

1 A bill to be entitled
2 An act relating to the Florida Uniform
3 Principal and Income Act; creating ss. 738.101,
4 738.102, 738.103, 738.104, 738.1041, 738.105,
5 738.201, 738.202, 738.301, 738.302, 738.303,
6 738.401, 738.402, 738.403, 738.501, 738.502,
7 738.503, 738.504, 738.601, 738.602, 738.603,
8 738.604, 738.605, 738.606, 738.607, 738.608,
9 738.701, 738.702, 738.703, 738.704, 738.705,
10 738.706, 738.801, 738.802, 738.803, and
11 738.804, F.S.; providing a short title;
12 providing definitions; specifying a fiduciary's
13 duties; providing general principles; providing
14 a trustee's power to adjust between principal
15 and income; providing for a unitrust
16 alternative to certain trusts where the power
17 to adjust is unavailable or not exercised;
18 providing requirements, criteria, and
19 procedures; providing for judicial control of
20 certain discretionary powers; providing
21 limitations; providing for determinations and
22 distributions of net income; providing
23 requirements; providing for distributions to
24 residuary and remainder beneficiaries;
25 providing for apportionment at beginning and
26 end of an income interest; providing for
27 entitlement to a right to income; providing for
28 apportionment of receipts and disbursements
29 under certain circumstances; providing for
30 allocation of trust receipts during
31 administration; specifying character of

1 receipts; providing for distributions from
2 trust or estate; providing for separate
3 accounting by trustee of certain businesses or
4 activities; providing for allocation of certain
5 receipts not normally apportioned; providing
6 for allocation of certain normally apportioned
7 receipts; providing for allocation of
8 disbursements from income and principal during
9 administration of a trust; providing for
10 certain transfers from income under certain
11 circumstances; providing for payment of certain
12 taxes; providing for adjustments between
13 principal and income due to taxes; providing
14 for uniform application and construction;
15 providing severability; providing for
16 application with respect to apportionment of
17 expenses and improvements; providing for
18 application; repealing ss. 738.01, 738.02,
19 738.03, 738.04, 738.05, 738.06, 738.07, 738.08,
20 738.09, 738.10, 738.11, 738.12, 738.13, 738.14,
21 and 738.15, F.S., relating to principal and
22 income of trusts; providing an effective date.

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

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,

1 738.705, 738.706, 738.801, 738.802, 738.803, and 738.804,
2 Florida Statutes, are created to read:

3 738.101 Short title.--This chapter may be cited as the
4 "Florida Uniform Principal and Income Act."

5 738.102 Definitions.--As used in this chapter, the
6 term:

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

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

15 (3) "Fiduciary" means a personal representative or a
16 trustee. The term includes an executor, administrator,
17 successor personal representative, special administrator, or a
18 person performing substantially the same function.

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

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

26 (6) "Income interest" means the right of an income
27 beneficiary to receive all or part of net income, whether the
28 terms of the trust require the net income to be distributed or
29 authorize the net income to be distributed in the trustee's
30 discretion.

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1 (7) "Mandatory income interest" means the right of an
2 income beneficiary to receive net income that the terms of the
3 trust require the fiduciary to distribute.

4 (8) "Net income" means the total receipts allocated to
5 income during an accounting period minus the disbursements
6 made from income during the period, plus or minus transfers
7 under this chapter to or from income during the period.

8 (9) "Person" means an individual, corporation,
9 business trust, estate, trust, partnership, limited liability
10 company, association, joint venture, public corporation, or
11 any other legal or commercial entity or a government or
12 governmental subdivision, agency, or instrumentality.

13 (10) "Principal" means property held in trust for
14 distribution to a remainder beneficiary when the trust
15 terminates.

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

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

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

25 738.103 Fiduciary duties; general principles.--

26 (1) In allocating receipts and disbursements to or
27 between principal and income, and with respect to any matter
28 within the scope of ss. 738.201 and 738.202 and ss.
29 738.301-738.303, a fiduciary:

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

4 (b) May administer a trust or estate by the exercise
5 of a discretionary power of administration given to the
6 fiduciary by the terms of the trust or the will, even if the
7 exercise of the power produces a result different from a
8 result required or permitted by this chapter.

9 (c) Shall administer a trust or estate in accordance
10 with this chapter if the terms of the trust or the will do not
11 contain a different provision or do not give the fiduciary a
12 discretionary power of administration.

13 (d) Shall add a receipt or charge a disbursement to
14 principal to the extent the terms of the trust and this
15 chapter do not provide a rule for allocating the receipt or
16 disbursement to or between principal and income.

17 (2) In exercising the power to adjust under s.
18 738.104(1) or a discretionary power of administration
19 regarding a matter within the scope of this chapter, whether
20 granted by the terms of a trust, a will, or this chapter, a
21 fiduciary shall administer a trust or estate impartially,
22 based on what is fair and reasonable to all of the
23 beneficiaries, except to the extent the terms of the trust or
24 the will clearly manifest an intention that the fiduciary
25 shall or may favor one or more of the beneficiaries. A
26 determination in accordance with this chapter is presumed to
27 be fair and reasonable to all of the beneficiaries.

28 738.104 Trustee's power to adjust.--

29 (1) A trustee may adjust between principal and income
30 to the extent the trustee considers necessary if the trustee
31 invests and manages trust assets as a prudent investor, the

1 terms of the trust describe the amount that may or shall be
2 distributed to a beneficiary by referring to the trust's
3 income, and the trustee determines, after applying the rules
4 in s. 738.103(1), that the trustee is unable to comply with s.
5 738.103(2).

6 (2) In deciding whether and to what extent to exercise
7 the power conferred by subsection (1), a trustee shall
8 consider all factors relevant to the trust and its
9 beneficiaries, including the following factors to the extent
10 they are relevant:

11 (a) The nature, purpose, and expected duration of the
12 trust.

13 (b) The intent of the grantor.

14 (c) The identity and circumstances of the
15 beneficiaries.

16 (d) The needs for liquidity, regularity of income, and
17 preservation and appreciation of capital.

18 (e) The assets held in the trust; the extent to which
19 the assets consist of financial assets, interests in closely
20 held enterprises, tangible and intangible personal property,
21 or real property; the extent to which an asset is used by a
22 beneficiary; and whether an asset was purchased by the trustee
23 or received from the grantor.

24 (f) The net amount allocated to income under the other
25 sections of this chapter and the increases or decreases in the
26 value of the principal assets, which the trustee may estimate
27 as to assets for which market values are not readily
28 available.

29 (g) Whether and to what extent the terms of the trust
30 give the trustee the power to invade principal or accumulate
31 income or prohibit the trustee from invading principal or

1 accumulating income and the extent to which the trustee has
2 exercised a power from time to time to invade principal or
3 accumulate income.

4 (h) The actual and anticipated effect of economic
5 conditions on principal and income and effects of inflation
6 and deflation.

7 (i) The anticipated tax consequences of an adjustment.

8 (3) A trustee may not make an adjustment:

9 (a) That diminishes the income interest in a trust
10 that requires all of the income to be paid at least annually
11 to a spouse and for which an estate tax or gift tax marital
12 deduction would be allowed, in whole or in part, if the
13 trustee did not have the power to adjust;

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

17 (c) That changes the amount payable to a beneficiary
18 as a fixed annuity or a fixed fraction of the value of the
19 trust assets;

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

23 (e) If possessing or exercising the power to adjust
24 causes an individual to be treated as the owner of all or part
25 of the trust for income tax purposes and the individual would
26 not be treated as the owner if the trustee did not possess the
27 power to adjust;

28 (f) If possessing or exercising the power to adjust
29 causes all or part of the trust assets to be included for
30 estate tax purposes in the estate of an individual who has the
31 power to remove a trustee or appoint a trustee, or both, and

1 the assets would not be included in the estate of the
2 individual if the trustee did not possess the power to adjust;

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

4 (h) If the trustee is not a beneficiary of the trust
5 but the adjustment would benefit the trustee directly or
6 indirectly.

7 (4) If paragraph (3)(e), paragraph (3)(f), paragraph
8 (3)(g), or paragraph (3)(h) applies to a trustee and there is
9 more than one trustee, a cotrustee to whom the provision does
10 not apply may make the adjustment unless the exercise of the
11 power by the remaining trustee is not permitted by the terms
12 of the trust.

13 (5) A trustee may release the entire power to adjust
14 conferred by subsection (1) or may release only the power to
15 adjust from income to principal or the power to adjust from
16 principal to income if the trustee is uncertain about whether
17 possessing or exercising the power will cause a result
18 described in paragraphs (3)(a)-(f) or paragraph (3)(h) or if
19 the trustee determines that possessing or exercising the power
20 will or may deprive the trust of a tax benefit or impose a tax
21 burden not described in subsection (3). The release may be
22 permanent or for a specified period, including a period
23 measured by the life of an individual.

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

29 (7) Nothing in this chapter is intended to create or
30 imply a duty to make an adjustment and no inference of

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1 impropriety shall be made as a result of a trustee not
2 exercising the power to adjust conferred by subsection (1).

3 (8) With respect to a trust in existence on January 1,
4 2003:

5 (a) A trustee shall not have the power to adjust under
6 this section if, within 60 days after the date of the
7 statement required in subsection (9), a super majority of the
8 trust beneficiaries deliver to the trustee a written objection
9 to the application of this section to such trust. An objection
10 shall be deemed to be delivered to the trustee on the date the
11 objection is mailed to the mailing address listed in the
12 notice provided in subsection (9).

13 (b) An objection under this section may be executed by
14 a legal representative or natural guardian of a beneficiary
15 without the filing of any proceeding or approval of any court.

16 (c) If an objection is delivered to the trustee, then
17 the trustee may petition the circuit court for an order
18 quashing the objection and vesting in such trustee the power
19 to adjust under this section. The burden will be on the
20 objecting beneficiaries to prove that the power to adjust
21 would be inequitable, illegal, or otherwise in contravention
22 of the grantor's intent. The court may award costs and
23 attorney's fees relating to the trustee's petition in the same
24 manner as in chancery actions. When costs and attorney's fees
25 are to be paid out of the trust, the court may, in its
26 discretion, direct from which part of the trust they shall be
27 paid.

28 (d) If no timely objection is made or if the trustee
29 is vested with the power to adjust by court order, the trustee
30 may thereafter exercise the power to adjust without providing
31 notice of its intent to do so unless, in vesting the trustee

1 with the power to adjust, the court determines that unusual
2 circumstances require otherwise.

3 (e)1. If a trustee makes a good faith effort to comply
4 with the notice provisions of subsection (9), but fails to
5 deliver notice to one or more beneficiaries entitled to such
6 notice, neither the validity of the notice required under this
7 subsection nor the trustee's power to adjust under this
8 section shall be affected until the trustee has actual notice
9 that one or more beneficiaries entitled to notice were not
10 notified. Until the trustee has actual notice of the notice
11 deficiency, the trustee shall have all of the powers and
12 protections granted a trustee with the power to adjust under
13 this chapter.

14 2. When the trustee has actual notice that one or more
15 beneficiaries entitled to notice under subsection (9) were not
16 notified, the trustee's power to adjust under this section
17 shall cease until all beneficiaries who are entitled to such
18 notice, including those who were previously provided with such
19 notice, are notified and given the opportunity to object as
20 provided for under this subsection.

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

26 (g) Nothing in this section is intended to create or
27 imply a duty of the trustee of a trust existing on January 1,
28 2003, to seek a power to adjust pursuant to this subsection or
29 to give the notice described in subsection (9) if the trustee
30 does not desire to have a power to adjust under this section,
31 and no inference of impropriety shall be made as the result of

1 a trustee not seeking a power to adjust pursuant to this
2 subsection.

3 (9)(a) A trustee of a trust in existence on January 1,
4 2003, that is not prohibited under subsection (3) from
5 exercising the power to adjust shall, any time prior to
6 initially exercising the power, provide to all reasonably
7 ascertainable current beneficiaries described in s.
8 737.303(4)(b)1. and all reasonably ascertainable remainder
9 beneficiaries described in s. 737.303(4)(b)2. a statement
10 containing the following:

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

14 2. A statement that unless a super majority of the
15 beneficiaries objects to the application of this section to
16 the trust within 60 days after the date the statement pursuant
17 to this subsection was served, s. 738.104, shall apply to the
18 trust; and

19 3. A statement that, if s. 738.104, applies to the
20 trust, the trustee will have the power to adjust between
21 income and principal and that such a power may have an effect
22 on the distributions to such beneficiary from the trust.

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

26 (c) The statement referred to in this subsection shall
27 be served informally, in the manner provided in the Florida
28 Rules of Civil Procedure relating to service of pleadings
29 subsequent to the initial pleading.

30 (d) For purposes of subsection (8) and this
31 subsection, a "super majority of the trust beneficiaries"

1 means at least two-thirds in interest of the reasonably
2 ascertainable current beneficiaries described in s.
3 737.303(4)(b)1. or two-thirds in interest of the reasonably
4 ascertainable remainder beneficiaries described in s.
5 737.303(4)(b)2., if the interests of the beneficiaries are
6 reasonably ascertainable; otherwise, it means two-thirds in
7 number of either such class.

8 (10) A trust exists on January 1, 2003, if it is not
9 revocable on January 1, 2003. A trust is revocable if
10 revocable by the grantor alone or in conjunction with any
11 other person. A trust is not revocable for purposes of this
12 section if revocable by the grantor only with the consent of
13 all persons having a beneficial interest in the property.

14 738.1041 Total return unitrust.--

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

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

22 (b) "Income trust" means a trust, created by either an
23 inter vivos or a testamentary instrument, which directs or
24 permits the trustee to distribute the net income of the trust
25 to one or more persons, either in fixed proportions or in
26 amounts or proportions determined by the trustee.

27 Notwithstanding the foregoing, no trust that otherwise is an
28 "income trust" shall qualify hereunder, if it may be subject
29 to taxation under the Internal Revenue Code, 26 U.S.C. s. 2001
30 or s. 2501, until the expiration of the period for filing the
31 return therefor, including extensions.

1 (c) "Interested distributee" means a person to whom
2 distributions of income or principal can currently be made who
3 has the power to remove the existing trustee and designate as
4 successor a person who may be a "related or subordinate
5 party," as defined in the Internal Revenue Code, 26 U.S.C. s.
6 672(c), with respect to such distributee.

7 (d) "Interested trustee" means an individual trustee
8 to whom the net income or principal of the trust can currently
9 be distributed or would be distributed if the trust were then
10 to terminate and be distributed, any trustee who may be
11 removed and replaced by an interested distributee, or an
12 individual trustee whose legal obligation to support a
13 beneficiary may be satisfied by distributions of income and
14 principal of the trust.

15 (2) A trustee may, without court approval, convert an
16 income trust to a total return unitrust, reconvert a total
17 return unitrust to an income trust, or change the percentage
18 used to calculate the unitrust amount or the method used to
19 determine the fair market value of the trust if:

20 (a) The trustee adopts a written statement regarding
21 trust distributions that provides:

22 1. In the case of a trust being administered as an
23 income trust, that future distributions from the trust will be
24 unitrust amounts rather than net income, and indicates the
25 manner in which the unitrust amount will be calculated and the
26 method in which the fair market value of the trust will be
27 determined.

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

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

1 b. The percentage used to calculate the unitrust
2 amount or the method used to determine the fair market value
3 of the trust will be changed, and indicates the manner in
4 which the new unitrust amount will be calculated and the
5 method in which the new fair market value of the trust will be
6 determined;

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

11 a. The percentage to be used to calculate the unitrust
12 amount, provided the percentage used is not greater than 5
13 percent nor less than 3 percent;

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

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

18 2. The trustee administers the trust such that:

19 a. The percentage used to calculate the unitrust
20 amount is 50 percent of the applicable federal rate as defined
21 in the Internal Revenue Code, 26 U.S.C. s. 7520, in effect for
22 the month the conversion under this section becomes effective
23 and for each January thereafter; however, the percentage shall
24 never be greater than 5 percent nor less than 3 percent; and

25 b. The fair market value of the trust shall be
26 determined at least annually on an asset-by-asset basis,
27 reasonably and in good faith, in accordance with the
28 provisions of s. 738.202(5), except the following property
29 shall not be included in determining the value of the trust:

30 (I) Any residential property or any tangible personal
31 property that, as of the first business day of the current

1 valuation year, one or more current beneficiaries of the trust
2 have or have had the right to occupy, or have or have had the
3 right to possess or control (other than in his or her capacity
4 as trustee of the trust), and instead the right of occupancy
5 or the right to possession and control shall be deemed to be
6 the unitrust amount with respect to such property; however,
7 the unitrust amount shall be adjusted to take into account
8 partial distributions from or receipt into the trust of such
9 property during the valuation year.

10 (II) Any asset specifically given to a beneficiary and
11 the return on investment on such property, which return on
12 investment shall be distributable to such beneficiary.

13 (III) Any asset while held in a testator's estate;

14 (c) The trustee sends written notice of its intention
15 to take such action, along with copies of such written
16 statement and this section, and, if applicable, the
17 determinations of either the trustee or the disinterested
18 person to:

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

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

22 3. All living persons who would receive distributions
23 of principal of the trust if the trust were to terminate at
24 the time of the giving of such notice (without regard to the
25 exercise of any power of appointment) or, if the trust does
26 not provide for its termination, all living persons who would
27 receive or be eligible to receive distributions of income or
28 principal of the trust if the persons identified in
29 subparagraph 2. were deceased.

30 4. All persons acting as advisers or protectors of the
31 trust.

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2 Notice under this paragraph shall be served informally, in the
3 manner provided in the Florida Rules of Civil Procedure
4 relating to service of pleadings subsequent to the initial
5 pleading;

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

8 (e) No person receiving such notice objects, by
9 written instrument delivered to the trustee, to the proposed
10 action of the trustee or the determinations of the
11 disinterested person within 60 days after receipt of such
12 notice.

13 (3) If a trustee desires to convert an income trust to
14 a total return unitrust, reconvert a total return unitrust to
15 an income trust, or change the percentage used to calculate
16 the unitrust amount or the method used to determine a fair
17 market value of the trust but does not have the ability to or
18 elects not to do it under subsection (2), the trustee may
19 petition the circuit court for such order as the trustee deems
20 appropriate. In that event, the court, in its own discretion
21 or on the petition of such trustee or any person having an
22 income or remainder interest in the trust, may appoint a
23 disinterested person who, acting in a fiduciary capacity,
24 shall present such information to the court as shall be
25 necessary for the court to make a determination hereunder.

26 (4) All determinations made pursuant to
27 sub-subparagraph (2)(b)2.b. shall be conclusive if reasonable
28 and made in good faith. Such determination shall be
29 conclusively presumed to have been made reasonably and in good
30 faith unless proven otherwise in a proceeding commenced by or
31 on behalf of a person interested in the trust within the time

1 provided in s. 737.307. The burden will be on the objecting
2 interested party to prove that the determinations were not
3 made reasonably and in good faith.

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

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

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

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16 Paragraph (a) will not apply to any trust to the extent that
17 the use of a total return unitrust is recognized for federal
18 tax purposes under the Internal Revenue Code, 26 U.S.C. s.
19 2056 or s. 2523. Paragraph (b) will not apply to any trust to
20 the extent that the use of a total return unitrust is
21 recognized for federal tax purposes under the Internal Revenue
22 Code, 26 U.S.C. s. 2601.

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

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

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

30 1. Net short-term capital gain described in the
31 Internal Revenue Code, 26 U.S.C. s. 1222(5), for such year, or

1 portion thereof, but only to the extent that the amount so
2 allocated together with all other amounts allocated to trust
3 income, as determined under the provisions of this chapter
4 without regard to this section and s. 738.104, for such year,
5 or portion thereof, does not exceed the unitrust amount for
6 such year, or portion thereof.

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

14 (7) In administering a total return unitrust, the
15 trustee may, in its sole discretion but subject to the
16 provisions of the governing instrument, determine:

17 (a) The effective date of the conversion.

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

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

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

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

28 (8) Conversion to a total return unitrust under the
29 provisions of this section shall not affect any other
30 provision of the governing instrument, if any, regarding
31 distributions of principal.

1 (9) In the case of a trust for which a marital
 2 deduction has been taken for federal tax purposes under the
 3 Internal Revenue Code, 26 U.S.C. s. 2056 or s. 2523, the
 4 spouse otherwise entitled to receive the net income of the
 5 trust shall have the right, by written instrument delivered to
 6 the trustee, to compel the reconversion during his or her
 7 lifetime of the trust from a total return unitrust to an
 8 income trust, notwithstanding anything in this section to the
 9 contrary, unless the use of a total return unitrust is
 10 recognized for federal tax purposes under the Internal Revenue
 11 Code, 26 U.S.C. s. 2056 or s. 2523.

12 (10) Any trustee or disinterested person who in good
 13 faith takes or fails to take any action under this section
 14 shall not be liable to any person affected by such action or
 15 inaction, regardless of whether such person received written
 16 notice as provided in this section and regardless of whether
 17 such person was under a legal disability at the time of the
 18 delivery of such notice. Such person's exclusive remedy shall
 19 be to obtain, under subsection (11), an order of the court
 20 directing the trustee to convert an income trust to a total
 21 return unitrust, to reconvert from a total return unitrust to
 22 an income trust, or to change the percentage used to calculate
 23 the unitrust amount.

24 (11) If a majority in interest of either the income or
 25 remainder beneficiaries of an income trust has delivered to
 26 the trustee a written objection to the amount of the income
 27 distributions of the trust, and, if the trustee has failed to
 28 resolve the objection to the satisfaction of the objecting
 29 beneficiaries within 6 months from the receipt of such written
 30 objection, then the objecting beneficiaries may petition the
 31 court in accordance with subsection (3).

1 (12) This section shall be construed as pertaining to
2 the administration of a trust and shall be available to any
3 trust that is administered in this state under Florida law
4 unless:

5 (a) The governing instrument reflects an intention
6 that the current beneficiary or beneficiaries are to receive
7 an amount other than a reasonable current return from the
8 trust;

9 (b) The trust is a trust described in the Internal
10 Revenue Code, 26 U.S.C. s. 170(f)(2)(B), s. 642(c)(5), s.
11 664(d), s. 1361(d), s. 2702(a)(3), or s. 2702(b);

12 (c) One or more persons to whom the trustee could
13 distribute income have a power of withdrawal over the trust
14 that is not subject to an ascertainable standard under the
15 Internal Revenue Code, 26 U.S.C. s. 2041 or s. 2514, or that
16 can be exercised to discharge a duty of support he or she
17 possesses;

18 (d) The governing instrument expressly prohibits use
19 of this section by specific reference to the section. A
20 provision in the governing instrument that, "The provisions of
21 section 738.1041, Florida Statutes, as amended, or any
22 corresponding provision of future law, shall not be used in
23 the administration of this trust," or similar words reflecting
24 such intent shall be sufficient to preclude the use of this
25 section; or

26 (e) The trust is a trust with respect to which a
27 trustee currently possesses the power to adjust under s.
28 738.104.

29 738.105 Judicial control of discretionary powers.--

30 (1) A court shall not change a fiduciary's decision to
31 exercise or not to exercise a discretionary power conferred by

1 this chapter unless the court determines that the decision was
2 an abuse of the fiduciary's discretion. A court shall not
3 determine that a fiduciary abused its discretion merely
4 because the court would have exercised the discretion in a
5 different manner or would not have exercised the discretion.

6 (2) The decisions to which subsection (1) applies
7 include:

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

11 (b) A determination of the factors that are relevant
12 to the trust and trust beneficiaries, the extent to which such
13 factors are relevant, and the weight, if any, to be given to
14 the relevant factors, in deciding whether and to what extent
15 to exercise the power conferred by s. 738.104(1).

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

21 (a) To the extent the abuse of discretion has resulted
22 in no distribution to a beneficiary or a distribution that is
23 too small, the court shall require the fiduciary to distribute
24 from the trust to the beneficiary an amount the court
25 determines will restore the beneficiary, in whole or in part,
26 to his or her appropriate position.

27 (b) To the extent the abuse of discretion has resulted
28 in a distribution to a beneficiary that is too large, the
29 court shall restore the beneficiaries, the trust, or both, in
30 whole or in part, to their appropriate positions by requiring
31 the fiduciary to withhold an amount from one or more future

1 distributions to the beneficiary who received the distribution
2 that was too large or requiring that beneficiary to return
3 some or all of the distribution to the trust.

4 (c) To the extent the court is unable, after applying
5 paragraphs (a) and (b), to restore the beneficiaries, the
6 trust, or both, to the positions they would have occupied if
7 the fiduciary had not abused its discretion, the court may
8 require the fiduciary to pay an appropriate amount from its
9 own funds to one or more of the beneficiaries or the trust or
10 both.

11 (4) Upon the filing of a petition by the fiduciary,
12 the court having jurisdiction over the trust or estate shall
13 determine whether a proposed exercise or nonexercise by the
14 fiduciary of a discretionary power conferred by this chapter
15 will result in an abuse of the fiduciary's discretion. If the
16 petition describes the proposed exercise or nonexercise of the
17 power and contains sufficient information to inform the
18 beneficiaries of the reasons for the proposal, the facts upon
19 which the fiduciary relies, and an explanation of how the
20 income and remainder beneficiaries will be affected by the
21 proposed exercise or nonexercise of the power, a beneficiary
22 who challenges the proposed exercise or nonexercise has the
23 burden of establishing that such exercise or nonexercise will
24 result in an abuse of discretion.

25 (5) If an action is instituted alleging an abuse of
26 discretion in the exercise or nonexercise of the power of
27 adjustment conferred by s. 738.104(1) and the court determines
28 that no abuse of discretion has occurred, the trustee's costs
29 and attorney's fees incurred in defending the action shall be
30 paid from the trust assets.

31

1 738.201 Determination and distribution of net
2 income.--After a decedent dies, in the case of an estate, or
3 after an income interest in a trust ends, the following rules
4 apply:

5 (1) A fiduciary of an estate or of a terminating
6 income interest shall determine the amount of net income and
7 net principal receipts received from property specifically
8 given to a beneficiary under the rules in ss. 738.301-738.706
9 which apply to trustees and the rules in subsection (5). The
10 fiduciary shall distribute the net income and net principal
11 receipts to the beneficiary who is to receive the specific
12 property.

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

17 (a) Including in net income all income from property
18 used to discharge liabilities.

19 (b) Paying from income or principal, in the
20 fiduciary's discretion, fees of attorneys, accountants, and
21 fiduciaries; court costs and other expenses of administration;
22 and interest on death taxes, but the fiduciary may pay those
23 expenses from income of property passing to a trust for which
24 the fiduciary claims an estate tax marital or charitable
25 deduction only to the extent the payment of those expenses
26 from income will not cause the reduction or loss of the
27 deduction.

28 (c) Paying from principal all other disbursements made
29 or incurred in connection with the settlement of a decedent's
30 estate or the winding up of a terminating income interest,
31 including debts, funeral expenses, disposition of remains,

1 family allowances, and death taxes and related penalties that
 2 are apportioned to the estate or terminating income interest
 3 by the will, the terms of the trust, or applicable law.

4 (3) A fiduciary shall distribute to a beneficiary who
 5 receives a pecuniary amount outright the interest or any other
 6 amount provided by the will, the terms of the trust, or
 7 applicable law from net income determined under subsection (2)
 8 or from principal to the extent net income is insufficient.
 9 If a beneficiary is to receive a pecuniary amount outright
 10 from a trust after an income interest ends and no interest or
 11 other amount is provided for by the terms of the trust or
 12 applicable law, the fiduciary shall distribute the interest or
 13 other amount to which the beneficiary would be entitled under
 14 applicable law if the pecuniary amount were required to be
 15 paid under a will.

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

23 (5) A fiduciary may not reduce principal or income
 24 receipts from property described in subsection (1) because of
 25 a payment described in s. 738.701 or s. 738.702 to the extent
 26 the will, the terms of the trust, or applicable law requires
 27 the fiduciary to make the payment from assets other than the
 28 property or to the extent the fiduciary recovers or expects to
 29 recover the payment from a third party. The net income and
 30 principal receipts from the property are determined by
 31 including all of the amounts the fiduciary receives or pays

1 with respect to the property, whether those amounts accrued or
2 became due before, on, or after the date of a decedent's death
3 or an income interest's terminating event, and by making a
4 reasonable provision for amounts the fiduciary believes the
5 estate or terminating income interest may become obligated to
6 pay after the property is distributed.

7 738.202 Distribution to residuary and remainder
8 beneficiaries.--

9 (1) Each beneficiary described in s. 738.201(4) is
10 entitled to receive a portion of the net income equal to the
11 beneficiary's fractional interest in undistributed principal
12 assets, using values as of the distribution date. If a
13 fiduciary makes more than one distribution of assets to
14 beneficiaries to whom this section applies, each beneficiary,
15 including one who does not receive part of the distribution,
16 is entitled, as of each distribution date, to the net income
17 the fiduciary has received after the date of death or
18 terminating event or earlier distribution date but has not
19 distributed as of the current distribution date.

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

22 (a) The beneficiary is entitled to receive a portion
23 of the net income equal to the beneficiary's fractional
24 interest in the undistributed principal assets immediately
25 before the distribution date, including assets that later may
26 be sold to meet principal obligations.

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

31

1 (c) The beneficiary's fractional interest in the
2 undistributed principal assets shall be calculated on the
3 basis of the aggregate value of those assets as of the
4 distribution date without reducing the value by any unpaid
5 principal obligation.

6 (d) The distribution date for purposes of this section
7 may be the date as of which the fiduciary calculates the value
8 of the assets if that date is reasonably near the date on
9 which assets are actually distributed.

10 (3) If a fiduciary does not distribute all of the
11 collected but undistributed net income to each person as of a
12 distribution date, the fiduciary shall maintain appropriate
13 records showing the interest of each beneficiary in that net
14 income.

15 (4) A fiduciary may apply the rules in this section,
16 to the extent the fiduciary considers appropriate, to net gain
17 or loss realized after the date of death or terminating event
18 or earlier distribution date from the disposition of a
19 principal asset if this section applies to the income from the
20 asset.

21 (5) The value of trust assets shall be determined on
22 an asset-by-asset basis and shall be conclusive if reasonable
23 and determined in good faith. Determinations based on
24 appraisals performed within 2 years after the valuation date
25 shall be presumed reasonable. The value of trust assets shall
26 be conclusively presumed to be reasonable and determined in
27 good faith unless proven otherwise in a proceeding commenced
28 by or on behalf of a person interested in the trust within the
29 time provided in s. 737.307.

30
31

1 738.301 When right to income begins and ends.--An
2 income beneficiary is entitled to net income from the date on
3 which the income interest begins.

4 (1) An income interest begins on the date specified in
5 the terms of the trust or, if no date is specified, on the
6 date an asset becomes subject to a trust or successive income
7 interest.

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

9 (a) On the date the asset is transferred to the trust
10 in the case of an asset that is transferred to a trust during
11 the transferor's life;

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

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

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

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

28 738.302 Apportionment of receipts and disbursements
29 when decedent dies or income interest begins.--

30 (1) A trustee shall allocate an income receipt or
31 disbursement other than one to which s. 738.201(1) applies to

1 principal if the due date of the receipt or disbursement
2 occurs before a decedent dies in the case of an estate or
3 before an income interest begins in the case of a trust or
4 successive income interest.

5 (2) A trustee shall allocate an income receipt or
6 disbursement to income if the due date of the receipt or
7 disbursement occurs on or after the date on which a decedent
8 dies or an income interest begins and the due date is a
9 periodic due date. An income receipt or disbursement shall be
10 treated as accruing from day to day if the due date of the
11 receipt or disbursement is not periodic or the receipt or
12 disbursement has no due date. The portion of the receipt or
13 disbursement accruing before the date on which a decedent dies
14 or an income interest begins shall be allocated to principal
15 and the balance shall be allocated to income.

16 (3) An item of income or an obligation is due on the
17 date the payor is required to make a payment. If a payment
18 date is not stated, there is no due date for the purposes of
19 this chapter. Distributions to shareholders or other owners
20 from an entity to which s. 738.401 applies are deemed to be
21 due on the date fixed by the entity for determining who is
22 entitled to receive the distribution or, if no date is fixed,
23 on the declaration date for the distribution. A due date is
24 periodic for receipts or disbursements that shall be paid at
25 regular intervals under a lease or an obligation to pay
26 interest or if an entity customarily makes distributions at
27 regular intervals.

28 (4) Nothing in this section shall prevent the
29 application of s. 733.817 to apportion tax to the income
30 recipient under this section.

31 738.303 Apportionment when income interest ends.--

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

7 (2) When a mandatory income interest ends, the trustee
8 shall pay to a mandatory income beneficiary who survives that
9 date, or the estate of a deceased mandatory income beneficiary
10 whose death causes the interest to end, the beneficiary's
11 share of the undistributed income that is not disposed of
12 under the terms of the trust unless the beneficiary has an
13 unqualified power to revoke more than 5 percent of the trust
14 immediately before the income interest ends. In the latter
15 case, the undistributed income from the portion of the trust
16 that may be revoked shall be added to principal.

17 (3) When a trustee's obligation to pay a fixed annuity
18 or a fixed fraction of the value of the trust's assets ends,
19 the trustee shall prorate the final payment if and to the
20 extent required by applicable law to accomplish a purpose of
21 the trust or its grantor relating to income, gift, estate, or
22 other tax requirements.

23 738.401 Character of receipts.--

24 (1) For purposes of this section, "entity" means a
25 corporation, partnership, limited liability company, regulated
26 investment company, real estate investment trust, common trust
27 fund, or any other organization in which a trustee has an
28 interest other than a trust or estate to which s. 738.402
29 applies, a business or activity to which s. 738.403 applies,
30 or an asset-backed security to which s. 738.608 applies.

31

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

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

6 (a) Property other than money.

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

10 (c) Money received in total or partial liquidation of
11 the entity.

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

16 (4) If a trustee elects, or continues an election made
17 by its predecessor, to reinvest dividends in shares of stock
18 of a distributing corporation or fund, whether evidenced by
19 new certificates or entries on the books of the distributing
20 entity, the new shares shall retain their character as income.

21 (5) Money is received in partial liquidation:

22 (a) To the extent the entity, at or near the time of a
23 distribution, indicates that such money is a distribution in
24 partial liquidation; or

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

30 (6) Money is not received in partial liquidation, nor
31 may money be taken into account under paragraph (5)(b), to the

1 extent such money does not exceed the amount of income tax a
2 trustee or beneficiary must pay on taxable income of the
3 entity that distributes the money.

4 (7) A trustee may rely upon a statement made by an
5 entity about the source or character of a distribution if the
6 statement is made at or near the time of distribution by the
7 entity's board of directors or other person or group of
8 persons authorized to exercise powers to pay money or transfer
9 property comparable to those of a corporation's board of
10 directors.

11 738.402 Distribution from trust or estate.--A trustee
12 shall allocate to income an amount received as a distribution
13 of income from a trust or an estate in which the trust has an
14 interest other than a purchased interest and shall allocate to
15 principal an amount received as a distribution of principal
16 from such a trust or estate. If a trustee purchases an
17 interest in a trust that is an investment entity, or a
18 decedent or donor transfers an interest in such a trust to a
19 trustee, s. 738.401 or s. 738.608 applies to a receipt from
20 the trust.

21 738.403 Business and other activities conducted by
22 trustee.--

23 (1) If a trustee who conducts a business or other
24 activity determines that it is in the best interest of all the
25 beneficiaries to account separately for the business or
26 activity instead of accounting for the business or activity as
27 part of the trust's general accounting records, the trustee
28 may maintain separate accounting records for the transactions
29 of such business or other activity, whether or not the assets
30 of such business or activity are segregated from other trust
31 assets.

1 (2) A trustee who accounts separately for a business
2 or other activity may determine the extent to which the net
3 cash receipts of such business or activity must be retained
4 for working capital, the acquisition or replacement of fixed
5 assets, and other reasonably foreseeable needs of the business
6 or activity, and the extent to which the remaining net cash
7 receipts are accounted for as principal or income in the
8 trust's general accounting records. If a trustee sells assets
9 of the business or other activity, other than in the ordinary
10 course of the business or activity, the trustee shall account
11 for the net amount received as principal in the trust's
12 general accounting records to the extent the trustee
13 determines that the amount received is no longer required in
14 the conduct of the business.

15 (3) Activities for which a trustee may maintain
16 separate accounting records include:

17 (a) Retail, manufacturing, service, and other
18 traditional business activities.

19 (b) Farming.

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

21 (d) Management of rental properties.

22 (e) Extraction of minerals and other natural
23 resources.

24 (f) Timber operations.

25 (g) Activities to which s. 738.608 applies.

26 738.501 Principal receipts.--A trustee shall allocate
27 to principal:

28 (1) To the extent not allocated to income under this
29 chapter, assets received from a transferor during the
30 transferor's lifetime, a decedent's estate, a trust with a
31

1 terminating income interest, or a payor under a contract
2 naming the trust or its trustee as beneficiary.

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

6 (3) Amounts recovered from third parties to reimburse
7 the trust because of disbursements described in s.
8 738.702(1)(g) or for other reasons to the extent not based on
9 the loss of income.

10 (4) Proceeds of property taken by eminent domain but a
11 separate award made for the loss of income with respect to an
12 accounting period during which a current income beneficiary
13 had a mandatory income interest is income.

14 (5) Net income received in an accounting period during
15 which there is no beneficiary to whom a trustee may or shall
16 distribute income.

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

18 738.502 Rental property.--To the extent a trustee
19 accounts for receipts from rental property pursuant to this
20 section, the trustee shall allocate to income an amount
21 received as rent of real or personal property, including an
22 amount received for cancellation or renewal of a lease. An
23 amount received as a refundable deposit, including a security
24 deposit or a deposit that is to be applied as rent for future
25 periods, shall be added to principal and held subject to the
26 terms of the lease and is not available for distribution to a
27 beneficiary until the trustee's contractual obligations have
28 been satisfied with respect to that amount.

29 738.503 Obligation to pay money.--

30 (1) An amount received as interest, whether determined
31 at a fixed, variable, or floating rate, on an obligation to

1 pay money to the trustee, including an amount received as
2 consideration for prepaying principal, shall be allocated to
3 income without any provision for amortization of premium.

4 (2) Except as otherwise provided herein, a trustee
5 shall allocate to principal an amount received from the sale,
6 redemption, or other disposition of an obligation to pay money
7 to the trustee.

8 (3) The increment in value of a bond or other
9 obligation for the payment of money bearing no stated interest
10 but payable at a future time in excess of the price at which
11 it was issued or purchased, if purchased after issuance, is
12 distributable as income. If the increment in value accrues
13 and becomes payable pursuant to a fixed schedule of
14 appreciation, it may be distributed to the beneficiary who was
15 the income beneficiary at this time of increment from the
16 first principal cash available or, if none is available, when
17 the increment is realized by sale, redemption, or other
18 disposition. When unrealized increment is distributed as
19 income but out of principal, the principal shall be reimbursed
20 for the increment when realized. If, in the reasonable
21 judgment of the trustee, exercised in good faith, the ultimate
22 payment of the bond principal is in doubt, the trustee may
23 withhold the payment of incremental interest to the income
24 beneficiary.

25 (4) This section does not apply to an obligation to
26 which s. 738.602, s. 738.603, s. 738.604, s. 738.605, s.
27 738.607, or s. 738.608 applies.

28 738.504 Insurance policies and similar contracts.--

29 (1) Except as otherwise provided in subsection (2), a
30 trustee shall allocate to principal the proceeds of a life
31 insurance policy or other contract in which the trust or its

1 trustee is named as beneficiary, including a contract that
2 insures the trust or its trustee against loss for damage to,
3 destruction of, or loss of title to a trust asset. The
4 trustee shall allocate dividends on an insurance policy to
5 income if the premiums on the policy are paid from income and
6 to principal if the premiums are paid from principal.

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

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

13 738.601 Insubstantial allocations not required.--If a
14 trustee determines that an allocation between principal and
15 income required by s. 738.602, s. 738.603, s. 738.604, s.
16 738.605, or s. 738.608 is insubstantial, the trustee may
17 allocate the entire amount to principal unless one of the
18 circumstances described in s. 738.104(3) applies to the
19 allocation. This power may be exercised by a cotrustee in the
20 circumstances described in s. 738.104(4) and may be released
21 for the reasons and in the manner described in s. 738.104(5).
22 An allocation is presumed to be insubstantial if:

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

26 (2) The value of the asset producing the receipt for
27 which the allocation would be made is less than 10 percent of
28 the total value of the trust's assets at the beginning of the
29 accounting period.

30 738.602 Deferred compensation, annuities, and similar
31 payments.--

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

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

12 (a) A trustee shall allocate to income in the
13 following order:

14 1. First, payments characterized by the payor as
15 interest or dividends or as a payment made in lieu of interest
16 or dividends.

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

20 (b) A trustee shall allocate to principal the balance
21 of any payment not characterized as, or otherwise determined
22 to be, interest, dividends, or their equivalent.

23 (3) If no part of a payment is characterized as, or
24 otherwise determined to be, interest, a dividend, or an
25 equivalent payment and all or part of the payment is required
26 to be made, a trustee shall allocate to income 10 percent of
27 the part that is required to be made during the accounting
28 period and the balance to principal. If no part of a payment
29 is required to be made or the payment received is the entire
30 amount to which the trustee is entitled, the trustee shall
31 allocate the entire payment to principal. For purposes of

1 this subsection, a payment is not "required to be made" to the
2 extent the payment is made because the trustee exercises a
3 right of withdrawal.

4 (4) If, to obtain an estate tax marital deduction for
5 a trust, a trustee must allocate more of a payment to income
6 than provided for by this section, the trustee shall allocate
7 to income the additional amount necessary to obtain the
8 marital deduction.

9 (5) This section does not apply to payments to which
10 s. 738.603 applies.

11 738.603 Liquidating asset.--

12 (1) For purposes of this section, "liquidating asset"
13 means an asset the value of which will diminish or terminate
14 because the asset is expected to produce receipts for a period
15 of limited duration. The term includes a leasehold, patent,
16 copyright, royalty right, and right to receive payments during
17 a period of more than 1 year under an arrangement that does
18 not provide for the payment of interest on the unpaid balance.
19 The term does not include a payment subject to s. 738.602,
20 resources subject to s. 738.604, timber subject to s. 738.605,
21 an activity subject to s. 738.607, an asset subject to s.
22 738.608, or any asset for which the trustee establishes a
23 reserve for depreciation under s. 738.703.

24 (2) A trustee shall allocate to income 10 percent of
25 the receipts from a liquidating asset and the balance to
26 principal.

27 738.604 Minerals, water, and other natural
28 resources.--

29 (1) To the extent a trustee accounts for receipts from
30 an interest in minerals or other natural resources pursuant to
31

1 this section, the trustee shall allocate such receipts as
2 follows:

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

6 (b) If received from a production payment, a receipt
7 shall be allocated to income if and to the extent the
8 agreement creating the production payment provides a factor
9 for interest or its equivalent. The balance shall be
10 allocated to principal.

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

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

20 (2) An amount received on account of an interest in
21 water that is renewable shall be allocated to income. If the
22 water is not renewable, 90 percent of the amount shall be
23 allocated to principal and the balance to income.

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

27 (4) If a trust owns an interest in minerals, water, or
28 other natural resources on January 1, 2003, the trustee may
29 allocate receipts from the interest as provided in this
30 chapter or in the manner used by the trustee before January 1,
31 2003. If the trust acquires an interest in minerals, water,

1 or other natural resources after January 1, 2003, the trustee
2 shall allocate receipts from the interest as provided in this
3 chapter.

4 738.605 Timber.--

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

8 (a) To income to the extent the amount of timber
9 removed from the land does not exceed the rate of growth of
10 the timber during the accounting periods in which a
11 beneficiary has a mandatory income interest;

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

15 (c) To or between income and principal if the net
16 receipts are from the lease of timberland or from a contract
17 to cut timber from land owned by a trust by determining the
18 amount of timber removed from the land under the lease or
19 contract and applying the rules in paragraphs (a) and (b); or

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

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

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

29 (4) If a trust owns an interest in timberland on
30 January 1, 2003, the trustee may allocate net receipts from
31 the sale of timber and related products as provided in this

1 chapter or in the manner used by the trustee before January 1,
2 2003. If the trust acquires an interest in timberland after
3 January 1, 2003, the trustee shall allocate net receipts from
4 the sale of timber and related products as provided in this
5 chapter.

6 738.606 Property not productive of income.--

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

21 (2) In cases not governed by subsection (1), proceeds
22 from the sale or other disposition of an asset are principal
23 without regard to the amount of income the asset produces
24 during any accounting period.

25 738.607 Derivatives and options.--

26 (1) For purposes of this section, "derivative" means a
27 contract or financial instrument or a combination of contracts
28 and financial instruments which gives a trust the right or
29 obligation to participate in some or all changes in the price
30 of a tangible or intangible asset or group of assets, or

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1 changes in a rate, an index of prices or rates, or other
2 market indicator for an asset or a group of assets.

3 (2) To the extent a trustee does not account under s.
4 738.403 for transactions in derivatives, the trustee shall
5 allocate to principal receipts from and disbursements made in
6 connection with those transactions.

7 (3) If a trustee grants an option to buy property from
8 the trust whether or not the trust owns the property when the
9 option is granted, grants an option that permits another
10 person to sell property to the trust, or acquires an option to
11 buy property for the trust or an option to sell an asset owned
12 by the trust, and the trustee or other owner of the asset is
13 required to deliver the asset if the option is exercised, an
14 amount received for granting the option shall be allocated to
15 principal. An amount paid to acquire the option shall be paid
16 from principal. A gain or loss realized upon the exercise of
17 an option, including an option granted to a grantor of the
18 trust for services rendered, shall be allocated to principal.

19 738.608 Asset-backed securities.--

20 (1) For purposes of this section, "asset-backed
21 security" means an asset the value of which is based upon the
22 right given the owner to receive distributions from the
23 proceeds of financial assets that provide collateral for the
24 security. The term includes an asset that gives the owner the
25 right to receive from the collateral financial assets only the
26 interest or other current return or only the proceeds other
27 than interest or current return. The term does not include an
28 asset to which s. 738.401 or s. 738.602 applies.

29 (2) If a trust receives a payment from interest or
30 other current return and from other proceeds of the collateral
31 financial assets, the trustee shall allocate to income the

1 portion of the payment which the payor identifies as being
2 from interest or other current return and shall allocate the
3 balance of the payment to principal.

4 (3) If a trust receives one or more payments in
5 exchange for the trust's entire interest in an asset-backed
6 security during a single accounting period, the trustee shall
7 allocate the payments to principal. If a payment is one of a
8 series of payments that will result in the liquidation of the
9 trust's interest in the security over more than a single
10 accounting period, the trustee shall allocate 10 percent of
11 the payment to income and the balance to principal.

12 738.701 Disbursements from income.--A trustee shall
13 make the following disbursements from income to the extent
14 they are not disbursements to which s. 738.201(2)(a) or (c)
15 applies:

16 (1) One-half of the regular compensation of the
17 trustee and of any person providing investment advisory or
18 custodial services to the trustee.

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

22 (3) All of the other ordinary expenses incurred in
23 connection with the administration, management, or
24 preservation of trust property and the distribution of income,
25 including interest, ordinary repairs, regularly recurring
26 taxes assessed against principal, and expenses of a proceeding
27 or other matter that concerns primarily the income interest.

28 (4) Recurring premiums on insurance covering the loss
29 of a principal asset or the loss of income from or use of the
30 asset.

31 738.702 Disbursements from principal.--

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

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

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

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

10 (d) Expenses of a proceeding that concerns primarily
11 principal, including a proceeding to construe the trust or to
12 protect the trust or its property.

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

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

18 (g) Disbursements related to environmental matters,
19 including reclamation, assessing environmental conditions,
20 remediating and removing environmental contamination, monitoring
21 remedial activities and the release of substances, preventing
22 future releases of substances, collecting amounts from persons
23 liable or potentially liable for the costs of such activities,
24 penalties imposed under environmental laws or regulations and
25 other payments made to comply with those laws or regulations,
26 statutory or common law claims by third parties, and defending
27 claims based on environmental matters.

28 (h) Payments representing extraordinary repairs or
29 expenses incurred in making a capital improvement to
30 principal, including special assessments; however, a trustee
31

1 may establish an allowance for depreciation out of income to
2 the extent permitted by s. 738.703.

3 (2) If a principal asset is encumbered with an
4 obligation that requires income from that asset to be paid
5 directly to the creditor, the trustee shall transfer from
6 principal to income an amount equal to the income paid to the
7 creditor in reduction of the principal balance of the
8 obligation.

9 738.703 Transfers from income to principal for
10 depreciation.--

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

15 (2) A trustee may transfer to principal a reasonable
16 amount of the net cash receipts from a principal asset that is
17 subject to depreciation but may not transfer any amount for
18 depreciation:

19 (a) Of that portion of real property used or available
20 for use by a beneficiary as a residence or of tangible
21 personal property held or made available for the personal use
22 or enjoyment of a beneficiary;

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

25 (c) Under this section if the trustee is accounting
26 under s. 738.403 for the business or activity in which the
27 asset is used.

28 (3) The amount of depreciation taken for tax purposes
29 with respect to an asset shall be presumed to be a reasonable
30 amount of depreciation. An amount taken for depreciation
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1 shall not be considered unreasonable solely because it is
2 greater or less than the amount taken for tax purposes.

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

5 738.704 Transfers from income to reimburse
6 principal.--

7 (1) If a trustee makes or expects to make a principal
8 disbursement described in this section, the trustee may
9 transfer an appropriate amount from income to principal in one
10 or more accounting periods to reimburse principal or to
11 provide a reserve for future principal disbursements.

12 (2) Principal disbursements to which subsection (1)
13 applies include the following, but only to the extent the
14 trustee has not been and does not expect to be reimbursed by a
15 third party:

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

18 (b) Disbursements made to prepare property for rental,
19 including tenant allowances, leasehold improvements, and
20 broker's commissions.

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

22 (3) If the asset the ownership of which gives rise to
23 the disbursements becomes subject to a successive income
24 interest after an income interest ends, a trustee may continue
25 to transfer amounts from income to principal as provided in
26 subsection (1).

27 (4) To the extent principal cash is not sufficient to
28 pay the principal balance of payments due on mortgaged
29 property, income may be applied to such payment in order to
30 avoid a default on any mortgage or security interest securing
31 the property. Income shall be reimbursed for such payments

1 out of the first available principal cash. If the asset the
2 ownership of which gives rise to the disbursements described
3 in this subsection becomes subject to a successive income
4 interest after an income interest ends, all rights of the
5 initial income interest shall lapse, and amounts remaining due
6 from principal shall not be a lien on the assets of the trust.

7 738.705 Income taxes.--

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

10 (2) A tax required to be paid by a trustee based on
11 receipts allocated to principal shall be paid from principal,
12 even if the tax is called an income tax by the taxing
13 authority.

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

17 (a) From income to the extent receipts from the entity
18 are allocated to income; and

19 (b) From principal to the extent:

20 1. Receipts from the entity are allocated to
21 principal; and

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

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

29 738.706 Adjustments between principal and income
30 because of taxes.--

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

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

8 (b) An income tax or any other tax that is imposed
9 upon the fiduciary or a beneficiary as a result of a
10 transaction involving or a distribution from the estate or
11 trust; or

12 (c) The ownership by an estate or trust of an interest
13 in an entity whose taxable income, whether or not distributed,
14 is includable in the taxable income of the estate, trust, or a
15 beneficiary.

16 (2) If the amount of an estate tax marital deduction
17 or charitable contribution deduction is reduced because a
18 fiduciary deducts an amount paid from principal for income tax
19 purposes instead of deducting such amount for estate tax
20 purposes, and as a result estate taxes paid from principal are
21 increased and income taxes paid by an estate, trust, or
22 beneficiary are decreased, each estate, trust, or beneficiary
23 that benefits from the decrease in income tax shall reimburse
24 the principal from which the increase in estate tax is paid.
25 The total reimbursement shall equal the increase in the estate
26 tax to the extent the principal used to pay the increase would
27 have qualified for a marital deduction or charitable
28 contribution deduction but for the payment. The proportionate
29 share of the reimbursement for each estate, trust, or
30 beneficiary whose income taxes are reduced shall be the same
31 as such estate's, trust's, or beneficiary's proportionate

1 share of the total decrease in income tax. An estate or trust
2 shall reimburse principal from income.

3 738.801 Application with respect to apportionment of
4 expenses; improvements.--

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

15 (2) Subject to the exceptions stated in subsection
16 (1), the cost of, or special taxes or assessments for, an
17 improvement representing an addition of value to property
18 forming part of the principal shall be paid by the tenant when
19 the improvement is not reasonably expected to outlast the
20 estate of the tenant. In all other cases a part only shall be
21 paid by the tenant, while the remainder shall be paid by the
22 remainderman. The part payable by the tenant shall be
23 ascertainable by taking that percentage of the total that is
24 found by dividing the present value of the tenant's estate by
25 the present value of an estate of the same form as that of the
26 tenant except that it is limited for a period corresponding to
27 the reasonably expected duration of the improvement. The
28 computation of present values of the estates shall be made on
29 the expectancy basis set forth in the official mortality
30 tables, and no other evidence of duration or expectancy shall
31 be considered.

1 738.802 Uniformity of application and
2 construction.--In applying and construing this act,
3 consideration shall be given to the need to promote uniformity
4 of the law with respect to the act's subject matter among
5 states that enact such act.

6 738.803 Severability.--If any provision of this
7 chapter or its application to any person or circumstance is
8 held invalid, the invalidity shall not affect other provisions
9 or applications of this chapter which can be given effect
10 without the invalid provision or application, and to this end
11 the provisions of this chapter are severable.

12 738.804 Application.--Except as provided in the trust
13 instrument, the will, or this chapter, this chapter shall
14 apply to any receipt or expense received or incurred and any
15 disbursement made after January 1, 2003, by any trust or
16 decedent's estate, whether established before or after January
17 1, 2003, and whether the asset involved was acquired by the
18 trustee or personal representative before or after January 1,
19 2003. Receipts or expenses received or incurred and
20 disbursements made before January 1, 2003, shall be governed
21 by the law of this state in effect at the time of the event,
22 except as otherwise expressly provided in the will or terms of
23 the trust or in this chapter.

24 Section 2. Sections 738.01, 738.02, 738.03, 738.04,
25 738.05, 738.06, 738.07, 738.08, 738.09, 738.10, 738.11,
26 738.12, 738.13, 738.14, and 738.15, Florida Statutes, are
27 repealed.

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