



1 trustee; providing that such resignation does  
2 not discharge or affect any liability of the  
3 resigning trustee; providing for notice of  
4 resignation; providing an effective date.  
5

6 Be It Enacted by the Legislature of the State of Florida:  
7

8 Section 1. Subsection (10) of section 711.501, Florida  
9 Statutes, is amended to read:

10 711.501 Definitions.--In ss. 711.50-711.512, unless  
11 the context otherwise requires, the term:

12 (10) "Security account" means:

13 (a) A reinvestment account associated with a security,  
14 a securities account with a broker, a cash balance in a  
15 brokerage account, cash, interest, earnings, or dividends  
16 earned or declared on a security in an account, a reinvestment  
17 account, or a brokerage account, whether or not credited to  
18 the account before the owner's death; ~~or~~

19 (b) An investment management, investment advisory,  
20 investment agency, custody, or other account with a bank or  
21 trust company, including the securities in the account, the  
22 cash balance in the account, cash equivalents, and interest,  
23 earnings, or dividends earned or declared on a security in the  
24 account, whether or not credited to the account before the  
25 owner's death; or

26 ~~(c)(b)~~ A cash balance or other property held for or  
27 due to the owner of a security as a replacement for or product  
28 of an account security, whether or not credited to the account  
29 before the owner's death.

30 Section 2. Paragraphs (y) and (z) of subsection (2) of  
31 section 737.402, Florida Statutes, are amended to read:

1           737.402 Powers of trustees conferred by this part.--

2           (2) Unless otherwise provided in the trust instrument,  
3 a trustee has the power:

4           (y) To employ persons, including attorneys, auditors,  
5 investment advisers, or agents, even if they are the trustee  
6 or associated with the trustee, to advise or assist the  
7 trustee in the performance of his or her administrative duties  
8 and to pay compensation and costs incurred in connection with  
9 such employment from the assets of the trust; to act without  
10 independent investigation upon their recommendations; and,  
11 instead of acting personally, to employ one or more agents to  
12 perform any act of administration, whether or not  
13 discretionary.

14           (z) To prosecute or defend actions, claims, or  
15 proceedings, including appeals, for the protection of trust  
16 assets and of the trustee in the performance of his or her  
17 duties; to employ attorneys and other agents to advise and  
18 assist the trustee in the exercise of those powers; and to pay  
19 compensation and costs incurred in connection with such  
20 employment from the assets of the trust.

21           Section 3. Subsection (2) of section 737.403, Florida  
22 Statutes, is amended to read:

23           737.403 Power of court to permit deviation or to  
24 approve transactions involving conflict of interest.--

25           (2) If the duty of the trustee and the trustee's  
26 individual interest or his or her interest as trustee of  
27 another trust conflict in the exercise of a trust power, the  
28 power may be exercised only by court authorization, ~~except as~~  
29 ~~provided in s. 737.402(2)(a), (c), (g), (s) or (y).~~ Under this  
30 section, personal profit or advantage to an affiliated or  
31 subsidiary company or association is personal profit to any

1 corporate trustee. Court authorization is not required for any  
2 of the following:

3 (a) The exercise of any power described in s.  
4 737.402(2)(a), (e), (g), (s), or (y);

5 (b) The exercise of any power for which the trust  
6 instrument acknowledges the trustee's conflict of interest and  
7 expressly authorizes the exercise of that power  
8 notwithstanding conflict;

9 (c) The exercise of any power consented to in writing  
10 by a settlor of the trust while the settlor holds the right of  
11 revocation of the trust;

12 (d) The exercise of any power consented to in writing  
13 by each of the beneficiaries to whom the trustee is required  
14 to provide any annual or periodic accounting. Consent under  
15 this paragraph may be given by a person who represents the  
16 interest of the beneficiary under s. 731.303, or by the legal  
17 guardian of the beneficiary or, if there is no legal guardian,  
18 by the natural guardian of the beneficiary; or

19 (e) Payment of costs or attorney's fees incurred in  
20 any trust proceeding from the assets of the trust unless an  
21 action has been filed or defense asserted against the trustee  
22 based upon a breach of trust. Court authorization is not  
23 required if the action or defense is later withdrawn or  
24 dismissed by the party that is alleging a breach of trust, or  
25 resolved without a determination by the court that the trustee  
26 has committed a breach of trust.

27 Section 4. Subsections (3) and (4) and paragraph (b)  
28 of subsection (5) of section 738.104, Florida Statutes, are  
29 amended, and subsection (11) is added to that section, to  
30 read:

31 738.104 Trustee's power to adjust.--

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

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

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

10 (b)(c) That changes the amount payable to a  
11 beneficiary as a fixed annuity or a fixed fraction of the  
12 value of the trust assets;

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

16 (d)(e) If possessing or exercising the power to adjust  
17 causes an individual to be treated as the owner of all or part  
18 of the trust for income tax purposes and the individual would  
19 not be treated as the owner if the trustee did not possess the  
20 power to adjust;

21 (e)(f) If possessing or exercising the power to adjust  
22 causes all or part of the trust assets to be included for  
23 estate tax purposes in the estate of an individual who has the  
24 power to remove a trustee or appoint a trustee, or both, and  
25 the assets would not be included in the estate of the  
26 individual if the trustee did not possess the power to adjust;

27 (f)(g) If the trustee is a beneficiary of the trust;

28 or

29 (g)(h) If the trustee is not a beneficiary of the  
30 trust but the adjustment would benefit the trustee directly or  
31 indirectly, except that, in the case of a trustee whose

1 compensation for acting as trustee is based upon the value of  
2 trust assets, an adjustment that affects the value of trust  
3 assets shall not be deemed to benefit the trustee.

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

10 (5)

11 (b) A trustee may release the entire power to adjust  
12 conferred by subsection (1) or may release only the power to  
13 adjust from income to principal or the power to adjust from  
14 principal to income if the trustee is uncertain about whether  
15 possessing or exercising the power will cause a result  
16 described in paragraphs ~~(3)(a)-(e)~~ ~~(3)(a)-(f)~~ or paragraph  
17 ~~(3)(g)~~ ~~(3)(h)~~ or if the trustee determines that possessing or  
18 exercising the power will or may deprive the trust of a tax  
19 benefit or impose a tax burden not described in subsection  
20 (3).

21 (11) This section shall be construed as pertaining to  
22 the administration of a trust and is applicable to any trust  
23 that is administered either in this state or under Florida  
24 law.

25 Section 5. Section 738.1041, Florida Statutes, is  
26 amended to read:

27 738.1041 Total return unitrust.--

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

29 (a) "Disinterested person" means a person who is not a  
30 "related or subordinate party" as defined in s. 672(c) of the  
31 United States Internal Revenue Code, 26 U.S.C. ss. 1 et seq.,

1 or any successor provision thereof, with respect to the person  
2 then acting as trustee of the trust and excludes the grantor  
3 and any interested trustee.

4 (b) "Fair market value" means the fair market value of  
5 assets held by the trust as otherwise determined under this  
6 chapter, reduced by all known noncontingent liabilities.

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

19 ~~(d)(c)~~ "Interested distributee" means a person to whom  
20 distributions of income or principal can currently be made who  
21 has the power to remove the existing trustee and designate as  
22 successor a person who may be a "related or subordinate  
23 party," as defined in the Internal Revenue Code, 26 U.S.C. s.  
24 672(c), with respect to such distributee.

25 ~~(e)(d)~~ "Interested trustee" means an individual  
26 trustee to whom the net income or principal of the trust can  
27 currently be distributed or would be distributed if the trust  
28 were then to terminate and be distributed, any trustee whom an  
29 interested distributee has the power to remove and replace  
30 with a related or subordinate party as defined in paragraph  
31 (c), or an individual trustee whose legal obligation to

1 support a beneficiary may be satisfied by distributions of  
2 income and principal of the trust.

3 (f) "Unitrust amount" means the amount determined by  
4 multiplying the fair market value of the assets as defined in  
5 paragraph (b) by the percentage calculated under paragraph  
6 (2)(b).

7 (2) A trustee may, without court approval, convert an  
8 income trust to a total return unitrust, reconvert a total  
9 return unitrust to an income trust, or change the percentage  
10 used to calculate the unitrust amount or the method used to  
11 determine the fair market value of the trust if:

12 (a) The trustee adopts a written statement regarding  
13 trust distributions that provides:

14 1. In the case of a trust being administered as an  
15 income trust, that future distributions from the trust will be  
16 unitrust amounts rather than net income, and indicates the  
17 manner in which the unitrust amount will be calculated and the  
18 method in which the fair market value of the trust will be  
19 determined.

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

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

24 b. The percentage used to calculate the unitrust  
25 amount or the method used to determine the fair market value  
26 of the trust will be changed, and indicates the manner in  
27 which the new unitrust amount will be calculated and the  
28 method in which the new fair market value of the trust will be  
29 determined;

30 (b)~~1-~~ The trustee determines the terms of the unitrust  
31 under one of the following methods:



1           1. A trustee who is a disinterested trustee  
2 determines, or if there is no trustee other than an interested  
3 trustee, the interested trustee appoints a disinterested  
4 person who, in its sole discretion but acting in a fiduciary  
5 capacity, determines for the interested trustee:  
6           a. The percentage to be used to calculate the unitrust  
7 amount, provided the percentage used is not greater than 5  
8 percent nor less than 3 percent;  
9           b. The method to be used in determining the fair  
10 market value of the trust; and  
11           c. Which assets, if any, are to be excluded in  
12 determining the unitrust amount; or  
13           2. The interested trustee or disinterested trustee  
14 administers the trust such that:  
15           a. The percentage used to calculate the unitrust  
16 amount is 50 percent of the applicable federal rate as defined  
17 in the Internal Revenue Code, 26 U.S.C. s. 7520, in effect for  
18 the month the conversion under this section becomes effective  
19 and for each January thereafter; however, if the percentage  
20 calculated exceeds 5 percent, the unitrust percentage shall be  
21 5 percent and if the percentage calculated is less than 3  
22 percent, the unitrust percentage shall be 3 percent; and  
23           b. The fair market value of the trust shall be  
24 determined at least annually on an asset-by-asset basis,  
25 reasonably and in good faith, in accordance with the  
26 provisions of s. 738.202(5), except the following property  
27 shall not be included in determining the value of the trust:  
28           (I) Any residential property or any tangible personal  
29 property that, as of the first business day of the current  
30 valuation year, one or more current beneficiaries of the trust  
31 have or have had the right to occupy, or have or have had the

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

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

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

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

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

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

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

28 4. All persons acting as advisers or protectors of the  
29 trust.

30  
31

1 Notice under this paragraph shall be served informally, in the  
2 manner provided in the Florida Rules of Civil Procedure  
3 relating to service of pleadings subsequent to the initial  
4 pleading. Notice may be served on a legal representative or  
5 natural guardian of a person without the filing of any  
6 proceeding or approval of any court;

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

9 (e) No person receiving such notice objects, by  
10 written instrument delivered to the trustee, to the proposed  
11 action of the trustee or the determinations of the  
12 disinterested person within 60 days after service ~~receipt~~ of  
13 such notice. An objection under this section may be executed  
14 by a legal representative or natural guardian of a person  
15 without the filing of any proceeding or approval of any court.

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

29 (4) All determinations made pursuant to  
30 sub-subparagraph (2)(b)2.b. shall be conclusive if reasonable  
31 and made in good faith. Such determination shall be

1 conclusively presumed to have been made reasonably and in good  
2 faith unless proven otherwise in a proceeding commenced by or  
3 on behalf of a person interested in the trust within the time  
4 provided in s. 737.307. The burden will be on the objecting  
5 interested party to prove that the determinations were not  
6 made reasonably and in good faith.

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

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

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

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

26 ~~(5)(6)~~ Following the conversion of an income trust to  
27 a total return unitrust, the trustee:

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

31

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

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

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

18 ~~(6)(7)~~ In administering a total return unitrust, the  
19 trustee may, in its sole discretion but subject to the  
20 provisions of the governing instrument, determine:

21 (a) The effective date of the conversion.

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

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

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

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

1           ~~(7)(8)~~ Conversion to a total return unitrust under the  
2 provisions of this section shall not affect any other  
3 provision of the governing instrument, if any, regarding  
4 distributions of principal.

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

16           ~~(8)(10)~~ Any trustee or disinterested person who in  
17 good faith takes or fails to take any action under this  
18 section shall not be liable to any person affected by such  
19 action or inaction, regardless of whether such person received  
20 written notice as provided in this section and regardless of  
21 whether such person was under a legal disability at the time  
22 of the delivery of such notice. Such person's exclusive remedy  
23 shall be to obtain, under subsection~~(9)(11)~~, an order of the  
24 court directing the trustee to convert an income trust to a  
25 total return unitrust, to reconvert from a total return  
26 unitrust to an income trust, or to change the percentage used  
27 to calculate the unitrust amount. If a court determines that  
28 the trustee or disinterested person has not acted in good  
29 faith in taking or failing to take any action under this  
30 section, s. 738.105(3) applies.

1           ~~(9)(11)~~ If a majority in interest of either the income  
2 or remainder beneficiaries of an income trust has delivered to  
3 the trustee a written objection to the amount of the income  
4 distributions of the trust, and, if the trustee has failed to  
5 resolve the objection to the satisfaction of the objecting  
6 beneficiaries within 6 months from the receipt of such written  
7 objection, then the objecting beneficiaries may petition the  
8 court in accordance with subsection (3).

9           ~~(10)(12)~~ This section shall be construed as pertaining  
10 to the administration of a trust and shall be available to any  
11 trust that is administered either in this state or under  
12 Florida law unless:

13           (a) The governing instrument reflects an intention  
14 that the current beneficiary or beneficiaries are to receive  
15 an amount other than a reasonable current return from the  
16 trust;

17           (b) The trust is a trust described in the Internal  
18 Revenue Code, 26 U.S.C. s. 170(f)(2)(B), s. 642(c)(5), s.  
19 664(d), ~~s. 1361(d)~~, s. 2702(a)(3), or s. 2702(b);

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

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

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

29           (d) The governing instrument expressly prohibits use  
30 of this section by specific reference to the section. A  
31 provision in the governing instrument that, "The provisions of

1 | section 738.1041, Florida Statutes, as amended, or any  
2 | corresponding provision of future law, shall not be used in  
3 | the administration of this trust," or similar words reflecting  
4 | such intent shall be sufficient to preclude the use of this  
5 | section; or

6 |       (e) The trust is a trust with respect to which a  
7 | trustee currently possesses the power to adjust under s.  
8 | 738.104.

9 |       (11) The grantor of a trust may create an express  
10 | total return unitrust that will become effective as provided  
11 | in the trust document without requiring a conversion under  
12 | this section. An express total return unitrust created by the  
13 | grantor of the trust shall be treated as a unitrust under this  
14 | section only if the terms of the trust document contain all of  
15 | the following provisions:

16 |       (a) That distributions from the trust will be unitrust  
17 | amounts and the trust documents indicate the manner in which  
18 | the unitrust amount will be calculated and the method in which  
19 | the fair market value of the trust will be determined;

20 |       (b) The percentage to be used to calculate the  
21 | unitrust amount, provided the percentage used is not greater  
22 | than 5 percent or less than 3 percent;

23 |       (c) The method to be used in determining the fair  
24 | market value of the trust; and

25 |       (d) Which assets, if any, are to be excluded in  
26 | determining the unitrust amount.

27 |       Section 6. Subsection (1) of section 738.303, Florida  
28 | Statutes, is amended to read:

29 |       738.303 Apportionment when income interest ends.--

30 |       (1) For purposes of this section, the term  
31 | "undistributed income" means net income received on or before



1 | the date on which an income interest ends. The term does not  
2 | include an item of income or expense that is due or accrued or  
3 | net income that has been added or is required to be added to  
4 | principal under the terms of the trust. In the case of a trust  
5 | being administered as a unitrust under s. 738.1041, the term  
6 | "undistributed income" means the prorated unitrust amount  
7 | computed on a daily basis through the date on which the income  
8 | interest ends.

9 |           Section 7. Section 738.401, Florida Statutes, is  
10 | amended to read:

11 |           738.401 Character of receipts.--

12 |           (1) For purposes of this section, "entity" means a  
13 | corporation, partnership, limited liability company, regulated  
14 | investment company, real estate investment trust, common trust  
15 | fund, or any other organization in which a trustee has an  
16 | interest other than a trust or estate to which s. 738.402  
17 | applies, a business or activity to which s. 738.403 applies,  
18 | or an asset-backed security to which s. 738.608 applies.

19 |           (2) Except as otherwise provided in this section, a  
20 | trustee shall allocate to income money received from an  
21 | entity.

22 |           (3) Except as otherwise provided in this section, a  
23 | trustee shall allocate the following receipts from an entity  
24 | to principal:

25 |           (a) Property other than money.

26 |           (b) Money received in one distribution or a series of  
27 | related distributions in exchange for part or all of a trust's  
28 | interest in the entity.

29 |           (c) Money received in total or partial liquidation of  
30 | the entity.

31 |

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

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

10 (5) Money is received in partial liquidation:

11 (a) To the extent the entity, at or near the time of a  
12 distribution, indicates that such money is a distribution in  
13 partial liquidation; or

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

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

24 (7) The following special rules apply to moneys or  
25 property received by a private trustee from entities described  
26 in this subsection:

27 (a) Moneys or property received from a targeted entity  
28 that is not an investment entity which do not exceed the  
29 trust's pro rata share of the undistributed cumulative net  
30 income of the targeted entity during the time an ownership  
31 interest in the targeted entity was held by the trust shall be

1 allocated to income. The balance of moneys or property  
2 received from a targeted entity shall be allocated to  
3 principal.

4 (b) If trust assets include any interest in an  
5 investment entity, the designated amount of money or property  
6 received from the investment entity shall be treated by the  
7 trustee in the same manner as if the trustee had directly held  
8 the trust's pro rata share of the assets of the investment  
9 entity attributable to the distribution of such designated  
10 amount. Thereafter, distributions shall be treated as  
11 principal.

12 (c) For purposes of this subsection and subsection  
13 (8), the following definitions apply:

14 1. "Cumulative net income" means the targeted entity's  
15 net income as determined using the method of accounting  
16 regularly used by the targeted entity in preparing its  
17 financial statements or, if no financial statements are  
18 prepared, the net book income computed for federal income tax  
19 purposes, for every year an ownership interest in the entity  
20 is held by the trust. The trust's pro rata share shall be the  
21 cumulative net income, multiplied by the percentage ownership  
22 of the trust.

23 2. "Undistributed cumulative net income" means the  
24 trust's pro rata share of cumulative net income less all prior  
25 distributions from the targeted entity to the trust which have  
26 been allocated to income.

27 3. A "targeted entity" includes any entity that is  
28 treated as a partnership, subchapter S corporation, or  
29 disregarded entity pursuant to the Internal Revenue Code of  
30 1986, as amended, other than an entity described in s.  
31 738.403.

1           4. An "investment entity" is a targeted entity that  
2 normally derives 50 percent or more of its annual cumulative  
3 net income from interest, dividends, annuities, royalties,  
4 rental activity, or other passive investments, including  
5 income from the sale or exchange of such passive investments.

6           5. The "designated amount" of moneys or property  
7 received from an investment entity during any year shall be  
8 equal to the amount of the distribution which does not exceed  
9 the greater of:

10           a. The amount of income of the investment entity for  
11 the current year, as reported to the trustee by the investment  
12 entity for federal income tax purposes; or

13           b. The amount of income of the investment entity for  
14 the current year and the prior 2 years, as reported to the  
15 trustee by the investment entity for federal income tax  
16 purposes, less any distributions of money or property made by  
17 the investment entity to the trustee during the prior 2 years.

18           6. A "private trustee" is a trustee who is an  
19 individual, but only if the trustee is unable to use the power  
20 to adjust between income and principal with respect to  
21 receipts from entities described in this subsection pursuant  
22 to s. 738.104. A bank, trust company, or other commercial  
23 trustee is not a private trustee.

24           (d) This subsection does not modify or change any  
25 provisions of ss. 738.705 and 738.706 relating to income  
26 taxes.

27           ~~(8)(7)~~ A trustee may rely upon a statement made by an  
28 entity about the source or character of a distribution, about  
29 the amount of profits of a targeted entity, or absent the  
30 nature and value of assets of an investment entity if the  
31 statement is made at or near the time of distribution by the

1 | entity's board of directors or other person or group of  
2 | persons authorized to exercise powers to pay money or transfer  
3 | property comparable to those of a corporation's board of  
4 | directors.

5 |         Section 8. Section 737.309, Florida Statutes, is  
6 | created to read:

7 |         737.309 Resignation of trustee.--

8 |         (1) A trustee may resign:

9 |         (a) Upon at least 30 days' written notice to the  
10 | settlor, if living, all cotrustees, and all persons entitled  
11 | to a trust accounting pursuant to s. 737.303, as qualified by  
12 | s. 731.303; or

13 |         (b) With approval of the court. In approving a  
14 | resignation, the court may issue orders and impose conditions  
15 | reasonably necessary for the protection of the trust property.

16 |         (2) Any liability of a resigning trustee or of any  
17 | sureties on the trustee's bond for acts or omissions of the  
18 | trustee is not discharged or affected by the trustee's  
19 | resignation.

20 |         (3) If the resignation of a trustee would require the  
21 | vacancy to be filled by a successor trustee, a trustee that  
22 | resigns shall continue to serve until the successor assumes  
23 | the trusteeship. The resigning trustee shall deliver copies of  
24 | all notices and other records pertaining to the resignation to  
25 | the successor trustee or, if none, to a cotrustee.

26 |         (4) Notice of resignation shall be served in the  
27 | manner provided in the Florida Rules of Civil Procedure  
28 | relating to service of pleadings subsequent to the initial  
29 | pleading. The notice may be served on a legal representative  
30 | or natural guardian of a beneficiary without the filing of any  
31 | proceeding or approval of any court.

1           Section 9. This act shall take effect upon becoming a  
2 law.

3  
4                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
5                                COMMITTEE SUBSTITUTE FOR  
6                                Senate Bill 1688

7 The committee substitute establishes the means by which a  
8 trustee may resign his or her post by creating s. 737.309,  
9 F.S. The trustee may resign upon giving at least 30-days  
10 written notice to the settler (if living), all co-trustees,  
11 and all persons entitled to a trust accounting  
12 (beneficiaries), or with approval of the court.

13 -- The resignation of a trustee does not affect or discharge  
14 any liability the trustee or surety on the trustee's bond  
15 may have for acts or omissions. If the resignation  
16 requires a successor trustee, the resigning trustee must  
17 continue to serve until the successor assumes the  
18 trusteeship. Notice of the resignation must be provided  
19 to beneficiaries, and notice and all records pertaining  
20 to the resignation must be provided to a co-trustee or  
21 the successor trustee.  
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