

By the Committee on Banking and Insurance; and Senator Bogdanoff

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1 A bill to be entitled
2 An act relating to fiduciaries; amending s. 701.04,
3 F.S.; requiring a mortgage holder to provide certain
4 information within a specified time relating to the
5 unpaid loan balance due under a mortgage if a
6 mortgagor, a record title owner of the property, a
7 fiduciary or trustee lawfully acting on behalf of a
8 record title owner, or any person lawfully authorized
9 to act on behalf of a mortgagor or record title owner
10 of the property makes a written request under certain
11 circumstances; allowing financial institutions to
12 release certain mortgagor information to specified
13 persons without penalty; amending s. 738.102, F.S.;
14 defining the term "carrying value"; amending s.
15 738.103, F.S.; providing for application; amending s.
16 738.104, F.S.; deleting a provision authorizing a
17 trustee to release the power to adjust between
18 principal and income if the trustee desires to convert
19 the form of certain trusts; limiting the power to
20 adjust a trust; deleting a provision that provides for
21 construction and application relating to the
22 administration of trusts in this state or under this
23 state's law; amending s. 738.1041, F.S.; defining the
24 term "average fair market value" and revising
25 definition of the term "unitrust amount"; deleting a
26 duplicative provision relating to conclusive
27 determinations of the terms of a unitrust; revising
28 provisions relating to an express total return
29 unitrust; amending s. 738.105, F.S.; substituting the

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30 term "trustee" for "fiduciary" with respect to
31 judicial control of discretionary powers; amending s.
32 738.201, F.S.; revising provisions relating to the
33 determination and distribution of net income; amending
34 s. 738.202, F.S.; revising provisions relating to
35 distributions to residuary and remainder
36 beneficiaries; amending ss. 738.301, 738.302, and
37 738.303, F.S.; substituting the term "fiduciary" for
38 "trustee" to clarify that provisions apply to all
39 fiduciaries; amending s. 738.401, F.S.; substituting
40 the term "fiduciary" for "trustee" to clarify that
41 provisions apply to all fiduciaries; revising how
42 distributions from entities are allocated between
43 income and principal; amending ss. 738.402, 738.403,
44 738.501, 738.502, 738.503, 738.504, and 738.601, F.S.;
45 substituting the term "fiduciary" for "trustee" to
46 clarify that provisions apply to all fiduciaries;
47 amending s. 738.602, F.S.; substituting the term
48 "fiduciary" for "trustee" to clarify that provisions
49 apply to all fiduciaries; revising provisions relating
50 to allocations to trusts; amending s. 738.603, F.S.;
51 substituting the term "fiduciary" for "trustee" to
52 clarify that provisions apply to all fiduciaries;
53 revising provisions relating to the allocation between
54 income and principal when liquidating assets; amending
55 ss. 738.604, 738.605, 738.606, 738.607, 738.608,
56 738.701, 738.702, 738.703, and 738.704, F.S.;
57 substituting the term "fiduciary" for "trustee" to
58 clarify that provisions apply to all fiduciaries;

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59 amending s. 738.705, F.S.; substituting the term
60 "fiduciary" for "trustee" to clarify that provisions
61 apply to all fiduciaries; revising the method for
62 allocating income taxes between income and principal;
63 amending s. 738.801, F.S.; clarifying the
64 apportionment of expenses between tenants and
65 remaindermen; providing an effective date.
66

67 Be It Enacted by the Legislature of the State of Florida:
68

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

71 701.04 Cancellation of mortgages, liens, and judgments.—

72 (1) Within 14 days after receipt of the written request of
73 a mortgagor, a record title owner of the property, a fiduciary
74 or trustee lawfully acting on behalf of a record title owner, or
75 any other person lawfully authorized to act on behalf of a
76 mortgagor or record title owner of the property, the holder of a
77 mortgage shall deliver or cause the servicer of the mortgage to
78 deliver to the person making the request ~~mortgagor~~ at a place
79 designated in the written request an estoppel letter setting
80 forth the unpaid balance of the loan secured by the mortgage.7

81 (a) If the mortgagor, or any person lawfully authorized to
82 act on behalf of the mortgagor, makes the request, the estoppel
83 letter must include an itemization of the ~~including~~ principal,
84 interest, and any other charges properly due under or secured by
85 the mortgage and interest on a per-day basis for the unpaid
86 balance.

87 (b) If a record title owner of the property, or any person

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88 lawfully authorized to act on behalf of a mortgagor or record
89 title owner of the property, makes the request:

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

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

96 3. The mortgagee or servicer of the mortgagee acting in
97 accordance with a request in substantial compliance with this
98 paragraph is expressly discharged from any obligation or
99 liability to any person on account of the release of the
100 requested information, other than the obligation to comply with
101 the terms of the estoppel letter.

102 (c) A mortgage holder may provide the financial information
103 required under this subsection to a person authorized under this
104 subsection to request the financial information notwithstanding
105 s. 655.059.

106 (2) Whenever the amount of money due on any mortgage, lien,
107 or judgment ~~has been shall be~~ fully paid to the person or party
108 entitled to the payment thereof, the mortgagee, creditor, or
109 assignee, or the attorney of record in the case of a judgment,
110 to whom ~~the such~~ payment ~~was shall have been~~ made, shall execute
111 in writing an instrument acknowledging satisfaction of ~~the said~~
112 mortgage, lien, or judgment and have the instrument ~~same~~
113 acknowledged, or proven, and duly entered ~~of record in the book~~
114 ~~provided by law for such purposes~~ in the official records of the
115 proper county. Within 60 days ~~after of~~ the date of receipt of
116 the full payment of the mortgage, lien, or judgment, the person

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117 required to acknowledge satisfaction of the mortgage, lien, or
118 judgment shall send or cause to be sent the recorded
119 satisfaction to the person who has made the full payment. In the
120 case of a civil action arising out of ~~the provisions of this~~
121 section, the prevailing party is ~~shall be~~ entitled to attorney
122 ~~attorney's~~ fees and costs.

123 (3)~~(2)~~ Whenever a writ of execution has been issued,
124 docketed, and indexed with a sheriff and the judgment upon which
125 it was issued has been fully paid, it is ~~shall be~~ the
126 responsibility of the party receiving payment to request, in
127 writing, addressed to the sheriff, return of the writ of
128 execution as fully satisfied.

129 Section 2. Present subsections (3) through (13) of section
130 738.102, Florida Statutes, are renumbered as subsections (4)
131 through (14), respectively, and a new subsection (3) is added to
132 that section, to read:

133 738.102 Definitions.—As used in this chapter, the term:

134 (3) "Carrying value" means the fair market value at the
135 time the assets are received by the fiduciary. For the estates
136 of decedents and trusts described in s. 733.707(3), after the
137 grantor's death, the assets are considered received as of the
138 date of death. If there is a change in fiduciaries, a majority
139 of the continuing fiduciaries may elect to adjust the carrying
140 values to reflect the fair market value of the assets at the
141 beginning of their administration. If such election is made, it
142 must be reflected on the first accounting filed after the
143 election. For assets acquired during the administration of the
144 estate or trust, the carrying value is equal to the acquisition
145 costs of the asset.

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

148 738.103 Fiduciary duties; general principles.—

149 (3) Except as provided in s. 738.1041(9), this chapter
150 pertains to the administration of a trust and is applicable to
151 any trust that is administered in this state or under its law.
152 This chapter also applies to any estate that is administered in
153 this state unless the provision is limited in application to a
154 trustee, rather than a fiduciary.

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

157 738.104 Trustee's power to adjust.—

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

161 ~~(b)~~ A trustee may release the entire power to adjust
162 conferred by subsection (1) or may release only the power to
163 adjust from income to principal or the power to adjust from
164 principal to income if the trustee is uncertain about whether
165 possessing or exercising the power will cause a result described
166 in paragraphs (3) (a)-(e) or paragraph (3) (g) or if the trustee
167 determines that possessing or exercising the power will or may
168 deprive the trust of a tax benefit or impose a tax burden not
169 described in subsection (3).

170 ~~(e)~~ A release under this subsection may be permanent or for
171 a specified period, including a period measured by the life of
172 an individual. ~~Notwithstanding anything contrary to this~~
173 ~~subsection, a release of the power to adjust pursuant to~~
174 ~~paragraph (a) shall remain effective only for as long as the~~

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175 ~~trust is administered as a unitrust pursuant to s. 738.1041.~~

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

179 Section 5. Section 738.1041, Florida Statutes, is amended
180 to read:

181 738.1041 Total return unitrust.—

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

183 (a) "Average fair market value" means the average of the
184 fair market values of assets held by the trust at the beginning
185 of the current and each of the 2 preceding years, or for the
186 entire term of the trust if there are less than 2 preceding
187 years, and adjusted as follows:

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

191 2. If assets have been distributed from the trust during
192 the years used to determine the average, other than in
193 satisfaction of the unitrust amount, the amount of each
194 distribution is subtracted from all years in which such
195 distribution was not included.

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

202 (c) ~~(b)~~ "Fair market value" means the fair market value of
203 the assets held by the trust as otherwise determined under this

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204 chapter, reduced by all known noncontingent liabilities.

205 (d)~~(e)~~ "Income trust" means a trust, created by either an
206 inter vivos or a testamentary instrument, which directs or
207 permits the trustee to distribute the net income of the trust to
208 one or more persons, either in fixed proportions or in amounts
209 or proportions determined by the trustee and regardless of
210 whether the trust directs or permits the trustee to distribute
211 the principal of the trust to one or more such persons.

212 (e)~~(d)~~ "Interested distributee" means a person to whom
213 distributions of income or principal can currently be made and
214 who has the power to remove the existing trustee and designate
215 as successor a person who may be a "related or subordinate
216 party," ~~as defined in the Internal Revenue Code, 26 U.S.C. s.~~
217 ~~672(e)~~, with respect to such distributee.

218 (f)~~(e)~~ "Interested trustee" means an individual trustee to
219 whom the net income or principal of the trust can currently be
220 distributed or would be distributed if the trust were then to
221 terminate and be distributed, any trustee whom an interested
222 distributee has the power to remove and replace with a related
223 or subordinate party ~~as defined in paragraph (d)~~, or an
224 individual trustee whose legal obligation to support a
225 beneficiary may be satisfied by distributions of income and
226 principal of the trust.

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

230 (h)~~(f)~~ "Unitrust amount" means the amount determined by
231 multiplying the average fair market value of the assets as
232 calculated ~~defined~~ in paragraph (a) ~~(b)~~ by the percentage

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233 calculated under paragraph (2) (b).

234 (2) A trustee may, without court approval, convert an
235 income trust to a total return unitrust, reconvert a total
236 return unitrust to an income trust, or change the percentage
237 used to calculate the unitrust amount or the method used to
238 determine the fair market value of the trust if:

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

241 1. In the case of a trust being administered as an income
242 trust, that future distributions from the trust will be unitrust
243 amounts rather than net income, and indicates the manner in
244 which the unitrust amount will be calculated and the method in
245 which the fair market value of the trust will be determined.

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

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

250 b. The percentage used to calculate the unitrust amount or
251 the method used to determine the fair market value of the trust
252 will be changed, and indicates the manner in which the new
253 unitrust amount will be calculated and the method in which the
254 new fair market value of the trust will be determined;

255 (b) The trustee determines the terms of the unitrust under
256 one of the following methods:

257 1. A disinterested trustee determines, or if there is no
258 trustee other than an interested trustee, the interested trustee
259 appoints a disinterested person who, in its sole discretion but
260 acting in a fiduciary capacity, determines for the interested
261 trustee:

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262 a. The percentage to be used to calculate the unitrust
263 amount, provided the percentage used is not greater than 5
264 percent nor less than 3 percent;

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

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

269 2. The interested trustee or disinterested trustee
270 administers the trust such that:

271 a. The percentage used to calculate the unitrust amount is
272 50 percent of the ~~applicable federal~~ rate as defined in the
273 Internal Revenue Code, 26 U.S.C. s. 7520, in effect for the
274 month the conversion under this section becomes effective and
275 for each January thereafter; however, if the percentage
276 calculated exceeds 5 percent, the unitrust percentage is shall
277 ~~be~~ 5 percent and if the percentage calculated is less than 3
278 percent, the unitrust percentage is shall be 3 percent; and

279 b. The fair market value of the trust shall be determined
280 at least annually on an asset-by-asset basis, reasonably and in
281 good faith, in accordance with ~~the provisions of~~ s. 738.202(5),
282 except the following property shall not be included in
283 determining the value of the trust:

284 (I) Any residential property or any tangible personal
285 property that, as of the first business day of the current
286 valuation year, one or more current beneficiaries of the trust
287 have or have had the right to occupy, or have or have had the
288 right to possess or control, other than in his or her capacity
289 ~~as trustee of the trust~~, and instead the right of occupancy or
290 the right to possession and control is shall be deemed to be the

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291 unitrust amount with respect to such property; however, the
 292 unitrust amount must ~~shall~~ be adjusted to take into account
 293 partial distributions from or receipt into the trust of such
 294 property during the valuation year;~~;~~

295 (II) Any asset specifically given to a beneficiary and the
 296 return on investment on such property, which return on
 297 investment shall be distributable to the ~~such~~ beneficiary; or.

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

300 (c) The trustee sends written notice of its intention to
 301 take such action, along with copies of the ~~such~~ written
 302 statement regarding trust distributions and this section, and,
 303 if applicable, the determinations of ~~either~~ the trustee or the
 304 disinterested person to:

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

306 2. All living persons who are currently receiving or
 307 eligible to receive distributions of income from ~~of~~ the trust.

308 3. All living persons who would receive distributions of
 309 principal of the trust if the trust were to terminate at the
 310 time of ~~the~~ giving ~~of~~ such notice ~~(without regard to the~~
 311 ~~exercise of any power of appointment,~~) or, if the trust does not
 312 provide for its termination, all living persons who would
 313 receive or be eligible to receive distributions of income or
 314 principal of the trust if the persons identified in subparagraph
 315 2. were deceased.

316 4. All persons acting as advisers or protectors of the
 317 trust.

318

319 Notice under this paragraph shall be served informally~~;~~ in the

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320 manner provided in the Florida Rules of Civil Procedure relating
321 to service of pleadings subsequent to the initial pleading.
322 Notice may be served on a legal representative or natural
323 guardian of a person without ~~the~~ filing ~~of~~ any proceeding or
324 approval of any court;

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

327 (e) No person receiving such notice objects, by written
328 instrument delivered to the trustee, to the proposed action of
329 the trustee or the determinations of the disinterested person
330 within 60 days after service of such notice. An objection ~~under~~
331 ~~this section~~ may be executed by a legal representative or
332 natural guardian of a person without ~~the~~ filing ~~of~~ any
333 proceeding or approval of any court.

334 (3) If a trustee desires to convert an income trust to a
335 total return unitrust, reconvert a total return unitrust to an
336 income trust, or change the percentage used to calculate the
337 unitrust amount or the method used to determine a fair market
338 value of the trust but does not have the ability to or elects
339 not to do it under subsection (2), the trustee may petition the
340 circuit court for such order as the trustee deems appropriate.
341 In that event, the court, in its own discretion or on the
342 petition of such trustee or any person having an income or
343 remainder interest in the trust, may appoint a disinterested
344 person who, acting in a fiduciary capacity, shall present such
345 information to the court as is ~~shall be~~ necessary for the court
346 to make a determination hereunder.

347 ~~(4) All determinations made pursuant to sub-subparagraph~~
348 ~~(2)(b)2.b. shall be conclusive if reasonable and made in good~~

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349 ~~faith. Such determination shall be conclusively presumed to have~~
350 ~~been made reasonably and in good faith unless proven otherwise~~
351 ~~in a proceeding commenced by or on behalf of a person interested~~
352 ~~in the trust within the time provided in s. 736.1008. The burden~~
353 ~~will be on the objecting interested party to prove that the~~
354 ~~determinations were not made reasonably and in good faith.~~

355 (4)~~(5)~~ Following the conversion of an income trust to a
356 total return unitrust, the trustee:

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

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

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

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

377 (5)~~(6)~~ In administering a total return unitrust, the

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378 trustee may, in its sole discretion but subject to the
379 provisions of the governing instrument, determine:

380 (a) The effective date of the conversion.

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

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

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

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

390 (6)~~(7)~~ Conversion to a total return unitrust under ~~the~~
391 ~~provisions of~~ this section does ~~shall~~ not affect any other
392 provision of the governing instrument, if any, regarding
393 distributions of principal.

394 (7)~~(8)~~ Any trustee or disinterested person who in good
395 faith takes or fails to take any action under this section is
396 ~~shall~~ not be liable to any person affected by such action or
397 inaction, regardless of whether such person received written
398 notice as provided in this section or ~~and regardless of whether~~
399 such person was under a legal disability at the time of the
400 delivery of such notice. Such person's exclusive remedy is ~~shall~~
401 ~~be~~ to obtain, under subsection (8) ~~(9)~~, an order of the court
402 directing the trustee to convert an income trust to a total
403 return unitrust, to reconvert from a total return unitrust to an
404 income trust, or to change the percentage used to calculate the
405 unitrust amount. If a court determines that the trustee or
406 disinterested person has not acted in good faith in taking or

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407 failing to take any action under this section, ~~the provisions of~~
408 s. 738.105(3) applies ~~apply~~.

409 ~~(8)-(9)~~ If a majority in interest of ~~either~~ the income or
410 remainder beneficiaries of an income trust has delivered to the
411 trustee a written objection to the amount of the income
412 distributions of the trust, and, if the trustee has failed to
413 resolve the objection to the satisfaction of the objecting
414 beneficiaries within 6 months after ~~from the~~ receipt of such
415 written objection, ~~then~~ the objecting beneficiaries may petition
416 the court in accordance with subsection (3).

417 ~~(9)-(10)~~ This section pertains ~~shall be construed as~~
418 ~~pertaining~~ to the administration of a trust and is applicable to
419 any trust that is administered ~~either~~ in this state or under
420 Florida law unless:

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

424 (b) The trust is a trust described in the Internal Revenue
425 Code, 26 U.S.C. s. 170(f)(2)(B), s. 642(c)(5), s. 664(d), s.
426 2702(a)(3), or s. 2702(b);

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

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

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

435 (d) The governing instrument expressly prohibits use of

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436 this section by specific reference to the section. A provision
437 in the governing instrument that, "The provisions of section
438 738.1041, Florida Statutes, as amended, or any corresponding
439 provision of future law, may ~~shall~~ not be used in the
440 administration of this trust," or similar words reflecting such
441 intent are ~~shall be~~ sufficient to preclude the use of this
442 section; ~~or~~

443 ~~(c) The trust is a trust with respect to which a trustee~~
444 ~~currently possesses the power to adjust under s. 738.104.~~

445 (10) ~~(11)~~ The grantor of a trust may create an express total
446 return unitrust that ~~which~~ will be ~~become~~ effective as provided
447 in the trust instrument ~~document~~ without requiring a conversion
448 under this section.

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

453 1. ~~(a)~~ That distributions from the trust will be unitrust
454 amounts and the manner in which the unitrust amount will be
455 calculated; ~~and the method in which the fair market value of the~~
456 ~~trust will be determined.~~

457 2. ~~(b)~~ The percentage to be used to calculate the unitrust
458 amount, provided the percentage used is not greater than 5
459 percent nor less than 3 percent.

460 (b) The trust instrument may also contain provisions
461 specifying:

462 1. ~~(c)~~ The method to be used in determining the fair market
463 value of the trust, including whether to use an average fair
464 market value or the fair market value of the assets held by the

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465 trust at the beginning of the current year; or-

466 2.~~(d)~~ Which assets, if any, are to be excluded in
467 determining the unitrust amount.

468 (c) This section establishes the method of determining the
469 fair market value of the trust if the trust instrument is silent
470 as to subparagraph (b)1., and to specify those assets, if any,
471 which are to be excluded in determining the unitrust amount if
472 the trust instrument is silent as to subparagraph (b)2.

473 Section 6. Subsections (1), (3), and (4) of section
474 738.105, Florida Statutes, are amended to read:

475 738.105 Judicial control of discretionary powers.-

476 (1) A court may ~~shall~~ not change a trustee's fiduciary's
477 decision to exercise or not to exercise a discretionary power
478 conferred by this chapter unless the court determines that the
479 decision was an abuse of the trustee's fiduciary's discretion. A
480 court may ~~shall~~ not determine that a trustee fiduciary abused
481 its discretion merely because the court would have exercised the
482 discretion in a different manner or would not have exercised the
483 discretion.

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

489 (a) To the extent the abuse of discretion has resulted in
490 no distribution to a beneficiary or a distribution that is too
491 small, the court shall require the trustee fiduciary to
492 distribute from the trust to the beneficiary an amount the court
493 determines will restore the beneficiary, in whole or in part, to

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494 his or her appropriate position.

495 (b) To the extent the abuse of discretion has resulted in a
496 distribution to a beneficiary that is too large, the court shall
497 restore the beneficiaries, the trust, or both, in whole or in
498 part, to their appropriate positions by requiring the trustee
499 ~~fiduciary~~ to withhold an amount from one or more future
500 distributions to the beneficiary who received the distribution
501 that was too large or requiring that beneficiary to return some
502 or all of the distribution to the trust.

503 (c) To the extent the court is unable, after applying
504 paragraphs (a) and (b), to restore the beneficiaries or, the
505 trust, or both, to the positions they would have occupied if the
506 trustee ~~fiduciary~~ had not abused its discretion, the court may
507 require the trustee ~~fiduciary~~ to pay an appropriate amount from
508 its own funds to one or more of the beneficiaries or the trust
509 or both.

510 (4) Upon the filing of a petition by the trustee ~~fiduciary~~,
511 the court having jurisdiction over the trust ~~or estate~~ shall
512 determine whether a proposed exercise or nonexercise by the
513 trustee ~~fiduciary~~ of a discretionary power conferred by this
514 chapter will result in an abuse of the trustee's ~~fiduciary's~~
515 discretion. If the petition describes the proposed exercise or
516 nonexercise of the power and contains sufficient information to
517 inform the beneficiaries of the reasons for the proposal, the
518 facts upon which the trustee ~~fiduciary~~ relies, and an
519 explanation of how the income and remainder beneficiaries will
520 be affected by the proposed exercise or nonexercise of the
521 power, a beneficiary who challenges the proposed exercise or
522 nonexercise has the burden of establishing that such exercise or

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523 nonexercise will result in an abuse of discretion.

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

526 738.201 Determination and distribution of net income.—After
527 a decedent dies, in the case of an estate, or after an income
528 interest in a trust ends, the following rules apply:

529 (1) A fiduciary of an estate or of a terminating income
530 interest shall determine the amount of net income and net
531 principal receipts received from property specifically given to
532 a beneficiary under ~~the rules in ss. 738.301-738.706 which apply~~
533 ~~to trustees and the rules in~~ subsection (5). The fiduciary shall
534 distribute the net income and net principal receipts to the
535 beneficiary who is to receive the specific property.

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

539 (a) Including in net income all income from property used
540 to discharge liabilities.

541 (b) Paying from income or principal, in the fiduciary's
542 discretion, fees of attorneys, accountants, and fiduciaries;
543 court costs and other expenses of administration; and interest
544 on death taxes. ~~but~~ The fiduciary may pay those expenses from
545 income of property passing to a trust for which the fiduciary
546 claims an estate tax marital or charitable deduction under the
547 Internal Revenue Code or comparable law of any state only to the
548 extent the payment of those expenses from income will not cause
549 the reduction or loss of the deduction.

550 (c) Paying from principal all other disbursements made or
551 incurred in connection with the settlement of a decedent's

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552 estate or the winding up of a terminating income interest,
553 including debts, funeral expenses, disposition of remains,
554 family allowances, and death taxes and related penalties that
555 are apportioned to the estate or terminating income interest by
556 the will, the terms of the trust, or applicable law.

557 (3) ~~If A fiduciary shall distribute to a beneficiary who~~
558 ~~receives a pecuniary devise amount outright is also entitled to~~
559 ~~receive the interest or any other amount on the devise under the~~
560 ~~terms of provided by the will or, the terms of the trust, the~~
561 ~~fiduciary shall distribute the interest or other amount~~
562 ~~applicable law from net income determined under subsection (2)~~
563 ~~or from principal to the extent net income is insufficient. If a~~
564 ~~beneficiary is to receive a pecuniary amount outright from a~~
565 ~~trust after an income interest ends and no interest or other~~
566 ~~amount is provided for by the terms of the trust or applicable~~
567 ~~law, the fiduciary shall distribute the interest or other amount~~
568 ~~to which the beneficiary would be entitled under applicable law~~
569 ~~if the pecuniary amount were required to be paid under a will.~~

570 (4) A fiduciary shall distribute the net income remaining
571 after distributions required under subsections (1)-(3) by
572 ~~subsection (3)~~ in the manner described in s. 738.202 to all
573 other beneficiaries, including a beneficiary who receives a
574 pecuniary amount in trust, even if the beneficiary holds an
575 unqualified power to withdraw assets from the trust or other
576 presently exercisable general power of appointment over the
577 trust.

578 Section 8. Section 738.202, Florida Statutes, is amended to
579 read:

580 738.202 Distribution to residuary and remainder

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581 beneficiaries.—

582 (1) Each beneficiary described in s. 738.201(4) is entitled
583 to receive a portion of the net income remaining after the
584 application of s. 738.201(1)-(3), which is equal to the
585 beneficiary's fractional interest in undistributed principal
586 assets, using carrying values as of the distribution date. If a
587 fiduciary makes more than one distribution of assets to
588 beneficiaries to whom this section applies, each beneficiary,
589 including one who does not receive part of the distribution, is
590 entitled, as of each distribution date, to the net income the
591 fiduciary ~~has~~ received after the date of death or terminating
592 event or earlier distribution date but has not distributed as of
593 the current distribution date.

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

596 (a) The beneficiary is entitled to receive a portion of the
597 net income equal to the beneficiary's fractional interest in the
598 carrying value of the undistributed principal assets immediately
599 before the distribution date, excluding the amount of unpaid
600 liabilities ~~including assets that later may be sold to meet~~
601 principal obligations.

602 (b) The beneficiary's fractional interest in the
603 undistributed principal assets shall be calculated: without
604 regard to

605 1. At the time the interest began and adjusted for any
606 disproportionate distributions since the interest began;

607 2. By excluding any liabilities of the estate or trust from
608 the calculation;

609 3. By also excluding property specifically given to a

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610 beneficiary and property required to pay pecuniary amounts not
611 in trust; and-

612 4.(c) The beneficiary's fractional interest in the
613 undistributed principal assets shall be calculated On the basis
614 of the aggregate carrying value of those assets determined under
615 subsection (1) as of the distribution date without reducing the
616 value by any unpaid principal obligation.

617 (c) If a disproportionate distribution of principal is made
618 to any beneficiary, the respective fractional interests of all
619 beneficiaries in the remaining underlying assets shall be
620 recomputed by:

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

623 2. Reducing the fractional interest of the recipient of the
624 disproportionate distribution in the remaining principal assets
625 by the fair market value of the principal distribution; and

626 3. Recomputing the fractional interests of all
627 beneficiaries in the remaining principal assets based upon the
628 now restated carrying values.

629 ~~(d) The distribution date for purposes of this section may~~
630 ~~be the date as of which the fiduciary calculates the value of~~
631 ~~the assets if that date is reasonably near the date on which~~
632 ~~assets are actually distributed.~~

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

637 (4) A fiduciary may apply the provisions of ~~rules in~~ this
638 section, to the extent the fiduciary considers appropriate, to

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639 net gain or loss realized after the date of death or terminating
640 event or earlier distribution date from the disposition of a
641 principal asset if this section applies to the income from the
642 asset.

643 (5) The carrying value or fair market value of trust assets
644 shall be determined on an asset-by-asset basis and are ~~shall be~~
645 conclusive if reasonable and determined in good faith.
646 Determinations of fair market value based on appraisals
647 performed within 2 years before or after the valuation date are
648 ~~shall be~~ presumed reasonable. The values ~~value~~ of trust assets
649 are ~~shall be~~ conclusively presumed to be reasonable and
650 determined in good faith unless proven otherwise in a proceeding
651 commenced by or on behalf of a person interested in the trust
652 within the time provided in s. 736.1008.

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

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

657 738.301 When right to income begins and ends.—An income
658 beneficiary is entitled to net income from the date on which the
659 income interest begins.

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

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

666 738.302 Apportionment of receipts and disbursements when
667 decedent dies or income interest begins.—

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668 (1) A fiduciary ~~trustee~~ shall allocate an income receipt or
669 disbursement other than one to which s. 738.201(1) applies to
670 principal if the due date of the receipt or disbursement occurs
671 before a decedent dies in the case of an estate or before an
672 income interest begins in the case of a trust or successive
673 income interest.

674 (2) A fiduciary ~~trustee~~ shall allocate an income receipt or
675 disbursement to income if the due date of the receipt or
676 disbursement occurs on or after the date on which a decedent
677 dies or an income interest begins and the due date is a periodic
678 due date. An income receipt or disbursement shall be treated as
679 accruing from day to day if the due date of the receipt or
680 disbursement is not periodic or the receipt or disbursement has
681 no due date. The portion of the receipt or disbursement accruing
682 before the date on which a decedent dies or an income interest
683 begins shall be allocated to principal and the balance shall be
684 allocated to income.

685 Section 11. Subsections (2) and (3) of section 738.303,
686 Florida Statutes, are amended to read:

687 738.303 Apportionment when income interest ends.—

688 (2) When a mandatory income interest ends, the fiduciary
689 ~~trustee~~ shall pay to a mandatory income beneficiary who survives
690 that date, or the estate of a deceased mandatory income
691 beneficiary whose death causes the interest to end, the
692 beneficiary's share of the undistributed income that is not
693 disposed of under the terms of the trust unless the beneficiary
694 has an unqualified power to revoke more than 5 percent of the
695 trust immediately before the income interest ends. In the latter
696 case, the undistributed income from the portion of the trust

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697 that may be revoked shall be added to principal.

698 (3) When a fiduciary's ~~trustee's~~ obligation to pay a fixed
699 annuity or a fixed fraction of the value of the trust's assets
700 ends, the fiduciary ~~trustee~~ shall prorate the final payment if
701 and to the extent required by applicable law to accomplish a
702 purpose of the trust or its grantor relating to income, gift,
703 estate, or other tax requirements.

704 Section 12. Section 738.401, Florida Statutes, is amended
705 to read:

706 738.401 Character of receipts.—

707 (1) For purposes of this section, the term "entity" means a
708 corporation, partnership, limited liability company, regulated
709 investment company, real estate investment trust, common trust
710 fund, or any other organization in which a fiduciary ~~trustee~~ has
711 an interest other than a trust or estate to which s. 738.402
712 applies, a business or activity to which s. 738.403 applies, or
713 an asset-backed security to which s. 738.608 applies.

714 (2) Except as otherwise provided in this section, a
715 fiduciary ~~trustee~~ shall allocate to income money received from
716 an entity.

717 (3) Except as otherwise provided in this section, a
718 fiduciary ~~trustee~~ shall allocate the following receipts from an
719 entity to principal:

720 (a) Property other than money.

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

724 (c) Money received in total or partial liquidation of the
725 entity.

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726 (d) Money received from an entity that is a regulated
727 investment company or a real estate investment trust if the
728 money received ~~distributed~~ represents short-term or long-term
729 capital gain realized within the entity.

730 (e) Money received from an entity listed on a public stock
731 exchange during any year of the trust or estate which exceeds 10
732 percent of the fair market value of the trust's or estate's
733 interest in the entity on the first day of that year. The amount
734 to be allocated to principal must be reduced to the extent that
735 the cumulative distributions from the entity to the trust or
736 estate allocated to income does not exceed a cumulative annual
737 return of 3 percent of the fair market value of the interest in
738 the entity at the beginning of each year or portion of a year
739 for the number of years or portion of years in the period that
740 the interest in the entity has been held by the trust or estate.
741 If a trustee has exercised a power to adjust under s. 738.104
742 during any period the interest in the entity has been held by
743 the trust, the trustee, in determining the total income
744 distributions from that entity, must take into account the
745 extent to which the exercise of that power resulted in income to
746 the trust from that entity for that period. If the income of the
747 trust for any period has been computed under s. 738.1041, the
748 trustee, in determining the total income distributions from that
749 entity for that period, must take into account the portion of
750 the unitrust amount paid as a result of the ownership of the
751 trust's interest in the entity for that period.

752 (4) If a fiduciary ~~trustee~~ elects, or continues an election
753 made by its predecessor, to reinvest dividends in shares of
754 stock of a distributing corporation or fund, whether evidenced

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755 by new certificates or entries on the books of the distributing
756 entity, the new shares ~~shall~~ retain their character as income.

757 (5) Money is received in partial liquidation:

758 (a) To the extent the entity, at or near the time of a
759 distribution, indicates that such money is a distribution in
760 partial liquidation; or

761 (b) To the extent ~~if~~ the total amount of money and property
762 received in a distribution or series of related distributions
763 from an entity that is not listed on a public stock exchange
764 exceeds ~~is greater than~~ 20 percent of the trust's or estate's
765 pro rata share of the entity's gross assets, as shown by the
766 entity's year-end financial statements immediately preceding the
767 initial receipt.

768
769 This subsection does not apply to an entity to which subsection
770 (7) applies.

771 (6) Money may not ~~is not received in partial liquidation,~~
772 ~~nor may money~~ be taken into account in determining any excess
773 under paragraph (5)(b), to the extent that the cumulative
774 distributions from the entity to the trust or the estate
775 allocated to income do not exceed the greater of: such money
776 ~~does not exceed the amount of income tax a trustee or~~
777 ~~beneficiary must pay on taxable income of the entity that~~
778 ~~distributes the money.~~

779 (a) A cumulative annual return of 3 percent of the entity's
780 carrying value computed at the beginning of each period for the
781 number of years or portion of years that the entity was held by
782 the fiduciary. If a trustee has exercised a power to adjust
783 under s. 738.104 during any period the interest in the entity

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784 has been held by the trust, the trustee, in determining the
785 total income distributions from that entity, must take into
786 account the extent to which exercise of the power resulted in
787 income to the trust from that entity for that period. If the
788 income of a trust for any period has been computed pursuant to
789 s. 738.1041, the trustee, in determining the total income
790 distributions from the entity for that period, must take into
791 account the portion of the unitrust amount paid as a result of
792 the ownership of the trust's interest in the entity for that
793 period; or

794 (b) If the entity is treated as a partnership, subchapter S
795 corporation, or a disregarded entity pursuant to the Internal
796 Revenue Code of 1986, as amended, the amount of income tax
797 attributable to the trust's or estate's ownership share of the
798 entity, based on its pro rata share of the taxable income of the
799 entity that distributes the money, for the number of years or
800 portion of years that the interest in the entity was held by the
801 fiduciary, calculated as if all of that tax was incurred by the
802 fiduciary.

803 (7) The following ~~applies special rules shall apply~~ to
804 money ~~monies~~ or property received by a private trustee as a
805 distribution from an investment entity ~~entities~~ described in
806 this subsection:

807 (a) The trustee shall first treat as income of the trust
808 all of the money or property received from the investment entity
809 in the current year which would be considered income under this
810 chapter if the trustee had directly held the trust's pro rata
811 share of the assets of the investment entity. For this purpose,
812 all distributions received in the current year must be

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813 aggregated.

814 (b) The trustee shall next treat as income of the trust any
815 additional money or property received in the current year which
816 would have been considered income in the prior 2 years under
817 paragraph (a) if additional money or property had been received
818 from the investment entity in any of those prior 2 years. The
819 amount to be treated as income shall be reduced by any
820 distributions of money or property made by the investment entity
821 to the trust during the current and prior 2 years which were
822 treated as income under this paragraph.

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

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

826 1. "Investment entity" means an entity, other than a
827 business activity conducted by the trustee described in s.
828 738.403 or an entity that is listed on a public stock exchange,
829 which is treated as a partnership, subchapter S corporation, or
830 disregarded entity pursuant to the Internal Revenue Code of
831 1986, as amended, and which normally derives 50 percent or more
832 of its annual cumulative net income from interest, dividends,
833 annuities, royalties, rental activity, or other passive
834 investments, including income from the sale or exchange of such
835 passive investments.

836 2. "Private trustee" means a trustee who is a natural
837 person, but only if the trustee is unable to use the power to
838 adjust between income and principal with respect to receipts
839 from entities described in this subsection pursuant to s.
840 738.104. A bank, trust company, or other commercial trustee is
841 not considered a private trustee.

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842 (8) This section shall be applied before ss. 738.705 and
843 738.706 and does not modify or change any of the provisions of
844 those sections.

845 ~~(a) Moneys or property received from a targeted entity that~~
846 ~~is not an investment entity which do not exceed the trust's pro~~
847 ~~rata share of the undistributed cumulative net income of the~~
848 ~~targeted entity during the time an ownership interest in the~~
849 ~~targeted entity was held by the trust shall be allocated to~~
850 ~~income. The balance of moneys or property received from a~~
851 ~~targeted entity shall be allocated to principal.~~

852 ~~(b) If trust assets include any interest in an investment~~
853 ~~entity, the designated amount of moneys or property received~~
854 ~~from the investment entity shall be treated by the trustee in~~
855 ~~the same manner as if the trustee had directly held the trust's~~
856 ~~pro rata share of the assets of the investment entity~~
857 ~~attributable to the distribution of such designated amount.~~
858 ~~Thereafter, distributions shall be treated as principal.~~

859 ~~(c) For purposes of this subsection, the following~~
860 ~~definitions shall apply:~~

861 ~~1. "Cumulative net income" means the targeted entity's net~~
862 ~~income as determined using the method of accounting regularly~~
863 ~~used by the targeted entity in preparing its financial~~
864 ~~statements, or if no financial statements are prepared, the net~~
865 ~~book income computed for federal income tax purposes, for every~~
866 ~~year an ownership interest in the entity is held by the trust.~~
867 ~~The trust's pro rata share shall be the cumulative net income~~
868 ~~multiplied by the percentage ownership of the trust.~~

869 ~~2. "Designated amount" means moneys or property received~~
870 ~~from an investment entity during any year that is equal to the~~

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871 ~~amount of the distribution that does not exceed the greater of:~~

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

875 ~~b. The amount of income of the investment entity for the~~
876 ~~current year and the prior 2 years, as reported to the trustee~~
877 ~~by the investment entity for federal income tax purposes, less~~
878 ~~any distributions of moneys or property made by the investment~~
879 ~~entity to the trustee during the prior 2 years.~~

880 ~~3. "Investment entity" means a targeted entity that~~
881 ~~normally derives 50 percent or more of its annual cumulative net~~
882 ~~income from interest, dividends, annuities, royalties, rental~~
883 ~~activity, or other passive investments, including income from~~
884 ~~the sale or exchange of such passive investments.~~

885 ~~4. "Private trustee" means a trustee who is an individual,~~
886 ~~but only if the trustee is unable to utilize the power to adjust~~
887 ~~between income and principal with respect to receipts from~~
888 ~~entities described in this subsection pursuant to s. 738.104. A~~
889 ~~bank, trust company, or other commercial trustee shall not be~~
890 ~~considered to be a private trustee.~~

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

895 ~~6. "Undistributed cumulative net income" means the trust's~~
896 ~~pro rata share of cumulative net income, less all prior~~
897 ~~distributions from the targeted entity to the trust that have~~
898 ~~been allocated to income.~~

899 ~~(d) This subsection shall not be construed to modify or~~

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900 ~~change any of the provisions of ss. 738.705 and 738.706 relating~~
901 ~~to income taxes.~~

902 ~~(8) A trustee may rely upon a statement made by an entity~~
903 ~~about the source or character of a distribution, about the~~
904 ~~amount of profits of a targeted entity, or about the nature and~~
905 ~~value of assets of an investment entity if the statement is made~~
906 ~~at or near the time of distribution by the entity's board of~~
907 ~~directors or other person or group of persons authorized to~~
908 ~~exercise powers to pay money or transfer property comparable to~~
909 ~~those of a corporation's board of directors.~~

910 Section 13. Section 738.402, Florida Statutes, is amended
911 to read:

912 738.402 Distribution from trust or estate.—A fiduciary
913 ~~trustee~~ shall allocate to income an amount received as a
914 distribution of income from a trust or an estate in which the
915 trust has an interest other than a purchased interest and ~~shall~~
916 allocate to principal an amount received as a distribution of
917 principal from such a trust or estate. If a fiduciary trustee
918 purchases an interest in a trust that is an investment entity,
919 or a decedent or donor transfers an interest in such a trust to
920 a fiduciary trustee, s. 738.401 or s. 738.608 applies to a
921 receipt from the trust.

922 Section 14. Section 738.403, Florida Statutes, is amended
923 to read:

924 738.403 Business and other activities conducted by
925 fiduciary trustee.—

926 (1) If a fiduciary trustee who conducts a business or other
927 activity determines that it is in the best interest of all the
928 beneficiaries to account separately for the business or activity

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929 instead of accounting for the business or activity as part of
930 the trust's or estate's general accounting records, the
931 fiduciary trustee may maintain separate accounting records for
932 the transactions of the ~~such~~ business or other activity, whether
933 or not the assets of such business or activity are segregated
934 from other trust or estate assets.

935 (2) A fiduciary trustee who accounts separately for a
936 business or other activity may determine the extent to which the
937 net cash receipts of the ~~such~~ business or activity must be
938 retained for working capital, the acquisition or replacement of
939 fixed assets, and other reasonably foreseeable needs of the
940 business or activity, and the extent to which the remaining net
941 cash receipts are accounted for as principal or income in the
942 trust's or estate's general accounting records. If a fiduciary
943 ~~trustee~~ sells assets of the business or other activity, other
944 than in the ordinary course of the business or activity, the
945 fiduciary must ~~trustee shall~~ account for the net amount received
946 as principal in the trust's or estate's general accounting
947 records to the extent the fiduciary trustee determines that the
948 amount received is no longer required in the conduct of the
949 business.

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

- 952 (a) Retail, manufacturing, service, and other traditional
953 business activities.
- 954 (b) Farming.
- 955 (c) Raising and selling livestock and other animals.
- 956 (d) Management of rental properties.
- 957 (e) Extraction of minerals and other natural resources.

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958 (f) Timber operations.

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

960 Section 15. Section 738.501, Florida Statutes, is amended
961 to read:

962 738.501 Principal receipts.—A fiduciary ~~trustee~~ shall
963 allocate to principal:

964 (1) To the extent not allocated to income under this
965 chapter, assets received from a donor ~~transferor~~ during the
966 donor's ~~transferor's~~ lifetime, a decedent's estate, a trust with
967 a terminating income interest, or a payor under a contract
968 naming the trust, estate, or fiduciary ~~its trustee~~ as
969 beneficiary.

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

973 (3) Amounts recovered from third parties to reimburse the
974 trust or estate because of disbursements described in s.
975 738.702(1)(g) or for other reasons to the extent not based on
976 the loss of income.

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

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

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

985 Section 16. Section 738.502, Florida Statutes, is amended
986 to read:

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987 738.502 Rental property.—~~If To the extent~~ a fiduciary
988 ~~trustee~~ accounts for receipts from rental property pursuant to
989 this section, the fiduciary ~~trustee~~ shall allocate to income an
990 amount received as rent of real or personal property, including
991 an amount received for cancellation or renewal of a lease. An
992 amount received as a refundable deposit, including a security
993 deposit or a deposit that is to be applied as rent for future
994 periods, must ~~shall~~ be added to principal and held subject to
995 the terms of the lease and is not available for distribution to
996 a beneficiary until the fiduciary's ~~trustee's~~ contractual
997 obligations have been satisfied with respect to that amount.

998 Section 17. Subsections (1), (2), and (3) of section
999 738.503, Florida Statutes, are amended to read:

1000 738.503 Obligation to pay money.—

1001 (1) An amount received as interest, whether determined at a
1002 fixed, variable, or floating rate, on an obligation to pay money
1003 to the fiduciary ~~trustee~~, including an amount received as
1004 consideration for prepaying principal, shall be allocated to
1005 income without any provision for amortization of premium.

1006 (2) Except as otherwise provided herein, a fiduciary
1007 ~~trustee~~ shall allocate to principal an amount received from the
1008 sale, redemption, or other disposition of an obligation to pay
1009 money to the fiduciary ~~trustee~~.

1010 (3) The increment in value of a bond or other obligation
1011 for the payment of money bearing no stated interest but payable
1012 at a future time in excess of the price at which it was issued
1013 or purchased, if purchased after issuance, is distributable as
1014 income. If the increment in value accrues and becomes payable
1015 pursuant to a fixed schedule of appreciation, it may be

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1016 distributed to the beneficiary who was the income beneficiary at
1017 the ~~this~~ time of increment from the first principal cash
1018 available or, if none is available, when the increment is
1019 realized by sale, redemption, or other disposition. If ~~When~~
1020 unrealized increment is distributed as income but out of
1021 principal, the principal must ~~shall~~ be reimbursed for the
1022 increment when realized. If, in the reasonable judgment of the
1023 fiduciary ~~trustee~~, exercised in good faith, the ultimate payment
1024 of the bond principal is in doubt, the fiduciary ~~trustee~~ may
1025 withhold the payment of incremental interest to the income
1026 beneficiary.

1027 Section 18. Subsections (1) and (2) of section 738.504,
1028 Florida Statutes, are amended to read:

1029 738.504 Insurance policies and similar contracts.—

1030 (1) Except as otherwise provided in subsection (2), a
1031 fiduciary ~~trustee~~ shall allocate to principal the proceeds of a
1032 life insurance policy or other contract in which the trust,
1033 estate, or fiduciary ~~its trustee~~ is named as beneficiary,
1034 including a contract that insures the trust, estate, or
1035 fiduciary ~~its trustee~~ against loss for damage to, destruction
1036 of, or loss of title to a trust or estate asset. The fiduciary
1037 ~~trustee~~ shall allocate dividends on an insurance policy to
1038 income if the premiums on the policy are paid from income and to
1039 principal if the premiums are paid from principal.

1040 (2) A fiduciary ~~trustee~~ shall allocate to income the
1041 proceeds of a contract that insures the fiduciary ~~trustee~~
1042 against loss of occupancy or other use by an income beneficiary,
1043 loss of income, or, subject to s. 738.403, loss of profits from
1044 a business.

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1045 Section 19. Section 738.601, Florida Statutes, is amended
1046 to read:

1047 738.601 Insubstantial allocations not required.—If a
1048 fiduciary ~~trustee~~ determines that an allocation between
1049 principal and income required by s. 738.602, s. 738.603, s.
1050 738.604, s. 738.605, or s. 738.608 is insubstantial, the
1051 fiduciary ~~trustee~~ may allocate the entire amount to principal
1052 unless one of the circumstances described in s. 738.104(3)
1053 applies to the allocation. This power may be exercised by a
1054 cofiduciary under ~~co~~~~trustee~~ in the circumstances described in s.
1055 738.104(4) and may be released for the reasons and in the manner
1056 described in s. 738.104(5). An allocation is presumed to be
1057 insubstantial if:

1058 (1) The amount of the allocation would increase or decrease
1059 net income in an accounting period, as determined before the
1060 allocation, by less than 10 percent; or

1061 (2) The value of the asset producing the receipt for which
1062 the allocation would be made is less than 10 percent of the
1063 total value of the trust or estate ~~trust's~~ assets at the
1064 beginning of the accounting period.

1065 Section 20. Section 738.602, Florida Statutes, is amended
1066 to read:

1067 738.602 Payments from deferred compensation plans,
1068 annuities, and retirement plans or accounts.—

1069 (1) As used in ~~For purposes of~~ this section, the term:

1070 (a) "Fund" means a private or commercial annuity, an
1071 individual retirement account, an individual retirement annuity,
1072 a deferred compensation plan, a pension plan, a profit-sharing
1073 plan, a stock-bonus plan, an employee stock-ownership plan, or

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1074 another similar arrangement in which federal income tax is
1075 deferred.

1076 (b) "Income of the fund" means income that is determined
1077 according to subsection (2) or subsection (3).

1078 (c) "Nonseparate account" means a fund for which the value
1079 of the participant's or account owner's right to receive
1080 benefits can be determined only by the occurrence of a date or
1081 event as defined in the instrument governing the fund.

1082 (d) "Payment" means a distribution from a fund that a
1083 fiduciary ~~trustee~~ may receive over a fixed number of years or
1084 during the life of one or more individuals because of services
1085 rendered or property transferred to the payor in exchange for
1086 future payments. The term includes a distribution made in money
1087 or property from the payor's general assets or from a fund
1088 created by the payor or payee.

1089 (e) "Separate account" means a fund holding assets
1090 exclusively for the benefit of a participant or account owner
1091 and:

1092 1. The value of such assets or the value of the separate
1093 account is ascertainable at any time; or

1094 2. The administrator of the fund maintains records that
1095 show receipts and disbursements associated with such assets.

1096 (2) (a) For a fund that is a separate account, income of the
1097 fund shall be determined:

1098 1. As if the fund were a trust subject to the provisions of
1099 ss. 738.401-738.706; or

1100 2. As a unitrust amount calculated by multiplying the fair
1101 market value of the fund as of the first day of the first
1102 accounting period and, thereafter, as of the last day of the

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1103 accounting period that immediately precedes the accounting
1104 period during which a payment is received by the percentage
1105 determined in accordance with s. 738.1041(2)(b)2.a. The
1106 fiduciary ~~trustee~~ shall determine such percentage as of the
1107 first month that the fiduciary's ~~trustee's~~ election to treat the
1108 income of the fund as a unitrust amount becomes effective. For
1109 purposes of this subparagraph, "fair market value" means the
1110 fair market value of the assets held in the fund as of the
1111 applicable valuation date determined as provided in this
1112 subparagraph. The fiduciary ~~trustee~~ is not liable for good faith
1113 reliance upon any valuation supplied by the person or persons in
1114 possession of the fund. If the fiduciary ~~trustee~~ makes or
1115 terminates an election under this subparagraph, the fiduciary
1116 ~~trustee~~ shall make such disclosure in a trust disclosure
1117 document that satisfies the requirements of s. 736.1008(4)(a).

1118 (b) The fiduciary ~~may trustee shall have discretion to~~
1119 elect the method of determining the income of the fund pursuant
1120 to this subsection and may change the method of determining
1121 income of the fund for any future accounting period.

1122 (3) For a fund that is a nonseparate account, income of the
1123 fund is a unitrust amount determined by calculating the present
1124 value of the right to receive the remaining payments under 26
1125 U.S.C. s. 7520 of the Internal Revenue Code as of the first day
1126 of the accounting period and multiplying it by the percentage
1127 determined in accordance with s. 738.1041(2)(b)2.a. The
1128 fiduciary ~~trustee~~ shall determine the unitrust amount as of the
1129 first month that the fiduciary's ~~trustee's~~ election to treat the
1130 income of the fund as a unitrust amount becomes effective.

1131 (4) Except for those trusts described in subsection (5),

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1132 the fiduciary trustee shall allocate to income the lesser of the
1133 payment received from a fund or the income determined under
1134 subsection (2) or subsection (3). Any remaining amount of the
1135 payment shall be allocated to principal ~~a payment from a fund as~~
1136 ~~follows:~~

1137 ~~(a) That portion of the payment the payor characterizes as~~
1138 ~~income shall be allocated to income, and any remaining portion~~
1139 ~~of the payment shall be allocated to principal.~~

1140 ~~(b) To the extent that the payor does not characterize any~~
1141 ~~portion of a payment as income or principal and the trustee can~~
1142 ~~ascertain the income of the fund by the fund's account~~
1143 ~~statements or any other reasonable source, the trustee shall~~
1144 ~~allocate to income the lesser of the income of the fund or the~~
1145 ~~entire payment and shall allocate to principal any remaining~~
1146 ~~portion of the payment.~~

1147 ~~(c) If the trustee, acting reasonably and in good faith,~~
1148 ~~determines that neither paragraph (a) nor paragraph (b) applies~~
1149 ~~and all or part of the payment is required to be made, the~~
1150 ~~trustee shall allocate to income 10 percent of the portion of~~
1151 ~~the payment that is required to be made during the accounting~~
1152 ~~period and shall allocate the balance to principal. If no part~~
1153 ~~of a payment is required to be made or the payment received is~~
1154 ~~the entire amount to which the trustee is entitled, the trustee~~
1155 ~~shall allocate the entire payment to principal. For purposes of~~
1156 ~~this paragraph, a payment is not "required to be made" to the~~
1157 ~~extent the payment is made because the trustee exercises a right~~
1158 ~~of withdrawal.~~

1159 (5) For a trust that which, in order to qualify for the
1160 estate or gift tax marital deduction under the Internal Revenue

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1161 Code or comparable law of any state, entitles the spouse to all
1162 of the income of the trust, and the terms of the trust are
1163 silent as to the time and frequency for distribution of the
1164 income of the fund, ~~then:~~

1165 (a) For a fund that is a separate account, unless the
1166 spouse directs the fiduciary ~~trustee~~ to leave the income of the
1167 fund in the fund, the fiduciary ~~trustee~~ shall withdraw and pay
1168 to the spouse, at least no less frequently than annually:

1169 1. All of the income of the fund determined in accordance
1170 with subparagraph (2) (a)1.; or

1171 2. The income of the fund as a unitrust amount determined
1172 in accordance with subparagraph (2) (a)2.

1173 (b) For a fund that is a nonseparate account, the fiduciary
1174 ~~trustee~~ shall withdraw and pay to the spouse, at least no less
1175 ~~frequently than~~ annually, the income of the fund as a unitrust
1176 amount determined in accordance with subsection (3).

1177 (6) This section does not apply to payments to which s.
1178 738.603 applies.

1179 Section 21. Section 738.603, Florida Statutes, is amended
1180 to read:

1181 738.603 Liquidating asset.—

1182 (1) For purposes of this section, the term "liquidating
1183 asset" means an asset the value of which will diminish or
1184 terminate because the asset is expected to produce receipts for
1185 a period of limited duration. The term includes a leasehold,
1186 patent, copyright, royalty right, and right to receive payments
1187 for ~~during a period of~~ more than 1 year under an arrangement
1188 that does not provide for the payment of interest on the unpaid
1189 balance. The term does not include a payment subject to s.

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1190 738.602, resources subject to s. 738.604, timber subject to s.
1191 738.605, an activity subject to s. 738.607, an asset subject to
1192 s. 738.608, or any asset for which the fiduciary trustee
1193 establishes a reserve for depreciation under s. 738.703.

1194 (2) A fiduciary trustee shall allocate to income 5 10
1195 percent of the receipts from the carrying value of a liquidating
1196 asset and the balance to principal. Amounts allocated to
1197 principal shall reduce the carrying value of the liquidating
1198 asset, but not below zero. Amounts received in excess of the
1199 remaining carrying value must be allocated to principal.

1200 Section 22. Subsections (1), (3), and (4) of section
1201 738.604, Florida Statutes, are amended to read:

1202 738.604 Minerals, water, and other natural resources.—

1203 (1) If ~~To the extent~~ a fiduciary trustee accounts for
1204 receipts from an interest in minerals or other natural resources
1205 pursuant to this section, the fiduciary trustee shall allocate
1206 such receipts as follows:

1207 (a) If received as nominal delay rental or nominal annual
1208 rent on a lease, a receipt shall be allocated to income.

1209 (b) If received from a production payment, a receipt shall
1210 be allocated to income if and to the extent the agreement
1211 creating the production payment provides a factor for interest
1212 or its equivalent. The balance shall be allocated to principal.

1213 (c) If an amount received as a royalty, shut-in-well
1214 payment, take-or-pay payment, bonus, or delay rental is more
1215 than nominal, 90 percent shall be allocated to principal and the
1216 balance to income.

1217 (d) If an amount is received from a working interest or any
1218 other interest not provided for in paragraph (a), paragraph (b),

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1219 or paragraph (c), 90 percent of the net amount received shall be
1220 allocated to principal and the balance to income.

1221 (3) This chapter applies whether or not a decedent or donor
1222 was extracting minerals, water, or other natural resources
1223 before the interest became subject to the trust or estate.

1224 (4) If a trust or estate owns an interest in minerals,
1225 water, or other natural resources on January 1, 2003, the
1226 fiduciary ~~trustee~~ may allocate receipts from the interest as
1227 provided in this chapter or in the manner used by the fiduciary
1228 ~~trustee~~ before January 1, 2003. If the trust or estate acquires
1229 an interest in minerals, water, or other natural resources after
1230 January 1, 2003, the fiduciary ~~trustee~~ shall allocate receipts
1231 from the interest as provided in this chapter.

1232 Section 23. Section 738.605, Florida Statutes, is amended
1233 to read:

1234 738.605 Timber.—

1235 (1) ~~If To the extent~~ a fiduciary ~~trustee~~ accounts for
1236 receipts from the sale of timber and related products pursuant
1237 to this section, the fiduciary ~~trustee~~ shall allocate such ~~the~~
1238 net receipts as follows:

1239 (a) To income to the extent the amount of timber removed
1240 from the land does not exceed the rate of growth of the timber
1241 during the accounting periods in which a beneficiary has a
1242 mandatory income interest;

1243 (b) To principal to the extent the amount of timber removed
1244 from the land exceeds the rate of growth of the timber or the
1245 net receipts are from the sale of standing timber;

1246 (c) To or between income and principal if the net receipts
1247 are from the lease of timberland or from a contract to cut

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1248 timber from land owned by a trust or estate by determining the
1249 amount of timber removed from the land under the lease or
1250 contract and applying the rules in paragraphs (a) and (b); or

1251 (d) To principal to the extent advance payments, bonuses,
1252 and other payments are not allocated pursuant to paragraph (a),
1253 paragraph (b), or paragraph (c).

1254 (2) In determining net receipts to be allocated pursuant to
1255 subsection (1), a fiduciary ~~trustee~~ shall deduct and transfer to
1256 principal a reasonable amount for depletion.

1257 (3) This chapter applies whether or not a decedent or donor
1258 ~~transferor~~ was harvesting timber from the property before the
1259 property became subject to the trust or estate.

1260 (4) If a trust or estate owns an interest in timberland on
1261 January 1, 2003, the fiduciary ~~trustee~~ may allocate net receipts
1262 from the sale of timber and related products as provided in this
1263 chapter or in the manner used by the fiduciary ~~trustee~~ before
1264 January 1, 2003. If the trust or estate acquires an interest in
1265 timberland after January 1, 2003, the fiduciary ~~trustee~~ shall
1266 allocate net receipts from the sale of timber and related
1267 products as provided in this chapter.

1268 Section 24. Subsection (1) of section 738.606, Florida
1269 Statutes, is amended to read:

1270 738.606 Property not productive of income.—

1271 (1) If a marital deduction under the Internal Revenue Code
1272 or comparable law of any state is allowed for all or part of a
1273 trust the income of which must ~~is required to~~ be distributed to
1274 the grantor's spouse and the assets of which consist
1275 substantially of property that does not provide the spouse with
1276 sufficient income from or use of the trust assets, and if the

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1277 amounts the trustee transfers from principal to income under s.
1278 738.104 and distributes to the spouse from principal pursuant to
1279 the terms of the trust are insufficient to provide the spouse
1280 with the beneficial enjoyment required to obtain the marital
1281 deduction, the spouse may require the trustee to make property
1282 productive of income, convert property within a reasonable time,
1283 or exercise the power conferred by ss. 738.104 and 738.1041. The
1284 trustee may decide which action or combination of actions to
1285 take.

1286 Section 25. Subsections (2) and (3) of section 738.607,
1287 Florida Statutes, are amended to read:

1288 738.607 Derivatives and options.—

1289 (2) To the extent a fiduciary ~~trustee~~ does not account
1290 under s. 738.403 for transactions in derivatives, the fiduciary
1291 ~~trustee~~ shall allocate to principal receipts from and
1292 disbursements made in connection with those transactions.

1293 (3) If a fiduciary ~~trustee~~ grants an option to buy property
1294 from the trust or estate whether or not the trust or estate owns
1295 the property when the option is granted, grants an option that
1296 permits another person to sell property to the trust or estate,
1297 or acquires an option to buy property for the trust or estate or
1298 an option to sell an asset owned by the trust or estate, and the
1299 fiduciary ~~trustee~~ or other owner of the asset is required to
1300 deliver the asset if the option is exercised, an amount received
1301 for granting the option shall be allocated to principal. An
1302 amount paid to acquire the option shall be paid from principal.
1303 A gain or loss realized upon the exercise of an option,
1304 including an option granted to a grantor of the trust or estate
1305 for services rendered, shall be allocated to principal.

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1306 Section 26. Subsections (2) and (3) of section 738.608,
1307 Florida Statutes, are amended to read:

1308 738.608 Asset-backed securities.—

1309 (2) If a trust or estate receives a payment from interest
1310 or other current return and from other proceeds of the
1311 collateral financial assets, the fiduciary ~~trustee~~ shall
1312 allocate to income the portion of the payment which the payor
1313 identifies as being from interest or other current return and
1314 ~~shall~~ allocate the balance of the payment to principal.

1315 (3) If a trust or estate receives one or more payments in
1316 exchange for the trust's or estate's entire interest in an
1317 asset-backed security during a single accounting period, the
1318 fiduciary ~~trustee~~ shall allocate the payments to principal. If a
1319 payment is one of a series of payments that will result in the
1320 liquidation of the trust's or estate's interest in the security
1321 over more than a single accounting period, the fiduciary ~~trustee~~
1322 shall allocate 10 percent of the payment to income and the
1323 balance to principal.

1324 Section 27. Section 738.701, Florida Statutes, is amended
1325 to read:

1326 738.701 Disbursements from income.—A fiduciary ~~trustee~~
1327 shall make the following disbursements from income to the extent
1328 they are not disbursements to which s. 738.201(2) ~~(a) or (c)~~
1329 applies:

1330 (1) One-half of the regular compensation of the fiduciary
1331 ~~trustee~~ and of any person providing investment advisory or
1332 custodial services to the fiduciary ~~trustee~~.

1333 (2) One-half of all expenses for accountings, judicial
1334 proceedings, or other matters that involve both the income and

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1335 remainder interests.

1336 (3) All of the other ordinary expenses incurred in
1337 connection with the administration, management, or preservation
1338 of trust property and the distribution of income, including
1339 interest, ordinary repairs, regularly recurring taxes assessed
1340 against principal, and expenses of a proceeding or other matter
1341 that concerns primarily the income interest.

1342 (4) Recurring premiums on insurance covering the loss of a
1343 principal asset or the loss of income from or use of the asset.

1344 Section 28. Subsection (1) of section 738.702, Florida
1345 Statutes, is amended to read:

1346 738.702 Disbursements from principal.—

1347 (1) A fiduciary ~~trustee~~ shall make the following
1348 disbursements from principal:

1349 (a) The remaining one-half of the disbursements described
1350 in s. 738.701(1) and (2).

1351 (b) All of the trustee's compensation calculated on
1352 principal as a fee for acceptance, distribution, or termination
1353 and disbursements made to prepare property for sale.

1354 (c) Payments on the principal of a trust debt.

1355 (d) Expenses of a proceeding that concerns primarily
1356 principal, including a proceeding to construe the trust or will,
1357 or to protect the trust, estate, or its property.

1358 (e) Premiums paid on a policy of insurance not described in
1359 s. 738.701(4) of which the trust or estate is the owner and
1360 beneficiary.

1361 (f) Estate, inheritance, and other transfer taxes,
1362 including penalties, apportioned to the trust.

1363 (g) Disbursements related to environmental matters,

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1364 including reclamation, assessing environmental conditions,
1365 remedying and removing environmental contamination, monitoring
1366 remedial activities and the release of substances, preventing
1367 future releases of substances, collecting amounts from persons
1368 liable or potentially liable for the costs of such activities,
1369 penalties imposed under environmental laws or regulations and
1370 other payments made to comply with those laws or regulations,
1371 statutory or common law claims by third parties, and defending
1372 claims based on environmental matters.

1373 (h) Payments representing extraordinary repairs or expenses
1374 incurred in making a capital improvement to principal, including
1375 special assessments; however, a fiduciary ~~trustee~~ may establish
1376 an allowance for depreciation out of income to the extent
1377 permitted by s. 738.703.

1378 Section 29. Subsection (2) of section 738.703, Florida
1379 Statutes, is amended to read:

1380 738.703 Transfers from income to principal for
1381 depreciation.—

1382 (2) A fiduciary ~~trustee~~ may transfer to principal a
1383 reasonable amount of the net cash receipts from a principal
1384 asset that is subject to depreciation but may not transfer any
1385 amount for depreciation:

1386 (a) Of that portion of real property used or available for
1387 use by a beneficiary as a residence or of tangible personal
1388 property held or made available for the personal use or
1389 enjoyment of a beneficiary;

1390 (b) During the administration of a decedent's estate; or

1391 (c) Under this section if the fiduciary ~~trustee~~ is
1392 accounting under s. 738.403 for the business or activity in

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1393 which the asset is used.

1394 Section 30. Subsections (1), (2), and (3) of section
1395 738.704, Florida Statutes, are amended to read:

1396 738.704 Transfers from income to reimburse principal.—

1397 (1) If a fiduciary ~~trustee~~ makes or expects to make a
1398 principal disbursement described in this section, the fiduciary
1399 ~~trustee~~ may transfer an appropriate amount from income to
1400 principal in one or more accounting periods to reimburse
1401 principal or to provide a reserve for future principal
1402 disbursements.

1403 (2) Principal disbursements to which subsection (1) applies
1404 include the following, but only to the extent the fiduciary
1405 ~~trustee~~ has not been and does not expect to be reimbursed by a
1406 third party:

1407 (a) An amount chargeable to income but paid from principal
1408 because the amount is unusually large.

1409 (b) Disbursements made to prepare property for rental,
1410 including tenant allowances, leasehold improvements, and
1411 broker's commissions.

1412 (c) Disbursements described in s. 738.702(1)(g).

1413 (3) If the asset the ownership of which gives rise to the
1414 disbursements becomes subject to a successive income interest
1415 after an income interest ends, a fiduciary ~~trustee~~ may continue
1416 to transfer amounts from income to principal as provided in
1417 subsection (1).

1418 Section 31. Section 738.705, Florida Statutes, is amended
1419 to read:

1420 738.705 Income taxes.—

1421 (1) A tax required to be paid by a fiduciary ~~trustee~~ based

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1422 on receipts allocated to income shall be paid from income.

1423 (2) A tax required to be paid by a fiduciary ~~trustee~~ based
1424 on receipts allocated to principal shall be paid from principal,
1425 even if the tax is called an income tax by the taxing authority.

1426 (3) A tax required to be paid by a fiduciary ~~trustee~~ on the
1427 trust's or estate's share of an entity's taxable income shall be
1428 paid proportionately:

1429 (a) From income to the extent receipts from the entity are
1430 allocated to income; ~~and~~

1431 (b) From principal to the extent:

1432 ~~1. receipts from the entity are allocated to principal; and~~

1433 ~~2. The trust's share of the entity's taxable income exceeds~~
1434 ~~the total receipts described in paragraph (a) and subparagraph~~
1435 ~~1.~~

1436 (c) From principal to the extent that the income taxes
1437 payable by the trust or estate exceed the total receipts from
1438 the entity.

1439 (4) After applying subsections (1)-(3), the fiduciary shall
1440 adjust income or principal receipts to the extent that the
1441 trust's or estate's income taxes are reduced, but not
1442 eliminated, because the trust or estate receives a deduction for
1443 payments made to a beneficiary. The amount distributable to that
1444 beneficiary as income as a result of this adjustment shall be
1445 equal to the cash received by the trust or estate, reduced, but
1446 not below zero, by the entity's taxable income allocable to the
1447 trust or estate multiplied by the trust's or estate's income tax
1448 rate. The reduced amount shall be divided by the difference
1449 between 1 and the trust's or estate's income tax rate in order
1450 to determine the amount distributable to that beneficiary as

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1451 income before giving effect to other receipts or disbursements
1452 allocable to that beneficiary's interest. ~~For purposes of this~~
1453 ~~section, receipts allocated to principal or income shall be~~
1454 ~~reduced by the amount distributed to a beneficiary from~~
1455 ~~principal or income for which the trust receives a deduction in~~
1456 ~~calculating the tax.~~

1457 Section 32. Section 738.801, Florida Statutes, is amended
1458 to read:

1459 (Substantial rewording of section. See
1460 s. 738.801, F.S., for present text.)

1461 738.801 Apportionment of expenses; improvements.-

1462 (1) For purposes of this section, the term:

1463 (a) "Remainderman" means the holder of the remainder
1464 interests after the expiration of a tenant's estate in property.

1465 (b) "Tenant" means the holder of an estate for life or term
1466 of years in real property or personal property, or both.

1467 (2) If a trust has not been created, expenses shall be
1468 apportioned between the tenant and remainderman as follows:

1469 (a) The following expenses are allocated to and shall be
1470 paid by the tenant:

1471 1. All ordinary expenses incurred in connection with the
1472 administration, management, or preservation of the property,
1473 including interest, ordinary repairs, regularly recurring taxes
1474 assessed against the property, and expenses of a proceeding or
1475 other matter that concerns primarily the tenant's estate or use
1476 of the property.

1477 2. Recurring premiums on insurance covering the loss of the
1478 property or the loss of income from or use of the property.

1479 3. Any of the expenses described in subparagraph (b)3.

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1480 which are attributable to the use of the property by the tenant.

1481 (b) The following expenses are allocated to and shall be
1482 paid by the remainderman:

1483 1. Payments on the principal of a debt secured by the
1484 property, except to the extent the debt is for expenses
1485 allocated to the tenant.

1486 2. Expenses of a proceeding or other matter that concerns
1487 primarily the title to the property, other than title to the
1488 tenant's estate.

1489 3. Except as provided in subparagraph (a)3., expenses
1490 related to environmental matters, including reclamation,
1491 assessing environmental conditions, remedying and removing
1492 environmental contamination, monitoring remedial activities and
1493 the release of substances, preventing future releases of
1494 substances, collecting amounts from persons liable or
1495 potentially liable for the costs of such activities, penalties
1496 imposed under environmental laws or regulations and other
1497 payments made to comply with those laws or regulations,
1498 statutory or common law claims by third parties, and defending
1499 claims based on environmental matters.

1500 4. Extraordinary repairs.

1501 (c) If the tenant or remainderman incurred an expense for
1502 the benefit of his or her own estate without consent or
1503 agreement of the other, he or she must pay such expense in full.

1504 (d) Except as provided in paragraph (c), the cost of, or
1505 special taxes or assessments for, an improvement representing an
1506 addition of value to property forming part of the principal
1507 shall be paid by the tenant if the improvement is not reasonably
1508 expected to outlast the estate of the tenant. In all other

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1509 cases, only a part shall be paid by the tenant while the
1510 remainder shall be paid by the remainderman. The part payable by
1511 the tenant is ascertainable by taking that percentage of the
1512 total that is found by dividing the present value of the
1513 tenant's estate by the present value of an estate of the same
1514 form as that of the tenant, except that it is limited for a
1515 period corresponding to the reasonably expected duration of the
1516 improvement. The computation of present values of the estates
1517 shall be made by using the rate defined in 26 U.S.C. s. 7520,
1518 then in effect and, in the case of an estate for life, the
1519 official mortality tables then in effect under 26 U.S.C. s.
1520 7520. Other evidence of duration or expectancy may not be
1521 considered.

1522 (3) This section does not apply to the extent it is
1523 inconsistent with the instrument creating the estates, the
1524 agreement of the parties, or the specific direction of the
1525 taxing or other statutes.

1526 (4) The common law applicable to tenants and remaindermen
1527 supplements this section, except as modified by this section or
1528 other laws.

1529 Section 33. This act shall take effect January 1, 2013.