

704-154AX-32

Bill No. HB 585

Amendment No. ____ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

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11 Representative(s) Goodlette offered the following:

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13 **Amendment (with title amendment)**

14 remove: everything after the enacting clause,

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16 and insert:

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Section 1. Sections 738.101, 738.102, 738.103, 738.104, 738.1041, 738.105, 738.201, 738.202, 738.301, 738.302, 738.303, 738.401, 738.402, 738.403, 738.501, 738.502, 738.503, 738.504, 738.601, 738.602, 738.603, 738.604, 738.605, 738.606, 738.607, 738.608, 738.701, 738.702, 738.703, 738.704, 738.705, 738.706, 738.801, 738.802, 738.803, and 738.804, Florida Statutes, are created to read:

738.101 Short title.--This chapter may be cited as the "Florida Uniform Principal and Income Act."

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

(1) "Accounting period" means a calendar year unless another 12-month period is selected by a fiduciary. The term includes a portion of a calendar year or other 12-month period that begins when an income interest begins or ends when an

1 income interest ends.

2 (2) "Beneficiary" means, in the case of a decedent's
3 estate, an heir or devisee and, in the case of a trust, an
4 income beneficiary or a remainder beneficiary.

5 (3) "Fiduciary" means a personal representative or a
6 trustee. The term includes an executor, administrator,
7 successor personal representative, special administrator, or a
8 person performing substantially the same function.

9 (4) "Income" means money or property that a fiduciary
10 receives as current return from a principal asset. The term
11 includes a portion of receipts from a sale, exchange, or
12 liquidation of a principal asset, to the extent provided in
13 ss. 738.401-738.403 and s. 738.503.

14 (5) "Income beneficiary" means a person to whom net
15 income of a trust is or may be payable.

16 (6) "Income interest" means the right of an income
17 beneficiary to receive all or part of net income, whether the
18 terms of the trust require the net income to be distributed or
19 authorize the net income to be distributed in the trustee's
20 discretion.

21 (7) "Mandatory income interest" means the right of an
22 income beneficiary to receive net income that the terms of the
23 trust require the fiduciary to distribute.

24 (8) "Net income" means the total receipts allocated to
25 income during an accounting period minus the disbursements
26 made from income during the period, plus or minus transfers
27 under this chapter to or from income during the period.

28 (9) "Person" means an individual, corporation,
29 business trust, estate, trust, partnership, limited liability
30 company, association, joint venture, public corporation, or
31 any other legal or commercial entity or a government or

1 governmental subdivision, agency, or instrumentality.

2 (10) "Principal" means property held in trust for
3 distribution to a remainder beneficiary when the trust
4 terminates.

5 (11) "Remainder beneficiary" means a person entitled
6 to receive principal when an income interest ends.

7 (12) "Terms of a trust" means the manifestation of the
8 intent of a grantor or decedent with respect to the trust,
9 expressed in a manner that admits of its proof in a judicial
10 proceeding, whether by written or spoken words or by conduct.

11 (13) "Trustee" includes an original, additional, or
12 successor trustee, whether or not appointed or confirmed by a
13 court.

14 738.103 Fiduciary duties; general principles.--

15 (1) In allocating receipts and disbursements to or
16 between principal and income, and with respect to any matter
17 within the scope of ss. 738.201 and 738.202 and ss.
18 738.301-738.303, a fiduciary:

19 (a) Shall administer a trust or estate in accordance
20 with the terms of the trust or the will, even if there is a
21 different provision in this chapter.

22 (b) May administer a trust or estate by the exercise
23 of a discretionary power of administration given to the
24 fiduciary by the terms of the trust or the will, even if the
25 exercise of the power produces a result different from a
26 result required or permitted by this chapter.

27 (c) Shall administer a trust or estate in accordance
28 with this chapter if the terms of the trust or the will do not
29 contain a different provision or do not give the fiduciary a
30 discretionary power of administration.

31 (d) Shall add a receipt or charge a disbursement to

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1 principal to the extent the terms of the trust and this
2 chapter do not provide a rule for allocating the receipt or
3 disbursement to or between principal and income.

4 (2) In exercising the power to adjust under s.
5 738.104(1) or a discretionary power of administration
6 regarding a matter within the scope of this chapter, whether
7 granted by the terms of a trust, a will, or this chapter, a
8 fiduciary shall administer a trust or estate impartially,
9 based on what is fair and reasonable to all of the
10 beneficiaries, except to the extent the terms of the trust or
11 the will clearly manifest an intention that the fiduciary
12 shall or may favor one or more of the beneficiaries. A
13 determination in accordance with this chapter is presumed to
14 be fair and reasonable to all of the beneficiaries.

15 738.104 Trustee's power to adjust.--

16 (1) A trustee may adjust between principal and income
17 to the extent the trustee considers necessary if the trustee
18 invests and manages trust assets as a prudent investor, the
19 terms of the trust describe the amount that may or shall be
20 distributed to a beneficiary by referring to the trust's
21 income, and the trustee determines, after applying the rules
22 in s. 738.103(1), that the trustee is unable to comply with s.
23 738.103(2).

24 (2) In deciding whether and to what extent to exercise
25 the power conferred by subsection (1), a trustee shall
26 consider all factors relevant to the trust and its
27 beneficiaries, including the following factors to the extent
28 they are relevant:

29 (a) The nature, purpose, and expected duration of the
30 trust.

31 (b) The intent of the grantor.

- 1 (c) The identity and circumstances of the
2 beneficiaries.
- 3 (d) The needs for liquidity, regularity of income, and
4 preservation and appreciation of capital.
- 5 (e) The assets held in the trust; the extent to which
6 the assets consist of financial assets, interests in closely
7 held enterprises, tangible and intangible personal property,
8 or real property; the extent to which an asset is used by a
9 beneficiary; and whether an asset was purchased by the trustee
10 or received from the grantor.
- 11 (f) The net amount allocated to income under the other
12 sections of this chapter and the increases or decreases in the
13 value of the principal assets, which the trustee may estimate
14 as to assets for which market values are not readily
15 available.
- 16 (g) Whether and to what extent the terms of the trust
17 give the trustee the power to invade principal or accumulate
18 income or prohibit the trustee from invading principal or
19 accumulating income and the extent to which the trustee has
20 exercised a power from time to time to invade principal or
21 accumulate income.
- 22 (h) The actual and anticipated effect of economic
23 conditions on principal and income and effects of inflation
24 and deflation.
- 25 (i) The anticipated tax consequences of an adjustment.
- 26 (3) A trustee may not make an adjustment:
27 (a) That diminishes the income interest in a trust
28 that requires all of the income to be paid at least annually
29 to a spouse and for which an estate tax or gift tax marital
30 deduction would be allowed, in whole or in part, if the
31 trustee did not have the power to adjust;

1 (b) That reduces the actuarial value of the income
2 interest in a trust to which a person transfers property with
3 the intent to qualify for a gift tax exclusion;

4 (c) That changes the amount payable to a beneficiary
5 as a fixed annuity or a fixed fraction of the value of the
6 trust assets;

7 (d) From any amount that is permanently set aside for
8 charitable purposes under a will or the terms of a trust
9 unless both income and principal are so set aside;

10 (e) If possessing or exercising the power to adjust
11 causes an individual to be treated as the owner of all or part
12 of the trust for income tax purposes and the individual would
13 not be treated as the owner if the trustee did not possess the
14 power to adjust;

15 (f) If possessing or exercising the power to adjust
16 causes all or part of the trust assets to be included for
17 estate tax purposes in the estate of an individual who has the
18 power to remove a trustee or appoint a trustee, or both, and
19 the assets would not be included in the estate of the
20 individual if the trustee did not possess the power to adjust;

21 (g) If the trustee is a beneficiary of the trust; or

22 (h) If the trustee is not a beneficiary of the trust
23 but the adjustment would benefit the trustee directly or
24 indirectly.

25 (4) If paragraph (3)(e), paragraph (3)(f), paragraph
26 (3)(g), or paragraph (3)(h) applies to a trustee and there is
27 more than one trustee, a cotrustee to whom the provision does
28 not apply may make the adjustment unless the exercise of the
29 power by the remaining trustee is not permitted by the terms
30 of the trust.

31 (5) A trustee may release the entire power to adjust

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1 conferred by subsection (1) or may release only the power to
2 adjust from income to principal or the power to adjust from
3 principal to income if the trustee is uncertain about whether
4 possessing or exercising the power will cause a result
5 described in paragraphs (3)(a)-(f) or paragraph (3)(h) or if
6 the trustee determines that possessing or exercising the power
7 will or may deprive the trust of a tax benefit or impose a tax
8 burden not described in subsection (3). The release may be
9 permanent or for a specified period, including a period
10 measured by the life of an individual.

11 (6) Terms of a trust that limit a trustee's power to
12 adjust between principal and income do not affect the
13 application of this section unless it is clear from the terms
14 of the trust that the terms are intended to deny the trustee
15 the power to adjust conferred by subsection (1).

16 (7) Nothing in this chapter is intended to create or
17 imply a duty to make an adjustment and no inference of
18 impropriety shall be made as a result of a trustee not
19 exercising the power to adjust conferred by subsection (1).

20 (8) With respect to a trust in existence on January 1,
21 2003:

22 (a) A trustee shall not have the power to adjust under
23 this section if, within 60 days after the date of the
24 statement required in subsection (9), a super majority of the
25 trust beneficiaries deliver to the trustee a written objection
26 to the application of this section to such trust. An objection
27 shall be deemed to be delivered to the trustee on the date the
28 objection is mailed to the mailing address listed in the
29 notice provided in subsection (9).

30 (b) An objection under this section may be executed by
31 a legal representative or natural guardian of a beneficiary

1 without the filing of any proceeding or approval of any court.

2 (c) If an objection is delivered to the trustee, then
3 the trustee may petition the circuit court for an order
4 quashing the objection and vesting in such trustee the power
5 to adjust under this section. The burden will be on the
6 objecting beneficiaries to prove that the power to adjust
7 would be inequitable, illegal, or otherwise in contravention
8 of the grantor's intent. The court may award costs and
9 attorney's fees relating to the trustee's petition in the same
10 manner as in chancery actions. When costs and attorney's fees
11 are to be paid out of the trust, the court may, in its
12 discretion, direct from which part of the trust they shall be
13 paid.

14 (d) If no timely objection is made or if the trustee
15 is vested with the power to adjust by court order, the trustee
16 may thereafter exercise the power to adjust without providing
17 notice of its intent to do so unless, in vesting the trustee
18 with the power to adjust, the court determines that unusual
19 circumstances require otherwise.

20 (e)1. If a trustee makes a good faith effort to comply
21 with the notice provisions of subsection (9), but fails to
22 deliver notice to one or more beneficiaries entitled to such
23 notice, neither the validity of the notice required under this
24 subsection nor the trustee's power to adjust under this
25 section shall be affected until the trustee has actual notice
26 that one or more beneficiaries entitled to notice were not
27 notified. Until the trustee has actual notice of the notice
28 deficiency, the trustee shall have all of the powers and
29 protections granted a trustee with the power to adjust under
30 this chapter.

31 2. When the trustee has actual notice that one or more

1 beneficiaries entitled to notice under subsection (9) were not
2 notified, the trustee's power to adjust under this section
3 shall cease until all beneficiaries who are entitled to such
4 notice, including those who were previously provided with such
5 notice, are notified and given the opportunity to object as
6 provided for under this subsection.

7 (f) The objection of a super majority of beneficiaries
8 under this subsection shall be valid for a period of 1 year
9 after the date of the notice set forth in subsection (9). Upon
10 expiration of the objection, the trustee may thereafter give a
11 new notice under subsection (9).

12 (g) Nothing in this section is intended to create or
13 imply a duty of the trustee of a trust existing on January 1,
14 2003, to seek a power to adjust pursuant to this subsection or
15 to give the notice described in subsection (9) if the trustee
16 does not desire to have a power to adjust under this section,
17 and no inference of impropriety shall be made as the result of
18 a trustee not seeking a power to adjust pursuant to this
19 subsection.

20 (9)(a) A trustee of a trust in existence on January 1,
21 2003, that is not prohibited under subsection (3) from
22 exercising the power to adjust shall, any time prior to
23 initially exercising the power, provide to all reasonably
24 ascertainable current beneficiaries described in s.
25 737.303(4)(b)1. and all reasonably ascertainable remainder
26 beneficiaries described in s. 737.303(4)(b)2. a statement
27 containing the following:

28 1. The name, telephone number, street address, and
29 mailing address of the trustee and of any individuals who may
30 be contacted for further information;

31 2. A statement that unless a super majority of the

1 beneficiaries objects to the application of this section to
2 the trust within 60 days after the date the statement pursuant
3 to this subsection was served, s. 738.104, shall apply to the
4 trust; and

5 3. A statement that, if s. 738.104, applies to the
6 trust, the trustee will have the power to adjust between
7 income and principal and that such a power may have an effect
8 on the distributions to such beneficiary from the trust.

9 (b) The statement may contain information regarding a
10 trustee's fiduciary obligations with respect to the power to
11 adjust between income and principal under this section.

12 (c) The statement referred to in this subsection shall
13 be served informally, in the manner provided in the Florida
14 Rules of Civil Procedure relating to service of pleadings
15 subsequent to the initial pleading.

16 (d) For purposes of subsection (8) and this
17 subsection, a "super majority of the trust beneficiaries"
18 means at least two-thirds in interest of the reasonably
19 ascertainable current beneficiaries described in s.
20 737.303(4)(b)1. or two-thirds in interest of the reasonably
21 ascertainable remainder beneficiaries described in s.
22 737.303(4)(b)2., if the interests of the beneficiaries are
23 reasonably ascertainable; otherwise, it means two-thirds in
24 number of either such class.

25 (10) A trust exists on January 1, 2003, if it is not
26 revocable on January 1, 2003. A trust is revocable if
27 revocable by the grantor alone or in conjunction with any
28 other person. A trust is not revocable for purposes of this
29 section if revocable by the grantor only with the consent of
30 all persons having a beneficial interest in the property.

31 738.1041 Total return unitrust.--

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

2 (a) "Disinterested person" means a person who is not a
3 "related or subordinate party" as defined in s. 672(c) of the
4 United States Internal Revenue Code, 26 U.S.C. s. 1 et seq.,
5 or any successor provision thereof, with respect to the person
6 then acting as trustee of the trust and excludes the grantor
7 and any interested trustee.

8 (b) "Income trust" means a trust, created by either an
9 inter vivos or a testamentary instrument, which directs or
10 permits the trustee to distribute the net income of the trust
11 to one or more persons, either in fixed proportions or in
12 amounts or proportions determined by the trustee.
13 Notwithstanding the foregoing, no trust that otherwise is an
14 "income trust" shall qualify hereunder, if it may be subject
15 to taxation under the Internal Revenue Code, 26 U.S.C. s. 2001
16 or s. 2501, until the expiration of the period for filing the
17 return therefor, including extensions.

18 (c) "Interested distributee" means a person to whom
19 distributions of income or principal can currently be made who
20 has the power to remove the existing trustee and designate as
21 successor a person who may be a "related or subordinate
22 party," as defined in the Internal Revenue Code, 26 U.S.C. s.
23 672(c), with respect to such distributee.

24 (d) "Interested trustee" means an individual trustee
25 to whom the net income or principal of the trust can currently
26 be distributed or would be distributed if the trust were then
27 to terminate and be distributed, any trustee who may be
28 removed and replaced by an interested distributee, or an
29 individual trustee whose legal obligation to support a
30 beneficiary may be satisfied by distributions of income and
31 principal of the trust.

1 (2) A trustee may, without court approval, convert an
2 income trust to a total return unitrust, reconvert a total
3 return unitrust to an income trust, or change the percentage
4 used to calculate the unitrust amount or the method used to
5 determine the fair market value of the trust if:

6 (a) The trustee adopts a written statement regarding
7 trust distributions that provides:

8 1. In the case of a trust being administered as an
9 income trust, that future distributions from the trust will be
10 unitrust amounts rather than net income, and indicates the
11 manner in which the unitrust amount will be calculated and the
12 method in which the fair market value of the trust will be
13 determined.

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

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

18 b. The percentage used to calculate the unitrust
19 amount or the method used to determine the fair market value
20 of the trust will be changed, and indicates the manner in
21 which the new unitrust amount will be calculated and the
22 method in which the new fair market value of the trust will be
23 determined;

24 (b)1. The trustee determines, or if there is no
25 trustee other than an interested trustee, the trustee appoints
26 a disinterested person who, in its sole discretion but acting
27 in a fiduciary capacity, determines for the trustee:

28 a. The percentage to be used to calculate the unitrust
29 amount, provided the percentage used is not greater than 5
30 percent nor less than 3 percent;

31 b. The method to be used in determining the fair

1 market value of the trust; and
2 c. Which assets, if any, are to be excluded in
3 determining the unitrust amount; or
4 2. The trustee administers the trust such that:
5 a. The percentage used to calculate the unitrust
6 amount is 50 percent of the applicable federal rate as defined
7 in the Internal Revenue Code, 26 U.S.C. s. 7520, in effect for
8 the month the conversion under this section becomes effective
9 and for each January thereafter; however, the percentage shall
10 never be greater than 5 percent nor less than 3 percent; and
11 b. The fair market value of the trust shall be
12 determined at least annually on an asset-by-asset basis,
13 reasonably and in good faith, in accordance with the
14 provisions of s. 738.202(5), except the following property
15 shall not be included in determining the value of the trust:
16 (I) Any residential property or any tangible personal
17 property that, as of the first business day of the current
18 valuation year, one or more current beneficiaries of the trust
19 have or have had the right to occupy, or have or have had the
20 right to possess or control (other than in his or her capacity
21 as trustee of the trust), and instead the right of occupancy
22 or the right to possession and control shall be deemed to be
23 the unitrust amount with respect to such property; however,
24 the unitrust amount shall be adjusted to take into account
25 partial distributions from or receipt into the trust of such
26 property during the valuation year.
27 (II) Any asset specifically given to a beneficiary and
28 the return on investment on such property, which return on
29 investment shall be distributable to such beneficiary.
30 (III) Any asset while held in a testator's estate;
31 (c) The trustee sends written notice of its intention

1 to take such action, along with copies of such written
2 statement and this section, and, if applicable, the
3 determinations of either the trustee or the disinterested
4 person to:

5 1. The grantor of the trust, if living.

6 2. All living persons who are currently receiving or
7 eligible to receive distributions of income of the trust.

8 3. All living persons who would receive distributions
9 of principal of the trust if the trust were to terminate at
10 the time of the giving of such notice (without regard to the
11 exercise of any power of appointment) or, if the trust does
12 not provide for its termination, all living persons who would
13 receive or be eligible to receive distributions of income or
14 principal of the trust if the persons identified in
15 subparagraph 2. were deceased.

16 4. All persons acting as advisers or protectors of the
17 trust.

18
19 Notice under this paragraph shall be served informally, in the
20 manner provided in the Florida Rules of Civil Procedure
21 relating to service of pleadings subsequent to the initial
22 pleading;

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

25 (e) No person receiving such notice objects, by
26 written instrument delivered to the trustee, to the proposed
27 action of the trustee or the determinations of the
28 disinterested person within 60 days after receipt of such
29 notice.

30 (3) If a trustee desires to convert an income trust to
31 a total return unitrust, reconvert a total return unitrust to

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1 an income trust, or change the percentage used to calculate
2 the unitrust amount or the method used to determine a fair
3 market value of the trust but does not have the ability to or
4 elects not to do it under subsection (2), the trustee may
5 petition the circuit court for such order as the trustee deems
6 appropriate. In that event, the court, in its own discretion
7 or on the petition of such trustee or any person having an
8 income or remainder interest in the trust, may appoint a
9 disinterested person who, acting in a fiduciary capacity,
10 shall present such information to the court as shall be
11 necessary for the court to make a determination hereunder.

12 (4) All determinations made pursuant to
13 sub-subparagraph (2)(b)2.b. shall be conclusive if reasonable
14 and made in good faith. Such determination shall be
15 conclusively presumed to have been made reasonably and in good
16 faith unless proven otherwise in a proceeding commenced by or
17 on behalf of a person interested in the trust within the time
18 provided in s. 737.307. The burden will be on the objecting
19 interested party to prove that the determinations were not
20 made reasonably and in good faith.

21 (5) The unitrust amount shall not be less than the net
22 income of the trust, determined without regard to the
23 provisions of subsection (6), for:

24 (a) A trust for which a marital deduction has been
25 taken for federal tax purposes under the Internal Revenue
26 Code, 26 U.S.C. s. 2056 or s. 2523, during the lifetime of the
27 spouse for whom the trust was created; or

28 (b) A trust to which the generation-skipping transfer
29 tax due under the Internal Revenue Code, 26 U.S.C. s. 2601
30 does not apply by reason of any effective date or transition
31 rule.

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2 Paragraph (a) will not apply to any trust to the extent that
3 the use of a total return unitrust is recognized for federal
4 tax purposes under the Internal Revenue Code, 26 U.S.C. s.
5 2056 or s. 2523. Paragraph (b) will not apply to any trust to
6 the extent that the use of a total return unitrust is
7 recognized for federal tax purposes under the Internal Revenue
8 Code, 26 U.S.C. s. 2601.

9 (6) Following the conversion of an income trust to a
10 total return unitrust, the trustee:

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

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

16 1. Net short-term capital gain described in the
17 Internal Revenue Code, 26 U.S.C. s. 1222(5), for such year, or
18 portion thereof, but only to the extent that the amount so
19 allocated together with all other amounts allocated to trust
20 income, as determined under the provisions of this chapter
21 without regard to this section and s. 738.104, for such year,
22 or portion thereof, does not exceed the unitrust amount for
23 such year, or portion thereof.

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

31 (7) In administering a total return unitrust, the

1 trustee may, in its sole discretion but subject to the
2 provisions of the governing instrument, determine:
3 (a) The effective date of the conversion.
4 (b) The timing of distributions, including provisions
5 for prorating a distribution for a short year in which a
6 beneficiary's right to payments commences or ceases.
7 (c) Whether distributions are to be made in cash or in
8 kind or partly in cash and partly in kind.
9 (d) If the trust is reconverted to an income trust,
10 the effective date of such reconversion.
11 (e) Such other administrative issues as may be
12 necessary or appropriate to carry out the purposes of this
13 section.
14 (8) Conversion to a total return unitrust under the
15 provisions of this section shall not affect any other
16 provision of the governing instrument, if any, regarding
17 distributions of principal.
18 (9) In the case of a trust for which a marital
19 deduction has been taken for federal tax purposes under the
20 Internal Revenue Code, 26 U.S.C. s. 2056 or s. 2523, the
21 spouse otherwise entitled to receive the net income of the
22 trust shall have the right, by written instrument delivered to
23 the trustee, to compel the reconversion during his or her
24 lifetime of the trust from a total return unitrust to an
25 income trust, notwithstanding anything in this section to the
26 contrary, unless the use of a total return unitrust is
27 recognized for federal tax purposes under the Internal Revenue
28 Code, 26 U.S.C. s. 2056 or s. 2523.
29 (10) Any trustee or disinterested person who in good
30 faith takes or fails to take any action under this section
31 shall not be liable to any person affected by such action or

1 inaction, regardless of whether such person received written
2 notice as provided in this section and regardless of whether
3 such person was under a legal disability at the time of the
4 delivery of such notice. Such person's exclusive remedy shall
5 be to obtain, under subsection (11), an order of the court
6 directing the trustee to convert an income trust to a total
7 return unitrust, to reconvert from a total return unitrust to
8 an income trust, or to change the percentage used to calculate
9 the unitrust amount.

10 (11) If a majority in interest of either the income or
11 remainder beneficiaries of an income trust has delivered to
12 the trustee a written objection to the amount of the income
13 distributions of the trust, and, if the trustee has failed to
14 resolve the objection to the satisfaction of the objecting
15 beneficiaries within 6 months from the receipt of such written
16 objection, then the objecting beneficiaries may petition the
17 court in accordance with subsection (3).

18 (12) This section shall be construed as pertaining to
19 the administration of a trust and shall be available to any
20 trust that is administered in this state under Florida law
21 unless:

22 (a) The governing instrument reflects an intention
23 that the current beneficiary or beneficiaries are to receive
24 an amount other than a reasonable current return from the
25 trust;

26 (b) The trust is a trust described in the Internal
27 Revenue Code, 26 U.S.C. s. 170(f)(2)(B), s. 642(c)(5), s.
28 664(d), s. 1361(d), s. 2702(a)(3), or s. 2702(b);

29 (c) One or more persons to whom the trustee could
30 distribute income have a power of withdrawal over the trust
31 that is not subject to an ascertainable standard under the

1 Internal Revenue Code, 26 U.S.C. s. 2041 or s. 2514, or that
2 can be exercised to discharge a duty of support he or she
3 possesses;

4 (d) The governing instrument expressly prohibits use
5 of this section by specific reference to the section. A
6 provision in the governing instrument that, "The provisions of
7 section 738.1041, Florida Statutes, as amended, or any
8 corresponding provision of future law, shall not be used in
9 the administration of this trust," or similar words reflecting
10 such intent shall be sufficient to preclude the use of this
11 section; or

12 (e) The trust is a trust with respect to which a
13 trustee currently possesses the power to adjust under s.
14 738.104.

15 738.105 Judicial control of discretionary powers.--

16 (1) A court shall not change a fiduciary's decision to
17 exercise or not to exercise a discretionary power conferred by
18 this chapter unless the court determines that the decision was
19 an abuse of the fiduciary's discretion. A court shall not
20 determine that a fiduciary abused its discretion merely
21 because the court would have exercised the discretion in a
22 different manner or would not have exercised the discretion.

23 (2) The decisions to which subsection (1) applies
24 include:

25 (a) A determination under s. 738.104(1) of whether and
26 to what extent an amount should be transferred from principal
27 to income or from income to principal.

28 (b) A determination of the factors that are relevant
29 to the trust and trust beneficiaries, the extent to which such
30 factors are relevant, and the weight, if any, to be given to
31 the relevant factors, in deciding whether and to what extent

1 to exercise the power conferred by s. 738.104(1).

2 (3) If a court determines that a fiduciary has abused
3 its discretion, the remedy shall be to restore the income and
4 remainder beneficiaries to the positions they would have
5 occupied if the fiduciary had not abused its discretion,
6 according to the following rules:

7 (a) To the extent the abuse of discretion has resulted
8 in no distribution to a beneficiary or a distribution that is
9 too small, the court shall require the fiduciary to distribute
10 from the trust to the beneficiary an amount the court
11 determines will restore the beneficiary, in whole or in part,
12 to his or her appropriate position.

13 (b) To the extent the abuse of discretion has resulted
14 in a distribution to a beneficiary that is too large, the
15 court shall restore the beneficiaries, the trust, or both, in
16 whole or in part, to their appropriate positions by requiring
17 the fiduciary to withhold an amount from one or more future
18 distributions to the beneficiary who received the distribution
19 that was too large or requiring that beneficiary to return
20 some or all of the distribution to the trust.

21 (c) To the extent the court is unable, after applying
22 paragraphs (a) and (b), to restore the beneficiaries, the
23 trust, or both, to the positions they would have occupied if
24 the fiduciary had not abused its discretion, the court may
25 require the fiduciary to pay an appropriate amount from its
26 own funds to one or more of the beneficiaries or the trust or
27 both.

28 (4) Upon the filing of a petition by the fiduciary,
29 the court having jurisdiction over the trust or estate shall
30 determine whether a proposed exercise or nonexercise by the
31 fiduciary of a discretionary power conferred by this chapter

1 will result in an abuse of the fiduciary's discretion. If the
2 petition describes the proposed exercise or nonexercise of the
3 power and contains sufficient information to inform the
4 beneficiaries of the reasons for the proposal, the facts upon
5 which the fiduciary relies, and an explanation of how the
6 income and remainder beneficiaries will be affected by the
7 proposed exercise or nonexercise of the power, a beneficiary
8 who challenges the proposed exercise or nonexercise has the
9 burden of establishing that such exercise or nonexercise will
10 result in an abuse of discretion.

11 (5) If an action is instituted alleging an abuse of
12 discretion in the exercise or nonexercise of the power of
13 adjustment conferred by s. 738.104(1) and the court determines
14 that no abuse of discretion has occurred, the trustee's costs
15 and attorney's fees incurred in defending the action shall be
16 paid from the trust assets.

17 738.201 Determination and distribution of net
18 income.--After a decedent dies, in the case of an estate, or
19 after an income interest in a trust ends, the following rules
20 apply:

21 (1) A fiduciary of an estate or of a terminating
22 income interest shall determine the amount of net income and
23 net principal receipts received from property specifically
24 given to a beneficiary under the rules in ss. 738.301-738.706
25 which apply to trustees and the rules in subsection (5). The
26 fiduciary shall distribute the net income and net principal
27 receipts to the beneficiary who is to receive the specific
28 property.

29 (2) A fiduciary shall determine the remaining net
30 income of a decedent's estate or a terminating income interest
31 under the rules in ss. 738.301-738.706 which apply to trustees

1 and by:

2 (a) Including in net income all income from property
3 used to discharge liabilities.

4 (b) Paying from income or principal, in the
5 fiduciary's discretion, fees of attorneys, accountants, and
6 fiduciaries; court costs and other expenses of administration;
7 and interest on death taxes, but the fiduciary may pay those
8 expenses from income of property passing to a trust for which
9 the fiduciary claims an estate tax marital or charitable
10 deduction only to the extent the payment of those expenses
11 from income will not cause the reduction or loss of the
12 deduction.

13 (c) Paying from principal all other disbursements made
14 or incurred in connection with the settlement of a decedent's
15 estate or the winding up of a terminating income interest,
16 including debts, funeral expenses, disposition of remains,
17 family allowances, and death taxes and related penalties that
18 are apportioned to the estate or terminating income interest
19 by the will, the terms of the trust, or applicable law.

20 (3) A fiduciary shall distribute to a beneficiary who
21 receives a pecuniary amount outright the interest or any other
22 amount provided by the will, the terms of the trust, or
23 applicable law from net income determined under subsection (2)
24 or from principal to the extent net income is insufficient.
25 If a beneficiary is to receive a pecuniary amount outright
26 from a trust after an income interest ends and no interest or
27 other amount is provided for by the terms of the trust or
28 applicable law, the fiduciary shall distribute the interest or
29 other amount to which the beneficiary would be entitled under
30 applicable law if the pecuniary amount were required to be
31 paid under a will.

1 (4) A fiduciary shall distribute the net income
2 remaining after distributions required by subsection (3) in
3 the manner described in s. 738.202 to all other beneficiaries,
4 including a beneficiary who receives a pecuniary amount in
5 trust, even if the beneficiary holds an unqualified power to
6 withdraw assets from the trust or other presently exercisable
7 general power of appointment over the trust.

8 (5) A fiduciary may not reduce principal or income
9 receipts from property described in subsection (1) because of
10 a payment described in s. 738.701 or s. 738.702 to the extent
11 the will, the terms of the trust, or applicable law requires
12 the fiduciary to make the payment from assets other than the
13 property or to the extent the fiduciary recovers or expects to
14 recover the payment from a third party. The net income and
15 principal receipts from the property are determined by
16 including all of the amounts the fiduciary receives or pays
17 with respect to the property, whether those amounts accrued or
18 became due before, on, or after the date of a decedent's death
19 or an income interest's terminating event, and by making a
20 reasonable provision for amounts the fiduciary believes the
21 estate or terminating income interest may become obligated to
22 pay after the property is distributed.

23 738.202 Distribution to residuary and remainder
24 beneficiaries.--

25 (1) Each beneficiary described in s. 738.201(4) is
26 entitled to receive a portion of the net income equal to the
27 beneficiary's fractional interest in undistributed principal
28 assets, using values as of the distribution date. If a
29 fiduciary makes more than one distribution of assets to
30 beneficiaries to whom this section applies, each beneficiary,
31 including one who does not receive part of the distribution,

1 is entitled, as of each distribution date, to the net income
2 the fiduciary has received after the date of death or
3 terminating event or earlier distribution date but has not
4 distributed as of the current distribution date.

5 (2) In determining a beneficiary's share of net
6 income, the following rules apply:

7 (a) The beneficiary is entitled to receive a portion
8 of the net income equal to the beneficiary's fractional
9 interest in the undistributed principal assets immediately
10 before the distribution date, including assets that later may
11 be sold to meet principal obligations.

12 (b) The beneficiary's fractional interest in the
13 undistributed principal assets shall be calculated without
14 regard to property specifically given to a beneficiary and
15 property required to pay pecuniary amounts not in trust.

16 (c) The beneficiary's fractional interest in the
17 undistributed principal assets shall be calculated on the
18 basis of the aggregate value of those assets as of the
19 distribution date without reducing the value by any unpaid
20 principal obligation.

21 (d) The distribution date for purposes of this section
22 may be the date as of which the fiduciary calculates the value
23 of the assets if that date is reasonably near the date on
24 which assets are actually distributed.

25 (3) If a fiduciary does not distribute all of the
26 collected but undistributed net income to each person as of a
27 distribution date, the fiduciary shall maintain appropriate
28 records showing the interest of each beneficiary in that net
29 income.

30 (4) A fiduciary may apply the rules in this section,
31 to the extent the fiduciary considers appropriate, to net gain

1 or loss realized after the date of death or terminating event
2 or earlier distribution date from the disposition of a
3 principal asset if this section applies to the income from the
4 asset.

5 (5) The value of trust assets shall be determined on
6 an asset-by-asset basis and shall be conclusive if reasonable
7 and determined in good faith. Determinations based on
8 appraisals performed within 2 years after the valuation date
9 shall be presumed reasonable. The value of trust assets shall
10 be conclusively presumed to be reasonable and determined in
11 good faith unless proven otherwise in a proceeding commenced
12 by or on behalf of a person interested in the trust within the
13 time provided in s. 737.307.

14 738.301 When right to income begins and ends.--An
15 income beneficiary is entitled to net income from the date on
16 which the income interest begins.

17 (1) An income interest begins on the date specified in
18 the terms of the trust or, if no date is specified, on the
19 date an asset becomes subject to a trust or successive income
20 interest.

21 (2) An asset becomes subject to a trust:

22 (a) On the date the asset is transferred to the trust
23 in the case of an asset that is transferred to a trust during
24 the transferor's life;

25 (b) On the date of a testator's death in the case of
26 an asset that becomes subject to a trust by reason of a will,
27 even if there is an intervening period of administration of
28 the testator's estate; or

29 (c) On the date of an individual's death in the case
30 of an asset that is transferred to a fiduciary by a third
31 party because of the individual's death.

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

6 (4) An income interest ends on the day before an
7 income beneficiary dies or another terminating event occurs,
8 or on the last day of a period during which there is no
9 beneficiary to whom a trustee may distribute income.

10 738.302 Apportionment of receipts and disbursements
11 when decedent dies or income interest begins.--

12 (1) A trustee shall allocate an income receipt or
13 disbursement other than one to which s. 738.201(1) applies to
14 principal if the due date of the receipt or disbursement
15 occurs before a decedent dies in the case of an estate or
16 before an income interest begins in the case of a trust or
17 successive income interest.

18 (2) A trustee shall allocate an income receipt or
19 disbursement to income if the due date of the receipt or
20 disbursement occurs on or after the date on which a decedent
21 dies or an income interest begins and the due date is a
22 periodic due date. An income receipt or disbursement shall be
23 treated as accruing from day to day if the due date of the
24 receipt or disbursement is not periodic or the receipt or
25 disbursement has no due date. The portion of the receipt or
26 disbursement accruing before the date on which a decedent dies
27 or an income interest begins shall be allocated to principal
28 and the balance shall be allocated to income.

29 (3) An item of income or an obligation is due on the
30 date the payor is required to make a payment. If a payment
31 date is not stated, there is no due date for the purposes of

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1 this chapter. Distributions to shareholders or other owners
2 from an entity to which s. 738.401 applies are deemed to be
3 due on the date fixed by the entity for determining who is
4 entitled to receive the distribution or, if no date is fixed,
5 on the declaration date for the distribution. A due date is
6 periodic for receipts or disbursements that shall be paid at
7 regular intervals under a lease or an obligation to pay
8 interest or if an entity customarily makes distributions at
9 regular intervals.

10 (4) Nothing in this section shall prevent the
11 application of s. 733.817 to apportion tax to the income
12 recipient under this section.

13 738.303 Apportionment when income interest ends.--

14 (1) For purposes of this section, "undistributed
15 income" means net income received before the date on which an
16 income interest ends. The term does not include an item of
17 income or expense that is due or accrued or net income that
18 has been added or is required to be added to principal under
19 the terms of the trust.

20 (2) When a mandatory income interest ends, the trustee
21 shall pay to a mandatory income beneficiary who survives that
22 date, or the estate of a deceased mandatory income beneficiary
23 whose death causes the interest to end, the beneficiary's
24 share of the undistributed income that is not disposed of
25 under the terms of the trust unless the beneficiary has an
26 unqualified power to revoke more than 5 percent of the trust
27 immediately before the income interest ends. In the latter
28 case, the undistributed income from the portion of the trust
29 that may be revoked shall be added to principal.

30 (3) When a trustee's obligation to pay a fixed annuity
31 or a fixed fraction of the value of the trust's assets ends,

1 the trustee shall prorate the final payment if and to the
2 extent required by applicable law to accomplish a purpose of
3 the trust or its grantor relating to income, gift, estate, or
4 other tax requirements.

5 738.401 Character of receipts.--

6 (1) For purposes of this section, "entity" means a
7 corporation, partnership, limited liability company, regulated
8 investment company, real estate investment trust, common trust
9 fund, or any other organization in which a trustee has an
10 interest other than a trust or estate to which s. 738.402
11 applies, a business or activity to which s. 738.403 applies,
12 or an asset-backed security to which s. 738.608 applies.

13 (2) Except as otherwise provided in this section, a
14 trustee shall allocate to income money received from an
15 entity.

16 (3) A trustee shall allocate the following receipts
17 from an entity to principal:

18 (a) Property other than money.

19 (b) Money received in one distribution or a series of
20 related distributions in exchange for part or all of a trust's
21 interest in the entity.

22 (c) Money received in total or partial liquidation of
23 the entity.

24 (d) Money received from an entity that is a regulated
25 investment company or a real estate investment trust if the
26 money distributed represents a distribution of short-term or
27 long-term capital gain for federal income tax purposes.

28 (4) If a trustee elects, or continues an election made
29 by its predecessor, to reinvest dividends in shares of stock
30 of a distributing corporation or fund, whether evidenced by
31 new certificates or entries on the books of the distributing

1 entity, the new shares shall retain their character as income.

2 (5) Money is received in partial liquidation:

3 (a) To the extent the entity, at or near the time of a
4 distribution, indicates that such money is a distribution in
5 partial liquidation; or

6 (b) If the total amount of money and property received
7 in a distribution or series of related distributions is
8 greater than 20 percent of the entity's gross assets, as shown
9 by the entity's year-end financial statements immediately
10 preceding the initial receipt.

11 (6) Money is not received in partial liquidation, nor
12 may money be taken into account under paragraph (5)(b), to the
13 extent such money does not exceed the amount of income tax a
14 trustee or beneficiary must pay on taxable income of the
15 entity that distributes the money.

16 (7) A trustee may rely upon a statement made by an
17 entity about the source or character of a distribution if the
18 statement is made at or near the time of distribution by the
19 entity's board of directors or other person or group of
20 persons authorized to exercise powers to pay money or transfer
21 property comparable to those of a corporation's board of
22 directors.

23 738.402 Distribution from trust or estate.--A trustee
24 shall allocate to income an amount received as a distribution
25 of income from a trust or an estate in which the trust has an
26 interest other than a purchased interest and shall allocate to
27 principal an amount received as a distribution of principal
28 from such a trust or estate. If a trustee purchases an
29 interest in a trust that is an investment entity, or a
30 decendent or donor transfers an interest in such a trust to a
31 trustee, s. 738.401 or s. 738.608 applies to a receipt from

1 the trust.

2 738.403 Business and other activities conducted by
3 trustee.--

4 (1) If a trustee who conducts a business or other
5 activity determines that it is in the best interest of all the
6 beneficiaries to account separately for the business or
7 activity instead of accounting for the business or activity as
8 part of the trust's general accounting records, the trustee
9 may maintain separate accounting records for the transactions
10 of such business or other activity, whether or not the assets
11 of such business or activity are segregated from other trust
12 assets.

13 (2) A trustee who accounts separately for a business
14 or other activity may determine the extent to which the net
15 cash receipts of such business or activity must be retained
16 for working capital, the acquisition or replacement of fixed
17 assets, and other reasonably foreseeable needs of the business
18 or activity, and the extent to which the remaining net cash
19 receipts are accounted for as principal or income in the
20 trust's general accounting records. If a trustee sells assets
21 of the business or other activity, other than in the ordinary
22 course of the business or activity, the trustee shall account
23 for the net amount received as principal in the trust's
24 general accounting records to the extent the trustee
25 determines that the amount received is no longer required in
26 the conduct of the business.

27 (3) Activities for which a trustee may maintain
28 separate accounting records include:

29 (a) Retail, manufacturing, service, and other
30 traditional business activities.

31 (b) Farming.

- 1 (c) Raising and selling livestock and other animals.
2 (d) Management of rental properties.
3 (e) Extraction of minerals and other natural
4 resources.
5 (f) Timber operations.
6 (g) Activities to which s. 738.608 applies.
7 738.501 Principal receipts.--A trustee shall allocate
8 to principal:
9 (1) To the extent not allocated to income under this
10 chapter, assets received from a transferor during the
11 transferor's lifetime, a decedent's estate, a trust with a
12 terminating income interest, or a payor under a contract
13 naming the trust or its trustee as beneficiary.
14 (2) Money or other property received from the sale,
15 exchange, liquidation, or change in form of a principal asset,
16 including realized profit, subject to this section.
17 (3) Amounts recovered from third parties to reimburse
18 the trust because of disbursements described in s.
19 738.702(1)(g) or for other reasons to the extent not based on
20 the loss of income.
21 (4) Proceeds of property taken by eminent domain but a
22 separate award made for the loss of income with respect to an
23 accounting period during which a current income beneficiary
24 had a mandatory income interest is income.
25 (5) Net income received in an accounting period during
26 which there is no beneficiary to whom a trustee may or shall
27 distribute income.
28 (6) Other receipts as provided in ss. 738.601-738.608.
29 738.502 Rental property.--To the extent a trustee
30 accounts for receipts from rental property pursuant to this
31 section, the trustee shall allocate to income an amount

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1 received as rent of real or personal property, including an
2 amount received for cancellation or renewal of a lease. An
3 amount received as a refundable deposit, including a security
4 deposit or a deposit that is to be applied as rent for future
5 periods, shall be added to principal and held subject to the
6 terms of the lease and is not available for distribution to a
7 beneficiary until the trustee's contractual obligations have
8 been satisfied with respect to that amount.

9 738.503 Obligation to pay money.--

10 (1) An amount received as interest, whether determined
11 at a fixed, variable, or floating rate, on an obligation to
12 pay money to the trustee, including an amount received as
13 consideration for prepaying principal, shall be allocated to
14 income without any provision for amortization of premium.

15 (2) Except as otherwise provided herein, a trustee
16 shall allocate to principal an amount received from the sale,
17 redemption, or other disposition of an obligation to pay money
18 to the trustee.

19 (3) The increment in value of a bond or other
20 obligation for the payment of money bearing no stated interest
21 but payable at a future time in excess of the price at which
22 it was issued or purchased, if purchased after issuance, is
23 distributable as income. If the increment in value accrues
24 and becomes payable pursuant to a fixed schedule of
25 appreciation, it may be distributed to the beneficiary who was
26 the income beneficiary at this time of increment from the
27 first principal cash available or, if none is available, when
28 the increment is realized by sale, redemption, or other
29 disposition. When unrealized increment is distributed as
30 income but out of principal, the principal shall be reimbursed
31 for the increment when realized. If, in the reasonable

1 judgment of the trustee, exercised in good faith, the ultimate
2 payment of the bond principal is in doubt, the trustee may
3 withhold the payment of incremental interest to the income
4 beneficiary.

5 (4) This section does not apply to an obligation to
6 which s. 738.602, s. 738.603, s. 738.604, s. 738.605, s.
7 738.607, or s. 738.608 applies.

8 738.504 Insurance policies and similar contracts.--

9 (1) Except as otherwise provided in subsection (2), a
10 trustee shall allocate to principal the proceeds of a life
11 insurance policy or other contract in which the trust or its
12 trustee is named as beneficiary, including a contract that
13 insures the trust or its trustee against loss for damage to,
14 destruction of, or loss of title to a trust asset. The
15 trustee shall allocate dividends on an insurance policy to
16 income if the premiums on the policy are paid from income and
17 to principal if the premiums are paid from principal.

18 (2) A trustee shall allocate to income proceeds of a
19 contract that insures the trustee against loss of occupancy or
20 other use by an income beneficiary, loss of income, or,
21 subject to s. 738.403, loss of profits from a business.

22 (3) This section does not apply to a contract to which
23 s. 738.602 applies.

24 738.601 Insubstantial allocations not required.--If a
25 trustee determines that an allocation between principal and
26 income required by s. 738.602, s. 738.603, s. 738.604, s.
27 738.605, or s. 738.608 is insubstantial, the trustee may
28 allocate the entire amount to principal unless one of the
29 circumstances described in s. 738.104(3) applies to the
30 allocation. This power may be exercised by a cotrustee in the
31 circumstances described in s. 738.104(4) and may be released

1 for the reasons and in the manner described in s. 738.104(5).

2 An allocation is presumed to be insubstantial if:

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

6 (2) The value of the asset producing the receipt for
7 which the allocation would be made is less than 10 percent of
8 the total value of the trust's assets at the beginning of the
9 accounting period.

10 738.602 Deferred compensation, annuities, and similar
11 payments.--

12 (1) For purposes of this section, "payment" means a
13 payment that a trustee may receive over a fixed number of
14 years or during the life of one or more individuals because of
15 services rendered or property transferred to the payor in
16 exchange for future payments. The term includes a payment
17 made in money or property from the payor's general assets or
18 from a separate fund created by the payor, including a private
19 or commercial annuity, an individual retirement account, and a
20 pension, profit-sharing, stock-bonus, or stock-ownership plan.

21 (2) With respect to payments that may be characterized
22 as interest, dividends, or their equivalent:

23 (a) A trustee shall allocate to income in the
24 following order:

25 1. First, payments characterized by the payor as
26 interest or dividends or as a payment made in lieu of interest
27 or dividends.

28 2. Second, all other payments to the extent that the
29 trustee, reasonably and in good faith, determines that such
30 payments represent interest, dividends, or their equivalent.

31 (b) A trustee shall allocate to principal the balance

1 of any payment not characterized as, or otherwise determined
2 to be, interest, dividends, or their equivalent.

3 (3) If no part of a payment is characterized as, or
4 otherwise determined to be, interest, a dividend, or an
5 equivalent payment and all or part of the payment is required
6 to be made, a trustee shall allocate to income 10 percent of
7 the part that is required to be made during the accounting
8 period and the balance to principal. If no part of a payment
9 is required to be made or the payment received is the entire
10 amount to which the trustee is entitled, the trustee shall
11 allocate the entire payment to principal. For purposes of
12 this subsection, a payment is not "required to be made" to the
13 extent the payment is made because the trustee exercises a
14 right of withdrawal.

15 (4) If, to obtain an estate tax marital deduction for
16 a trust, a trustee must allocate more of a payment to income
17 than provided for by this section, the trustee shall allocate
18 to income the additional amount necessary to obtain the
19 marital deduction.

20 (5) This section does not apply to payments to which
21 s. 738.603 applies.

22 738.603 Liquidating asset.--

23 (1) For purposes of this section, "liquidating asset"
24 means an asset the value of which will diminish or terminate
25 because the asset is expected to produce receipts for a period
26 of limited duration. The term includes a leasehold, patent,
27 copyright, royalty right, and right to receive payments during
28 a period of more than 1 year under an arrangement that does
29 not provide for the payment of interest on the unpaid balance.
30 The term does not include a payment subject to s. 738.602,
31 resources subject to s. 738.604, timber subject to s. 738.605,

1 an activity subject to s. 738.607, an asset subject to s.
2 738.608, or any asset for which the trustee establishes a
3 reserve for depreciation under s. 738.703.

4 (2) A trustee shall allocate to income 10 percent of
5 the receipts from a liquidating asset and the balance to
6 principal.

7 738.604 Minerals, water, and other natural
8 resources.--

9 (1) To the extent a trustee accounts for receipts from
10 an interest in minerals or other natural resources pursuant to
11 this section, the trustee shall allocate such receipts as
12 follows:

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

16 (b) If received from a production payment, a receipt
17 shall be allocated to income if and to the extent the
18 agreement creating the production payment provides a factor
19 for interest or its equivalent. The balance shall be
20 allocated to principal.

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

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

30 (2) An amount received on account of an interest in
31 water that is renewable shall be allocated to income. If the

1 water is not renewable, 90 percent of the amount shall be
2 allocated to principal and the balance to income.

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

6 (4) If a trust owns an interest in minerals, water, or
7 other natural resources on January 1, 2003, the trustee may
8 allocate receipts from the interest as provided in this
9 chapter or in the manner used by the trustee before January 1,
10 2003. If the trust acquires an interest in minerals, water,
11 or other natural resources after January 1, 2003, the trustee
12 shall allocate receipts from the interest as provided in this
13 chapter.

14 738.605 Timber.--

15 (1) To the extent a trustee accounts for receipts from
16 the sale of timber and related products pursuant to this
17 section, the trustee shall allocate the net receipts:

18 (a) To income to the extent the amount of timber
19 removed from the land does not exceed the rate of growth of
20 the timber during the accounting periods in which a
21 beneficiary has a mandatory income interest;

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

25 (c) To or between income and principal if the net
26 receipts are from the lease of timberland or from a contract
27 to cut timber from land owned by a trust by determining the
28 amount of timber removed from the land under the lease or
29 contract and applying the rules in paragraphs (a) and (b); or

30 (d) To principal to the extent advance payments,
31 bonuses, and other payments are not allocated pursuant to

1 paragraph (a), paragraph (b), or paragraph (c).

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

5 (3) This chapter applies whether or not a decedent or
6 transferor was harvesting timber from the property before the
7 property became subject to the trust.

8 (4) If a trust owns an interest in timberland on
9 January 1, 2003, the trustee may allocate net receipts from
10 the sale of timber and related products as provided in this
11 chapter or in the manner used by the trustee before January 1,
12 2003. If the trust acquires an interest in timberland after
13 January 1, 2003, the trustee shall allocate net receipts from
14 the sale of timber and related products as provided in this
15 chapter.

16 738.606 Property not productive of income.--

17 (1) If a marital deduction is allowed for all or part
18 of a trust the income of which is required to be distributed
19 to the grantor's spouse and the assets of which consist
20 substantially of property that does not provide the spouse
21 with sufficient income from or use of the trust assets, and if
22 the amounts the trustee transfers from principal to income
23 under s. 738.104 and distributes to the spouse from principal
24 pursuant to the terms of the trust are insufficient to provide
25 the spouse with the beneficial enjoyment required to obtain
26 the marital deduction, the spouse may require the trustee to
27 make property productive of income, convert property within a
28 reasonable time, or exercise the power conferred by ss.
29 738.104 and 738.1041. The trustee may decide which action or
30 combination of actions to take.

31 (2) In cases not governed by subsection (1), proceeds

1 from the sale or other disposition of an asset are principal
2 without regard to the amount of income the asset produces
3 during any accounting period.

4 738.607 Derivatives and options.--

5 (1) For purposes of this section, "derivative" means a
6 contract or financial instrument or a combination of contracts
7 and financial instruments which gives a trust the right or
8 obligation to participate in some or all changes in the price
9 of a tangible or intangible asset or group of assets, or
10 changes in a rate, an index of prices or rates, or other
11 market indicator for an asset or a group of assets.

12 (2) To the extent a trustee does not account under s.
13 738.403 for transactions in derivatives, the trustee shall
14 allocate to principal receipts from and disbursements made in
15 connection with those transactions.

16 (3) If a trustee grants an option to buy property from
17 the trust whether or not the trust owns the property when the
18 option is granted, grants an option that permits another
19 person to sell property to the trust, or acquires an option to
20 buy property for the trust or an option to sell an asset owned
21 by the trust, and the trustee or other owner of the asset is
22 required to deliver the asset if the option is exercised, an
23 amount received for granting the option shall be allocated to
24 principal. An amount paid to acquire the option shall be paid
25 from principal. A gain or loss realized upon the exercise of
26 an option, including an option granted to a grantor of the
27 trust for services rendered, shall be allocated to principal.

28 738.608 Asset-backed securities.--

29 (1) For purposes of this section, "asset-backed
30 security" means an asset the value of which is based upon the
31 right given the owner to receive distributions from the

1 proceeds of financial assets that provide collateral for the
2 security. The term includes an asset that gives the owner the
3 right to receive from the collateral financial assets only the
4 interest or other current return or only the proceeds other
5 than interest or current return. The term does not include an
6 asset to which s. 738.401 or s. 738.602 applies.

7 (2) If a trust receives a payment from interest or
8 other current return and from other proceeds of the collateral
9 financial assets, the trustee shall allocate to income the
10 portion of the payment which the payor identifies as being
11 from interest or other current return and shall allocate the
12 balance of the payment to principal.

13 (3) If a trust receives one or more payments in
14 exchange for the trust's entire interest in an asset-backed
15 security during a single accounting period, the trustee shall
16 allocate the payments to principal. If a payment is one of a
17 series of payments that will result in the liquidation of the
18 trust's interest in the security over more than a single
19 accounting period, the trustee shall allocate 10 percent of
20 the payment to income and the balance to principal.

21 738.701 Disbursements from income.--A trustee shall
22 make the following disbursements from income to the extent
23 they are not disbursements to which s. 738.201(2)(a) or (c)
24 applies:

25 (1) One-half of the regular compensation of the
26 trustee and of any person providing investment advisory or
27 custodial services to the trustee.

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

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

1 connection with the administration, management, or
2 preservation of trust property and the distribution of income,
3 including interest, ordinary repairs, regularly recurring
4 taxes assessed against principal, and expenses of a proceeding
5 or other matter that concerns primarily the income interest.

6 (4) Recurring premiums on insurance covering the loss
7 of a principal asset or the loss of income from or use of the
8 asset.

9 738.702 Disbursements from principal.--

10 (1) A trustee shall make the following disbursements
11 from principal:

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

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

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

19 (d) Expenses of a proceeding that concerns primarily
20 principal, including a proceeding to construe the trust or to
21 protect the trust or its property.

22 (e) Premiums paid on a policy of insurance not
23 described in s. 738.701(4) of which the trust is the owner and
24 beneficiary.

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

27 (g) Disbursements related to environmental matters,
28 including reclamation, assessing environmental conditions,
29 remediating and removing environmental contamination, monitoring
30 remedial activities and the release of substances, preventing
31 future releases of substances, collecting amounts from persons

1 liable or potentially liable for the costs of such activities,
2 penalties imposed under environmental laws or regulations and
3 other payments made to comply with those laws or regulations,
4 statutory or common law claims by third parties, and defending
5 claims based on environmental matters.

6 (h) Payments representing extraordinary repairs or
7 expenses incurred in making a capital improvement to
8 principal, including special assessments; however, a trustee
9 may establish an allowance for depreciation out of income to
10 the extent permitted by s. 738.703.

11 (2) If a principal asset is encumbered with an
12 obligation that requires income from that asset to be paid
13 directly to the creditor, the trustee shall transfer from
14 principal to income an amount equal to the income paid to the
15 creditor in reduction of the principal balance of the
16 obligation.

17 738.703 Transfers from income to principal for
18 depreciation.--

19 (1) For purposes of this section, "depreciation" means
20 a reduction in value due to wear, tear, decay, corrosion, or
21 gradual obsolescence of a fixed asset having a useful life of
22 more than 1 year.

23 (2) A trustee may transfer to principal a reasonable
24 amount of the net cash receipts from a principal asset that is
25 subject to depreciation but may not transfer any amount for
26 depreciation:

27 (a) Of that portion of real property used or available
28 for use by a beneficiary as a residence or of tangible
29 personal property held or made available for the personal use
30 or enjoyment of a beneficiary;

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

1 or

2 (c) Under this section if the trustee is accounting
3 under s. 738.403 for the business or activity in which the
4 asset is used.

5 (3) The amount of depreciation taken for tax purposes
6 with respect to an asset shall be presumed to be a reasonable
7 amount of depreciation. An amount taken for depreciation
8 shall not be considered unreasonable solely because it is
9 greater or less than the amount taken for tax purposes.

10 (4) An amount transferred to principal need not be
11 held as a separate fund.

12 738.704 Transfers from income to reimburse
13 principal.--

14 (1) If a trustee makes or expects to make a principal
15 disbursement described in this section, the trustee may
16 transfer an appropriate amount from income to principal in one
17 or more accounting periods to reimburse principal or to
18 provide a reserve for future principal disbursements.

19 (2) Principal disbursements to which subsection (1)
20 applies include the following, but only to the extent the
21 trustee has not been and does not expect to be reimbursed by a
22 third party:

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

25 (b) Disbursements made to prepare property for rental,
26 including tenant allowances, leasehold improvements, and
27 broker's commissions.

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

29 (3) If the asset the ownership of which gives rise to
30 the disbursements becomes subject to a successive income
31 interest after an income interest ends, a trustee may continue

1 to transfer amounts from income to principal as provided in
2 subsection (1).

3 (4) To the extent principal cash is not sufficient to
4 pay the principal balance of payments due on mortgaged
5 property, income may be applied to such payment in order to
6 avoid a default on any mortgage or security interest securing
7 the property. Income shall be reimbursed for such payments
8 out of the first available principal cash. If the asset the
9 ownership of which gives rise to the disbursements described
10 in this subsection becomes subject to a successive income
11 interest after an income interest ends, all rights of the
12 initial income interest shall lapse, and amounts remaining due
13 from principal shall not be a lien on the assets of the trust.

14 738.705 Income taxes.--

15 (1) A tax required to be paid by a trustee based on
16 receipts allocated to income shall be paid from income.

17 (2) A tax required to be paid by a trustee based on
18 receipts allocated to principal shall be paid from principal,
19 even if the tax is called an income tax by the taxing
20 authority.

21 (3) A tax required to be paid by a trustee on the
22 trust's share of an entity's taxable income shall be paid
23 proportionately:

24 (a) From income to the extent receipts from the entity
25 are allocated to income; and

26 (b) From principal to the extent:

27 1. Receipts from the entity are allocated to
28 principal; and

29 2. The trust's share of the entity's taxable income
30 exceeds the total receipts described in paragraph (a) and
31 subparagraph 1.

1 (4) For purposes of this section, receipts allocated
2 to principal or income shall be reduced by the amount
3 distributed to a beneficiary from principal or income for
4 which the trust receives a deduction in calculating the tax.

5 738.706 Adjustments between principal and income
6 because of taxes.--

7 (1) A fiduciary may make adjustments between principal
8 and income to offset the shifting of economic interests or tax
9 benefits between income beneficiaries and remainder
10 beneficiaries which arise from:

11 (a) Elections and decisions, other than those
12 described in paragraph (b), that the fiduciary makes from time
13 to time regarding tax matters;

14 (b) An income tax or any other tax that is imposed
15 upon the fiduciary or a beneficiary as a result of a
16 transaction involving or a distribution from the estate or
17 trust; or

18 (c) The ownership by an estate or trust of an interest
19 in an entity whose taxable income, whether or not distributed,
20 is includable in the taxable income of the estate, trust, or a
21 beneficiary.

22 (2) If the amount of an estate tax marital deduction
23 or charitable contribution deduction is reduced because a
24 fiduciary deducts an amount paid from principal for income tax
25 purposes instead of deducting such amount for estate tax
26 purposes, and as a result estate taxes paid from principal are
27 increased and income taxes paid by an estate, trust, or
28 beneficiary are decreased, each estate, trust, or beneficiary
29 that benefits from the decrease in income tax shall reimburse
30 the principal from which the increase in estate tax is paid.

31 The total reimbursement shall equal the increase in the estate

1 tax to the extent the principal used to pay the increase would
2 have qualified for a marital deduction or charitable
3 contribution deduction but for the payment. The proportionate
4 share of the reimbursement for each estate, trust, or
5 beneficiary whose income taxes are reduced shall be the same
6 as such estate's, trust's, or beneficiary's proportionate
7 share of the total decrease in income tax. An estate or trust
8 shall reimburse principal from income.

9 738.801 Application with respect to apportionment of
10 expenses; improvements.--

11 (1) The provisions of ss. 738.701-738.705, so far as
12 applicable and excepting those dealing with costs of, or
13 assessments for, improvements to property, shall govern the
14 apportionment of expenses between tenants and remaindermen
15 when no trust has been created, subject to any agreement of
16 the parties or specific direction of the taxing or other
17 statutes, but when either tenant or remainderman has incurred
18 an expense for the benefit of his or her own estate without
19 consent or agreement of the other, he or she shall pay such
20 expense in full.

21 (2) Subject to the exceptions stated in subsection
22 (1), the cost of, or special taxes or assessments for, an
23 improvement representing an addition of value to property
24 forming part of the principal shall be paid by the tenant when
25 the improvement is not reasonably expected to outlast the
26 estate of the tenant. In all other cases a part only shall be
27 paid by the tenant, while the remainder shall be paid by the
28 remainderman. The part payable by the tenant shall be
29 ascertainable by taking that percentage of the total that is
30 found by dividing the present value of the tenant's estate by
31 the present value of an estate of the same form as that of the

1 tenant except that it is limited for a period corresponding to
2 the reasonably expected duration of the improvement. The
3 computation of present values of the estates shall be made on
4 the expectancy basis set forth in the official mortality
5 tables, and no other evidence of duration or expectancy shall
6 be considered.

7 738.802 Uniformity of application and
8 construction.--In applying and construing this act,
9 consideration shall be given to the need to promote uniformity
10 of the law with respect to the act's subject matter among
11 states that enact such act.

12 738.803 Severability.--If any provision of this
13 chapter or its application to any person or circumstance is
14 held invalid, the invalidity shall not affect other provisions
15 or applications of this chapter which can be given effect
16 without the invalid provision or application, and to this end
17 the provisions of this chapter are severable.

18 738.804 Application.--Except as provided in the trust
19 instrument, the will, or this chapter, this chapter shall
20 apply to any receipt or expense received or incurred and any
21 disbursement made after January 1, 2003, by any trust or
22 decendent's estate, whether established before or after January
23 1, 2003, and whether the asset involved was acquired by the
24 trustee or personal representative before or after January 1,
25 2003. Receipts or expenses received or incurred and
26 disbursements made before January 1, 2003, shall be governed
27 by the law of this state in effect at the time of the event,
28 except as otherwise expressly provided in the will or terms of
29 the trust or in this chapter.

30 Section 2. Sections 738.01, 738.02, 738.03, 738.04,
31 738.05, 738.06, 738.07, 738.08, 738.09, 738.10, 738.11,

1 738.12, 738.13, 738.14, and 738.15, Florida Statutes, are
2 repealed.

3 Section 3. This act shall take effect January 1, 2003.
4
5

6 ===== T I T L E A M E N D M E N T =====

7 And the title is amended as follows:

8 remove: the entire title,
9

10 and insert:

11 A bill to be entitled
12 An act relating to the Florida Uniform
13 Principal and Income Act; creating ss. 738.101,
14 738.102, 738.103, 738.104, 738.1041, 738.105,
15 738.201, 738.202, 738.301, 738.302, 738.303,
16 738.401, 738.402, 738.403, 738.501, 738.502,
17 738.503, 738.504, 738.601, 738.602, 738.603,
18 738.604, 738.605, 738.606, 738.607, 738.608,
19 738.701, 738.702, 738.703, 738.704, 738.705,
20 738.706, 738.801, 738.802, 738.803, and
21 738.804, F.S.; providing a short title;
22 providing definitions; specifying a fiduciary's
23 duties; providing general principles; providing
24 a trustee's power to adjust between principal
25 and income; providing for a unitrust
26 alternative to certain trusts where the power
27 to adjust is unavailable or not exercised;
28 providing requirements, criteria, and
29 procedures; providing for judicial control of
30 certain discretionary powers; providing
31 limitations; providing for determinations and

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Amendment No. ____ (for drafter's use only)

1 distributions of net income; providing
2 requirements; providing for distributions to
3 residuary and remainder beneficiaries;
4 providing for apportionment at beginning and
5 end of an income interest; providing for
6 entitlement to a right to income; providing for
7 apportionment of receipts and disbursements
8 under certain circumstances; providing for
9 allocation of trust receipts during
10 administration; specifying character of
11 receipts; providing for distributions from
12 trust or estate; providing for separate
13 accounting by trustee of certain businesses or
14 activities; providing for allocation of certain
15 receipts not normally apportioned; providing
16 for allocation of certain normally apportioned
17 receipts; providing for allocation of
18 disbursements from income and principal during
19 administration of a trust; providing for
20 certain transfers from income under certain
21 circumstances; providing for payment of certain
22 taxes; providing for adjustments between
23 principal and income due to taxes; providing
24 for uniform application and construction;
25 providing severability; providing for
26 application with respect to apportionment of
27 expenses and improvements; providing for
28 application; repealing ss. 738.01, 738.02,
29 738.03, 738.04, 738.05, 738.06, 738.07, 738.08,
30 738.09, 738.10, 738.11, 738.12, 738.13, 738.14,
31 and 738.15, F.S., relating to principal and

704-154AX-32

Bill No. HB 585

Amendment No. ____ (for drafter's use only)

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income of trusts; providing an effective date.