

By the Committee on Judiciary; and Senator Berman

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1 A bill to be entitled
2 An act relating to the Florida Uniform Fiduciary
3 Income and Principal Act; amending s. 738.101, F.S.;
4 revising a short title; amending s. 738.102, F.S.;
5 revising and providing definitions governing ch. 738,
6 F.S.; amending s. 738.103, F.S.; specifying the scope
7 of ch. 738, F.S.; amending s. 738.104, F.S.;
8 specifying circumstances under which ch. 738, F.S.,
9 applies to a trust; repealing s. 738.1041, F.S.,
10 relating to total return unitrusts; repealing s.
11 738.105, F.S., relating to judicial control of
12 discretionary powers; amending s. 738.201, F.S.;
13 specifying the duties of a fiduciary; providing that a
14 fiduciary's allocation, determination, or exercise of
15 discretion is presumed to be fair and reasonable to
16 all beneficiaries; requiring a fiduciary to take
17 specified actions; authorizing a fiduciary to exercise
18 discretionary power of administration under specified
19 circumstances; requiring the fiduciary to consider
20 specified factors before exercising such discretionary
21 power; providing for applicability; amending s.
22 738.202, F.S.; defining the term "fiduciary decision";
23 prohibiting a court from ordering a fiduciary to
24 change his or her decision unless the decision was an
25 abuse of discretionary power; prohibiting a court from
26 determining that a fiduciary abused its discretion
27 under specified conditions; authorizing a court to
28 order a specified remedy; authorizing a court to
29 determine whether a proposed fiduciary decision will

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30 result in an abuse of discretion; providing that a
31 beneficiary who opposes a proposed decision has the
32 burden to establish that such decision is an abuse of
33 discretion; requiring that any attorney fees incurred
34 in defending an action related to the abuse of a
35 fiduciary's discretion be paid from trust assets;
36 creating s. 738.203, F.S.; authorizing a fiduciary to
37 adjust between income and principal if such adjustment
38 assists in administering the trust or estate
39 impartially; providing construction; providing that a
40 fiduciary is not liable to another for an adjustment,
41 or failure to adjust, between income and principal
42 made in good faith; requiring a fiduciary to consider
43 certain relevant factors when considering such
44 adjustment; prohibiting a fiduciary from exercising or
45 considering such adjustment if certain conditions
46 exist; revising applicability; authorizing a fiduciary
47 to release or delegate to a cofiduciary specified
48 powers to adjust under specified conditions; providing
49 requirements and powers for any such releases and
50 delegations; providing applicability; requiring that
51 the description of an exercise of the power to adjust
52 between income and principal contain specified
53 information; amending s. 738.301, F.S.; defining
54 terms; amending s. 738.302, F.S.; specifying
55 applicability of specified provisions; authorizing the
56 conversion of an income trust to a unitrust;
57 restricting provisions to trusts that are
58 beneficiaries of an estate; providing construction;

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59 providing that a fiduciary acting in good faith is not
60 liable to a person affected by a certain action or
61 inaction; amending s. 738.303, F.S.; specifying the
62 authority of a fiduciary with respect to the
63 administration of certain trusts; providing the
64 circumstances under which a fiduciary may perform such
65 actions; authorizing a beneficiary or a fiduciary to
66 request the court to allow the beneficiary or
67 fiduciary to take a specified action; requiring a
68 fiduciary to inform specified persons of a decision to
69 take action; authorizing a beneficiary to request a
70 court to direct the fiduciary to take the requested
71 action under specified circumstances; requiring
72 fiduciaries to consider specified factors before
73 taking a certain action; authorizing a fiduciary to
74 release or delegate the power to take certain actions;
75 creating s. 738.304, F.S.; requiring a certain notice
76 to be sent to specified parties; providing
77 applicability; authorizing a person to consent to a
78 specified action in a record; providing that such
79 person does not need to be sent notice of such action;
80 providing requirements for such notices; creating s.
81 738.305, F.S.; requiring a fiduciary of a unitrust to
82 follow a certain policy; providing rules for a
83 unitrust policy; providing additional actions a
84 unitrust policy may contain; creating s. 738.306,
85 F.S.; requiring a unitrust rate to be within a
86 specified range; authorizing a unitrust policy to
87 provide for specified limits within such range;

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88 requiring a fiduciary who is a non-independent person
89 to use a specified unitrust rate; creating s. 738.307,
90 F.S.; requiring a unitrust policy to provide a
91 specified method for determining fair market value of
92 an asset in determining a unitrust amount; authorizing
93 specified unitrust policies to provide methods for
94 determining a certain net fair market value;
95 prohibiting certain property from being included in
96 the determination of the value of a trust; creating s.
97 738.308, F.S.; requiring a unitrust policy to provide
98 a specified period; specifying that such period must
99 be a calendar year; authorizing a unitrust policy to
100 provide certain standards for periods; creating s.
101 738.309, F.S.; providing applicability; authorizing a
102 trustee of an express unitrust to determine the
103 unitrust amount by reference to the net fair market
104 value of the unitrust's assets in a specified
105 timeframe; providing that distribution of a unitrust
106 amount is considered a distribution of all the net
107 income of an express unitrust and is considered an
108 income interest; specifying that the unitrust amount
109 is considered a reasonable apportionment of the total
110 return of the express unitrust; providing that an
111 express unitrust that allows a distribution in excess
112 of a specified unitrust rate is considered a
113 distribution of all of the income of the unitrust;
114 authorizing an express unitrust to provide a mechanism
115 for changing the unitrust rate and for conversion from
116 a unitrust to an income trust or from an income trust

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117 to a unitrust; specifying that unless an express
118 unitrust prohibits the power to change the rate or
119 convert the trust, the trustee has such power;
120 authorizing the governing instrument of an express
121 unitrust to grant the trustee discretion to adopt a
122 certain practice; specifying that unless an express
123 unitrust provides otherwise, the distribution of an
124 amount is considered a distribution from specified
125 sources in a specified order of priority; authorizing
126 a governing instrument of an express unitrust to allow
127 exclusion of specified assets; providing that the use
128 of such assets may be considered equivalent to income
129 or to the unitrust amount; creating s. 738.310, F.S.;
130 requiring a trustee, after the conversion of an income
131 trust to a unitrust, to consider the unitrust amount
132 paid from certain sources in a specified order of
133 priority; amending s. 738.401, F.S.; defining and
134 revising terms; specifying that an attribute or action
135 of an entity includes an attribute or action from any
136 other entity in which the initial entity has an
137 ownership interest or holds another interest;
138 requiring a fiduciary to allocate certain money and
139 tangible personal property to income; requiring a
140 fiduciary to allocate specified property and money to
141 principal; providing that certain money received in an
142 entity distribution is a capital distribution in
143 specified circumstances; specifying that in cases of
144 capital distribution, the amount received in an entity
145 distribution must be reduced to the extent that

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146 cumulative distributions from the entity to the
147 fiduciary are within certain ranges; authorizing a
148 fiduciary to consider additional information before
149 deciding to make or change a decision to make a
150 payment to a beneficiary; providing that if a
151 fiduciary receives specified additional information
152 after a distribution to a beneficiary, the fiduciary
153 is not required to change or recover the payment;
154 authorizing a fiduciary in such a situation to
155 exercise other specified powers; revising definitions;
156 requiring a fiduciary to allocate certain money and
157 property to principal; providing the mechanism for
158 such allocation; defining the term "public entity";
159 conforming provisions to changes made by the act;
160 amending s. 738.402, F.S.; conforming provisions to
161 changes made by the act; amending s. 738.403, F.S.;
162 providing applicability; authorizing a fiduciary to
163 make certain determinations separately and differently
164 from the decisions concerning distributions of income
165 or principal; conforming provisions to changes made by
166 the act; making technical changes; creating s.
167 738.404, F.S.; specifying receipts that a fiduciary
168 must allocate to principal; creating s. 738.405, F.S.;
169 providing for the allocation of income from rental
170 property; creating s. 738.406, F.S.; specifying
171 applicability; requiring a fiduciary to allocate to
172 income certain amounts received as interest; requiring
173 a fiduciary to allocate to income increments in value
174 of certain bonds or other obligations; creating s.

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175 738.407, F.S.; specifying applicability; requiring a
176 fiduciary to allocate proceeds from insurance policies
177 or contracts to principal in a specified manner;
178 creating s. 738.408, F.S.; specifying circumstances
179 under which a fiduciary may allocate an insubstantial
180 allocation to principal, subject to certain conditions
181 and limitations; creating s. 738.409, F.S.; defining
182 terms; specifying the manner in which a fiduciary may
183 determine incomes of separate funds; providing duties
184 of a fiduciary of a marital trust and other trusts;
185 requiring a fiduciary of a nonseparate fund to
186 calculate internal income in a specified manner;
187 providing construction; transferring, renumbering, and
188 amending s. 738.603, F.S.; revising the definition of
189 the term "liquidating asset"; providing applicability;
190 requiring a fiduciary to allocate to income and
191 principal the receipts produced by liquidating assets
192 in a certain manner; transferring, renumbering, and
193 amending s. 738.604, F.S.; requiring a fiduciary to
194 allocate the receipts from interests in minerals,
195 water, or other natural resources to income,
196 principal, or between income and principal under
197 specified conditions; revising applicability;
198 providing that an allocation between income and
199 principal from a receipt from a natural resource is
200 presumed equitable under a specified condition;
201 providing construction; transferring, renumbering, and
202 amending s. 738.605, F.S.; requiring a fiduciary to
203 allocate receipts from timber to income, principal, or

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204 between income and principal under specified
205 conditions; revising applicability; transferring,
206 renumbering, and amending s. 738.606, F.S.;
207 authorizing a settlor's spouse to require the trustee
208 of a trust that receives certain property to make such
209 property produce income under specified conditions;
210 authorizing the trustee to take specified actions if
211 directed by such spouse; providing that the trustee
212 decides whether to take one or a combination of such
213 actions; revising applicability; providing
214 construction; transferring, renumbering, and amending
215 s. 738.607, F.S.; revising the definition of the term
216 "derivative"; requiring a fiduciary to allocate
217 specified percentages of certain receipts and
218 disbursements to income and allocate the balance to
219 principal; providing construction; requiring certain
220 fiduciaries to allocate a specified percentage to
221 income and allocate the balance to principal of
222 certain amounts; transferring, renumbering, and
223 amending s. 738.608, F.S.; requiring a fiduciary to
224 allocate to income a receipt from or related to asset-
225 backed securities under a specified condition;
226 requiring a fiduciary to allocate to income a
227 specified percentage of receipts from the transaction
228 and the disbursement of a payment received as a result
229 of an interest in an asset-backed security; conforming
230 provisions to changes made by the act; creating s.
231 738.416, F.S.; requiring a fiduciary to make specified
232 allocations from receipts from other financial

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233 instruments or arrangements; providing construction;
234 amending s. 738.501, F.S.; specifying the manner by
235 which a fiduciary must make disbursements from income;
236 amending s. 738.502, F.S.; specifying the manner by
237 which a fiduciary must make disbursements from
238 principal; amending s. 738.503, F.S.; defining the
239 term "depreciation"; specifying the manner by which a
240 fiduciary may make transfers from income to principal
241 to account for depreciation; amending s. 738.504,
242 F.S.; specifying the manner by which a fiduciary may
243 make transfers from principal to income for
244 reimbursements; transferring, renumbering, and
245 amending s. 738.704, F.S.; providing that a fiduciary
246 that makes or expects to make a certain principal
247 disbursement may transfer an appropriate amount from
248 income to principal in one or more accounting periods;
249 providing applicability; making technical changes;
250 deleting a provision relating to payments necessary to
251 avoid defaulting on a mortgage or security interest on
252 certain property; transferring, renumbering, and
253 amending s. 738.705, F.S.; revising the sources from
254 which a fiduciary must pay a tax required by a share
255 of an entity's taxable income; requiring a fiduciary
256 to adjust income or principal receipts if the taxes
257 paid are reduced due to a deduction for a payment made
258 to a beneficiary; providing construction; making
259 technical changes; transferring, renumbering, and
260 amending s. 738.706, F.S.; revising the circumstances
261 under which a fiduciary may make adjustments between

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262 income and principal to offset shifts in the economic
263 interests or tax benefits of specified beneficiaries;
264 requiring a fiduciary to charge a beneficiary to
265 reimburse the principal if the beneficiary benefits
266 from an applicable tax deduction; requiring the share
267 of reimbursement for each fiduciary or beneficiary to
268 be the same as its share of the decrease in income
269 tax; authorizing such fiduciary to charge a
270 beneficiary to offset the estate tax by obtaining
271 payment from the beneficiary, withholding an amount
272 from future distributions, or adopting another method
273 or combination of methods; creating s. 738.508, F.S.;
274 defining terms; specifying the manner by which
275 property expenses are apportioned between a tenant and
276 remainderman; providing applicability and
277 construction; amending s. 738.601, F.S.; providing
278 applicability; specifying the manner by which a
279 fiduciary determines and distributes net income;
280 providing circumstances under which a fiduciary may
281 not reduce certain principal or income receipts;
282 amending s. 738.602, F.S.; providing that certain
283 beneficiaries of non-unitrusts are entitled to receive
284 a specified share of net income; providing that
285 certain requirements apply in determining a
286 beneficiary's share of net income; providing
287 construction; amending s. 738.701, F.S.; providing
288 that an income beneficiary is entitled to net income
289 when an asset is subject to a certain trust or
290 successive interest; providing that an asset becomes

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291 subject to a specified trust on certain dates;
292 amending s. 738.702, F.S.; specifying the manner by
293 which a fiduciary allocates certain receipts and makes
294 disbursements when a decedent dies or income interest
295 begins; providing construction; amending s. 738.703,
296 F.S.; defining the term "undistributed income";
297 specifying the manner by which a fiduciary makes
298 allocations of undistributed income when income
299 interest ends; amending s. 738.801, F.S.; providing
300 for uniform application and construction of the act;
301 amending s. 738.802, F.S.; providing construction in
302 relation to federal law; amending s. 738.803, F.S.;
303 making a technical change; amending s. 738.804, F.S.;
304 revising application of ch. 738, F.S., to conform to
305 changes made by the act; providing an effective date.
306

307 Be It Enacted by the Legislature of the State of Florida:
308

309 Section 1. Section 738.101, Florida Statutes, is amended to
310 read:

311 738.101 Short title.—This chapter may be cited as the
312 "Florida Uniform Fiduciary Income and Principal ~~and Income~~ Act."

313 Section 2. Section 738.102, Florida Statutes, is amended to
314 read:

315 738.102 Definitions.—As used in this chapter, the term:

316 (1) "Accounting period" means a calendar year unless
317 ~~another 12-month period is selected by a fiduciary selects~~
318 another period of 12 calendar months or approximately 12
319 calendar months. The term includes a part ~~portion~~ of a calendar

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320 year or another period of 12 calendar months or approximately 12
321 calendar months which ~~other 12-month period that begins when an~~
322 ~~income interest~~ begins or ends when an income interest ends.

323 (2) "Asset-backed security," as provided in s. 738.415,
324 means a security that is serviced primarily by the cash flows of
325 a discrete pool of fixed or revolving receivables or other
326 financial assets that by their terms convert to cash within a
327 finite time. The term includes rights or other assets that
328 ensure the servicing or timely distribution of proceeds to the
329 holder of the asset-backed security. The term does not include
330 an asset to which s. 738.401, s. 738.409, or s. 738.414 applies.

331 (3) "Beneficiary" includes:

332 (a) For a trust:

333 1. A current beneficiary, including a current income
334 beneficiary and a beneficiary that may receive only principal;

335 2. A remainder beneficiary; and

336 3. Any other successor beneficiary;

337 (b) For an estate, an heir, and a devisee; and

338 (c) For a life estate or term interest, a person who holds
339 a life estate, a term interest, or a remainder or other interest
340 following a life estate or term interest ~~means, in the case of a~~
341 ~~decedent's estate, an heir or devisee and, in the case of a~~
342 ~~trust, an income beneficiary or a remainder beneficiary.~~

343 (4) ~~(3)~~ "Carrying value" means the fair market value at the
344 time the assets are received by the fiduciary. For an estate and
345 for a trust ~~the estates of decedents and trusts~~ described in s.
346 733.707(3), after the grantor's death, the assets are considered
347 received as of the date of the settlor's death. If there is a
348 change in fiduciaries, a majority of the continuing fiduciaries

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349 may elect to adjust the carrying values to reflect the fair
350 market value of the assets at the beginning of their
351 administration. If such election is made, it must be reflected
352 on the first accounting filed after the election. For assets
353 acquired during the administration of the estate or trust, the
354 carrying value is equal to the acquisition costs of the asset.
355 Carrying value of assets should not be arbitrarily "written up"
356 or "written down." In some circumstances, including, but not
357 limited to, those described in ss. 738.410 and 738.602, carrying
358 value may be adjusted with proper disclosure to reflect changes
359 in carrying value applied in a consistent manner.

360 (5) "Court" means a circuit court of this state.

361 (6) "Current income beneficiary" means a beneficiary to
362 which a fiduciary may or must distribute net income, regardless
363 of whether the fiduciary also distributes principal to the
364 beneficiary.

365 (7) "Distribution" means a payment or transfer by a
366 fiduciary to a beneficiary in the beneficiary's capacity as a
367 beneficiary, without consideration other than the beneficiary's
368 right to receive the payment or transfer under the terms of the
369 trust as defined in subsection (24), or in a will, life estate,
370 or term interest. "Distribute," "distributed," and "distributee"
371 have corresponding meanings.

372 (8) "Estate" means a decedent's estate, including the
373 property of the decedent as the estate is originally constituted
374 and the property of the estate as it exists at any time during
375 administration.

376 (9)~~(4)~~ "Fiduciary" includes ~~means~~ a trustee, a trust
377 director as defined in s. 736.0103, or a personal

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378 representative, and a person acting under a delegation from a
379 fiduciary ~~or a trustee~~. The term also includes a person that
380 holds property for a successor beneficiary whose interest may be
381 affected by an allocation of receipts and expenditures between
382 income and principal. If there are two or more cofiduciaries,
383 the term includes all cofiduciaries acting under the terms of
384 the trust and applicable law ~~an executor, administrator,~~
385 ~~successor personal representative, special administrator, or a~~
386 ~~person performing substantially the same function.~~

387 (10) ~~(5)~~ "Income" means money or other property ~~that~~ a
388 fiduciary receives as current return from a principal ~~asset~~. The
389 term includes a part ~~portion~~ of receipts from a sale, exchange,
390 or liquidation of a principal asset, to the extent provided in
391 ss. 738.401-738.416 ~~ss. 738.401-738.403 and s. 738.503.~~

392 ~~(6) "Income beneficiary" means a person to whom net income~~
393 ~~of a trust is or may be payable.~~

394 (11) ~~(7)~~ "Income interest" means the right of a current ~~an~~
395 income beneficiary to receive all or part of net income, whether
396 the terms of the trust require the net income to be distributed
397 or authorize the net income to be distributed in the fiduciary's
398 ~~trustee's~~ discretion. The term includes the right of a current
399 beneficiary to use property held by a fiduciary.

400 (12) "Independent person" means a person who is not:

401 (a) For a trust:

402 1. A qualified beneficiary as defined in s. 736.0103;

403 2. A settlor of the trust;

404 3. An individual whose legal obligation to support a
405 beneficiary may be satisfied by a distribution from the trust;

406 or

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407 4. Any trustee whom an interested distributee has the power
408 to remove and replace with a related or subordinate party.

409 (b) For an estate, a beneficiary;

410 (c) A spouse, a parent, a brother, a sister, or an issue of
411 an individual described in paragraph (a) or paragraph (b);

412 (d) A corporation, a partnership, a limited liability
413 company, or another entity in which persons described in
414 paragraphs (a), (b), and (c), in the aggregate, have voting
415 control; or

416 (e) An employee of a person described in paragraph (a),
417 paragraph (b), paragraph (c), or paragraph (d).

418 (13) "Internal Revenue Code" means the Internal Revenue
419 Code of 1986, as amended.

420 (14)-(8) "Mandatory income interest" means the right of a
421 current ~~an~~ income beneficiary to receive net income that the
422 terms of the trust require the fiduciary to distribute.

423 (15)-(9) "Net income" means the total allocations ~~receipts~~
424 ~~allocated to income~~ during an accounting period to income under
425 the terms of a trust and this chapter minus the disbursements
426 ~~made from income~~ during the period, other than distributions,
427 allocated to income under the terms of the trust and this
428 chapter. To the extent that the trust is a unitrust under ss.
429 738.301-738.310, the term means the unitrust amount determined
430 under ss. 738.301-738.310. The term includes the amount of an
431 adjustment from principal to income under s. 738.203. The term
432 does not include the amount of an adjustment ~~plus or minus~~
433 ~~transfers under this chapter to or~~ from income to principal
434 under s. 738.203 ~~during the period.~~

435 (16)-(10) "Person" means an individual, a business or a

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436 ~~nonprofit entity, corporation, business trust, an~~ estate, a
437 ~~trust, partnership, limited liability company, association,~~
438 ~~joint venture, a public corporation, or any other legal or~~
439 ~~commercial entity or~~ a government or governmental subdivision,
440 agency, or instrumentality, or other legal entity.

441 (17) "Personal representative" means an executor, an
442 administrator, a successor personal representative, a special
443 administrator, or a person that performs substantially the same
444 function with respect to an estate under the law governing the
445 person's status.

446 (18) ~~(11)~~ "Principal" means property held in trust for
447 distribution to, production of income for, or use by a current
448 or successor a remainder beneficiary when the trust terminates.

449 (19) "Record" means information inscribed on a tangible
450 medium or stored in an electronic or other medium and is
451 retrievable in perceivable form.

452 (20) "Settlor" means a person, including a testator, who
453 creates or contributes property to a trust. If more than one
454 person creates or contributes property to a trust, the term
455 includes each person, to the extent of the trust property
456 attributable to that person's contribution, except to the extent
457 that another person has the power to revoke or withdraw that
458 portion.

459 (21) "Special tax benefit" means:

460 (a) Exclusion of a transfer to a trust from gifts described
461 in s. 2503(b) of the Internal Revenue Code because of the
462 qualification of an income interest in the trust as a present
463 interest in property;

464 (b) Status as a qualified subchapter S trust described in

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465 s. 1361(d)(3) of the Internal Revenue Code at a time the trust
466 holds stock of an S corporation described in s. 1361(a)(1) of
467 the Internal Revenue Code;

468 (c) An estate or gift tax marital deduction for a transfer
469 to a trust under s. 2056 or s. 2523 of the Internal Revenue Code
470 which depends or depended in whole or in part on the right of
471 the settlor's spouse to receive the net income of the trust;

472 (d) Exemption in whole or in part of a trust from the
473 federal generation-skipping transfer tax imposed by s. 2601 of
474 the Internal Revenue Code because the trust was irrevocable on
475 September 25, 1985, if there is any possibility that:

476 1. A taxable distribution as defined in s. 2612(b) of the
477 Internal Revenue Code could be made from the trust; or

478 2. A taxable termination as defined in s. 2612(a) of the
479 Internal Revenue Code could occur with respect to the trust; or

480 (e) An inclusion ratio as defined in s. 2642(a) of the
481 Internal Revenue Code of the trust which is less than one, if
482 there is any possibility that:

483 1. A taxable distribution as defined in s. 2612(b) of the
484 Internal Revenue Code could be made from the trust; or

485 2. A taxable termination as defined in s. 2612(a) of the
486 Internal Revenue Code could occur with respect to the trust.

487 (22) "Successive interest" means the interest of a
488 successor beneficiary.

489 (23)~~(12)~~ "Successor ~~Remainder~~ beneficiary" means a person
490 entitled to receive income or principal or to use property when
491 an income interest or other current interest ends.

492 (24)~~(13)~~ "Terms of a trust" means:

493 (a) Except as otherwise provided in paragraph (b), the

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494 manifestation of the settlor's intent regarding a trust's
 495 provisions as:

496 1. Expressed in the will or trust instrument; or
 497 2. Established by other evidence that would be admissible
 498 in a judicial proceeding.

499 (b) The trust's provisions as established, determined, or
 500 amended by:

501 1. A trustee or trust director in accordance with the
 502 applicable law;

503 2. A court order; or

504 3. A nonjudicial settlement agreement under s. 736.0111.

505 (c) For an estate, a will; or

506 (d) For a life estate or term interest, the corresponding
 507 manifestation of the rights of the beneficiaries to the extent
 508 provided in s. 738.508 ~~the manifestation of the intent of a~~
 509 ~~grantor or decedent with respect to the trust, expressed in a~~
 510 ~~manner that admits of its proof in a judicial proceeding,~~
 511 ~~whether by written or spoken words or by conduct.~~

512 (25) "Trust" includes an express trust, whether private or
 513 charitable, with additions to the trust, wherever and however
 514 created; and a trust created or determined by a judgment or
 515 decree under which the trust is to be administered in the manner
 516 of an express trust. The term does not include a constructive
 517 trust; a resulting trust; a conservatorship; a custodial
 518 arrangement under the Florida Uniform Transfers to Minors Act; a
 519 business trust providing for certificates to be issued to
 520 beneficiaries; a common trust fund; a land trust under s.
 521 689.071; a trust created by the form of the account or by the
 522 deposit agreement at a financial institution; a voting trust; a

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523 security arrangement; a liquidation trust; a trust for the
524 primary purpose of paying debts, dividends, interest, salaries,
525 wages, profits, pensions, retirement benefits, or employee
526 benefits of any kind; or an arrangement under which a person is
527 a nominee, an escrowee, or an agent for another.

528 (26)~~(14)~~ "Trustee" means a person, other than a personal
529 representative, that owns or holds property for the benefit of a
530 beneficiary. The term includes an original, additional, or
531 successor trustee, regardless of whether they are ~~or not~~
532 appointed or confirmed by a court.

533 (27) "Will" means any testamentary instrument recognized
534 under applicable law which makes a legally effective disposition
535 of an individual's property, effective at the individual's
536 death. The term includes a codicil or other amendment to a
537 testamentary instrument.

538 Section 3. Section 738.103, Florida Statutes, is amended to
539 read:

540 (Substantial rewording of section. See
541 s. 738.103, F.S., for present text.)

542 738.103 Scope.—Except as otherwise provided in the terms of
543 a trust or this chapter, this chapter applies to all of the
544 following:

545 (1) A trust or an estate.

546 (2) A life estate or other term interest in which the
547 interest of one or more persons will be succeeded by the
548 interest of one or more other persons to the extent provided in
549 s. 738.508.

550 Section 4. Section 738.104, Florida Statutes, is amended to
551 read:

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552 (Substantial rewording of section. See
553 s. 738.104, F.S., for present text.)
554 738.104 Governing law.—Except as otherwise provided in the
555 terms of a trust or this chapter, this chapter applies when this
556 state is the principal place of administration of a trust or
557 estate or the situs of property that is not held in a trust or
558 estate and is subject to a life estate or other term interest
559 described in s. 738.103(2). By accepting the trusteeship of a
560 trust having its principal place of administration in this state
561 or by moving the principal place of administration of a trust to
562 this state, the trustee submits to the application of this
563 chapter to any matter within the scope of this chapter involving
564 the trust.

565 Section 5. Section 738.1041, Florida Statutes, is repealed.
566 Section 6. Section 738.105, Florida Statutes, is repealed.
567 Section 7. Section 738.201, Florida Statutes, is amended to
568 read:

569 (Substantial rewording of section. See
570 s. 738.201, F.S., for present text.)

571 738.201 Fiduciary duties; general principles.—

572 (1) In making an allocation or determination or exercising
573 discretion under this chapter, a fiduciary shall do all of the
574 following:

575 (a) Act in good faith, based on what is a fair and
576 reasonable fee to all beneficiaries;

577 (b) Administer a trust or estate impartially, except to the
578 extent that the terms of the trust manifest an intent that the
579 fiduciary favors one or more beneficiaries;

580 (c) Administer the trust or estate in accordance with the

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581 terms of the trust, even if there is a different provision in
582 this chapter.

583 (d) Administer the trust or estate in accordance with this
584 chapter, except to the extent that the terms of the trust
585 provide otherwise or authorize the fiduciary to determine
586 otherwise.

587 (2) A fiduciary's allocation, determination, or exercise of
588 discretion under this chapter is presumed to be fair and
589 reasonable to all beneficiaries. A fiduciary may exercise a
590 discretionary power of administration given to the fiduciary by
591 the terms of the trust, and an exercise of the power that
592 produces a result different from a result required or permitted
593 by this chapter does not create an inference that the fiduciary
594 abused the fiduciary's discretion.

595 (3) A fiduciary shall:

596 (a) Add a receipt to principal, to the extent that the
597 terms of the trust and this chapter do not allocate the receipt
598 between income and principal;

599 (b) Charge a disbursement to principal, to the extent that
600 the terms of the trust and this chapter do not allocate the
601 disbursement between income and principal; and

602 (c) Within 65 days after the fiscal year ends, add any
603 undistributed income to principal, unless otherwise provided by
604 the terms of the trust.

605 (4) A fiduciary may exercise the power to adjust under s.
606 738.203(1), convert an income trust to a unitrust under ss.
607 738.301-738.310, change the percentage or method used to
608 calculate a unitrust amount under ss. 738.301-738.310, or
609 convert a unitrust to an income trust under ss. 738.301-738.310

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610 if the fiduciary determines the exercise of the power will
611 assist the fiduciary to administer the trust or estate
612 impartially.

613 (5) The fiduciary must consider the following factors in
614 making the determination in subsection (4), including:

615 (a) The terms of the trust.

616 (b) The nature, distribution standards, and expected
617 duration of the trust.

618 (c) The effect of the allocation rules, including specific
619 adjustments between income and principal, under ss. 738.301-
620 738.416.

621 (d) The desirability of liquidity and regularity of income.

622 (e) The desirability of the preservation and appreciation
623 of principal.

624 (f) The extent to which an asset is used or may be used by
625 a beneficiary.

626 (g) The increase or decrease in the value of principal
627 assets, reasonably determined by the fiduciary.

628 (h) Whether and to what extent the terms of the trust give
629 the fiduciary power to accumulate income or invade principal or
630 prohibit the fiduciary from accumulating income or invading
631 principal.

632 (i) The extent to which the fiduciary has accumulated
633 income or invaded principal in preceding accounting periods.

634 (j) The effect of current and reasonably expected economic
635 conditions.

636 (k) The reasonably expected tax consequences of the
637 exercise of the power.

638 (l) The identities and circumstances of the beneficiaries.

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639 (6) Except as provided in ss. 738.301-738.310, this chapter
640 pertains to the administration of a trust and is applicable to
641 any trust that is administered in this state or under its law.
642 This chapter also applies to any estate that is administered in
643 this state unless the provision is limited in application to a
644 trustee, rather than a fiduciary.

645 Section 8. Section 738.202, Florida Statutes, is amended to
646 read:

647 (Substantial rewording of section. See
648 s. 738.202, F.S., for present text.)

649 738.202 Judicial review of exercise of discretionary power;
650 request for instruction.—

651 (1) As used in this section, the term “fiduciary decision”
652 means any of the following:

653 (a) A fiduciary’s allocation between income and principal
654 or other determination regarding income and principal required
655 or authorized by the terms of the trust or this chapter.

656 (b) The fiduciary’s exercise or nonexercise of a
657 discretionary power regarding income and principal granted by
658 the terms of the trust or this chapter, including the power to
659 adjust under s. 738.203, convert an income trust to a unitrust
660 under ss. 738.301-738.310, change the percentage or method used
661 to calculate a unitrust amount under ss. 738.301-738.310,
662 convert a unitrust to an income trust under ss. 738.301-738.310,
663 or the method used to make property productive of income under
664 s. 738.413.

665 (c) The fiduciary’s implementation of a decision described
666 in paragraph (a) or paragraph (b).

667 (2) The court may not order a fiduciary to change a

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668 fiduciary decision unless the court determines that the
669 fiduciary decision was an abuse of the fiduciary's discretion. A
670 court may not determine that a fiduciary abused its discretion
671 merely because the court would have exercised the discretion in
672 a different manner or would not have exercised the discretion.

673 (3) If the court determines that a fiduciary decision was
674 an abuse of the fiduciary's discretion, the court may order a
675 remedy authorized by law, including those prescribed under ss.
676 736.1001 and 736.1002. Following such a determination by the
677 court, the remedy is to place the beneficiaries in the positions
678 the beneficiaries would have occupied if the fiduciary had not
679 abused its discretion, as follows:

680 (a) The court may order the fiduciary to exercise or
681 refrain from exercising the power to adjust under s. 738.203;

682 (b) The court may order the fiduciary to exercise or
683 refrain from exercising the power to convert an income trust to
684 a unitrust under ss. 738.301-738.310, change the percentage or
685 method used to calculate a unitrust amount under ss. 738.301-
686 738.310, or convert a unitrust to an income trust under ss.
687 738.301-738.310;

688 (c) The court may compel the fiduciary to take any of the
689 actions listed under s. 738.413;

690 (d) To the extent that the abuse of discretion has resulted
691 in no distribution to a beneficiary or a distribution that is
692 too small, the court shall require the fiduciary to distribute
693 from the trust to the beneficiary an amount the court determines
694 will restore the beneficiary, in whole or in part, to his or her
695 appropriate position;

696 (e) To the extent that the abuse of discretion has resulted

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697 in a distribution to a beneficiary that is too large, the court
698 shall restore the beneficiaries, the trust, or both, in whole or
699 in part, to their appropriate positions by requiring the
700 fiduciary to withhold an amount from one or more future
701 distributions to the beneficiary who received the distribution
702 that was too large or requiring that beneficiary to return some
703 or all of the distribution to the trust; or

704 (f) To the extent that the court is unable, after applying
705 paragraphs (a)-(e), to restore the beneficiaries or the trust,
706 or both, to the positions they would have occupied if the
707 fiduciary had not abused its discretion, the court may require
708 the fiduciary to pay an appropriate amount from its own funds to
709 one or more of the beneficiaries or the trust or both.

710 (4) On petition by the fiduciary for instruction, the court
711 may determine whether a proposed fiduciary decision will result
712 in an abuse of the fiduciary's discretion. If the petition
713 describes the proposed decision, contains sufficient information
714 to inform the beneficiary of the reasons for making the proposed
715 decision and the facts on which the fiduciary relies, and
716 explains how the beneficiary will be affected by the proposed
717 decision, a beneficiary who opposes the proposed decision has
718 the burden to establish that it will result in an abuse of the
719 fiduciary's discretion.

720 (5) If an action is instituted alleging an abuse of
721 discretion in the exercise or nonexercise of the fiduciary's
722 discretion under this chapter and the court determines no abuse
723 of discretion has occurred, the fiduciary's costs and attorney
724 fees incurred in defending the action shall be paid from the
725 trust assets.

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726 Section 9. Section 738.203, Florida Statutes, is created to
727 read:

728 738.203 Fiduciary's power to adjust.-

729 (1) Except as otherwise provided in the terms of a trust or
730 this section, a fiduciary, in a record without court approval,
731 may adjust between income and principal if the fiduciary
732 determines that the exercise of the power to adjust will assist
733 the fiduciary in administering the trust or estate impartially.

734 (2) This section does not create a duty to exercise or
735 consider the power to adjust under subsection (1) or to inform a
736 beneficiary about the applicability of this section.

737 (3) A fiduciary that in good faith exercises or fails to
738 exercise the power to adjust under subsection (1) is not liable
739 to a person affected by the exercise or failure to exercise.

740 (4) In deciding whether and to what extent to exercise the
741 power to adjust under subsection (1), a fiduciary shall consider
742 all factors the fiduciary considers relevant, including relevant
743 factors in s. 738.201(5), and the application of ss. 738.401(9),
744 738.408 and 738.413.

745 (5) A fiduciary may not exercise the power under subsection
746 (1) to make an adjustment or under s. 738.408 to make a
747 determination that an allocation is insubstantial if:

748 (a) The adjustment or determination would reduce the amount
749 payable to a current income beneficiary from a trust that
750 qualifies for a special tax benefit, except to the extent that
751 the adjustment is made to provide for a reasonable apportionment
752 of the total return of the trust between the current income
753 beneficiary and successor beneficiaries;

754 (b) The adjustment or determination would change the amount

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755 payable to a beneficiary, as a fixed annuity or a fixed fraction
756 of the value of the trust assets, under the terms of the trust;

757 (c) The adjustment or determination would reduce an amount
758 that is permanently set aside for a charitable purpose under the
759 terms of the trust unless both income and principal are set
760 aside for the charitable purpose;

761 (d) Possessing or exercising the power would cause a person
762 to be treated as the owner of all or part of the trust for
763 federal income tax purposes and the person would not be treated
764 as the owner if the fiduciary did not possess the power to
765 adjust;

766 (e) Possessing or exercising the power would cause all or
767 part of the value of the trust assets to be included in the
768 gross estate of an individual for federal real estate tax
769 purposes and the assets would not be included in the gross
770 estate of the individual if the fiduciary did not possess the
771 power to adjust;

772 (f) Possessing or exercising the power would cause an
773 individual to be treated as making a gift for federal gift tax
774 purposes;

775 (g) The fiduciary is not an independent person;

776 (h) The trust is irrevocable and provides for income to be
777 paid to the settlor, and possessing or exercising the power
778 would cause the adjusted principal or income to be considered an
779 available resource or available income under a public-benefit
780 program; or

781 (i) The trust is a unitrust under ss. 738.301-738.310.

782 (6) If paragraph (5) (d), paragraph (5) (e), paragraph
783 (5) (f), or paragraph (5) (g) applies to a fiduciary:

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784 (a) A cofiduciary to which paragraphs (5) (d)-(g) do not
785 apply may exercise the power to adjust, unless the exercise of
786 the power by the remaining cofiduciary or cofiduciaries is not
787 permitted by the terms of the trust or law other than this
788 chapter; or

789 (b) If there is no cofiduciary to which paragraphs (5) (d)-
790 (g) do not apply, the fiduciary may appoint a cofiduciary to
791 which paragraphs (5) (d)-(g) do not apply which may be a special
792 fiduciary with limited powers, and the appointed cofiduciary may
793 exercise the power to adjust under subsection (1), unless the
794 appointment of a cofiduciary or the exercise of the power by a
795 cofiduciary is not permitted by the terms of the trust or law
796 other than this chapter.

797 (7) A fiduciary may release or delegate to a cofiduciary
798 the power to adjust under subsection (1) if the fiduciary
799 determines that the fiduciary's possession or exercise of the
800 power will or may:

801 (a) Cause a result described in paragraph (5) (a), paragraph
802 (5) (b), paragraph (5) (c), paragraph (5) (d), paragraph (5) (e),
803 paragraph (5) (f), or paragraph (5) (h); or

804 (b) Deprive the trust of a tax benefit or impose a tax
805 burden not described in paragraph (5) (a), paragraph (5) (b),
806 paragraph (5) (c), paragraph (5) (d), paragraph (5) (e), or
807 paragraph (5) (f).

808 (8) A fiduciary's release or delegation to a cofiduciary
809 under subsection (7) of the power to adjust under subsection
810 (1):

811 (a) Must be in a record;

812 (b) Applies to the entire power, unless the release or

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813 delegation provides a limitation, which may be a limitation to
814 the power to adjust:

- 815 1. From income to principal;
816 2. From principal to income;
817 3. For specified property; or
818 4. In specified circumstances.

819 (c) For a delegation, may be modified by a redelegation
820 under this subsection by the cofiduciary to which the delegation
821 is made; and

822 (d) Subject to paragraph (c), is permanent, unless the
823 release or delegation provides a specified period, including a
824 period measured by the life of an individual or the lives of
825 more than one individual.

826 (9) Terms of a trust that deny or limit the power to adjust
827 between income and principal do not affect the application of
828 this section, unless the terms of the trust expressly deny or
829 limit the power to adjust under subsection (1).

830 (10) The exercise of the power to adjust under subsection
831 (1) in any accounting period may apply to the current period,
832 the immediately preceding period, and one or more subsequent
833 periods.

834 (11) A description of the exercise of the power to adjust
835 under subsection (1) must be:

836 (a) Included in a report, if any, sent to beneficiaries
837 under s. 736.0813; or

838 (b) Communicated at least annually to the qualified
839 beneficiaries as defined in s. 736.0103 other than the Attorney
840 General.

841 (12) With respect to a trust in existence on January 1,

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842 2003:

843 (a) A fiduciary may not have the power to adjust under this
844 section until the statement required in subsection (13) is
845 provided and either no objection is made or any objection which
846 is made has been terminated.

847 1. An objection is made if, within 60 days after the date
848 of the statement required in subsection (13), a super majority
849 of the eligible beneficiaries deliver to the fiduciary a written
850 objection to the application of this section to such trust. An
851 objection shall be deemed to be delivered to the fiduciary on
852 the date the objection is mailed to the mailing address listed
853 in the notice provided in subsection (13).

854 2. An objection is terminated upon the earlier of the
855 receipt of consent from a super majority of eligible
856 beneficiaries of the class that made the objection, or the
857 resolution of the objection under paragraph (c).

858 (b) An objection or consent under this section may be
859 executed by a legal representative or natural guardian of a
860 beneficiary without the filing of any proceeding or approval of
861 any court.

862 (c) If an objection is delivered to the fiduciary, then the
863 fiduciary may petition the circuit court for an order quashing
864 the objection and vesting in such fiduciary the power to adjust
865 under this section. The burden will be on the objecting
866 beneficiaries to prove that the power to adjust would be
867 inequitable, illegal, or otherwise in contravention of the
868 grantor's intent. The court may award costs and attorney fees
869 relating to the fiduciary's petition in the same manner as in
870 chancery actions. When costs and attorney fees are to be paid

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871 out of the trust, the court may, in its discretion, direct from
872 which part of the trust they shall be paid.

873 (d) If no timely objection is made or if the fiduciary is
874 vested with the power to adjust by court order, the fiduciary
875 may thereafter exercise the power to adjust without providing
876 notice of its intent to do so unless, in vesting the fiduciary
877 with the power to adjust, the court determines that unusual
878 circumstances require otherwise.

879 (e)1. If a fiduciary makes a good faith effort to comply
880 with the notice provisions of subsection (13), but fails to
881 deliver notice to one or more beneficiaries entitled to such
882 notice, neither the validity of the notice required under this
883 subsection nor the fiduciary's power to adjust under this
884 section shall be affected until the fiduciary has actual notice
885 that one or more beneficiaries entitled to notice were not
886 notified. Until the fiduciary has actual notice of the notice
887 deficiency, the fiduciary shall have all of the powers and
888 protections granted a fiduciary with the power to adjust under
889 this chapter.

890 2. When the fiduciary has actual notice that one or more
891 beneficiaries entitled to notice under subsection (13) were not
892 notified, the fiduciary's power to adjust under this section
893 shall cease until all beneficiaries who are entitled to such
894 notice, including those who were previously provided with such
895 notice, are notified and given the opportunity to object as
896 provided for under this subsection.

897 (f) The objection of a super majority of eligible
898 beneficiaries under this subsection shall be valid for a period
899 of 1 year after the date of the notice set forth in subsection

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900 (13). Upon expiration of the objection, the fiduciary may
901 thereafter give a new notice under subsection (13).

902 (g) This section is not intended to create or imply a duty
903 of the fiduciary of a trust existing on January 1, 2003, to seek
904 a power to adjust under this subsection or to give the notice
905 described in subsection (13) if the fiduciary does not desire to
906 have a power to adjust under this section, and no inference of
907 impropriety shall be made as the result of a fiduciary not
908 seeking a power to adjust under this subsection.

909 (13) (a) A fiduciary of a trust in existence on January 1,
910 2003, that is not prohibited under subsection (5) from
911 exercising the power to adjust shall, any time before initially
912 exercising the power, provide to all eligible beneficiaries a
913 statement containing the following:

914 1. The name, telephone number, street address, and mailing
915 address of the fiduciary and of any person who may be contacted
916 for further information;

917 2. A statement that unless a super majority of the eligible
918 beneficiaries objects to the application of this section to the
919 trust within 60 days after the date the statement pursuant to
920 this subsection was served, this section shall apply to the
921 trust; and

922 3. A statement that, if this section applies to the trust,
923 the fiduciary will have the power to adjust between income and
924 principal and that such a power may have an effect on the
925 distributions to such beneficiary from the trust.

926 (b) The statement may contain information regarding a
927 fiduciary's obligation with respect to the power to adjust
928 between income and principal under this section.

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929 (c) The statement shall be served informally, in the manner
930 provided in the Florida Rules of Civil Procedure relating to
931 service of pleadings subsequent to the initial pleading. The
932 statement may be served on a legal representative or natural
933 guardian of a beneficiary without the filing of any proceeding
934 or approval of any court.

935 (14) For purposes of subsections (12) and (13), the term:

936 1. "Eligible beneficiaries" means:

937 a. If at the time the determination is made there are one
938 or more beneficiaries described in s. 736.0103(19) (c), the
939 beneficiaries described in s. 736.0103(19) (a) and (c); or

940 b. If there is no beneficiary described in s.
941 736.0103(19) (c), the beneficiaries described in s.
942 736.0103(19) (a) and (b).

943 2. "Super majority of the eligible beneficiaries" means:

944 a. If at the time the determination is made there are one
945 or more beneficiaries described in s. 736.0103(19) (c), at least
946 two-thirds in interest of the beneficiaries described in s.
947 736.0103(19) (a) or two-thirds in interest of the beneficiaries
948 described in s. 736.0103(19) (c), if the interests of the
949 beneficiaries are reasonably ascertainable; otherwise, it means
950 two-thirds in number of either such class; or

951 b. If there is no beneficiary described in s.
952 736.0103(19) (c), at least two-thirds in interest of the
953 beneficiaries described in s. 736.0103(19) (a) or two-thirds in
954 interest of the beneficiaries described in s. 736.0103(19) (b),
955 if the interests of the beneficiaries are reasonably
956 ascertainable, otherwise, two-thirds in number of either such
957 class.

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958 (15) A trust exists on January 1, 2003, if it is not
959 revocable on January 1, 2003. A trust is revocable if revocable
960 by the grantor alone or in conjunction with any other person. A
961 trust is not revocable for purposes of this section if revocable
962 by the grantor only with the consent of all persons having a
963 beneficial interest in the property.

964 Section 10. Section 738.301, Florida Statutes, is amended
965 to read:

966 (Substantial rewording of section. See
967 s. 738.301, F.S., for present text).

968 738.301 Definitions.—For purposes of this section and ss.
969 738.302-738.310:

970 (1) "Applicable value" means the amount of the net fair
971 market value of a trust taken into account under s. 738.307.

972 (2) "Express unitrust" means a trust for which, under the
973 terms of the trust without regard to this section and ss.
974 738.302-738.310, net income must be calculated as a unitrust
975 amount.

976 (3) "Income trust" means a trust, created by an inter vivos
977 or testamentary instrument, that directs or permits the trustee
978 to distribute the net income of the trust to one or more
979 persons, in fixed proportions or in amounts or proportions
980 determined by the trustee and regardless of whether the trust
981 directs or permits the trustee to distribute the principal of
982 the trust to one or more such persons.

983 (4) "Net fair market value of a trust" means the fair
984 market value of the assets of the trust, less the reasonably
985 known noncontingent liabilities of the trust.

986 (5) "Unitrust" means a trust for which net income is a

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987 unitrust amount. The term includes an express unitrust.

988 (6) "Unitrust amount" means an amount computed by
 989 multiplying a determined value of a trust by a determined
 990 percentage. For a unitrust administered under a unitrust policy,
 991 the term means the applicable value multiplied by the unitrust
 992 rate.

993 (7) "Unitrust policy" means a policy described in ss.
 994 738.301-738.310 and adopted under s. 738.303.

995 (8) "Unitrust rate" means the rate used to compute the
 996 unitrust amount for a unitrust administered under a unitrust
 997 policy.

998 Section 11. Section 738.302, Florida Statutes, is amended
 999 to read:

1000 (Substantial rewording of section. See
 1001 s. 738.302, F.S., for present text.)

1002 738.302 Applications; duties and remedies.-

1003 (1) Except as otherwise provided in subsection (2), ss.
 1004 738.301-738.310 apply to all of the following:

1005 (a) An income trust, unless the terms of the trust
 1006 expressly prohibit the use of ss. 738.301-738.310 by a specific
 1007 reference to this paragraph or corresponding provision of prior
 1008 law, or an explicit expression of intent that net income not be
 1009 calculated as a unitrust amount.

1010 (b) An express unitrust, except to the extent that the
 1011 terms of the trust explicitly:

1012 1. Prohibit the use of ss. 738.301-738.310 by a specific
 1013 reference to this paragraph or corresponding provision of prior
 1014 law;

1015 2. Prohibit conversion to an income trust; or

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1016 3. Limit changes to the method of calculating the unitrust
1017 amount.

1018 (c) A unitrust that had been converted from an income
1019 trust.

1020 (2) The provisions of ss. 738.301-738.310 do not apply to a
1021 trust described in s. 170(f)(2)(B), s. 642(c)(5), s. 664(d), s.
1022 2702(a)(3)(A)(ii) or (iii), or s. 2702(b) of the Internal
1023 Revenue Code.

1024 (3) An income trust to which ss. 738.301-738.310 apply
1025 under paragraph (1)(a) may be converted to a unitrust under ss.
1026 738.301-738.310 regardless of the terms of the trust concerning
1027 distributions. Conversion to a unitrust under ss. 738.301-
1028 738.310 does not affect other terms of the trust concerning
1029 distributions of income or principal.

1030 (4) Sections 738.301-738.310 apply to an estate only to the
1031 extent that a trust is a beneficiary of the estate. To the
1032 extent of the trust's interest in the estate, the estate may be
1033 administered as a unitrust, the administration of the estate as
1034 a unitrust may be discontinued, or the percentage or method used
1035 to calculate the unitrust amount may be changed, in the same
1036 manner as for a trust under those sections.

1037 (5) The provisions of ss. 738.301-738.310 do not create a
1038 duty to take or consider action under ss. 738.301-738.310 or to
1039 inform a beneficiary about the applicability of ss. 738.301-
1040 738.310.

1041 (6) A fiduciary that in good faith takes or fails to take
1042 an action under ss. 738.301-738.310 is not liable to a person
1043 affected by the action or inaction.

1044 Section 12. Section 738.303, Florida Statutes, is amended

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1045 to read:

1046 (Substantial rewording of section. See
1047 s. 738.303, F.S., for present text.)

1048 738.303 Authority of fiduciary.—

1049 (1) By complying with subsections (2) and (6), and without
1050 court approval, a fiduciary may do any of the following:

1051 (a) Convert an income trust to a unitrust if the fiduciary
1052 adopts in a record a unitrust policy for the trust which
1053 provides:

1054 1. That in administering the trust, the net income of the
1055 trust will be a unitrust amount rather than net income
1056 determined without regard to ss. 738.301-738.310; and

1057 2. The percentage and method used to calculate the unitrust
1058 amount.

1059 (b) Change the percentage or method used to calculate a
1060 unitrust amount for a unitrust if the fiduciary adopts in a
1061 record a unitrust policy or an amendment or replacement of a
1062 unitrust policy providing charges in the percentage or method
1063 used to calculate the unitrust amount.

1064 (c) Convert a unitrust to an income trust if the fiduciary
1065 adopts in a record a determination that, in administering the
1066 trust, the net income of the trust will be net income determined
1067 without regard to ss. 738.301-738.310 rather than a unitrust
1068 amount.

1069 (2) A fiduciary may take an action under subsection (1) if
1070 all of the following apply:

1071 (a) The fiduciary determines that the action will assist
1072 the fiduciary to administer a trust impartially.

1073 (b) The fiduciary sends a notice in a record to the

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1074 qualified beneficiaries determined under ss. 736.0103 and
1075 736.0110 in the manner required by s. 738.304, describing and
1076 proposing to take the action.

1077 (c) The fiduciary sends a copy of the notice under
1078 paragraph (b) to each settlor of the trust which is:

- 1079 1. If an individual, living; or
- 1080 2. If not an individual, in existence.

1081 (d) At least one member of each class of the qualified
1082 beneficiaries determined under ss. 736.0103 and 736.0110, other
1083 than the Attorney General, receiving the notice under paragraph
1084 (b) is:

- 1085 1. If an individual, legally competent;
- 1086 2. If not an individual, in existence; or
- 1087 3. Represented in the manner provided in s. 738.304(2).

1088 (e) The fiduciary does not receive, by the date specified
1089 in the notice under s. 738.304(4) (e), an objection in a record
1090 to the action proposed under paragraph (b) from a person to
1091 which the notice under paragraph (b) is sent.

1092 (3) If a fiduciary receives, not later than the date stated
1093 in the notice under s. 738.304(4) (e), an objection in a record
1094 described in s. 738.304(4) (d) to a proposed action, the
1095 fiduciary or a beneficiary may request the court to have the
1096 action taken as proposed, taken with modifications, or
1097 prevented. A person described in s. 738.304(1) may oppose the
1098 proposed action in the proceeding under this subsection
1099 regardless of whether the person:

- 1100 (a) Consented under s. 738.304(3); or
- 1101 (b) Objected under s. 738.304(4) (d).
- 1102 (4) If, after sending a notice under paragraph (2) (b), a

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1103 fiduciary decides not to take the action proposed in the notice,
1104 the fiduciary must notify in a record each person described in
1105 s. 738.304(1) of the decision not to take the action and the
1106 reasons for the decision.

1107 (5) If a beneficiary requests in a record that a fiduciary
1108 take an action described in subsection (1) and the fiduciary
1109 declines to act or does not act within 60 days after receiving
1110 the request, the beneficiary may request the court to direct the
1111 fiduciary to take the action requested.

1112 (6) In deciding whether and how to take an action
1113 authorized in subsection (1), or whether and how to respond to a
1114 request by a beneficiary under subsection (5), a fiduciary must
1115 consider all factors relevant to the trust and beneficiaries,
1116 including the relevant factors listed in s. 738.201(5).

1117 (7) A fiduciary may release or delegate the power to
1118 convert an income trust to a unitrust under paragraph (1)(a),
1119 change the percentage or method used to calculate a unitrust
1120 amount under paragraph (1)(b), or convert a unitrust to an
1121 income trust under paragraph (1)(c), for a reason described in
1122 s. 738.203(7) and in the manner described in s. 738.203(8).

1123 Section 13. Section 738.304, Florida Statutes, is created
1124 to read:

1125 738.304 Notice.—

1126 (1) A notice required by s. 738.303(2)(b) must be sent in a
1127 manner authorized under s. 736.0109 to all of the following:

1128 (a) The qualified beneficiaries determined under s.
1129 736.0103, other than the Attorney General.

1130 (b) Each person that is granted a power over the trust by
1131 the terms of the trust, to the extent that the power is

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1132 exercisable when the person is not then serving as a trustee:

1133 1. Including all of the following:

1134 a. Power over the investment, management, or distribution
1135 of trust property or other matters of trust administration.

1136 b. Power to appoint or remove a trustee or person described
1137 in this paragraph.

1138 2. Excluding all of the following:

1139 a. Power of appointment.

1140 b. Power of a beneficiary over the trust, to the extent
1141 that the exercise or nonexercise of the power affects the
1142 beneficial interest of the beneficiary or another beneficiary
1143 represented by the beneficiary under ss. 736.0301-736.0306 with
1144 respect to the exercise or nonexercise of the power.

1145 c. Power over the trust if the terms of the trust provide
1146 that the power is held in a nonfiduciary capacity and the power
1147 must be held in a nonfiduciary capacity to achieve a tax
1148 objective under the Internal Revenue Code.

1149 (c) Each person that is granted a power by the terms of the
1150 trust to appoint or remove a trustee or person described in
1151 paragraph (b) to the extent that the power is exercisable when
1152 the person that exercises the power is not serving as a trustee
1153 or person described in paragraph (b).

1154 (2) The representation provisions of ss. 736.0301-736.0306
1155 apply to notice under this section.

1156 (3) A person may consent in a record at any time to action
1157 proposed under s. 738.303(2)(b). A notice required by s.
1158 738.303(2)(b) need not be sent to a person that consents under
1159 this subsection.

1160 (4) A notice required under s. 738.303(2)(b) must include

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1161 all of the following:

1162 (a) The action proposed under s. 738.303(2)(b).

1163 (b) For a conversion of an income trust to a unitrust, a
1164 copy of the unitrust policy adopted under s. 738.303(1)(a).

1165 (c) For a change in the percentage or method used to
1166 calculate the unitrust amount, a copy of the unitrust policy or
1167 amendment or replacement of the unitrust policy adopted under s.
1168 738.303(1)(b).

1169 (d) A statement that the person to which the notice is sent
1170 may object to the proposed action by stating in a record the
1171 basis for the objection and sending or delivering the record to
1172 the fiduciary.

1173 (e) The date by which an objection under paragraph (d) must
1174 be received by the fiduciary, which must be at least 30 days
1175 after the date the notice is sent.

1176 (f) The date on which the action is proposed to be taken
1177 and the date on which the action is proposed to take effect.

1178 (g) The name and contact information of the fiduciary.

1179 (h) The name and contact information of a person that may
1180 be contacted for additional information.

1181 Section 14. Section 738.305, Florida Statutes, is created
1182 to read:

1183 738.305 Unitrust policy.—

1184 (1) In administering a unitrust under ss. 738.301-738.310,
1185 a fiduciary shall follow a unitrust policy adopted under s.
1186 738.303(1)(a) or (b) or amended or replaced under s.
1187 738.303(1)(b).

1188 (2) A unitrust policy must provide all of the following:

1189 (a) The unitrust rate or method for determining the

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1190 unitrust rate under s. 738.306.

1191 (b) The method for determining the applicable value under
1192 s. 738.307.

1193 (c) The rules described in ss. 738.306-738.310 which apply
1194 in the administration of the unitrust, whether the rules are:

1195 1. Mandatory as provided in ss. 738.307(1) and (3),
1196 738.308(1), and 738.310; or

1197 2. Optional as provided in ss. 738.306, 738.307(2), and
1198 738.308(2), to the extent that the fiduciary elects to adopt
1199 those rules.

1200 (3) A unitrust policy may do any of the following:

1201 (a) Provide methods and standards for:

1202 1. Determining the timing of the distributions;

1203 2. Making distributions in cash or in kind or partly in
1204 cash and partly in kind; or

1205 3. Correcting an underpayment or overpayment to a
1206 beneficiary based on the unitrust amount if there is an error in
1207 calculating the unitrust amount.

1208 (b) Specify sources and the order of sources, including
1209 categories of income for federal income tax purposes, from which
1210 distributions of a unitrust amount are paid.

1211 (c) Provide other standards and rules that the fiduciary
1212 determines serve the interests of the beneficiaries.

1213 Section 15. Section 738.306, Florida Statutes, is created
1214 to read:

1215 738.306 Unitrust rate.-

1216 (1) A unitrust rate must be at least 3 percent and not more
1217 than 5 percent. Within those limits, the unitrust rate may be:

1218 (a) A fixed unitrust rate; or

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1219 (b)1. A unitrust rate that is determined for each period
1220 using:
1221 a. A market index or other published data; or
1222 b. A mathematical blend of market indices or other
1223 published data over a stated number of preceding periods.
1224 2. If the rate calculated under this paragraph would be
1225 less than 3, the rate is 3; and if the rate calculated would be
1226 more than 5, the rate is 5.
1227 (2) Within the limits of subsection (1), a unitrust policy
1228 may provide for any of the following:
1229 (a) A limit on how much the unitrust rate determined under
1230 paragraph (1)(b) may increase over the unitrust rate for the
1231 preceding period or a mathematical blend of unitrust rates over
1232 a stated number of preceding periods.
1233 (b) A limit on how much the unitrust rate determined under
1234 paragraph (1)(b) may decrease below the unitrust rate for the
1235 preceding period or a mathematical blend of unitrust rates over
1236 a stated number of preceding periods.
1237 (c) A mathematical blend of any of the unitrust rates
1238 determined under paragraph (1)(b) and paragraphs (a) and (b).
1239 (3) If the fiduciary is not an independent person, the
1240 percentage used to calculate the unitrust amount is the rate
1241 determined under s. 7520(a)(2) of the Internal Revenue Code in
1242 effect for the month the conversion under this section becomes
1243 effective and for each January thereafter; however, if the rate
1244 determined under s. 7520(a)(2) of the Internal Revenue Code
1245 exceeds 5 percent, the unitrust rate is 5 percent, and if the
1246 rate determined under s. 7520(a)(2) of the Internal Revenue Code
1247 is less than 3 percent, the unitrust rate is 3 percent.

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1248 Section 16. Section 738.307, Florida Statutes, is created
1249 to read:

1250 738.307 Applicable value.—

1251 (1) A unitrust policy must provide the method for
1252 determining the fair market value of an asset for the purpose of
1253 determining the unitrust amount, including all of the following:

1254 (a) The frequency of valuing the asset, which need not
1255 require a valuation in every period.

1256 (b) The date for valuing the asset in each period in which
1257 the asset is valued.

1258 (2) Except as otherwise provided in s. 738.309, a unitrust
1259 policy may provide methods for determining the amount of the net
1260 fair market value of the trust to take into account in
1261 determining the applicable value, including any of the
1262 following:

1263 (a) Obtaining an appraisal of an asset for which fair
1264 market value is not readily available.

1265 (b) Excluding specific assets or groups or types of assets
1266 in addition to those described in subsection (3).

1267 (c) Making other exceptions or modifications of the
1268 treatment of specific assets or groups or types of assets.

1269 (d) Including identification and treatment of cash or
1270 property held for distribution.

1271 (e) Using an average of fair market values over a stated
1272 number of preceding periods, not to exceed 3 calendar years.

1273 (f) Determining the reasonable known liabilities of the
1274 trust, including treatment of liabilities to conform with the
1275 treatment of assets under paragraphs (a)-(e).

1276 (3) The following property may not be included in

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1277 determining the value of the trust:

1278 (a) Any residential property or any tangible personal
1279 property that, as of the first business day of the current
1280 valuation year, one or more current beneficiaries of the trust
1281 have or have had the right to occupy or have or have had the
1282 right to possess or control, other than in his or her capacity
1283 as trustee of the trust. Instead, the right of occupancy or the
1284 right to possession and control is the unitrust amount with
1285 respect to such property; however, the unitrust amount must be
1286 adjusted to take into account partial distributions from or
1287 receipt into the trust of such property during the valuation
1288 year;

1289 (b) Any asset specifically given to a beneficiary and the
1290 return on investment on such property, which return on
1291 investment must be distributable to the beneficiary; and

1292 (c) Any asset while held in an estate.

1293 Section 17. Section 738.308, Florida Statutes, is created
1294 to read:

1295 738.308 Period.—

1296 (1) A unitrust policy must provide the period used under
1297 ss. 738.306 and 738.307. The period must be the calendar year.

1298 (2) A unitrust policy may provide standards for:

1299 (a) Using fewer preceding periods under s. 738.306(1)(b)1.
1300 or (2)(a) or (b) if:

1301 1. The trust was not in existence in a preceding period; or
1302 2. Market indices or other published data are not available
1303 for a preceding period;

1304 (b) Using fewer preceding periods under 738.307(2)(e) if:

1305 1. The trust was not in existence in a preceding period; or

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1306 2. Fair market values are not available for a preceding
1307 period; and

1308 (c) Prorating a unitrust amount on a daily basis for a part
1309 of a period in which the trust or the administration of the
1310 trust as a unitrust or the interest of any beneficiary commences
1311 or terminates.

1312 Section 18. Section 738.309, Florida Statutes, is created
1313 to read:

1314 738.309 Express unitrust.—

1315 (1) This section applies to a trust that, by its governing
1316 instrument, requires or allows income or net income to be
1317 calculated as a unitrust amount.

1318 (2) The trustee of an express unitrust may determine the
1319 unitrust amount by reference to the net fair market value of the
1320 unitrust's assets in 1 or more years.

1321 (3) Distribution of a unitrust amount is considered a
1322 distribution of all of the net income of an express unitrust and
1323 is considered to be an income interest.

1324 (4) The unitrust amount is considered to be a reasonable
1325 apportionment of the total return of an express unitrust.

1326 (5) An express unitrust that provides or allows a
1327 distribution based on a unitrust rate in excess of 5 percent per
1328 year of the net fair market value of the unitrust assets is
1329 considered a distribution of all of the income of the unitrust
1330 and a distribution of principal of the unitrust to the extent
1331 that the distribution exceeds 5 percent per year.

1332 (6) An express unitrust may provide a mechanism for
1333 changing the unitrust rate, similar to the mechanism provided
1334 under s. 738.306, based upon the factors noted in that section,

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1335 and may provide for a conversion from a unitrust to an income
1336 trust or a reconversion of an income trust to a unitrust under
1337 s. 738.303.

1338 (7) If an express unitrust does not specifically or by
1339 reference to s. 738.306 prohibit a power to change the unitrust
1340 rate or to convert to an income trust under s. 738.303, the
1341 trustee must have such power.

1342 (8) The governing instrument of an express unitrust may
1343 grant the trustee discretion to adopt a consistent practice of
1344 treating capital gains as part of the unitrust amount to the
1345 extent that the unitrust amount exceeds the income determined as
1346 if the trust were not an express unitrust, or the governing
1347 instrument may specify the ordering of classes of income.

1348 (9) Unless the terms of the express unitrust specifically
1349 provide otherwise as provided in subsection (8), the
1350 distribution of a unitrust amount is considered a distribution
1351 made from the following sources, which are listed in order of
1352 priority:

1353 (a) Net accounting income determined under this chapter as
1354 if the trust were not a unitrust;

1355 (b) Ordinary income not allocable to net accounting income;

1356 (c) Net realized short-term capital gains;

1357 (d) Net realized long-term capital gains; and

1358 (e) The principal of the trust.

1359 (10) The governing instrument of an express unitrust may
1360 provide that the trustee may exclude assets used by the
1361 unitrust's beneficiary, including, but not limited to, a
1362 residence property or tangible personal property, from the net
1363 fair market value of the unitrust's assets for the purposes of

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1364 computing the unitrust amount. The use of these assets may be
 1365 considered equivalent to income or to the unitrust amount.

1366 Section 19. Section 738.310, Florida Statutes, is created
 1367 to read:

1368 738.310 Other rules.—Following the conversion of an income
 1369 trust to a unitrust, the trustee shall consider the unitrust
 1370 amount as paid from the following sources, which are listed in
 1371 order of priority:

1372 (1) Net accounting income determined under this chapter as
 1373 if the trust were not a unitrust;

1374 (2) Ordinary income not allocable to net accounting income;

1375 (3) Net realized short-term capital gains;

1376 (4) Net realized long-term capital gains; and

1377 (5) The principal of the trust.

1378 Section 20. Section 738.401, Florida Statutes, is amended
 1379 to read:

1380 738.401 Character of receipts from entity.—

1381 (1) For purposes of this section, the term:

1382 (a) "Capital distribution" means an entity distribution of
 1383 money which is a:

1384 1. Return of capital; or

1385 2. Distribution in total or partial liquidation of the
 1386 entity.

1387 (b) "Entity":

1388 1. Means a corporation, partnership, limited liability
 1389 company, regulated investment company, real estate investment
 1390 trust, common trust fund, or any other organization or
 1391 arrangement in which a fiduciary owns or holds ~~has~~ an interest,
 1392 regardless of whether the entity is a taxpayer for federal

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1393 income tax purposes; and

1394 2. Does not include:

1395 a. A trust or estate to which s. 738.402 applies;

1396 b. A business or other activity to which s. 738.403 applies
1397 which is not conducted by an entity described in subparagraph
1398 1.;

1399 c. An asset-backed security; or

1400 d. An instrument or arrangement to which s. 738.416 applies
1401 ~~other than a trust or estate to which s. 738.402 applies, a~~
1402 ~~business or activity to which s. 738.403 applies, or an asset-~~
1403 ~~backed security to which s. 738.608 applies.~~

1404 (c) "Entity distribution" means a payment or transfer by an
1405 entity to a person in the person's capacity as an owner or
1406 holder of an interest in the entity.

1407 (d) "Lookback period" means the accounting period and the
1408 preceding two accounting periods or, if less, the number of
1409 accounting periods, or portion of accounting periods, that the
1410 interest in the entity has been held by the fiduciary.

1411 (2) In this section, an attribute or action of an entity
1412 includes an attribute or action of any other entity in which the
1413 initial entity owns or holds an interest, including an interest
1414 owned or held indirectly through another entity.

1415 (3) Except as otherwise provided in paragraphs (4) (b), (c),
1416 and (d) ~~this section~~, a fiduciary shall allocate to income:

1417 (a) Money received in an entity distribution; and

1418 (b) Tangible personal property of nominal value received
1419 from the ~~money received from an~~ entity.

1420 ~~(4)(3) Except as otherwise provided in this section, A~~
1421 ~~fiduciary shall allocate the following receipts from an entity~~

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1422 to principal:

1423 (a) Property received in an entity distribution which is
1424 not:

1425 1. ~~other than~~ Money; or

1426 2. Tangible personal property of nominal value.

1427 (b) Money received in an entity ~~one~~ distribution ~~or a~~
1428 ~~series of related distributions~~ in an exchange for part or all
1429 of the fiduciary's a trust's or estate's interest in the entity
1430 to the extent that the entity distribution reduces the
1431 fiduciary's interest in the entity relative to the interest of
1432 other persons that own or hold interests in the entity.

1433 (c) Money received in an entity distribution that is a
1434 capital distribution, to the extent not allocated to income
1435 ~~total or partial liquidation of the entity.~~

1436 (d) Money received in an entity distribution from an entity
1437 that is a regulated investment company or a real estate
1438 investment trust if the money received represents short-term or
1439 long-term capital gain realized within the entity.

1440 ~~(e) Money received from an entity listed on a public stock~~
1441 ~~exchange during any year of the trust or estate which exceeds 10~~
1442 ~~percent of the fair market value of the trust's or estate's~~
1443 ~~interest in the entity on the first day of that year. The amount~~
1444 ~~to be allocated to principal must be reduced to the extent that~~
1445 ~~the cumulative distributions from the entity to the trust or~~
1446 ~~estate allocated to income do not exceed a cumulative annual~~
1447 ~~return of 3 percent of the fair market value of the interest in~~
1448 ~~the entity at the beginning of each year or portion of a year~~
1449 ~~for the number of years or portion of years in the period that~~
1450 ~~the interest in the entity has been held by the trust or estate.~~

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1451 ~~If a trustee has exercised a power to adjust under s. 738.104~~
1452 ~~during any period the interest in the entity has been held by~~
1453 ~~the trust, the trustee, in determining the total income~~
1454 ~~distributions from that entity, must take into account the~~
1455 ~~extent to which the exercise of that power resulted in income to~~
1456 ~~the trust from that entity for that period. If the income of the~~
1457 ~~trust for any period has been computed under s. 738.1041, the~~
1458 ~~trustee, in determining the total income distributions from that~~
1459 ~~entity for that period, must take into account the portion of~~
1460 ~~the unitrust amount paid as a result of the ownership of the~~
1461 ~~trust's interest in the entity for that period.~~

1462 (5) ~~(4)~~ If a fiduciary elects, or continues an election made
1463 by its predecessor, to reinvest dividends in shares of stock of
1464 a distributing corporation or fund, whether evidenced by new
1465 certificates or entries on the books of the distributing entity,
1466 the new shares retain their character as income.

1467 (6) ~~(5)~~ Except as otherwise provided in subsections (10) and
1468 (11), money received in an entity distribution is a capital
1469 distribution ~~Money is received in partial liquidation:~~

1470 (a) To the extent that the entity, at or near the time of
1471 the entity ~~a~~ distribution, indicates that such money is a
1472 capital distribution ~~in partial liquidation;~~ or

1473 (b) To the extent that the total amount of money and
1474 property received by the fiduciary in the entity ~~in a~~
1475 distribution or a series of related entity distributions ~~is or~~
1476 will be greater than ~~from an entity that is not listed on a~~
1477 ~~public stock exchange exceeds~~ 20 percent of the fiduciary's
1478 ~~trust's or estate's~~ pro rata share of the entity's gross assets,
1479 as shown by the entity's year-end financial statements

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1480 immediately preceding the initial receipt.

1481
1482 ~~This subsection does not apply to an entity to which subsection~~
1483 ~~(7) applies.~~

1484 (7)(6) In the case of a capital distribution, the amount
1485 received in an entity distribution allocated to principal must
1486 be reduced to the extent that the cumulative distributions from
1487 the entity to the fiduciary ~~Money may not be taken into account~~
1488 ~~in determining any excess under paragraph (5) (b), to the extent~~
1489 ~~that the cumulative distributions from the entity to the trust~~
1490 ~~or the estate~~ allocated to income do not exceed the greater of:

1491 (a) A cumulative annual return of 3 percent of the entity's
1492 carrying value computed at the beginning of each accounting
1493 period, or portion of an accounting period, during the lookback
1494 period for the number of years or portion of years that the
1495 entity was held by the fiduciary. If a fiduciary trustee has
1496 exercised a power to adjust under s. 738.203 during the lookback
1497 period, the fiduciary ~~s. 738.104~~ ~~during any period the interest~~
1498 ~~in the entity has been held by the trust, the trustee, in~~
1499 determining the total income distributions from that entity,
1500 must take into account the extent to which the exercise of the
1501 power resulted in income to the fiduciary ~~trust~~ from that entity
1502 for that period. If the income of a fiduciary during the
1503 lookback trust for any period has been computed under ss.
1504 738.301-738.310, the fiduciary pursuant to s. 738.1041, the
1505 ~~trustee, in determining the total income distributions from the~~
1506 entity for that period, must take into account the portion of
1507 the unitrust amount paid as a result of the ownership of the
1508 trust's interest in the entity for that period; or

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1509 (b) In ~~if~~ the case of an entity ~~is~~ treated as a

1510 partnership, subchapter S corporation, or a disregarded entity

1511 under pursuant to the Internal Revenue Code ~~of 1986, as amended,~~

1512 the amount of income tax attributable to the fiduciary's trust's

1513 ~~or estate's~~ ownership share of the entity, based on its pro rata

1514 share of the taxable income of the entity that distributes the

1515 money, during the lookback period ~~for the number of years or~~

1516 ~~portion of years that the interest in the entity was held by the~~

1517 ~~fiduciary,~~ calculated as if all of the ~~that~~ tax was incurred by

1518 the fiduciary.

1519 (8) If a fiduciary receives additional information about

1520 the application of this section to an entity distribution before

1521 the fiduciary has paid part of the entity distribution to a

1522 beneficiary, the fiduciary may consider the additional

1523 information before making the payment to the beneficiary and may

1524 change a decision to make the payment to the beneficiary.

1525 (9) If a fiduciary receives additional information about

1526 the application of this section to an entity distribution after

1527 the fiduciary has paid part of the entity distribution to a

1528 beneficiary, the fiduciary is not required to change or recover

1529 the payment to the beneficiary but may consider that information

1530 in determining whether to exercise its other powers, including

1531 but not limited to the power to adjust under s. 738.203.

1532 (10) ~~(7)~~ The following applies to money or property received

1533 by a private trustee as a distribution from an investment entity

1534 described in this subsection:

1535 (a) The trustee shall first treat as income of the trust

1536 all of the money or property received from the investment entity

1537 in the current accounting period ~~year~~ which would be considered

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1538 income under this chapter if the trustee had directly held the
1539 trust's pro rata share of the assets of the investment entity.
1540 For this purpose, all distributions received in the current
1541 accounting period ~~year~~ must be aggregated.

1542 (b) The trustee shall next treat as income of the trust any
1543 additional money or property received in the current accounting
1544 period ~~year~~ which would have been considered income in the prior
1545 2 accounting periods ~~years~~ under paragraph (a) if additional
1546 money or property had been received from the investment entity
1547 in any of those prior 2 accounting periods ~~years~~. The amount to
1548 be treated as income must ~~shall~~ be reduced by any distributions
1549 of money or property made by the investment entity to the trust
1550 during the current and the prior 2 accounting periods ~~years~~
1551 which were treated as income under this paragraph.

1552 (c) The remainder of the distribution, if any, is treated
1553 as principal.

1554 (d) As used in this subsection, the term:

1555 1. "Investment entity" means an entity, other than a
1556 business activity conducted by the trustee described in s.
1557 738.403 or an entity that is listed on a public stock exchange,
1558 which is treated as a partnership, subchapter S corporation, or
1559 disregarded entity under ~~pursuant to~~ the Internal Revenue Code
1560 ~~of 1986, as amended,~~ and which normally derives 50 percent or
1561 more of its annual cumulative net income from interest,
1562 dividends, annuities, royalties, rental activity, or other
1563 passive investments, including income from the sale or exchange
1564 of such passive investments.

1565 2. "Private trustee" means a trustee who is a natural
1566 person, but is not an independent person as set forth in s.

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1567 ~~738.102 only if the trustee is unable to use the power to adjust~~
1568 ~~between income and principal with respect to receipts from~~
1569 ~~entities described in this subsection pursuant to s. 738.104. A~~
1570 ~~bank, trust company, or other commercial trustee is not~~
1571 ~~considered a private trustee.~~

1572 (11) A fiduciary shall allocate to principal any money and
1573 property the fiduciary receives in a distribution or series of
1574 related distributions from a public entity which are greater
1575 than 10 percent of the fair market value of the fiduciary's
1576 interest in the public entity on the first day of the accounting
1577 period. The amount to be allocated to principal must be reduced
1578 to the extent that the cumulative distributions from the entity
1579 to the fiduciary allocated to income do not exceed a cumulative
1580 annual return of 3 percent of the fair market value of the
1581 interest in the entity at the beginning of each accounting
1582 period, or portion of an accounting period, during the lookback
1583 period. If a fiduciary has exercised a power to adjust under s.
1584 738.203 during the lookback period, the fiduciary, in
1585 determining the total income distributions from that entity,
1586 must take into account the extent to which the exercise of that
1587 power resulted in income to the fiduciary from that entity for
1588 that period. If the income of the fiduciary during the lookback
1589 period has been computed under ss. 738.301-738.310, the
1590 fiduciary, in determining the total income distribution from
1591 that entity for that period, must take into account the portion
1592 of the unitrust amount paid as a result of the ownership of the
1593 trust's interest in the entity for that period. As used in this
1594 subsection, the term "public entity" means an entity listed on a
1595 public stock exchange.

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1596 ~~(12)(8)~~ This section must ~~shall~~ be applied before ss.
 1597 738.506 and 738.507 ~~ss. 738.705 and 738.706~~ and does not modify
 1598 or change any of the provisions of those sections.

1599 Section 21. Section 738.402, Florida Statutes, is amended
 1600 to read:

1601 738.402 Distribution from trust or estate.—A fiduciary
 1602 shall allocate to income an amount received as a distribution of
 1603 income, including a unitrust distribution under ss. 738.301-
 1604 738.310, from a trust or an estate in which the fiduciary ~~trust~~
 1605 has an interest, other than an interest a purchased in a trust
 1606 that is an investment entity, and shall ~~interest and~~ allocate to
 1607 principal an amount received as a distribution of principal from
 1608 the ~~such a~~ trust or estate. If a fiduciary purchases, or
 1609 receives from a settlor, an interest in a trust that is an
 1610 investment entity, ~~or a decedent or donor transfers an interest~~
 1611 ~~in such a trust to a fiduciary,~~ s. 738.401, s. 738.415, or s.
 1612 738.416 ~~or s. 738.608~~ applies to a receipt from the trust.

1613 Section 22. Section 738.403, Florida Statutes, is amended
 1614 to read:

1615 738.403 Business and other activity ~~activities~~ conducted by
 1616 fiduciary.—

1617 (1) This section applies to ~~If a fiduciary who conducts a~~
 1618 business or other activity conducted by a fiduciary if the
 1619 fiduciary determines that it is in the best interests of
 1620 ~~interest of all the beneficiaries to account separately for the~~
 1621 business or other activity instead of:

1622 (a) Accounting for the business or other activity as part
 1623 of the fiduciary's ~~trust's or estate's~~ general accounting
 1624 records; or

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1625 (b) Conducting the business or other activity through an
 1626 entity described in s. 738.401(1)(b).~~the~~

1627 (2) A fiduciary may account separately under this section
 1628 ~~maintain separate accounting records~~ for the transactions of a
 1629 ~~the~~ business or another ~~other~~ activity, regardless of whether ~~or~~
 1630 ~~not the~~ assets of the ~~such~~ business or other activity are
 1631 segregated from other ~~trust or estate~~ assets held by the
 1632 fiduciary.

1633 (3)~~(2)~~ A fiduciary who accounts separately under this
 1634 section for a business or other activity:

1635 (a) May determine:

1636 1. The extent to which the net cash receipts of the
 1637 business or other activity must be retained for:

1638 a. Working capital;

1639 b. The acquisition or replacement of fixed assets; and

1640 c. Other reasonably foreseeable needs of the business or
 1641 other activity; and ~~working capital, the acquisition or~~
 1642 ~~replacement of fixed assets, and other reasonably foreseeable~~
 1643 ~~needs of the business or activity, and~~

1644 2. The extent to which the remaining net cash receipts are
 1645 accounted for as principal or income in the fiduciary's ~~trust's~~
 1646 ~~or estate's~~ general accounting records for the trust.

1647 (b) May make a determination under paragraph (a) separately
 1648 and differently from the fiduciary's decisions concerning
 1649 distributions of income or principal; and

1650 (c) Shall account for the net amount received from the sale
 1651 of an asset of ~~If a fiduciary sells assets of~~ the business or
 1652 other activity, other than a sale in the ordinary course of the
 1653 business or other activity, ~~the fiduciary must account for the~~

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1654 ~~net amount received~~ as principal in the fiduciary's ~~trust's or~~
 1655 ~~estate's~~ general accounting records for the trust, to the extent
 1656 the fiduciary determines that the net amount received is no
 1657 longer required in the conduct of the business or other
 1658 activity.

1659 (4)~~(3)~~ Activities for which a fiduciary may account
 1660 separately under this section ~~maintain separate accounting~~
 1661 ~~records~~ include:

1662 (a) Retail, manufacturing, service, and other traditional
 1663 business activities.

1664 (b) Farming.

1665 (c) Raising and selling livestock and other animals.

1666 (d) Managing ~~Management of~~ rental properties.

1667 (e) Extracting ~~Extraction of~~ minerals and other natural
 1668 resources.

1669 (f) Growing and cutting timber ~~operations.~~

1670 (g) An activity ~~Activities~~ to which s. 738.414, s. 738.415,
 1671 or s. 738.416 ~~s. 738.607~~ applies.

1672 (h) Any other business conducted by the fiduciary.

1673 Section 23. Section 738.404, Florida Statutes, is created
 1674 to read:

1675 738.404 Principal receipts.—A fiduciary shall allocate to
 1676 principal:

1677 (1) To the extent not allocated to income under this
 1678 chapter, an asset received from any of the following:

1679 (a) An individual during the individual's lifetime.

1680 (b) An estate.

1681 (c) A trust on termination of an income interest.

1682 (d) A payor under a contract naming the fiduciary as

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1683 beneficiary.

1684 (2) Except as otherwise provided in ss. 738.401-738.416,
1685 money or other property received from the sale, exchange,
1686 liquidation, or change in the form of a principal asset.

1687 (3) An amount recovered from a third party to reimburse the
1688 fiduciary because of a disbursement described in s. 738.502(1)
1689 or for another reason to the extent not based on the loss of
1690 income.

1691 (4) Proceeds of property taken by eminent domain except
1692 that proceeds awarded for loss of income in an accounting period
1693 are income if a current income beneficiary had a mandatory
1694 income interest during the period.

1695 (5) Net income received in an accounting period during
1696 which there is no beneficiary to which a fiduciary may or must
1697 distribute income.

1698 (6) Other receipts as provided in ss. 738.408-738.416.

1699 Section 24. Section 738.405, Florida Statutes, is created
1700 to read:

1701 738.405 Rental property.—To the extent that a fiduciary
1702 does not account for the management of rental property as a
1703 business under s. 738.403, the fiduciary shall allocate to
1704 income an amount received as rent of real or personal property,
1705 including an amount received for cancellation or renewal of a
1706 lease. An amount received as a refundable deposit, including a
1707 security deposit or a deposit that is to be applied as rent for
1708 future periods:

1709 (1) Must be added to principal and held subject to the
1710 terms of the lease, except as otherwise provided by law other
1711 than this chapter; and

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1712 (2) Is not allocated to income or available for
1713 distribution to a beneficiary until the fiduciary's contractual
1714 obligations have been satisfied with respect to that amount.

1715 Section 25. Section 738.406, Florida Statutes, is created
1716 to read:

1717 738.406 Receipt on obligation to be paid in money.—

1718 (1) This section does not apply to an obligation to which
1719 s. 738.409, s. 738.410, s. 738.411, s. 738.412, s. 738.414, s.
1720 738.415, or s. 738.416 applies.

1721 (2) A fiduciary shall allocate to income, without provision
1722 for amortization of premium, an amount received as interest on
1723 an obligation to pay money to the fiduciary, including an amount
1724 received as consideration for prepaying principal.

1725 (3) A fiduciary shall allocate to principal an amount
1726 received from the sale, redemption, or other disposition of an
1727 obligation to pay money to the fiduciary.

1728 (4) A fiduciary shall allocate to income the increment in
1729 value of a bond or other obligation for the payment of money
1730 bearing no stated interest but payable or redeemable, at
1731 maturity or another future time, in an amount that exceeds the
1732 amount in consideration of which it was issued. If the increment
1733 in value accrues and becomes payable pursuant to a fixed
1734 schedule of appreciation, it may be distributed to the
1735 beneficiary who was the income beneficiary at the time of
1736 increment from the first principal cash available or, if none is
1737 available, when the increment is realized by sale, redemption,
1738 or other disposition. If unrealized increment is distributed as
1739 income but out of principal, the principal must be reimbursed
1740 for the increment when realized. If, in the reasonable judgment

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1741 of the fiduciary, exercised in good faith, the ultimate payment
1742 of the bond principal is in doubt, the fiduciary may withhold
1743 the payment of incremental interest to the income beneficiary.

1744 Section 26. Section 738.407, Florida Statutes, is created
1745 to read:

1746 738.407 Insurance policy or contract.—

1747 (1) This section does not apply to a contract to which s.
1748 738.409 applies.

1749 (2) Except as otherwise provided in subsection (3), a
1750 fiduciary shall allocate to principal the proceeds of a life
1751 insurance policy or other contract received by the fiduciary as
1752 beneficiary, including a contract that insures against damage
1753 to, destruction of, or loss of title to an asset. The fiduciary
1754 shall allocate dividends on an insurance policy to income to the
1755 extent that premiums on the policy are paid from income and to
1756 principal to the extent premiums on the policy are paid from
1757 principal.

1758 (3) A fiduciary shall allocate to income proceeds of a
1759 contract that insures the fiduciary against loss of:

1760 (a) Occupancy or other use by a current income beneficiary;

1761 (b) Income; or

1762 (c) Subject to s. 738.403, profits from a business.

1763 Section 27. Section 738.408, Florida Statutes, is created
1764 to read:

1765 738.408 Insubstantial allocation not required.—

1766 (1) If a fiduciary determines that an allocation between
1767 income and principal required by s. 738.409, s. 738.410, s.
1768 738.411, s. 738.412, or s. 738.415 is insubstantial, the
1769 fiduciary may allocate the entire amount to principal, unless s.

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1770 738.203(5) applies to the allocation.

1771 (2) A fiduciary may presume an allocation is insubstantial
1772 under subsection (1) if:

1773 (a) The amount of the allocation would increase or decrease
1774 net income in an accounting period, as determined before the
1775 allocation, by less than 10 percent; and

1776 (b) The asset producing the receipt to be allocated has a
1777 carrying value less than 10 percent of the total carrying value
1778 of the assets owned or held by the fiduciary at the beginning of
1779 the accounting period.

1780 (3) The power to make a determination under subsection (1)
1781 may be:

1782 (a) Exercised by a cofiduciary in the manner described in
1783 s. 738.203(6); or

1784 (b) Released or delegated for a reason described in s.
1785 738.203(7) and in the manner described in s. 738.203(8).

1786 Section 28. Section 738.409, Florida Statutes, is created
1787 to read:

1788 738.409 Deferred compensation, annuity, or similar
1789 payment.-

1790 (1) As used in this section, the term:

1791 (a) "Internal income of the separate fund" means the amount
1792 determined under subsection (2).

1793 (b) "Marital trust" means a trust:

1794 1. Of which the settlor's surviving spouse is the only
1795 current income beneficiary and is entitled to a distribution of
1796 all the current net income of the trust; and

1797 2. That qualifies for a marital deduction with respect to
1798 the settlor's estate under the Internal Revenue Code or

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1799 comparable law of any state because:

1800 a. An election to qualify for a marital deduction under s.
1801 2056(b) (7) of the Internal Revenue Code has been made;

1802 b. The trust qualified for a marital deduction under s.
1803 2056(b) (5) of the Internal Revenue Code; or

1804 c. The trust otherwise qualifies for a marital deduction.

1805 (c) "Nonseparate fund" means an annuity, a deferred
1806 compensation plan, a pension plan, or other fund for which the
1807 value of the participant's or account owner's right to receive
1808 benefits can be determined only by the occurrence of a date or
1809 event as defined in the instrument governing the fund.

1810 (d) "Payment" means an amount a fiduciary may receive over
1811 a fixed number of years or during the life of one or more
1812 individuals because of services rendered or property transferred
1813 to the payor in exchange for future amounts the fiduciary may
1814 receive. The term includes an amount received in money or
1815 property from the payor's general assets or from a separate fund
1816 created by the payor.

1817 (e) "Percent calculated" means a percent equal to the rate
1818 determined under s. 7520 of the Internal Revenue Code in effect
1819 for the month preceding the beginning of the accounting period;
1820 however, if the percent calculated exceeds 5 percent, it must be
1821 reduced to 5 percent, and if the percent calculated is less than
1822 3 percent, it must be increased to 3 percent. Notwithstanding
1823 the preceding sentence, a fiduciary who is an independent person
1824 as defined in s. 738.102 may set the percent calculated at a
1825 percentage no less than 3 percent and no greater than 5 percent.

1826 (f) "Separate fund" includes a private or commercial
1827 annuity, an individual retirement account, and a pension,

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1828 profit-sharing, stock-bonus, stock ownership plan, or other
1829 deferred compensation fund holding assets exclusively for the
1830 benefit of a participant or account owner.

1831 (2) For each accounting period, the following rules apply
1832 to a separate fund:

1833 (a) The fiduciary may determine the internal income of the
1834 separate fund as if the separate fund were a trust subject to
1835 this chapter.

1836 (b) Alternatively, the fiduciary may deem the internal
1837 income of the separate fund to equal the percent calculated of
1838 the value of the separate fund according to the most recent
1839 statement of value preceding the beginning of the accounting
1840 period. The fiduciary is not liable for good faith reliance upon
1841 any valuation supplied by the person or persons in possession of
1842 the fund. If the fiduciary makes or terminates an election under
1843 this paragraph, the fiduciary must make such disclosure in a
1844 trust disclosure document that satisfies the requirements of s.
1845 736.1008(4)(c).

1846 (c) If the fiduciary cannot determine the value of the
1847 separate fund under paragraph (b), the value of the separate
1848 fund is deemed to equal the present value of the expected future
1849 payments, as determined under s. 7520 of the Internal Revenue
1850 Code for the month preceding the beginning of the accounting
1851 period for which the computation is made.

1852 (d) The fiduciary may elect the method of determining the
1853 income of the fund pursuant to this subsection and may change
1854 the method of determining income of the fund for any future
1855 accounting period.

1856 (3) A fiduciary shall allocate a payment received from a

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1857 separate fund during an accounting period to income, to the
1858 extent of the internal income of the separate fund during the
1859 period, and allocate the balance to principal.

1860 (4) The fiduciary of a marital trust shall:

1861 (a) Withdraw from a separate fund the amount the current
1862 income beneficiary of the trust requests the fiduciary to
1863 withdraw, not greater than the amount by which the internal
1864 income of the separate fund during the accounting period exceeds
1865 the amount the fiduciary otherwise receives from the separate
1866 fund during the period.

1867 (b) Transfer from principal to income the amount the
1868 current income beneficiary requests the fiduciary to transfer,
1869 but not greater than the amount by which the internal income of
1870 the separate fund during the period exceeds the amount the
1871 fiduciary receives from the separate fund during the period
1872 after the application of paragraph (a).

1873 (c) Distribute to the current income beneficiary as income:

1874 1. The amount of the internal income of the separate fund
1875 received or withdrawn during the period; and

1876 2. The amount transferred from principal to income under
1877 paragraph (b).

1878 (5) For a trust, other than a marital trust, of which one
1879 or more current income beneficiaries are entitled to a
1880 distribution of all the current net income, the fiduciary shall
1881 transfer from principal to income the amount by which the
1882 internal income of the separate fund during the accounting
1883 period exceeds the amount the fiduciary receives from the
1884 separate fund during the period.

1885 (6) The fiduciary of a nonseparate fund shall calculate

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1886 internal income of the fund as the percent calculated of the
 1887 present value of the right to receive the remaining payments as
 1888 determined under s. 7520(a)(2) of the Internal Revenue Code for
 1889 the month preceding the beginning of the accounting period.

1890 (7) If a fiduciary owns a separate fund or a nonseparate
 1891 fund before January 1, 2025, the fiduciary may determine
 1892 internal income, allocate payments, and account for unwithdrawn
 1893 internal income as provided in this section or in the manner
 1894 used by the fiduciary before January 1, 2025. Such fiduciary is
 1895 not required to consider subsection (5). If the fiduciary
 1896 acquires a separate fund or a nonseparate fund on or after
 1897 January 1, 2025, the fiduciary must calculate internal income,
 1898 allocate payments, and account for unwithdrawn internal income
 1899 as provided in this section.

1900 Section 29. Section 738.603, Florida Statutes, is
 1901 transferred, renumbered as section 738.410, Florida Statutes,
 1902 and amended to read:

1903 738.410 ~~738.603~~ Liquidating asset.—

1904 (1) As used in ~~For purposes of~~ this section, the term
 1905 "liquidating asset" means an asset whose value ~~the value of~~
 1906 ~~which~~ will diminish or terminate because the asset is expected
 1907 to produce receipts for a ~~period of~~ limited time duration. The
 1908 term includes a leasehold, patent, copyright, royalty right, and
 1909 right to receive payments during a period of ~~for~~ more than 1
 1910 year under an arrangement that does not provide for the payment
 1911 of interest on the unpaid balance. ~~The term does not include a~~
 1912 ~~payment subject to s. 738.602, resources subject to s. 738.604,~~
 1913 ~~timber subject to s. 738.605, an activity subject to s. 738.607,~~
 1914 ~~an asset subject to s. 738.608, or any asset for which the~~

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1915 ~~fiduciary establishes a reserve for depreciation under s.~~
 1916 ~~738.703.~~

1917 (2) This section does not apply to a receipt that is
 1918 subject to s. 738.401, s. 738.409, s. 738.411, s. 738.412, s.
 1919 738.414, s. 738.415, s. 738.416, or s. 738.503.

1920 (3) A fiduciary shall allocate to income a receipt produced
 1921 by a liquidating asset to the extent that the receipt does not
 1922 exceed 5 percent of the receipts from the carrying value of the
 1923 asset at the beginning of the accounting period and allocate a
 1924 liquidating asset and the balance to principal the balance of
 1925 the receipt.

1926 (4) The amount ~~Amounts~~ allocated to principal shall reduce
 1927 the carrying value of the liquidating asset, but not below zero.
 1928 Amounts received in excess of the remaining carrying value must
 1929 be allocated to principal.

1930 Section 30. Section 738.604, Florida Statutes, is
 1931 transferred, renumbered as section 738.411, Florida Statutes,
 1932 and amended to read:

1933 738.411 ~~738.604~~ Minerals, water, and other natural
 1934 resources.—

1935 (1) To the extent that ~~If~~ a fiduciary does not account for
 1936 a receipt accounts for receipts from an interest in minerals,
 1937 water, or other natural resources as a business under s. 738.403
 1938 pursuant to this section, the fiduciary shall allocate the
 1939 receipt such receipts as follows:

1940 (a) To income, to the extent received:

1941 1. If received As nominal delay rental or nominal annual
 1942 rent on a lease;

1943 2. As a factor for interest or the equivalent of interest

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1944 under an agreement creating a production payment; or

1945 3. On account of an interest in renewable water;~~a receipt~~
1946 ~~shall be allocated to income.~~

1947 (b) To principal, if received from a production payment, a
1948 ~~receipt shall be allocated to income if and to the extent that~~
1949 subparagraph (a)2. does not apply; or the agreement creating the
1950 production payment provides a factor for interest or its
1951 equivalent. The balance shall be allocated to principal.

1952 (c) Between income and principal equitably, to the extent
1953 received:

1954 1. On account of an interest in nonrenewable water;

1955 2. If an amount received As a royalty, shut-in-well
1956 payment, take-or-pay payment, or bonus; or,~~or delay rental is~~
1957 ~~more than nominal, 90 percent shall be allocated to principal~~
1958 ~~and the balance to income.~~

1959 3.(d) If an amount is received From a working interest or
1960 any other interest not provided for in paragraph (a) or,
1961 paragraph (b) or subparagraph 1. or subparagraph 2.,~~or~~
1962 ~~paragraph (c), 90 percent of the net amount received shall be~~
1963 ~~allocated to principal and the balance to income.~~

1964 (2) ~~An amount received on account of an interest in water~~
1965 ~~that is renewable shall be allocated to income. If the water is~~
1966 ~~not renewable, 90 percent of the amount shall be allocated to~~
1967 ~~principal and the balance to income.~~

1968 ~~(3) This section chapter~~ applies to an interest owned or
1969 held by a fiduciary regardless of whether or not a settlor
1970 ~~decedent or donor~~ was extracting minerals, water, or other
1971 natural resources before the fiduciary owned or held the
1972 ~~interest became subject to the trust or estate.~~

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1973 (3) An allocation of a receipt under paragraph (1)(c) is
 1974 presumed to be equitable if the amount allocated to principal is
 1975 equal to the amount allowed by the Internal Revenue Code as a
 1976 deduction for depletion of the interest.

1977 (4) If a fiduciary ~~trust or estate~~ owns or holds an
 1978 interest in minerals, water, or other natural resources before
 1979 January 1, 2025 ~~on January 1, 2003~~, the fiduciary may allocate
 1980 receipts from the interest as provided in this section ~~chapter~~
 1981 or in the manner used by the fiduciary before January 1, 2025
 1982 ~~January 1, 2003~~. If the fiduciary ~~trust or estate~~ acquires an
 1983 interest in minerals, water, or other natural resources on or
 1984 after January 1, 2025 ~~January 1, 2003~~, the fiduciary must ~~shall~~
 1985 allocate receipts from the interest as provided in this section
 1986 ~~chapter~~.

1987 Section 31. Section 738.605, Florida Statutes, is
 1988 transferred, renumbered as section 738.412, Florida Statutes,
 1989 and amended to read:

1990 738.412 ~~738.605~~ Timber.—

1991 (1) To the extent that ~~If~~ a fiduciary does not account
 1992 ~~accounts~~ for receipts from the sale of timber and related
 1993 products as a business under s. 738.403 ~~pursuant to this~~
 1994 ~~section~~, the fiduciary shall allocate the ~~such~~ net receipts ~~as~~
 1995 ~~follows~~:

1996 (a) To income, to the extent that the amount of timber cut
 1997 ~~removed~~ from the land does not exceed the rate of growth of the
 1998 timber ~~during the accounting periods in which a beneficiary has~~
 1999 ~~a mandatory income interest~~;

2000 (b) To principal, to the extent that the amount of timber
 2001 cut ~~removed~~ from the land exceeds the rate of growth of the

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2002 timber or the net receipts are from the sale of standing timber;

2003 (c) ~~To or~~ Between income and principal if the net receipts
2004 are from the lease of land used for growing and cutting timber
2005 ~~timberland~~ or from a contract to cut timber from land ~~owned by a~~
2006 ~~trust or estate~~ by determining the amount of timber cut removed
2007 from the land under the lease or contract and applying the rules
2008 in paragraphs (a) and (b); or

2009 (d) To principal, to the extent that advance payments,
2010 bonuses, and other payments are not allocated under ~~pursuant to~~
2011 paragraph (a), paragraph (b), or paragraph (c).

2012 (2) In determining net receipts to be allocated under
2013 ~~pursuant to~~ subsection (1), a fiduciary shall deduct and
2014 transfer to principal a reasonable amount for depletion.

2015 (3) This section ~~chapter~~ applies to land owned or held by a
2016 fiduciary regardless of whether ~~or not~~ a settlor decedent or
2017 ~~donor~~ was cutting harvesting timber from the land property
2018 before the fiduciary owned or held the property became subject
2019 ~~to the trust or estate~~.

2020 (4) If a fiduciary ~~trust or estate~~ owns or holds an
2021 interest in land used for growing and cutting timber before
2022 January 1, 2025 ~~timberland on January 1, 2003~~, the fiduciary may
2023 allocate net receipts from the sale of timber and related
2024 products as provided in this section ~~chapter~~ or in the manner
2025 used by the fiduciary before January 1, 2025 ~~January 1, 2003~~. If
2026 the fiduciary ~~trust or estate~~ acquires an interest in land used
2027 for growing and cutting timber on or after January 1, 2025
2028 ~~timberland after January 1, 2003~~, the fiduciary must ~~shall~~
2029 allocate net receipts from the sale of timber and related
2030 products as provided in this section ~~chapter~~.

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2031 Section 32. Section 738.606, Florida Statutes, is
2032 transferred, renumbered as section 738.413, Florida Statutes,
2033 and amended to read:

2034 738.413 ~~738.606~~ Marital deduction property not productive
2035 of income.—

2036 (1) If a trust received property for which a gift or estate
2037 tax marital deduction was under the Internal Revenue Code or
2038 comparable law of any state is allowed, ~~for all or if part of a~~
2039 trust received property satisfying, ~~or if assets are transferred~~
2040 ~~to a trust that satisfies~~ the requirements of s. 732.2025(2) (a)
2041 and (c), and such property has ~~assets have~~ been used in whole or
2042 in part to satisfy an election by a surviving spouse under s.
2043 732.2125, and the settlor's spouse holds a mandatory income
2044 interest in the trust, the spouse may require the trustee, to
2045 the extent that the trust assets otherwise do ~~consist of~~
2046 ~~property that, in the aggregate, does not provide the spouse~~
2047 with sufficient income from or use of the trust assets to
2048 qualify for the deduction, or to satisfy an election by a
2049 surviving spouse under s. 732.2125, to make the property
2050 productive of income within a reasonable time. The trustee may:

2051 (a) Convert property to property productive of income
2052 within a reasonable time;

2053 (b) Exercise the power to adjust under s. 738.203;

2054 (c) Exercise the power to convert to or from a unitrust
2055 under s. 738.303; or

2056 (d) Exercise the fiduciary's authority under the terms of
2057 the trust to otherwise provide the surviving spouse with
2058 sufficient income from the trust assets, or the use of the trust
2059 assets, to qualify for the marital deduction, or to satisfy an

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2060 election by a surviving spouse under s. 732.2125.

2061 (2) The trustee may decide which action or combination of
2062 actions listed in subsection (1) to take.

2063 (3) Subsection (1) shall apply, ~~and if amounts the trustee~~
2064 ~~transfers from principal to income under s. 738.104 and~~
2065 ~~distributes to the spouse from principal pursuant to the terms~~
2066 ~~of the trust are insufficient to provide the spouse with the~~
2067 ~~beneficial enjoyment required to obtain the marital deduction,~~
2068 ~~even though, in the case of an elective share trust under s.~~
2069 732.2025(2), a marital deduction is not made or is only
2070 ~~partially made, the spouse may require the trustee of such~~
2071 ~~marital trust or elective share trust to make property~~
2072 ~~productive of income, convert property within a reasonable time,~~
2073 ~~or exercise the power conferred by ss. 738.104 and 738.1041.~~

2074 (4) The terms of a trust as defined in s. 738.102 may not
2075 supersede this section unless such terms explicitly reference
2076 this section ~~The trustee may decide which action or combination~~
2077 ~~of actions to take.~~

2078 ~~(2) In cases not governed by subsection (1), proceeds from~~
2079 ~~the sale or other disposition of an asset are principal without~~
2080 ~~regard to the amount of income the asset produces during any~~
2081 ~~accounting period.~~

2082 Section 33. Section 738.607, Florida Statutes, is
2083 transferred, renumbered as section 738.414, Florida Statutes,
2084 and amended to read:

2085 738.414 ~~738.607~~ Derivatives or ~~and~~ options.—

2086 (1) As used in ~~For purposes of~~ this section, the term
2087 "derivative" means a contract, an ~~or financial~~ instrument, or
2088 other arrangement, or a combination of contracts, and financial

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2089 instruments, or other arrangements, of which the value, rights,
2090 and obligations are, in whole or in part, dependent on or
2091 derived from an underlying ~~which gives a trust the right or~~
2092 ~~obligation to participate in some or all changes in the price of~~
2093 ~~a tangible or intangible asset, a~~ ~~or~~ group of tangible or
2094 intangible assets, an index, or an occurrence of an event. The
2095 term includes stocks, fixed income securities, and financial
2096 instruments and arrangements based on indices, commodities,
2097 interest rates, weather-related events, and credit-default
2098 events ~~assets, or changes in a rate, an index of prices or~~
2099 ~~rates, or other market indicator for an asset or a group of~~
2100 ~~assets.~~

2101 (2) To the extent that a fiduciary does not account for a
2102 transaction in derivatives as a business under s. 738.403 ~~for~~
2103 ~~transactions in derivatives,~~ the fiduciary shall allocate 10
2104 percent of ~~to principal~~ receipts from the transaction and 10
2105 percent of ~~and~~ disbursements made in connection with the
2106 transaction to income and allocate the balance to principal
2107 ~~those transactions.~~

2108 (3) Subsection (4) applies if:

2109 (a) A fiduciary:

2110 1. If a fiduciary Grants an option to buy property from a
2111 ~~the trust,~~ regardless of ~~or estate~~ whether ~~or not~~ the trust ~~or~~
2112 ~~estate~~ owns the property when the option is granted;;

2113 2. Grants an option that permits another person to sell
2114 property to the trust; or

2115 3. estate, ~~or~~ Acquires an option to buy property for the
2116 ~~trust or estate~~ ~~or~~ an option to sell an asset owned by the trust
2117 ~~or estate;~~ and

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2118 (b) The fiduciary or other owner of the asset is required
2119 to deliver the asset if the option is exercised, ~~an amount~~
2120 ~~received for granting the option shall be allocated to~~
2121 ~~principal. An amount paid to acquire the option shall be paid~~
2122 ~~from principal.~~

2123 (4) If this subsection applies, the fiduciary must allocate
2124 10 percent to income and allocate the balance to principal of
2125 the following amounts:

2126 (a) An amount received for granting the option;

2127 (b) An amount paid to acquire the option; and

2128 (c) A Gain or loss realized ~~on~~ upon the exercise, exchange,
2129 settlement, offset, closing, or expiration of the option ~~of an~~
2130 ~~option, including an option granted to a grantor of the trust or~~
2131 ~~estate for services rendered, shall be allocated to principal.~~

2132 Section 34. Section 738.608, Florida Statutes, is
2133 transferred, renumbered as section 738.415, Florida Statutes,
2134 and amended to read:

2135 738.415 ~~738.608~~ Asset-backed securities.—

2136 (1) Except as otherwise provided in subsection (2), a
2137 fiduciary shall allocate to income a receipt from or related to
2138 an asset-backed security, as defined in s. 738.102, to the
2139 extent that the payor identifies the payment as being from ~~For~~
2140 ~~purposes of this section, "asset-backed security" means an asset~~
2141 ~~the value of which is based upon the right given the owner to~~
2142 ~~receive distributions from the proceeds of financial assets that~~
2143 ~~provide collateral for the security. The term includes an asset~~
2144 ~~that gives the owner the right to receive from the collateral~~
2145 ~~financial assets only the interest or other current return and~~
2146 allocate to principal the balance of the receipt ~~or only the~~

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2147 ~~proceeds other than interest or current return. The term does~~
2148 ~~not include an asset to which s. 738.401 or s. 738.602 applies.~~

2149 (2) If a fiduciary receives one or more payments in
2150 exchange for part or all of the fiduciary's interest in an
2151 asset-backed security, including a liquidation or redemption of
2152 the fiduciary's interest in the security trust or estate
2153 ~~receives a payment from interest or other current return and~~
2154 ~~from other proceeds of the collateral financial assets, the~~
2155 ~~fiduciary must shall allocate to income 10 percent of receipts~~
2156 ~~from the transaction and 10 percent of disbursements made in~~
2157 ~~connection with the transaction, and allocate to principal the~~
2158 ~~portion of the payment which the payor identifies as being from~~
2159 ~~interest or other current return and allocate the balance of the~~
2160 ~~receipts and disbursements payment to principal.~~

2161 ~~(3) If a trust or estate receives one or more payments in~~
2162 ~~exchange for the trust's or estate's entire interest in an~~
2163 ~~asset-backed security during a single accounting period, the~~
2164 ~~fiduciary shall allocate the payments to principal. If a payment~~
2165 ~~is one of a series of payments that will result in the~~
2166 ~~liquidation of the trust's or estate's interest in the security~~
2167 ~~ever more than a single accounting period, the fiduciary shall~~
2168 ~~allocate 10 percent of the payment to income and the balance to~~
2169 ~~principal.~~

2170 Section 35. Section 738.416, Florida Statutes, is created
2171 to read:

2172 738.416 Other financial instrument or arrangement.—A
2173 fiduciary shall allocate receipts from or related to a financial
2174 instrument or arrangement not otherwise addressed by this
2175 chapter. The allocation must be consistent with ss. 738.414 and

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2176 738.415.

2177 Section 36. Section 738.501, Florida Statutes, is amended
2178 to read:

2179 (Substantial rewording of section. See
2180 s. 738.501, F.S., for present text.)

2181 738.501 Disbursement from income.—Subject to s. 738.504,
2182 and except as otherwise provided in s. 738.601(3)(b) or (c), a
2183 fiduciary shall disburse from income:

2184 (1) One-half of:

2185 (a) The regular compensation of the fiduciary and of any
2186 person providing investment advisory, custodial, or other
2187 services to the fiduciary to the extent that income is
2188 sufficient; and

2189 (b) An expense for an accounting, judicial or nonjudicial
2190 proceeding, or other matter that involves both income and
2191 successive interests to the extent income is sufficient.

2192 (2) The balance of the disbursements described in
2193 subsection (1), to the extent that a fiduciary who is an
2194 independent person determines that making those disbursements
2195 from income would be in the interests of the beneficiaries.

2196 (3) Any other ordinary expense incurred in connection with
2197 administration, management, or preservation of property and
2198 distribution of income, including interest, an ordinary repair,
2199 a regularly recurring tax assessed against principal, and an
2200 expense of an accounting, judicial or nonjudicial proceeding, or
2201 other matter that involves primarily an income interest, to the
2202 extent that income is sufficient.

2203 (4) A premium on insurance covering loss of a principal
2204 asset or income from or use of the asset.

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2205 Section 37. Section 738.502, Florida Statutes, is amended
2206 to read:

2207 (Substantial rewording of section. See
2208 s. 738.502, F.S., for present text.)

2209 738.502 Disbursement from principal.-

2210 (1) Subject to s. 738.505, and except as otherwise provided
2211 in s. 738.601(3)(b), a fiduciary shall disburse all of the
2212 following from principal:

2213 (a) The balance of the disbursements described in s.
2214 738.501(1) and (3), after application of s. 738.501(2).

2215 (b) The fiduciary's compensation calculated on principal as
2216 a fee for acceptance, distribution, or termination.

2217 (c) A payment of an expense to prepare for or execute a
2218 sale or other disposition of property.

2219 (d) A payment on the principal of a trust debt.

2220 (e) A payment of an expense of an accounting, judicial or
2221 nonjudicial proceeding, or other matter that involves primarily
2222 principal, including a proceeding to construe the terms of the
2223 trust or protect property.

2224 (f) A payment of a premium for insurance, including title
2225 insurance, not described in s. 738.501(4) of which the fiduciary
2226 is the owner and beneficiary.

2227 (g) A payment of estate, inheritance, and other transfer
2228 taxes, including penalties, apportioned to the trust.

2229 (h) A payment related to environmental matters including:

2230 1. Reclamation;

2231 2. Assessing environmental conditions;

2232 3. Remedying and removing environmental contamination;

2233 4. Monitoring remedial activities and the release of

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2234 substances;
2235 5. Preventing future releases of substances;
2236 6. Collecting amounts from persons liable or potentially
2237 liable for the costs of the activities described in
2238 subparagraphs 1.-5.;
2239 7. Penalties imposed under environmental laws or
2240 regulations;
2241 8. Other actions to comply with environmental laws or
2242 regulations;
2243 9. Statutory or common law claims by third parties; and
2244 10. Defending claims based on environmental matters.
2245 (i) A payment of a premium for insurance for matters
2246 described in paragraph (h).
2247 (2) If a principal asset is encumbered with an obligation
2248 that requires income from the asset to be paid directly to a
2249 creditor, the fiduciary must transfer from principal to income
2250 an amount equal to the income paid to the creditor in reduction
2251 of the principal balance of the obligation.
2252 Section 38. Section 738.503, Florida Statutes, is amended
2253 to read:
2254 (Substantial rewording of section. See
2255 s. 738.503, F.S., for present text.)
2256 738.503 Transfers from income to principal for
2257 depreciation.—
2258 (1) For purposes of this section, "depreciation" means a
2259 reduction in value due to wear, tear, decay, corrosion, or
2260 gradual obsolescence of a tangible asset having a useful life of
2261 more than 1 year.
2262 (2) A fiduciary may transfer to principal a reasonable

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2263 amount of the net cash receipts from a principal asset that is
2264 subject to depreciation but may not transfer any amount for
2265 depreciation:

2266 (a) Of the part of real property used or available for use
2267 by a beneficiary as a residence;

2268 (b) Of tangible personal property held or made available
2269 for the personal use or enjoyment of a beneficiary; or

2270 (c) Under this section, to the extent that the fiduciary
2271 accounts:

2272 1. Under s. 738.410 for the asset; or

2273 2. Under s. 738.403 for the business or other activity in
2274 which the asset is used.

2275 (3) An amount transferred to principal under this section
2276 need not be separately held.

2277 Section 39. Section 738.504, Florida Statutes, is amended
2278 to read:

2279 (Substantial rewording of section. See
2280 s. 738.504, F.S., for present text.)

2281 738.504 Reimbursement of income from principal.-

2282 (1) If a fiduciary makes or expects to make an income
2283 disbursement described in subsection (2), the fiduciary may
2284 transfer an appropriate amount from principal to income in one
2285 or more accounting periods to reimburse income.

2286 (2) To the extent that the fiduciary has not been and does
2287 not expect to be reimbursed by a third party, income
2288 disbursements to which subsection (1) applies include:

2289 (a) An amount chargeable to principal but paid from income
2290 because principal is illiquid;

2291 (b) A disbursement made to prepare property for sale,

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2292 including improvements and commissions; and

2293 (c) A disbursement described in s. 738.502(1).

2294 (3) If an asset whose ownership gives rise to an income
2295 disbursement becomes subject to a successive interest after an
2296 income interest ends, the fiduciary may continue to make
2297 transfers under subsection (1).

2298 Section 40. Section 738.704, is transferred, renumbered as
2299 section 738.505, Florida Statutes, and amended to read:

2300 738.505 738.704 Reimbursement of principal from income
2301 ~~Transfers from income to reimburse principal.-~~

2302 (1) If a fiduciary makes or expects to make a principal
2303 disbursement described in subsection (2) ~~this section~~, the
2304 fiduciary may transfer an appropriate amount from income to
2305 principal in one or more accounting periods to reimburse
2306 principal or to provide a reserve for future principal
2307 disbursements.

2308 (2) ~~Principal disbursements to which subsection (1) applies~~
2309 ~~include the following, but only~~ To the extent that a the
2310 fiduciary has not been and does not expect to be reimbursed by a
2311 third party, principal disbursements to which subsection (1)
2312 applies include:

2313 (a) An amount chargeable to income but paid from principal
2314 because income is not sufficient; ~~the amount is unusually large.~~

2315 (b) The cost of an improvement to principal, whether a
2316 change to an existing asset or the construction of a new asset,
2317 including a special assessment; ~~Disbursements made to prepare~~
2318 ~~property for rental, including tenant allowances, leasehold~~
2319 ~~improvements, and broker's commissions.~~

2320 (c) A disbursement made to prepare property for rental,

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2321 including tenant allowances, leasehold improvements, and
2322 commissions; Disbursements described in s. 738.702(1)(g).

2323 (d) A periodic payment on an obligation secured by a
2324 principal asset, to the extent the amount transferred from
2325 income to principal for depreciation is less than the periodic
2326 payment; and

2327 (e) A disbursement described in s. 738.502(1).

2328 (3) If an ~~the~~ asset whose ~~the~~ ownership ~~of which~~ gives rise
2329 to a principal disbursement ~~the disbursements~~ becomes subject to
2330 a successive ~~income~~ interest after an income interest ends, the
2331 a fiduciary may continue to make transfers under transfer
2332 ~~amounts from income to principal as provided in subsection (1).~~

2333 ~~(4) To the extent principal cash is not sufficient to pay~~
2334 ~~the principal balance of payments due on mortgaged property,~~
2335 ~~income may be applied to such payment in order to avoid a~~
2336 ~~default on any mortgage or security interest securing the~~
2337 ~~property. Income shall be reimbursed for such payments out of~~
2338 ~~the first available principal cash. If the asset the ownership~~
2339 ~~of which gives rise to the disbursements described in this~~
2340 ~~subsection becomes subject to a successive income interest after~~
2341 ~~an income interest ends, all rights of the initial income~~
2342 ~~interest shall lapse, and amounts remaining due from principal~~
2343 ~~shall not be a lien on the assets of the trust.~~

2344 Section 41. Section 738.705, Florida Statutes, is
2345 transferred, renumbered as section 738.506, Florida Statutes,
2346 and amended to read:

2347 738.506 ~~738.705~~ Income taxes.—

2348 (1) A tax required to be paid by a fiduciary which is based
2349 on receipts allocated to income must ~~shall~~ be paid from income.

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2350 (2) A tax required to be paid by a fiduciary which is based
2351 on receipts allocated to principal must ~~shall~~ be paid from
2352 principal, even if the tax is called an income tax by the taxing
2353 authority.

2354 (3) Subject to subsection (4) and ss. 738.504, 738.505, and
2355 738.507, a tax required to be paid by a fiduciary on a the
2356 ~~trust's or estate's~~ share of an entity's taxable income in an
2357 accounting period must ~~shall~~ be paid from proportionately:

2358 (a) ~~From~~ Income and principal proportionately to the
2359 allocation between income and principal of to the extent
2360 receipts from the entity in the period are allocated to income.

2361 (b) ~~From principal to the extent receipts from the entity~~
2362 ~~are allocated to principal.~~

2363 (c) ~~From~~ Principal to the extent that the tax exceeds the
2364 income taxes payable by the trust or estate exceed the total
2365 receipts from the entity in the period.

2366 (4) After applying subsections (1), (2), and (3), a
2367 fiduciary shall adjust income or principal receipts, to the
2368 extent the taxes that the fiduciary pays are reduced because of
2369 a deduction for a payment made to a beneficiary.

2370 (5) Subject to the limitations and excluded assets provided
2371 under s. 736.08145, a reimbursement of state or federal income
2372 tax elected to be made by a fiduciary pursuant to s. 736.08145
2373 must be allocated and paid under paragraphs (3) (a) and (b) After
2374 ~~applying subsections (1)-(3), the fiduciary shall adjust income~~
2375 ~~or principal receipts to the extent that the trust's or estate's~~
2376 ~~income taxes are reduced, but not eliminated, because the trust~~
2377 ~~or estate receives a deduction for payments made to a~~
2378 ~~beneficiary. The amount distributable to that beneficiary as~~

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2379 ~~income as a result of this adjustment shall be equal to the cash~~
 2380 ~~received by the trust or estate, reduced, but not below zero, by~~
 2381 ~~the entity's taxable income allocable to the trust or estate~~
 2382 ~~multiplied by the trust's or estate's income tax rate. The~~
 2383 ~~reduced amount shall be divided by the difference between 1 and~~
 2384 ~~the trust's or estate's income tax rate in order to determine~~
 2385 ~~the amount distributable to that beneficiary as income before~~
 2386 ~~giving effect to other receipts or disbursements allocable to~~
 2387 ~~that beneficiary's interest.~~

2388 Section 42. Section 738.706, Florida Statutes, is
 2389 transferred, renumbered as section 738.507, Florida Statutes,
 2390 and amended to read:

2391 738.507 ~~738.706~~ Adjustment ~~Adjustments~~ between principal
 2392 and income because of taxes.-

2393 (1) A fiduciary may make an adjustment ~~adjustments~~ between
 2394 ~~principal and income~~ and principal to offset the shifting of
 2395 economic interests or tax benefits between current income
 2396 beneficiaries and successor ~~remainder~~ beneficiaries which arises
 2397 arise from:

2398 (a) An election or decision ~~Elections and decisions, other~~
 2399 ~~than those described in paragraph (b), that the fiduciary makes~~
 2400 ~~from time to time~~ regarding a tax matter, other than a decision
 2401 to claim an income tax deduction to which subsection (2) applies
 2402 matters;

2403 (b) An income tax or ~~any~~ other tax ~~that is~~ imposed on ~~upon~~
 2404 the fiduciary or a beneficiary as a result of a transaction
 2405 involving the fiduciary or a distribution by ~~from~~ the fiduciary
 2406 ~~estate or trust; or~~

2407 (c) ~~The~~ Ownership by the fiduciary ~~an estate or trust~~ of an

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2408 interest in an entity a part of whose taxable income, regardless
2409 of whether ~~or not~~ distributed, is includable in the taxable
2410 income of the fiduciary estate, trust, or a beneficiary; or

2411 (d) An election or decision a fiduciary makes to reimburse
2412 any tax under s. 736.08145.

2413 (2) If the amount of an estate tax marital ~~deduction~~ or
2414 charitable ~~contribution~~ deduction is reduced because a fiduciary
2415 deducts an amount paid from principal for income tax purposes
2416 instead of deducting it ~~such amount~~ for estate tax purposes,
2417 and, as a result, estate taxes paid from principal are increased
2418 and income taxes paid by a fiduciary or a ~~an estate, trust, or~~
2419 beneficiary are decreased, the fiduciary shall charge each
2420 ~~estate, trust, or~~ beneficiary that benefits from the decrease in
2421 income tax to ~~shall~~ reimburse the principal from which the
2422 increase in estate tax is paid. The total reimbursement must
2423 ~~shall~~ equal the increase in the estate tax, to the extent that
2424 the principal used to pay the increase would have qualified for
2425 a marital ~~deduction~~ or charitable ~~contribution~~ deduction but for
2426 the payment. The ~~proportionate~~ share of the reimbursement for
2427 each fiduciary estate, trust, or beneficiary whose income taxes
2428 are reduced must ~~shall~~ be the same as its ~~such estate's,~~
2429 ~~trust's, or beneficiary's~~ ~~proportionate~~ share of the total
2430 decrease in income tax. ~~An estate or trust shall reimburse~~
2431 ~~principal from income.~~

2432 (3) A fiduciary that charges a beneficiary under subsection
2433 (2) may offset the charge by obtaining payment from the
2434 beneficiary, withholding an amount from future distributions to
2435 the beneficiary, or adopting another method or combination of
2436 methods.

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2437 Section 43. Section 738.508, Florida Statutes, is created
2438 to read:

2439 738.508 Apportionment of property expenses between tenant
2440 and remainderman.—

2441 (1) For purposes of this section, the term:

2442 (a) "Remainderman" means the holder of the remainder
2443 interests after the expiration of a tenant's estate in property.

2444 (b) "Tenant" means the holder of an estate for life or term
2445 of years in real property or personal property, or both.

2446 (2) If a trust has not been created, expenses shall be
2447 apportioned between the tenant and remainderman as follows:

2448 (a) The following expenses are allocated to and shall be
2449 paid by the tenant:

2450 1. All ordinary expenses incurred in connection with the
2451 administration, management, or preservation of the property,
2452 including interest, ordinary repairs, regularly recurring taxes
2453 assessed against the property, and expenses of a proceeding or
2454 other matter that concerns primarily the tenant's estate or use
2455 of the property.

2456 2. Recurring premiums on insurance covering the loss of the
2457 property or the loss of income from or use of the property.

2458 3. Any of the expenses described in subparagraph (b)3.
2459 which are attributable to the use of the property by the tenant.

2460 (b) The following expenses are allocated to and shall be
2461 paid by the remainderman:

2462 1. Payments on the principal of a debt secured by the
2463 property, except to the extent that the debt is for expenses
2464 allocated to the tenant.

2465 2. Expenses of a proceeding or other matter that concerns

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2466 primarily the title to the property, other than title to the
2467 tenant's estate.

2468 3. Except as provided in subparagraph (a)3., expenses
2469 related to environmental matters, including reclamation,
2470 assessing environmental conditions, remedying and removing
2471 environmental contamination, monitoring remedial activities and
2472 the release of substances, preventing future releases of
2473 substances, collecting amounts from persons liable or
2474 potentially liable for the costs of such activities, penalties
2475 imposed under environmental laws or regulations and other
2476 payments made to comply with those laws or regulations,
2477 statutory or common law claims by third parties, and defending
2478 claims based on environmental matters.

2479 4. Extraordinary repairs.

2480 (c) If the tenant or remainderman incurred an expense for
2481 the benefit of his or her own estate without consent or
2482 agreement of the other, he or she must pay such expense in full.

2483 (d) Except as provided in paragraph (c), the cost of, or
2484 special taxes or assessments for, an improvement representing an
2485 addition of value to property forming part of the principal
2486 shall be paid by the tenant if the improvement is not reasonably
2487 expected to outlast the estate of the tenant. In all other
2488 cases, only a part shall be paid by the tenant while the
2489 remainder shall be paid by the remainderman. The part payable by
2490 the tenant is ascertainable by taking that percentage of the
2491 total that is found by dividing the present value of the
2492 tenant's estate by the present value of an estate of the same
2493 form as that of the tenant, except that it is limited for a
2494 period corresponding to the reasonably expected duration of the

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2495 improvement. The computation of present values of the estates
2496 shall be made by using the rate determined under s. 7520(a)(2)
2497 of the Internal Revenue Code then in effect and, in the case of
2498 an estate for life, the official mortality tables then in effect
2499 under s. 7520 of the Internal Revenue Code. Other evidence of
2500 duration or expectancy may not be considered.

2501 (3) This section does not apply to the extent that it is
2502 inconsistent with the instrument creating the estates, the
2503 agreement of the parties, or the specific direction of the
2504 Internal Revenue Code taxing or other applicable law.

2505 (4) The common law applicable to tenants and remaindermen
2506 supplements this section, except as modified by this section or
2507 other laws.

2508 Section 44. Section 738.601, Florida Statutes, is amended
2509 to read:

2510 (Substantial rewording of section. See
2511 s. 738.601, F.S., for present text.)

2512 738.601 Determination and distribution of net income.—

2513 (1) This section applies when:

2514 (a) The death of an individual results in the creation of
2515 an estate or trust; or

2516 (b) An income interest in a trust terminates, whether the
2517 trust continues or is distributed.

2518 (2) A fiduciary of an estate or trust with an income
2519 interest that terminates shall determine, under subsection (6)
2520 and ss. 738.401-738.508 and 738.701-738.703, the amount of net
2521 income and net principal receipts received from property
2522 specifically given to a beneficiary. The fiduciary shall
2523 distribute the net income and net principal receipts to the

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2524 beneficiary who is to receive the specific property.

2525 (3) A fiduciary shall determine the income and net income
2526 of an estate or income interest in a trust which terminates,
2527 other than the amount of net income determined under subsection
2528 (2), under ss. 738.401-738.508 and 738.701-738.703, and by:

2529 (a) Including in net income all income from property used
2530 or sold to discharge liabilities.

2531 (b) Paying from income or principal, in the fiduciary's
2532 discretion, fees of attorneys, accountants, and fiduciaries;
2533 court costs and other expenses of administration; and interest
2534 on estate and inheritance taxes and other taxes imposed because
2535 of the decedent's death, but the fiduciary may pay the expenses
2536 from income of property passing to a trust for which the
2537 fiduciary claims an estate tax marital or charitable deduction
2538 under the Internal Revenue Code or comparable law of any state
2539 only to the extent that:

2540 1. The payment of the those expenses from income will not
2541 cause the reduction or loss of the deduction; or

2542 2. The fiduciary makes an adjustment under s. 738.507(2).

2543 (c) Paying from principal other disbursements made or
2544 incurred in connection with the settlement of the estate or the
2545 winding up of an income interest that terminates, including:

2546 1. To the extent authorized by the decedent's will, the
2547 terms of the trust, or applicable law, debts, funeral expenses,
2548 disposition of remains, family allowances, estate and
2549 inheritance taxes, and other taxes imposed because of the
2550 decedent's death; and

2551 2. Related penalties apportioned by the decedent's will,
2552 the terms of the trust, or applicable law to the estate or

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2553 income interest that terminates.

2554 (4) If a decedent's will or the terms of a trust provide
2555 for the payment of interest or the equivalent of interest to a
2556 beneficiary who receives a pecuniary amount outright, the
2557 fiduciary shall make the payment from net income determined
2558 under subsection (3) or from principal to the extent that net
2559 income is insufficient.

2560 (5) A fiduciary shall distribute net income remaining after
2561 payments required by subsection (4) in the manner described in
2562 s. 738.602 to all other beneficiaries, including a beneficiary
2563 who receives a pecuniary amount in trust, even if the
2564 beneficiary holds an unqualified power to withdraw assets from
2565 the trust or other presently exercisable general power of
2566 appointment over the trust.

2567 (6) A fiduciary may not reduce principal or income receipts
2568 from property described in subsection (2) because of a payment
2569 described in s. 738.501 or s. 738.502 to the extent that the
2570 decedent's will, the terms of the trust, or applicable law
2571 requires the fiduciary to make the payment from assets other
2572 than the property or that the fiduciary recovers or expects to
2573 recover the payment from a third party. The net income and
2574 principal receipts from the property must be determined by
2575 including the amount the fiduciary receives or pays regarding
2576 the property, whether the amount accrued or became due before,
2577 on, or after the date of the decedent's death or an income
2578 interest's terminating event, and making a reasonable provision
2579 for an amount the estate or income interest may become obligated
2580 to pay after the property is distributed.

2581 Section 45. Section 738.602, Florida Statutes, is amended

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2582 to read:

2583 (Substantial rewording of section. See

2584 s. 738.602, F.S., for present text.)

2585 738.602 Distribution to successor beneficiary.-

2586 (1) Except to the extent that ss. 738.301-738.310 apply for
2587 a beneficiary that is a trust, each beneficiary described in s.
2588 738.601(5) is entitled to receive a share of the net income
2589 equal to the beneficiary's fractional interest in undistributed
2590 principal assets, using carrying values as of the distribution
2591 date. If a fiduciary makes more than one distribution of assets
2592 to beneficiaries to which this section applies, each
2593 beneficiary, including a beneficiary who does not receive part
2594 of the distribution, is entitled, as of each distribution date,
2595 to a share of the net income the fiduciary received after the
2596 decedent's death, an income interest's other terminating event,
2597 or the preceding distribution by the fiduciary.

2598 (2) In determining a beneficiary's share of net income
2599 under subsection (1), the following rules apply:

2600 (a) The beneficiary is entitled to receive a share of the
2601 net income equal to the beneficiary's fractional interest in the
2602 undistributed principal assets immediately before the
2603 distribution date.

2604 (b) The beneficiary's fractional interest under paragraph
2605 (a) must be calculated:

2606 1. On the aggregate carrying value of the assets as of the
2607 distribution date; and

2608 2. Reduced by:

2609 a. Any liabilities of the estate or trust;

2610 b. Property specifically given to a beneficiary under the

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2611 decedent's will or the terms of the trust; and

2612 c. Property required to pay pecuniary amounts not in trust.

2613 (c) If a disproportionate distribution of principal is made
2614 to any beneficiary, the respective fractional interests of all
2615 beneficiaries in the undistributed principal assets must be
2616 recomputed by:

2617 1. Adjusting the carrying value of the principal assets to
2618 their fair market value before the distribution;

2619 2. Reducing the fractional interest of the recipient of the
2620 disproportionate distribution in the remaining principal assets
2621 by the fair market value of the principal distribution; and

2622 3. Recomputing the fractional interests of all
2623 beneficiaries in the remaining principal assets based upon the
2624 now restated carrying values.

2625 (d) The distribution date under paragraph (a) may be the
2626 date as of which the fiduciary calculates the value of the
2627 assets if that date is reasonably near the date on which the
2628 assets are distributed. All distributions to a beneficiary must
2629 be valued based on the assets' fair market value on the date of
2630 the distribution.

2631 (3) To the extent that a fiduciary does not distribute
2632 under this section all the collected but undistributed net
2633 income to each beneficiary as of a distribution date, the
2634 fiduciary shall maintain records showing the interest of each
2635 beneficiary in the net income.

2636 (4) If this section applies to income from an asset, a
2637 fiduciary may apply the requirements in this section to net gain
2638 or loss realized from the disposition of the asset after the
2639 decedent's date of death, an income interest's terminating

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2640 event, or the preceding distribution by the fiduciary.

2641 (5) The carrying value or fair market value of trust assets
2642 shall be determined on an asset-by-asset basis and is conclusive
2643 if reasonable and determined in good faith. Determinations of
2644 fair market value based on appraisals performed within 2 years
2645 before or after the valuation date are presumed reasonable. The
2646 values of trust assets are conclusively presumed to be
2647 reasonable and determined in good faith unless proven otherwise
2648 in a proceeding commenced by or on behalf of a person interested
2649 in the trust within the time provided in s. 736.1008.

2650 Section 46. Section 738.701, Florida Statutes, is amended
2651 to read:

2652 (Substantial rewording of section. See
2653 s. 738.701, F.S., for present text.)

2654 738.701 When right to income begins and ends.—

2655 (1) An income beneficiary is entitled to net income in
2656 accordance with the terms of the trust from the date an income
2657 interest begins. The income interest begins on the date
2658 specified in the terms of the trust or, if no date is specified,
2659 on the date an asset becomes subject to:

2660 (a) The trust for the current income beneficiary; or

2661 (b) A successive interest for a successor beneficiary.

2662 (2) An asset becomes subject to a trust under paragraph

2663 (1) (a):

2664 (a) For an asset that is transferred to the trust during
2665 the settlor's life, on the date the asset is transferred;

2666 (b) For an asset that becomes subject to the trust because
2667 of a decedent's death, on the date of the decedent's death, even
2668 if there is an intervening period of administration of the

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2669 decedent's estate; or

2670 (c) For an asset that is transferred to a fiduciary by a
2671 third party because of a decedent's death, on the date of the
2672 decedent's death.

2673 (3) An asset becomes subject to a successive interest under
2674 paragraph (1)(b) on the day after the preceding income interest
2675 ends, as determined under subsection (4), even if there is an
2676 intervening period of administration to wind up the preceding
2677 income interest.

2678 (4) An income interest ends on the day before an income
2679 beneficiary dies or another terminating event occurs, or on the
2680 last day of a period during which there is no beneficiary to
2681 which a fiduciary may or must distribute income.

2682 Section 47. Section 738.702, Florida Statutes, is amended
2683 to read:

2684 (Substantial rewording of section. See
2685 s. 738.702, F.S., for present text.)

2686 738.702 Apportionment of receipts and disbursements when
2687 decedent dies or income interest begins.—

2688 (1) A fiduciary shall allocate an income receipt or
2689 disbursement, other than a receipt to which s. 738.601(2)
2690 applies, to principal if its due date occurs before the date on
2691 which:

2692 (a) For an estate, the decedent died; or

2693 (b) For a trust or successive interest, an income interest
2694 begins.

2695 (2) If the due date of a periodic income receipt or
2696 disbursement occurs on or after the date on which a decedent
2697 died or an income interest begins, a fiduciary must allocate the

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2698 receipt or disbursement to income.

2699 (3) If an income receipt or disbursement is not periodic or
2700 has no due date, a fiduciary must treat the receipt or
2701 disbursement under this section as accruing from day to day. The
2702 fiduciary shall allocate to principal the portion of the receipt
2703 or disbursement accruing before the date on which a decedent
2704 died or an income interest begins, and shall allocate to income
2705 the balance.

2706 (4) A receipt or disbursement is periodic under subsections
2707 (2) and (3) if:

2708 (a) The receipt or disbursement must be paid at regular
2709 intervals under an obligation to make payments; or

2710 (b) The payor customarily makes payments at regular
2711 intervals.

2712 (5) An item of income or an obligation is due under this
2713 section on the date the payor is required to make a payment. If
2714 a payment date is not stated, there is no due date.

2715 (6) Distributions to shareholders or other owners from an
2716 entity to which s. 738.401 applies are due:

2717 (a) On the date fixed by or on behalf of the entity for
2718 determining the persons entitled to receive the distribution;

2719 (b) If no date is fixed, on the date of the decision by or
2720 on behalf of the entity to make the distribution; or

2721 (c) If no date is fixed and the fiduciary does not know the
2722 date of the decision by or on behalf of the entity to make the
2723 distribution, on the date the fiduciary learns of the decision.

2724 (7) Section 733.817 controls over any provision of this
2725 chapter to the contrary.

2726 Section 48. Section 738.703, Florida Statutes, is amended

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2727 to read:

2728 (Substantial rewording of section. See
2729 s. 738.703, F.S., for present text.)

2730 738.703 Apportionment when income interest ends.—

2731 (1) As used in this section, the term “undistributed
2732 income” means net income received on or before the date on which
2733 an income interest ends. The term does not include an item of
2734 income or expense which is due or accrued or net income that has
2735 been added or is required to be added to principal under the
2736 terms of the trust.

2737 (2) Except as otherwise provided in subsection (3), when a
2738 mandatory income interest of a beneficiary ends, the fiduciary
2739 shall pay the beneficiary’s share of the undistributed income
2740 that is not disposed of under the terms of the trust to the
2741 beneficiary or, if the beneficiary does not survive the date the
2742 interest ends, to the beneficiary’s estate.

2743 (3) If a beneficiary has an unqualified power to withdraw
2744 more than 5 percent of the value of a trust immediately before
2745 an income interest ends:

2746 (a) The fiduciary shall allocate to principal the
2747 undistributed income from the portion of the trust which may be
2748 withdrawn; and

2749 (b) Subsection (2) applies only to the balance of the
2750 undistributed income.

2751 (4) When a fiduciary’s obligation to pay a fixed annuity or
2752 a fixed fraction of the value of assets ends, the fiduciary
2753 shall prorate the final payment as required to preserve income
2754 tax, gift tax, estate tax, or other tax benefits.

2755 Section 49. Section 738.801, Florida Statutes, is amended

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2756 to read:

2757 (Substantial rewording of section. See

2758 s. 738.801, F.S., for present text.)

2759 738.801 Uniformity of application and construction.—In
2760 applying and construing this act, consideration shall be given
2761 to the need to promote uniformity of the law with respect to its
2762 subject matter among states that enact it.

2763 Section 50. Section 738.802, Florida Statutes, is amended
2764 to read:

2765 (Substantial rewording of section. See

2766 s. 738.802, F.S., for present text.)

2767 738.802 Relation to Electronic Signatures in Global and
2768 National Commerce Act.—This chapter modifies, limits, or
2769 supersedes the Electronic Signatures in Global and National
2770 Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not modify,
2771 limit, or supersede section 101(c) of that act, 15 U.S.C. s.
2772 7001(c), or authorize electronic delivery of any of the notices
2773 described in s. 103(b) of that act, 15 U.S.C. s. 7003(b). This
2774 chapter does not modify, limit, or supersede s. 117.285.

2775 Section 51. Section 738.803, Florida Statutes, is amended
2776 to read:

2777 738.803 Severability.—If any provision of this chapter or
2778 its application to any person or circumstance is held invalid,
2779 the invalidity does ~~shall~~ not affect other provisions or
2780 applications of this chapter which can be given effect without
2781 the invalid provision or application, and to this end the
2782 provisions of this chapter are severable.

2783 Section 52. Section 738.804, Florida Statutes, is amended
2784 to read:

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2785 738.804 Application.—Except as provided in the terms of the
2786 trust ~~instrument, the will,~~ or this chapter, this chapter shall
2787 apply to any receipt or expense received or incurred and any
2788 disbursement made after January 1, 2025 ~~January 1, 2003,~~ by any
2789 trust or ~~decedent's~~ estate, whether established before or after
2790 January 1, 2025 ~~January 1, 2003,~~ and whether the asset involved
2791 was acquired by the trustee or personal representative before or
2792 after January 1, 2025 ~~January 1, 2003.~~ Receipts or expenses
2793 received or incurred and disbursements made before January 1,
2794 2025, must ~~January 1, 2003, shall~~ be governed by the law of this
2795 state in effect at the time of the event, except as otherwise
2796 expressly provided in the ~~will or~~ terms of the trust or in this
2797 chapter.

2798 Section 53. This act shall take effect January 1, 2025.