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

263 (e) No person receiving such notice objects, by written
264 instrument delivered to the trustee, to the proposed action of
265 the trustee or the determinations of the disinterested person
266 within 60 days after service of such notice. An objection ~~under~~
267 ~~this section~~ may be executed by a legal representative or
268 natural guardian of a person without ~~the~~ filing ~~of~~ any
269 proceeding or approval of any court.

270 (3) If a trustee desires to convert an income trust to a
271 total return unitrust, reconvert a total return unitrust to an
272 income trust, or change the percentage used to calculate the
273 unitrust amount or the method used to determine a fair market



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274 value of the trust but does not have the ability to or elects
275 not to do it under subsection (2), the trustee may petition the
276 circuit court for such order as the trustee deems appropriate.
277 In that event, the court, in its own discretion or on the
278 petition of such trustee or any person having an income or
279 remainder interest in the trust, may appoint a disinterested
280 person who, acting in a fiduciary capacity, shall present such
281 information to the court as is ~~shall be~~ necessary for the court
282 to make a determination hereunder.

283 ~~(4) All determinations made pursuant to sub-subparagraph~~
284 ~~(2)(b)2.b. shall be conclusive if reasonable and made in good~~
285 ~~faith. Such determination shall be conclusively presumed to have~~
286 ~~been made reasonably and in good faith unless proven otherwise~~
287 ~~in a proceeding commenced by or on behalf of a person interested~~
288 ~~in the trust within the time provided in s. 736.1008. The burden~~
289 ~~will be on the objecting interested party to prove that the~~
290 ~~determinations were not made reasonably and in good faith.~~

291 ~~(4)(5)~~ Following the conversion of an income trust to a
292 total return unitrust, the trustee:

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

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

298 1. Net short-term capital gain described in the Internal
299 Revenue Code, 26 U.S.C. s. 1222(5), for such year, or portion
300 thereof, but only to the extent that the amount so allocated
301 together with all other amounts allocated to trust income, as
302 determined under the provisions of this chapter without regard



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303 to this section and s. 738.104, for such year, or portion
304 thereof, does not exceed the unitrust amount for such year, or
305 portion thereof.

306 2. Net long-term capital gain described in the Internal
307 Revenue Code, 26 U.S.C. s. 1222(7), for such year, or portion
308 thereof, but only to the extent that the amount so allocated
309 together with all other amounts, including amounts described in
310 subparagraph 1., allocated to trust income for such year, or
311 portion thereof, does not exceed the unitrust amount for such
312 year, or portion thereof.

313 (5)~~(6)~~ In administering a total return unitrust, the
314 trustee may, in its sole discretion but subject to the
315 provisions of the governing instrument, determine:

316 (a) The effective date of the conversion.

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

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

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

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

326 (6)~~(7)~~ Conversion to a total return unitrust under ~~the~~
327 ~~provisions of~~ this section does ~~shall~~ not affect any other
328 provision of the governing instrument, if any, regarding
329 distributions of principal.

330 (7)~~(8)~~ Any trustee or disinterested person who in good
331 faith takes or fails to take any action under this section is



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332 ~~shall~~ not ~~be~~ liable to any person affected by such action or
333 inaction, regardless of whether such person received written
334 notice as provided in this section or ~~and regardless of whether~~
335 such person was under a legal disability at the time of the
336 delivery of such notice. Such person's exclusive remedy is ~~shall~~
337 ~~be~~ to obtain, under subsection (8) ~~(9)~~, an order of the court
338 directing the trustee to convert an income trust to a total
339 return unitrust, to reconvert from a total return unitrust to an
340 income trust, or to change the percentage used to calculate the
341 unitrust amount. If a court determines that the trustee or
342 disinterested person has not acted in good faith in taking or
343 failing to take any action under this section, ~~the provisions of~~
344 s. 738.105(3) applies ~~apply~~.

345 (8) ~~(9)~~ If a majority in interest of ~~either~~ the income or
346 remainder beneficiaries of an income trust has delivered to the
347 trustee a written objection to the amount of the income
348 distributions of the trust, and, if the trustee has failed to
349 resolve the objection to the satisfaction of the objecting
350 beneficiaries within 6 months after ~~from the~~ receipt of such
351 written objection, ~~then~~ the objecting beneficiaries may petition
352 the court in accordance with subsection (3).

353 (9) ~~(10)~~ This section pertains ~~shall be construed as~~
354 ~~pertaining~~ to the administration of a trust and is applicable to
355 any trust that is administered ~~either~~ in this state or under
356 Florida law unless:

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

360 (b) The trust is a trust described in the Internal Revenue



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361 Code, 26 U.S.C. s. 170(f)(2)(B), s. 642(c)(5), s. 664(d), s.
362 2702(a)(3), or s. 2702(b);

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

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

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

371 (d) The governing instrument expressly prohibits use of
372 this section by specific reference to the section. A provision
373 in the governing instrument that, "The provisions of section
374 738.1041, Florida Statutes, as amended, or any corresponding
375 provision of future law, may shall not be used in the
376 administration of this trust," or similar words reflecting such
377 intent are shall be sufficient to preclude the use of this
378 section; ~~or~~

379 ~~(e) The trust is a trust with respect to which a trustee~~
380 ~~currently possesses the power to adjust under s. 738.104.~~

381 ~~(10)(11)~~ The grantor of a trust may create an express total
382 return unitrust that ~~which~~ will be ~~become~~ effective as provided
383 in the trust instrument ~~document~~ without requiring a conversion
384 under this section.

385 (a) An express total return unitrust created by the grantor
386 of the trust is ~~shall be~~ treated as a unitrust ~~under this~~
387 ~~section~~ only if the terms of the trust instrument ~~document~~
388 contain all of the following provisions:

389 1.(a) That distributions from the trust will be unitrust



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390 amounts and the manner in which the unitrust amount will be
391 calculated; and ~~the method in which the fair market value of the~~
392 ~~trust will be determined.~~

393 2.(b) The percentage to be used to calculate the unitrust
394 amount, provided the percentage used is not greater than 5
395 percent nor less than 3 percent.

396 (b) The trust instrument may also contain provisions
397 specifying:

398 1.(e) The method to be used in determining the fair market
399 value of the trust, including whether to use an average fair
400 market value or the fair market value of the assets held by the
401 trust at the beginning of the current year; or-

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

404 (c) This section establishes the method of determining the
405 fair market value of the trust if the trust instrument is silent
406 as to subparagraph (b)1., and to specify those assets, if any,
407 which are to be excluded in determining the unitrust amount if
408 the trust instrument is silent as to subparagraph (b)2.

409 Section 6. Subsections (1), (3), and (4) of section
410 738.105, Florida Statutes, are amended to read:

411 738.105 Judicial control of discretionary powers.-

412 (1) A court may ~~shall~~ not change a trustee's fiduciary's
413 decision to exercise or not to exercise a discretionary power
414 conferred by this chapter unless the court determines that the
415 decision was an abuse of the trustee's fiduciary's discretion. A
416 court may ~~shall~~ not determine that a trustee fiduciary abused
417 its discretion merely because the court would have exercised the
418 discretion in a different manner or would not have exercised the



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419 discretion.

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

425 (a) To the extent the abuse of discretion has resulted in
426 no distribution to a beneficiary or a distribution that is too
427 small, the court shall require the trustee ~~fiduciary~~ to
428 distribute from the trust to the beneficiary an amount the court
429 determines will restore the beneficiary, in whole or in part, to
430 his or her appropriate position.

431 (b) To the extent the abuse of discretion has resulted in a
432 distribution to a beneficiary that is too large, the court shall
433 restore the beneficiaries, the trust, or both, in whole or in
434 part, to their appropriate positions by requiring the trustee
435 ~~fiduciary~~ to withhold an amount from one or more future
436 distributions to the beneficiary who received the distribution
437 that was too large or requiring that beneficiary to return some
438 or all of the distribution to the trust.

439 (c) To the extent the court is unable, after applying
440 paragraphs (a) and (b), to restore the beneficiaries or, the
441 trust, or both, to the positions they would have occupied if the
442 trustee ~~fiduciary~~ had not abused its discretion, the court may
443 require the trustee ~~fiduciary~~ to pay an appropriate amount from
444 its own funds to one or more of the beneficiaries or the trust
445 or both.

446 (4) Upon the filing of a petition by the trustee ~~fiduciary~~,
447 the court having jurisdiction over the trust ~~or estate~~ shall



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448 determine whether a proposed exercise or nonexercise by the
449 trustee ~~fiduciary~~ of a discretionary power conferred by this
450 chapter will result in an abuse of the trustee's ~~fiduciary's~~
451 discretion. If the petition describes the proposed exercise or
452 nonexercise of the power and contains sufficient information to
453 inform the beneficiaries of the reasons for the proposal, the
454 facts upon which the trustee ~~fiduciary~~ relies, and an
455 explanation of how the income and remainder beneficiaries will
456 be affected by the proposed exercise or nonexercise of the
457 power, a beneficiary who challenges the proposed exercise or
458 nonexercise has the burden of establishing that such exercise or
459 nonexercise will result in an abuse of discretion.

460 Section 7. Subsections (1) through (4) of section 738.201,
461 Florida Statutes, are amended to read:

462 738.201 Determination and distribution of net income.—After
463 a decedent dies, in the case of an estate, or after an income
464 interest in a trust ends, the following rules apply:

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

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

475 (a) Including in net income all income from property used
476 to discharge liabilities.



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477 (b) Paying from income or principal, in the fiduciary's
478 discretion, fees of attorneys, accountants, and fiduciaries;
479 court costs and other expenses of administration; and interest
480 on death taxes. ~~but~~ The fiduciary may pay those expenses from
481 income of property passing to a trust for which the fiduciary
482 claims an estate tax marital or charitable deduction under the
483 Internal Revenue Code or comparable law of any state only to the
484 extent the payment of those expenses from income will not cause
485 the reduction or loss of the deduction.

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

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



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506 (4) A fiduciary shall distribute the net income remaining
507 after distributions required under subsections (1)-(3) ~~by~~
508 ~~subsection (3)~~ in the manner described in s. 738.202 to all
509 other beneficiaries, including a beneficiary who receives a
510 pecuniary amount in trust, even if the beneficiary holds an
511 unqualified power to withdraw assets from the trust or other
512 presently exercisable general power of appointment over the
513 trust.

514 Section 8. Section 738.202, Florida Statutes, is amended to
515 read:

516 738.202 Distribution to residuary and remainder
517 beneficiaries.—

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

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

532 (a) The beneficiary is entitled to receive a portion of the
533 net income equal to the beneficiary's fractional interest in the
534 carrying value of the undistributed principal assets immediately



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535 before the distribution date, excluding the amount of unpaid
536 liabilities including assets that later may be sold to meet
537 principal obligations.

538 (b) The beneficiary's fractional interest in the
539 undistributed principal assets shall be calculated: without
540 regard to

541 1. At the time the interest began and adjusted for any
542 disproportionate distributions since the interest began;

543 2. By excluding any liabilities of the estate or trust from
544 the calculation;

545 3. By also excluding property specifically given to a
546 beneficiary and property required to pay pecuniary amounts not
547 in trust; and-

548 4. (c) The beneficiary's fractional interest in the
549 undistributed principal assets shall be calculated On the basis
550 of the aggregate carrying value of those assets determined under
551 subsection (1) as of the distribution date without reducing the
552 value by any unpaid principal obligation.

553 (c) If a disproportionate distribution of principal is made
554 to any beneficiary, the respective fractional interests of all
555 beneficiaries in the remaining underlying assets shall be
556 recomputed by:

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

559 2. Reducing the fractional interest of the recipient of the
560 disproportionate distribution in the remaining principal assets
561 by the fair market value of the principal distribution; and

562 3. Recomputing the fractional interests of all
563 beneficiaries in the remaining principal assets based upon the



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564 now restated carrying values.

565 ~~(d) The distribution date for purposes of this section may~~
566 ~~be the date as of which the fiduciary calculates the value of~~
567 ~~the assets if that date is reasonably near the date on which~~
568 ~~assets are actually distributed.~~

569 (3) If a fiduciary does not distribute all of the collected
570 but undistributed net income to each person as of a distribution
571 date, the fiduciary shall maintain appropriate records showing
572 the interest of each beneficiary in that net income.

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

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

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

591 Section 9. Subsection (4) of section 738.301, Florida
592 Statutes, is amended to read:



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593 738.301 When right to income begins and ends.—An income
594 beneficiary is entitled to net income from the date on which the
595 income interest begins.

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

600 Section 10. Subsections (1) and (2) of section 738.302,
601 Florida Statutes, are amended to read:

602 738.302 Apportionment of receipts and disbursements when
603 decedent dies or income interest begins.—

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

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

621 Section 11. Subsections (2) and (3) of section 738.303,



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622 Florida Statutes, are amended to read:

623 738.303 Apportionment when income interest ends.—

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

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

640 Section 12. Section 738.401, Florida Statutes, is amended
641 to read:

642 738.401 Character of receipts.—

643 (1) For purposes of this section, the term "entity" means a
644 corporation, partnership, limited liability company, regulated
645 investment company, real estate investment trust, common trust
646 fund, or any other organization in which a fiduciary ~~trustee~~ has
647 an interest other than a trust or estate to which s. 738.402
648 applies, a business or activity to which s. 738.403 applies, or
649 an asset-backed security to which s. 738.608 applies.

650 (2) Except as otherwise provided in this section, a



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651 fiduciary trustee shall allocate to income money received from
652 an entity.

653 (3) Except as otherwise provided in this section, a
654 fiduciary trustee shall allocate the following receipts from an
655 entity to principal:

656 (a) Property other than money.

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

660 (c) Money received in total or partial liquidation of the
661 entity.

662 (d) Money received from an entity that is a regulated
663 investment company or a real estate investment trust if the
664 money received distributed represents short-term or long-term
665 capital gain realized within the entity.

666 (e) Money received from an entity listed on a public stock
667 exchange during any year of the trust or estate which exceeds 10
668 percent of the fair market value of the trust's or estate's
669 interest in the entity on the first day of that year. The amount
670 to be allocated to principal must be reduced to the extent that
671 the cumulative distributions from the entity to the trust or
672 estate allocated to income does not exceed a cumulative annual
673 return of 3 percent of the fair market value of the interest in
674 the entity at the beginning of each year or portion of a year
675 for the number of years or portion of years in the period that
676 the interest in the entity has been held by the trust or estate.
677 If a trustee has exercised a power to adjust under s. 738.104
678 during any period the interest in the entity has been held by
679 the trust, the trustee, in determining the total income



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680 distributions from that entity, must take into account the
681 extent to which the exercise of that power resulted in income to
682 the trust from that entity for that period. If the income of the
683 trust for any period has been computed under s. 738.1041, the
684 trustee, in determining the total income distributions from that
685 entity for that period, must take into account the portion of
686 the unitrust amount paid as a result of the ownership of the
687 trust's interest in the entity for that period.

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

693 (5) Money is received in partial liquidation:

694 (a) To the extent the entity, at or near the time of a
695 distribution, indicates that such money is a distribution in
696 partial liquidation; or

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

704
705 This subsection does not apply to an entity to which subsection
706 (7) applies.

707 (6) Money may not ~~is not received in partial liquidation,~~
708 ~~nor may money~~ be taken into account in determining any excess



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709 under paragraph (5) (b), to the extent that the cumulative
710 distributions from the entity to the trust or the estate
711 allocated to income do not exceed the greater of: such money
712 does not exceed the amount of income tax a trustee or
713 beneficiary must pay on taxable income of the entity that
714 distributes the money.

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

730 (b) If the entity is treated as a partnership, subchapter S
731 corporation, or a disregarded entity pursuant to the Internal
732 Revenue Code of 1986, as amended, the amount of income tax
733 attributable to the trust's or estate's ownership share of the
734 entity, based on its pro rata share of the taxable income of the
735 entity that distributes the money, for the number of years or
736 portion of years that the interest in the entity was held by the
737 fiduciary, calculated as if all of that tax was incurred by the



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738 fiduciary.

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

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

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

759 (c) The remainder of the distribution, if any, is treated
760 as principal.

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

762 1. "Investment entity" means an entity, other than a
763 business activity conducted by the trustee described in s.
764 738.403 or an entity that is listed on a public stock exchange,
765 which is treated as a partnership, subchapter S corporation, or
766 disregarded entity pursuant to the Internal Revenue Code of



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767 1986, as amended, and which normally derives 50 percent or more
768 of its annual cumulative net income from interest, dividends,
769 annuities, royalties, rental activity, or other passive
770 investments, including income from the sale or exchange of such
771 passive investments.

772 2. "Private trustee" means a trustee who is a natural
773 person, but only if the trustee is unable to use the power to
774 adjust between income and principal with respect to receipts
775 from entities described in this subsection pursuant to s.
776 738.104. A bank, trust company, or other commercial trustee is
777 not considered a private trustee.

778 (8) This section shall be applied before ss. 738.705 and
779 738.706 and does not modify or change any of the provisions of
780 those sections.

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

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

795 ~~(c) For purposes of this subsection, the following~~



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796 ~~definitions shall apply:~~

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

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

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

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

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

821 ~~4. "Private trustee" means a trustee who is an individual,~~
822 ~~but only if the trustee is unable to utilize the power to adjust~~
823 ~~between income and principal with respect to receipts from~~
824 ~~entities described in this subsection pursuant to s. 738.104. A~~



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825 ~~bank, trust company, or other commercial trustee shall not be~~
826 ~~considered to be a private trustee.~~

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

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

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

838 ~~(8) A trustee may rely upon a statement made by an entity~~
839 ~~about the source or character of a distribution, about the~~
840 ~~amount of profits of a targeted entity, or about the nature and~~
841 ~~value of assets of an investment entity if the statement is made~~
842 ~~at or near the time of distribution by the entity's board of~~
843 ~~directors or other person or group of persons authorized to~~
844 ~~exercise powers to pay money or transfer property comparable to~~
845 ~~those of a corporation's board of directors.~~

846 Section 13. Section 738.402, Florida Statutes, is amended
847 to read:

848 738.402 Distribution from trust or estate.—A fiduciary
849 ~~trustee~~ shall allocate to income an amount received as a
850 distribution of income from a trust or an estate in which the
851 trust has an interest other than a purchased interest and ~~shall~~
852 allocate to principal an amount received as a distribution of
853 principal from such a trust or estate. If a fiduciary ~~trustee~~



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854 purchases an interest in a trust that is an investment entity,
855 or a decedent or donor transfers an interest in such a trust to
856 a fiduciary trustee, s. 738.401 or s. 738.608 applies to a
857 receipt from the trust.

858 Section 14. Section 738.403, Florida Statutes, is amended
859 to read:

860 738.403 Business and other activities conducted by
861 fiduciary trustee.—

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

871 (2) A fiduciary trustee who accounts separately for a
872 business or other activity may determine the extent to which the
873 net cash receipts of the such business or activity must be
874 retained for working capital, the acquisition or replacement of
875 fixed assets, and other reasonably foreseeable needs of the
876 business or activity, and the extent to which the remaining net
877 cash receipts are accounted for as principal or income in the
878 trust's or estate's general accounting records. If a fiduciary
879 trustee sells assets of the business or other activity, other
880 than in the ordinary course of the business or activity, the
881 fiduciary must trustee shall account for the net amount received
882 as principal in the trust's or estate's general accounting



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883 records to the extent the fiduciary trustee determines that the
884 amount received is no longer required in the conduct of the
885 business.

886 (3) Activities for which a fiduciary trustee may maintain
887 separate accounting records include:

888 (a) Retail, manufacturing, service, and other traditional
889 business activities.

890 (b) Farming.

891 (c) Raising and selling livestock and other animals.

892 (d) Management of rental properties.

893 (e) Extraction of minerals and other natural resources.

894 (f) Timber operations.

895 (g) Activities to which s. 738.607 ~~738.608~~ applies.

896 Section 15. Section 738.501, Florida Statutes, is amended
897 to read:

898 738.501 Principal receipts.—A fiduciary trustee shall
899 allocate to principal:

900 (1) To the extent not allocated to income under this
901 chapter, assets received from a donor transferor during the
902 donor's transferor's lifetime, a decedent's estate, a trust with
903 a terminating income interest, or a payor under a contract
904 naming the trust, estate, or fiduciary its trustee as
905 beneficiary.

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

909 (3) Amounts recovered from third parties to reimburse the
910 trust or estate because of disbursements described in s.
911 738.702(1)(g) or for other reasons to the extent not based on



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912 the loss of income.

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

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

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

921 Section 16. Section 738.502, Florida Statutes, is amended
922 to read:

923 738.502 Rental property.—If ~~To the extent~~ a fiduciary
924 ~~trustee~~ accounts for receipts from rental property pursuant to
925 this section, the fiduciary ~~trustee~~ shall allocate to income an
926 amount received as rent of real or personal property, including
927 an amount received for cancellation or renewal of a lease. An
928 amount received as a refundable deposit, including a security
929 deposit or a deposit that is to be applied as rent for future
930 periods, must ~~shall~~ be added to principal and held subject to
931 the terms of the lease and is not available for distribution to
932 a beneficiary until the fiduciary's ~~trustee's~~ contractual
933 obligations have been satisfied with respect to that amount.

934 Section 17. Subsections (1), (2), and (3) of section
935 738.503, Florida Statutes, are amended to read:

936 738.503 Obligation to pay money.—

937 (1) An amount received as interest, whether determined at a
938 fixed, variable, or floating rate, on an obligation to pay money
939 to the fiduciary ~~trustee~~, including an amount received as
940 consideration for prepaying principal, shall be allocated to



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941 income without any provision for amortization of premium.

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

946 (3) The increment in value of a bond or other obligation
947 for the payment of money bearing no stated interest but payable
948 at a future time in excess of the price at which it was issued
949 or purchased, if purchased after issuance, is distributable as
950 income. If the increment in value accrues and becomes payable
951 pursuant to a fixed schedule of appreciation, it may be
952 distributed to the beneficiary who was the income beneficiary at
953 the ~~this~~ time of increment from the first principal cash
954 available or, if none is available, when the increment is
955 realized by sale, redemption, or other disposition. If ~~When~~
956 unrealized increment is distributed as income but out of
957 principal, the principal must ~~shall~~ be reimbursed for the
958 increment when realized. If, in the reasonable judgment of the
959 fiduciary ~~trustee~~, exercised in good faith, the ultimate payment
960 of the bond principal is in doubt, the fiduciary ~~trustee~~ may
961 withhold the payment of incremental interest to the income
962 beneficiary.

963 Section 18. Subsections (1) and (2) of section 738.504,
964 Florida Statutes, are amended to read:

965 738.504 Insurance policies and similar contracts.—

966 (1) Except as otherwise provided in subsection (2), a
967 fiduciary ~~trustee~~ shall allocate to principal the proceeds of a
968 life insurance policy or other contract in which the trust,
969 estate, or fiduciary ~~its trustee~~ is named as beneficiary,



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970 including a contract that insures the trust, estate, or
971 fiduciary ~~its trustee~~ against loss for damage to, destruction
972 of, or loss of title to a trust or estate asset. The fiduciary
973 ~~trustee~~ shall allocate dividends on an insurance policy to
974 income if the premiums on the policy are paid from income and to
975 principal if the premiums are paid from principal.

976 (2) A fiduciary ~~trustee~~ shall allocate to income the
977 proceeds of a contract that insures the fiduciary ~~trustee~~
978 against loss of occupancy or other use by an income beneficiary,
979 loss of income, or, subject to s. 738.403, loss of profits from
980 a business.

981 Section 19. Section 738.601, Florida Statutes, is amended
982 to read:

983 738.601 Insubstantial allocations not required.—If a
984 fiduciary ~~trustee~~ determines that an allocation between
985 principal and income required by s. 738.602, s. 738.603, s.
986 738.604, s. 738.605, or s. 738.608 is insubstantial, the
987 fiduciary ~~trustee~~ may allocate the entire amount to principal
988 unless one of the circumstances described in s. 738.104(3)
989 applies to the allocation. This power may be exercised by a
990 cofiduciary under ~~cotrustee in~~ the circumstances described in s.
991 738.104(4) and may be released for the reasons and in the manner
992 described in s. 738.104(5). An allocation is presumed to be
993 insubstantial if:

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

997 (2) The value of the asset producing the receipt for which
998 the allocation would be made is less than 10 percent of the



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999 total value of the trust or estate ~~trust's~~ assets at the
1000 beginning of the accounting period.

1001 Section 20. Section 738.602, Florida Statutes, is amended
1002 to read:

1003 738.602 Payments from deferred compensation plans,
1004 annuities, and retirement plans or accounts.—

1005 (1) As used in ~~For purposes of~~ this section, the term:

1006 (a) "Fund" means a private or commercial annuity, an
1007 individual retirement account, an individual retirement annuity,
1008 a deferred compensation plan, a pension plan, a profit-sharing
1009 plan, a stock-bonus plan, an employee stock-ownership plan, or
1010 another similar arrangement in which federal income tax is
1011 deferred.

1012 (b) "Income of the fund" means income that is determined
1013 according to subsection (2) or subsection (3).

1014 (c) "Nonseparate account" means a fund for which the value
1015 of the participant's or account owner's right to receive
1016 benefits can be determined only by the occurrence of a date or
1017 event as defined in the instrument governing the fund.

1018 (d) "Payment" means a distribution from a fund that a
1019 fiduciary ~~trustee~~ may receive over a fixed number of years or
1020 during the life of one or more individuals because of services
1021 rendered or property transferred to the payor in exchange for
1022 future payments. The term includes a distribution made in money
1023 or property from the payor's general assets or from a fund
1024 created by the payor or payee.

1025 (e) "Separate account" means a fund holding assets
1026 exclusively for the benefit of a participant or account owner
1027 and:



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1028 1. The value of such assets or the value of the separate
1029 account is ascertainable at any time; or
1030 2. The administrator of the fund maintains records that
1031 show receipts and disbursements associated with such assets.
1032 (2) (a) For a fund that is a separate account, income of the
1033 fund shall be determined:
1034 1. As if the fund were a trust subject to the provisions of
1035 ss. 738.401-738.706; or
1036 2. As a unitrust amount calculated by multiplying the fair
1037 market value of the fund as of the first day of the first
1038 accounting period and, thereafter, as of the last day of the
1039 accounting period that immediately precedes the accounting
1040 period during which a payment is received by the percentage
1041 determined in accordance with s. 738.1041(2)(b)2.a. The
1042 fiduciary trustee shall determine such percentage as of the
1043 first month that the fiduciary's trustee's election to treat the
1044 income of the fund as a unitrust amount becomes effective. For
1045 purposes of this subparagraph, "fair market value" means the
1046 fair market value of the assets held in the fund as of the
1047 applicable valuation date determined as provided in this
1048 subparagraph. The fiduciary trustee is not liable for good faith
1049 reliance upon any valuation supplied by the person or persons in
1050 possession of the fund. If the fiduciary trustee makes or
1051 terminates an election under this subparagraph, the fiduciary
1052 ~~trustee~~ shall make such disclosure in a trust disclosure
1053 document that satisfies the requirements of s. 736.1008(4)(a).
1054 (b) The fiduciary may trustee ~~shall have discretion to~~
1055 elect the method of determining the income of the fund pursuant
1056 to this subsection and may change the method of determining



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1057 income of the fund for any future accounting period.

1058 (3) For a fund that is a nonseparate account, income of the
1059 fund is a unitrust amount determined by calculating the present
1060 value of the right to receive the remaining payments under 26
1061 U.S.C. s. 7520 of the Internal Revenue Code as of the first day
1062 of the accounting period and multiplying it by the percentage
1063 determined in accordance with s. 738.1041(2)(b)2.a. The
1064 fiduciary trustee shall determine the unitrust amount as of the
1065 first month that the fiduciary's trustee's election to treat the
1066 income of the fund as a unitrust amount becomes effective.

1067 (4) Except for those trusts described in subsection (5),
1068 the fiduciary trustee shall allocate to income the lesser of the
1069 payment received from a fund or the income determined under
1070 subsection (2) or subsection (3). Any remaining amount of the
1071 payment shall be allocated to principal ~~a payment from a fund as~~
1072 ~~follows:~~

1073 ~~(a) That portion of the payment the payor characterizes as~~
1074 ~~income shall be allocated to income, and any remaining portion~~
1075 ~~of the payment shall be allocated to principal.~~

1076 ~~(b) To the extent that the payor does not characterize any~~
1077 ~~portion of a payment as income or principal and the trustee can~~
1078 ~~ascertain the income of the fund by the fund's account~~
1079 ~~statements or any other reasonable source, the trustee shall~~
1080 ~~allocate to income the lesser of the income of the fund or the~~
1081 ~~entire payment and shall allocate to principal any remaining~~
1082 ~~portion of the payment.~~

1083 ~~(c) If the trustee, acting reasonably and in good faith,~~
1084 ~~determines that neither paragraph (a) nor paragraph (b) applies~~
1085 ~~and all or part of the payment is required to be made, the~~



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1086 ~~trustee shall allocate to income 10 percent of the portion of~~
1087 ~~the payment that is required to be made during the accounting~~
1088 ~~period and shall allocate the balance to principal. If no part~~
1089 ~~of a payment is required to be made or the payment received is~~
1090 ~~the entire amount to which the trustee is entitled, the trustee~~
1091 ~~shall allocate the entire payment to principal. For purposes of~~
1092 ~~this paragraph, a payment is not "required to be made" to the~~
1093 ~~extent the payment is made because the trustee exercises a right~~
1094 ~~of withdrawal.~~

1095 (5) For a trust that which, in order to qualify for the
1096 estate or gift tax marital deduction under the Internal Revenue
1097 Code or comparable law of any state, entitles the spouse to all
1098 of the income of the trust, and the terms of the trust are
1099 silent as to the time and frequency for distribution of the
1100 income of the fund, ~~then:~~

1101 (a) For a fund that is a separate account, unless the
1102 spouse directs the fiduciary trustee to leave the income of the
1103 fund in the fund, the fiduciary trustee shall withdraw and pay
1104 to the spouse, at least no less frequently than annually:

1105 1. All of the income of the fund determined in accordance
1106 with subparagraph (2) (a)1.; or

1107 2. The income of the fund as a unitrust amount determined
1108 in accordance with subparagraph (2) (a)2.

1109 (b) For a fund that is a nonseparate account, the fiduciary
1110 ~~trustee~~ shall withdraw and pay to the spouse, at least no less
1111 ~~frequently than~~ annually, the income of the fund as a unitrust
1112 amount determined in accordance with subsection (3).

1113 (6) This section does not apply to payments to which s.
1114 738.603 applies.



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1115 Section 21. Section 738.603, Florida Statutes, is amended
1116 to read:

1117 738.603 Liquidating asset.—

1118 (1) For purposes of this section, the term "liquidating
1119 asset" means an asset the value of which will diminish or
1120 terminate because the asset is expected to produce receipts for
1121 a period of limited duration. The term includes a leasehold,
1122 patent, copyright, royalty right, and right to receive payments
1123 for during a period of more than 1 year under an arrangement
1124 that does not provide for the payment of interest on the unpaid
1125 balance. The term does not include a payment subject to s.
1126 738.602, resources subject to s. 738.604, timber subject to s.
1127 738.605, an activity subject to s. 738.607, an asset subject to
1128 s. 738.608, or any asset for which the fiduciary trustee
1129 establishes a reserve for depreciation under s. 738.703.

1130 (2) A fiduciary trustee shall allocate to income 5 10
1131 percent of the receipts from the carrying value of a liquidating
1132 asset and the balance to principal. Amounts allocated to
1133 principal shall reduce the carrying value of the liquidating
1134 asset, but not below zero. Amounts received in excess of the
1135 remaining carrying value must be allocated to principal.

1136 Section 22. Subsections (1), (3), and (4) of section
1137 738.604, Florida Statutes, are amended to read:

1138 738.604 Minerals, water, and other natural resources.—

1139 (1) If To the extent a fiduciary trustee accounts for
1140 receipts from an interest in minerals or other natural resources
1141 pursuant to this section, the fiduciary trustee shall allocate
1142 such receipts as follows:

1143 (a) If received as nominal delay rental or nominal annual



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1144 rent on a lease, a receipt shall be allocated to income.

1145 (b) If received from a production payment, a receipt shall
1146 be allocated to income if and to the extent the agreement
1147 creating the production payment provides a factor for interest
1148 or its equivalent. The balance shall be allocated to principal.

1149 (c) If an amount received as a royalty, shut-in-well
1150 payment, take-or-pay payment, bonus, or delay rental is more
1151 than nominal, 90 percent shall be allocated to principal and the
1152 balance to income.

1153 (d) If an amount is received from a working interest or any
1154 other interest not provided for in paragraph (a), paragraph (b),
1155 or paragraph (c), 90 percent of the net amount received shall be
1156 allocated to principal and the balance to income.

1157 (3) This chapter applies whether or not a decedent or donor
1158 was extracting minerals, water, or other natural resources
1159 before the interest became subject to the trust or estate.

1160 (4) If a trust or estate owns an interest in minerals,
1161 water, or other natural resources on January 1, 2003, the
1162 fiduciary trustee may allocate receipts from the interest as
1163 provided in this chapter or in the manner used by the fiduciary
1164 trustee before January 1, 2003. If the trust or estate acquires
1165 an interest in minerals, water, or other natural resources after
1166 January 1, 2003, the fiduciary trustee shall allocate receipts
1167 from the interest as provided in this chapter.

1168 Section 23. Section 738.605, Florida Statutes, is amended
1169 to read:

1170 738.605 Timber.—

1171 (1) ~~If To the extent~~ a fiduciary trustee accounts for
1172 receipts from the sale of timber and related products pursuant



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1173 to this section, the fiduciary trustee shall allocate such the
1174 net receipts as follows:

1175 (a) To income to the extent the amount of timber removed
1176 from the land does not exceed the rate of growth of the timber
1177 during the accounting periods in which a beneficiary has a
1178 mandatory income interest;

1179 (b) To principal to the extent the amount of timber removed
1180 from the land exceeds the rate of growth of the timber or the
1181 net receipts are from the sale of standing timber;

1182 (c) To or between income and principal if the net receipts
1183 are from the lease of timberland or from a contract to cut
1184 timber from land owned by a trust or estate by determining the
1185 amount of timber removed from the land under the lease or
1186 contract and applying the rules in paragraphs (a) and (b); or

1187 (d) To principal to the extent advance payments, bonuses,
1188 and other payments are not allocated pursuant to paragraph (a),
1189 paragraph (b), or paragraph (c).

1190 (2) In determining net receipts to be allocated pursuant to
1191 subsection (1), a fiduciary trustee shall deduct and transfer to
1192 principal a reasonable amount for depletion.

1193 (3) This chapter applies whether or not a decedent or donor
1194 ~~transferor~~ was harvesting timber from the property before the
1195 property became subject to the trust or estate.

1196 (4) If a trust or estate owns an interest in timberland on
1197 January 1, 2003, the fiduciary trustee may allocate net receipts
1198 from the sale of timber and related products as provided in this
1199 chapter or in the manner used by the fiduciary trustee before
1200 January 1, 2003. If the trust or estate acquires an interest in
1201 timberland after January 1, 2003, the fiduciary trustee shall



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1202 allocate net receipts from the sale of timber and related
1203 products as provided in this chapter.

1204 Section 24. Subsection (1) of section 738.606, Florida
1205 Statutes, is amended to read:

1206 738.606 Property not productive of income.—

1207 (1) If a marital deduction under the Internal Revenue Code
1208 or comparable law of any state is allowed for all or part of a
1209 trust the income of which must ~~is required to~~ be distributed to
1210 the grantor's spouse and the assets of which consist
1211 substantially of property that does not provide the spouse with
1212 sufficient income from or use of the trust assets, and if the
1213 amounts the trustee transfers from principal to income under s.
1214 738.104 and distributes to the spouse from principal pursuant to
1215 the terms of the trust are insufficient to provide the spouse
1216 with the beneficial enjoyment required to obtain the marital
1217 deduction, the spouse may require the trustee to make property
1218 productive of income, convert property within a reasonable time,
1219 or exercise the power conferred by ss. 738.104 and 738.1041. The
1220 trustee may decide which action or combination of actions to
1221 take.

1222 Section 25. Subsections (2) and (3) of section 738.607,
1223 Florida Statutes, are amended to read:

1224 738.607 Derivatives and options.—

1225 (2) To the extent a fiduciary ~~trustee~~ does not account
1226 under s. 738.403 for transactions in derivatives, the fiduciary
1227 ~~trustee~~ shall allocate to principal receipts from and
1228 disbursements made in connection with those transactions.

1229 (3) If a fiduciary ~~trustee~~ grants an option to buy property
1230 from the trust or estate whether or not the trust or estate owns



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1231 the property when the option is granted, grants an option that
1232 permits another person to sell property to the trust or estate,
1233 or acquires an option to buy property for the trust or estate or
1234 an option to sell an asset owned by the trust or estate, and the
1235 fiduciary trustee or other owner of the asset is required to
1236 deliver the asset if the option is exercised, an amount received
1237 for granting the option shall be allocated to principal. An
1238 amount paid to acquire the option shall be paid from principal.
1239 A gain or loss realized upon the exercise of an option,
1240 including an option granted to a grantor of the trust or estate
1241 for services rendered, shall be allocated to principal.

1242 Section 26. Subsections (2) and (3) of section 738.608,
1243 Florida Statutes, are amended to read:

1244 738.608 Asset-backed securities.—

1245 (2) If a trust or estate receives a payment from interest
1246 or other current return and from other proceeds of the
1247 collateral financial assets, the fiduciary trustee shall
1248 allocate to income the portion of the payment which the payor
1249 identifies as being from interest or other current return and
1250 ~~shall~~ allocate the balance of the payment to principal.

1251 (3) If a trust or estate receives one or more payments in
1252 exchange for the trust's or estate's entire interest in an
1253 asset-backed security during a single accounting period, the
1254 fiduciary trustee shall allocate the payments to principal. If a
1255 payment is one of a series of payments that will result in the
1256 liquidation of the trust's or estate's interest in the security
1257 over more than a single accounting period, the fiduciary trustee
1258 shall allocate 10 percent of the payment to income and the
1259 balance to principal.



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1260 Section 27. Section 738.701, Florida Statutes, is amended
1261 to read:

1262 738.701 Disbursements from income.—A fiduciary ~~trustee~~
1263 shall make the following disbursements from income to the extent
1264 they are not disbursements to which s. 738.201(2) ~~(a) or (c)~~
1265 applies:

1266 (1) One-half of the regular compensation of the fiduciary
1267 ~~trustee~~ and of any person providing investment advisory or
1268 custodial services to the fiduciary ~~trustee~~.

1269 (2) One-half of all expenses for accountings, judicial
1270 proceedings, or other matters that involve both the income and
1271 remainder interests.

1272 (3) All of the other ordinary expenses incurred in
1273 connection with the administration, management, or preservation
1274 of trust property and the distribution of income, including
1275 interest, ordinary repairs, regularly recurring taxes assessed
1276 against principal, and expenses of a proceeding or other matter
1277 that concerns primarily the income interest.

1278 (4) Recurring premiums on insurance covering the loss of a
1279 principal asset or the loss of income from or use of the asset.

1280 Section 28. Subsection (1) of section 738.702, Florida
1281 Statutes, is amended to read:

1282 738.702 Disbursements from principal.—

1283 (1) A fiduciary ~~trustee~~ shall make the following
1284 disbursements from principal:

1285 (a) The remaining one-half of the disbursements described
1286 in s. 738.701(1) and (2).

1287 (b) All of the trustee's compensation calculated on
1288 principal as a fee for acceptance, distribution, or termination



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1289 and disbursements made to prepare property for sale.

1290 (c) Payments on the principal of a trust debt.

1291 (d) Expenses of a proceeding that concerns primarily
1292 principal, including a proceeding to construe the trust or will,
1293 or to protect the trust, estate, or its property.

1294 (e) Premiums paid on a policy of insurance not described in
1295 s. 738.701(4) of which the trust or estate is the owner and
1296 beneficiary.

1297 (f) Estate, inheritance, and other transfer taxes,
1298 including penalties, apportioned to the trust.

1299 (g) Disbursements related to environmental matters,
1300 including reclamation, assessing environmental conditions,
1301 remedying and removing environmental contamination, monitoring
1302 remedial activities and the release of substances, preventing
1303 future releases of substances, collecting amounts from persons
1304 liable or potentially liable for the costs of such activities,
1305 penalties imposed under environmental laws or regulations and
1306 other payments made to comply with those laws or regulations,
1307 statutory or common law claims by third parties, and defending
1308 claims based on environmental matters.

1309 (h) Payments representing extraordinary repairs or expenses
1310 incurred in making a capital improvement to principal, including
1311 special assessments; however, a fiduciary trustee may establish
1312 an allowance for depreciation out of income to the extent
1313 permitted by s. 738.703.

1314 Section 29. Subsection (2) of section 738.703, Florida
1315 Statutes, is amended to read:

1316 738.703 Transfers from income to principal for
1317 depreciation.-



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1318 (2) A fiduciary trustee may transfer to principal a
1319 reasonable amount of the net cash receipts from a principal
1320 asset that is subject to depreciation but may not transfer any
1321 amount for depreciation:

1322 (a) Of that portion of real property used or available for
1323 use by a beneficiary as a residence or of tangible personal
1324 property held or made available for the personal use or
1325 enjoyment of a beneficiary;

1326 (b) During the administration of a decedent's estate; or

1327 (c) Under this section if the fiduciary trustee is
1328 accounting under s. 738.403 for the business or activity in
1329 which the asset is used.

1330 Section 30. Subsections (1), (2), and (3) of section
1331 738.704, Florida Statutes, are amended to read:

1332 738.704 Transfers from income to reimburse principal.—

1333 (1) If a fiduciary trustee makes or expects to make a
1334 principal disbursement described in this section, the fiduciary
1335 ~~trustee~~ may transfer an appropriate amount from income to
1336 principal in one or more accounting periods to reimburse
1337 principal or to provide a reserve for future principal
1338 disbursements.

1339 (2) Principal disbursements to which subsection (1) applies
1340 include the following, but only to the extent the fiduciary
1341 ~~trustee~~ has not been and does not expect to be reimbursed by a
1342 third party:

1343 (a) An amount chargeable to income but paid from principal
1344 because the amount is unusually large.

1345 (b) Disbursements made to prepare property for rental,
1346 including tenant allowances, leasehold improvements, and



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1347 broker's commissions.

1348 (c) Disbursements described in s. 738.702(1)(g).

1349 (3) If the asset the ownership of which gives rise to the
1350 disbursements becomes subject to a successive income interest
1351 after an income interest ends, a fiduciary ~~trustee~~ may continue
1352 to transfer amounts from income to principal as provided in
1353 subsection (1).

1354 Section 31. Section 738.705, Florida Statutes, is amended
1355 to read:

1356 738.705 Income taxes.—

1357 (1) A tax required to be paid by a fiduciary ~~trustee~~ based
1358 on receipts allocated to income shall be paid from income.

1359 (2) A tax required to be paid by a fiduciary ~~trustee~~ based
1360 on receipts allocated to principal shall be paid from principal,
1361 even if the tax is called an income tax by the taxing authority.

1362 (3) A tax required to be paid by a fiduciary ~~trustee~~ on the
1363 trust's or estate's share of an entity's taxable income shall be
1364 paid proportionately:

1365 (a) From income to the extent receipts from the entity are
1366 allocated to income; ~~and~~

1367 (b) From principal to the extent—

1368 ~~1. receipts from the entity are allocated to principal; and~~

1369 ~~2. The trust's share of the entity's taxable income exceeds~~
1370 ~~the total receipts described in paragraph (a) and subparagraph~~
1371 ~~1.~~

1372 (c) From principal to the extent that the income taxes
1373 payable by the trust or estate exceed the total receipts from
1374 the entity.

1375 (4) After applying subsections (1)-(3), the fiduciary shall



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1376 adjust income or principal receipts to the extent that the
1377 trust's or estate's income taxes are reduced, but not
1378 eliminated, because the trust or estate receives a deduction for
1379 payments made to a beneficiary. The amount distributable to that
1380 beneficiary as income as a result of this adjustment shall be
1381 equal to the cash received by the trust or estate, reduced, but
1382 not below zero, by the entity's taxable income allocable to the
1383 trust or estate multiplied by the trust's or estate's income tax
1384 rate. The reduced amount shall be divided by the difference
1385 between 1 and the trust's or estate's income tax rate in order
1386 to determine the amount distributable to that beneficiary as
1387 income before giving effect to other receipts or disbursements
1388 allocable to that beneficiary's interest. For purposes of this
1389 section, receipts allocated to principal or income shall be
1390 reduced by the amount distributed to a beneficiary from
1391 principal or income for which the trust receives a deduction in
1392 calculating the tax.

1393 Section 32. Section 738.801, Florida Statutes, is amended
1394 to read:

1395 (Substantial rewording of section. See
1396 s. 738.801, F.S., for present text.)

1397 738.801 Apportionment of expenses; improvements.-

1398 (1) For purposes of this section, the term:

1399 (a) "Remainderman" means the holder of the remainder
1400 interests after the expiration of a tenant's estate in property.

1401 (b) "Tenant" means the holder of an estate for life or term
1402 of years in real property or personal property, or both.

1403 (2) If a trust has not been created, expenses shall be
1404 apportioned between the tenant and remainderman as follows:



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1405 (a) The following expenses are allocated to and shall be
1406 paid by the tenant:

1407 1. All ordinary expenses incurred in connection with the
1408 administration, management, or preservation of the property,
1409 including interest, ordinary repairs, regularly recurring taxes
1410 assessed against the property, and expenses of a proceeding or
1411 other matter that concerns primarily the tenant's estate or use
1412 of the property.

1413 2. Recurring premiums on insurance covering the loss of the
1414 property or the loss of income from or use of the property.

1415 3. Any of the expenses described in subparagraph (b)3.
1416 which are attributable to the use of the property by the tenant.

1417 (b) The following expenses are allocated to and shall be
1418 paid by the remainderman:

1419 1. Payments on the principal of a debt secured by the
1420 property, except to the extent the debt is for expenses
1421 allocated to the tenant.

1422 2. Expenses of a proceeding or other matter that concerns
1423 primarily the title to the property, other than title to the
1424 tenant's estate.

1425 3. Except as provided in subparagraph (a)3., expenses
1426 related to environmental matters, including reclamation,
1427 assessing environmental conditions, remedying and removing
1428 environmental contamination, monitoring remedial activities and
1429 the release of substances, preventing future releases of
1430 substances, collecting amounts from persons liable or
1431 potentially liable for the costs of such activities, penalties
1432 imposed under environmental laws or regulations and other
1433 payments made to comply with those laws or regulations,



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1434 statutory or common law claims by third parties, and defending
1435 claims based on environmental matters.

1436 4. Extraordinary repairs.

1437 (c) If the tenant or remainderman incurred an expense for
1438 the benefit of his or her own estate without consent or
1439 agreement of the other, he or she must pay such expense in full.

1440 (d) Except as provided in paragraph (c), the cost of, or
1441 special taxes or assessments for, an improvement representing an
1442 addition of value to property forming part of the principal
1443 shall be paid by the tenant if the improvement is not reasonably
1444 expected to outlast the estate of the tenant. In all other
1445 cases, only a part shall be paid by the tenant while the
1446 remainder shall be paid by the remainderman. The part payable by
1447 the tenant is ascertainable by taking that percentage of the
1448 total that is found by dividing the present value of the
1449 tenant's estate by the present value of an estate of the same
1450 form as that of the tenant, except that it is limited for a
1451 period corresponding to the reasonably expected duration of the
1452 improvement. The computation of present values of the estates
1453 shall be made by using the rate defined in 26 U.S.C. s. 7520,
1454 then in effect and, in the case of an estate for life, the
1455 official mortality tables then in effect under 26 U.S.C. s.
1456 7520. Other evidence of duration or expectancy may not be
1457 considered.

1458 (3) This section does not apply to the extent it is
1459 inconsistent with the instrument creating the estates, the
1460 agreement of the parties, or the specific direction of the
1461 taxing or other statutes.

1462 (4) The common law applicable to tenants and remaindermen



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1463 supplements this section, except as modified by this section or
1464 other laws.

1465 Section 33. This act shall take effect January 1, 2013.

1466
1467 ===== T I T L E A M E N D M E N T =====

1468 And the title is amended as follows:

1469 Delete everything before the enacting clause
1470 and insert:

1471 A bill to be entitled
1472 An act relating to fiduciaries; amending s. 701.04,
1473 F.S.; requiring a mortgage holder to provide certain
1474 information within a specified time relating to the
1475 unpaid loan balance due under a mortgage if a
1476 mortgagor, a record title owner of the property, a
1477 fiduciary or trustee lawfully acting on behalf of a
1478 record title owner, or any person lawfully authorized
1479 to act on behalf of a mortgagor or record title owner
1480 of the property makes a written request under certain
1481 circumstances; allowing financial institutions to
1482 release certain mortgagor information to specified
1483 persons without penalty; amending s. 738.102, F.S.;
1484 defining the term "carrying value"; amending s.
1485 738.103, F.S.; providing for application; amending s.
1486 738.104, F.S.; deleting a provision authorizing a
1487 trustee to release the power to adjust between
1488 principal and income if the trustee desires to convert
1489 the form of certain trusts; limiting the power to
1490 adjust a trust; deleting a provision that provides
1491 construction and application relating to the



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1492 administration of trusts in this state or under this
1493 state's law; amending s. 738.1041, F.S.; defining the
1494 term "average fair market value" and revising the term
1495 "unitrust amount"; deleting a duplicative provision
1496 relating to conclusive determinations of the terms of
1497 a unitrust; revising provisions relating to an express
1498 total return unitrust; amending s. 738.105, F.S.;
1499 substituting the term "trustee" for "fiduciary" with
1500 respect to judicial control of discretionary powers;
1501 amending s. 738.201, F.S.; revising provisions
1502 relating to the determination and distribution of net
1503 income; amending s. 738.202, F.S.; revising provisions
1504 relating to distributions to residuary and remainder
1505 beneficiaries; amending ss. 738.301, 738.302, and
1506 738.303, F.S.; substituting the term "fiduciary" for
1507 "trustee" to clarify that provisions apply to all
1508 fiduciaries; amending s. 738.401, F.S.; substituting
1509 the term "fiduciary" for "trustee" to clarify that
1510 provisions apply to all fiduciaries; revising how
1511 distributions from entities are allocated between
1512 income and principal; amending ss. 738.402, 738.403,
1513 738.501, 738.502, 738.503, 738.504, and 738.601, F.S.;
1514 substituting the term "fiduciary" for "trustee" to
1515 clarify that provisions apply to all fiduciaries;
1516 amending s. 738.602, F.S.; substituting the term
1517 "fiduciary" for "trustee" to clarify that provisions
1518 apply to all fiduciaries; revising provisions relating
1519 to allocations to trusts; amending s. 738.603, F.S.;
1520 substituting the term "fiduciary" for "trustee" to



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1521 clarify that provisions apply to all fiduciaries;
1522 revising provisions relating to the allocation between
1523 income and principal when liquidating assets; amending
1524 ss. 738.604, 738.605, 738.606, 738.607, 738.608,
1525 738.701, 738.702, 738.703, and 738.704, F.S.;
1526 substituting the term "fiduciary" for "trustee" to
1527 clarify that provisions apply to all fiduciaries;
1528 amending s. 738.705, F.S.; substituting the term
1529 "fiduciary" for "trustee" to clarify that provisions
1530 apply to all fiduciaries; revising the method for
1531 allocating income taxes between income and principal;
1532 amending s. 738.801, F.S.; clarifying the
1533 apportionment of expenses between tenants and
1534 remaindermen; providing an effective date.