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1 A bill to be entitled
2 An act relating to the Florida Uniform Principal and
3 Income Act; amending s. 738.102, F.S.; defining the
4 term "carrying value"; repealing s. 738.104(11), F.S.,
5 relating to the administration of a trust and its
6 applicability, which is being transferred to another
7 section; amending s. 738.1041, F.S.; defining the term
8 "average fair market value" and revising the term
9 "unitrust amount"; deleting a duplicative provision
10 relating to conclusive determinations of the terms of
11 a unitrust; revising provisions relating to an express
12 total return unitrust; amending s. 738.105, F.S.;
13 substituting the term "trustee" for "fiduciary" with
14 respect to judicial control of discretionary powers;
15 amending s. 738.201, F.S.; revising provisions
16 relating to the determination and distribution of net
17 income; amending s. 738.202, F.S.; revising provisions
18 relating to distributions to residuary and remainder
19 beneficiaries; amending ss. 738.301, 738.302, and
20 738.303, F.S.; substituting the term "fiduciary" for
21 "trustee" to clarify that provisions apply to all
22 fiduciaries; amending s. 738.401, F.S.; substituting
23 the term "fiduciary" for "trustee" to clarify that
24 provisions apply to all fiduciaries; revising how
25 distributions from entities are allocated between
26 income and principal; amending ss. 738.402, 738.403,
27 738.501, 738.502, 738.503, 738.504, and 738.601, F.S.;
28 substituting the term "fiduciary" for "trustee" to

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29 clarify that provisions apply to all fiduciaries;
30 amending s. 738.602, F.S.; substituting the term
31 "fiduciary" for "trustee" to clarify that provisions
32 apply to all fiduciaries; revising provisions relating
33 to allocations to trusts; amending s. 738.603, F.S.;
34 substituting the term "fiduciary" for "trustee" to
35 clarify that provisions apply to all fiduciaries;
36 revising provisions relating to the allocation between
37 income and principal when liquidating assets; amending
38 ss. 738.604, 738.605, 738.606, 738.607, 738.608,
39 738.701, 738.702, 738.703, and 738.704, F.S.;
40 substituting the term "fiduciary" for "trustee" to
41 clarify that provisions apply to all fiduciaries;
42 amending s. 738.705, F.S.; substituting the term
43 "fiduciary" for "trustee" to clarify that provisions
44 apply to all fiduciaries; revising the method for
45 allocating income taxes between income and principal;
46 amending s. 738.801, F.S.; clarifying the
47 apportionment of expenses between tenants and
48 remaindermen; amending s. 738.804, F.S.; transferring
49 a provision relating to applicability; providing an
50 effective date.

51
52 Be It Enacted by the Legislature of the State of Florida:

53
54 Section 1. Present subsections (3) through (13) of section
55 738.102, Florida Statutes, are renumbered as subsections (4)
56 through (14), respectively, and a new subsection (3) is added to

57 | that section, to read:

58 | 738.102 Definitions.—As used in this chapter, the term:

59 | (3) "Carrying value" means the fair market value at the
 60 | time the assets are received by the fiduciary. For the estates
 61 | of decedents and trusts described in s. 733.707(3), after the
 62 | grantor's death, the assets are considered received as of the
 63 | date of death. If there is a change in fiduciaries, a majority
 64 | of the continuing fiduciaries may elect to adjust the carrying
 65 | values to reflect the fair market value of the assets at the
 66 | beginning of their administration. If such election is made, it
 67 | must be reflected on the first accounting filed after the
 68 | election. For assets acquired during the administration of the
 69 | estate or trust, the carrying value is equal to the acquisition
 70 | costs of the asset.

71 | Section 2. Subsection (11) of section 738.104, Florida
 72 | Statutes, is repealed.

73 | Section 3. Section 738.1041, Florida Statutes, is amended
 74 | to read:

75 | 738.1041 Total return unitrust.—

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

77 | (a) "Average fair market value" means the average of the
 78 | fair market values of assets held by the trust at the beginning
 79 | of the current and each of the 2 preceding years, or for the
 80 | entire term of the trust if there are less than 2 preceding
 81 | years, and adjusted as follows:

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

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85 2. If assets have been distributed from the trust during
86 the years used to determine the average, other than in
87 satisfaction of the unitrust amount, the amount of each
88 distribution is subtracted from all years in which such
89 distribution was not included.

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

96 (c)-(b) "Fair market value" means the fair market value of
97 the assets held by the trust as otherwise determined under this
98 chapter, reduced by all known noncontingent liabilities.

99 (d)-(e) "Income trust" means a trust, created by ~~either~~ an
100 inter vivos or a testamentary instrument, which directs or
101 permits the trustee to distribute the net income of the trust to
102 one or more persons, ~~either~~ in fixed proportions or in amounts
103 or proportions determined by the trustee and regardless of
104 whether the trust directs or permits the trustee to distribute
105 the principal of the trust to one or more such persons.

106 (e)-(d) "Interested distributee" means a person to whom
107 distributions of income or principal can currently be made and
108 who has the power to remove the existing trustee and designate
109 as successor a person who may be a "related or subordinate
110 party," ~~as defined in the Internal Revenue Code, 26 U.S.C. s.~~
111 ~~672(c),~~ with respect to such distributee.

112 (f)-(e) "Interested trustee" means an individual trustee to

113 | whom the net income or principal of the trust can currently be
 114 | distributed or would be distributed if the trust were ~~then~~ to
 115 | terminate and be distributed, any trustee whom an interested
 116 | distributee has the power to remove and replace with a related
 117 | or subordinate party ~~as defined in paragraph (d)~~, or an
 118 | individual trustee whose legal obligation to support a
 119 | beneficiary may be satisfied by distributions of income and
 120 | principal of the trust.

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

124 | (h) ~~(f)~~ "Unitrust amount" means the amount determined by
 125 | multiplying the average fair market value of the assets as
 126 | calculated in subparagraph (a)1. ~~defined in paragraph (b)~~ by the
 127 | percentage calculated under paragraph (2) (b).

128 | (2) A trustee may, without court approval, convert an
 129 | income trust to a total return unitrust, reconvert a total
 130 | return unitrust to an income trust, or change the percentage
 131 | used to calculate the unitrust amount or the method used to
 132 | determine the fair market value of the trust if:

133 | (a) The trustee adopts a written statement regarding trust
 134 | distributions which ~~that~~ provides:

135 | 1. In the case of a trust being administered as an income
 136 | trust, that future distributions from the trust will be unitrust
 137 | amounts rather than net income, and indicates the manner in
 138 | which the unitrust amount will be calculated and the method in
 139 | which the fair market value of the trust will be determined.

140 | 2. In the case of a trust being administered as a total

141 return unitrust, that:

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

144 b. The percentage used to calculate the unitrust amount or
145 the method used to determine the fair market value of the trust
146 will be changed, and indicates the manner in which the new
147 unitrust amount will be calculated and the method in which the
148 new fair market value of the trust will be determined;

149 (b) The trustee determines the terms of the unitrust under
150 one of the following methods:

151 1. A disinterested trustee determines, or if there is no
152 trustee other than an interested trustee, the interested trustee
153 appoints a disinterested person who, in its sole discretion but
154 acting in a fiduciary capacity, determines for the interested
155 trustee:

156 a. The percentage to be used to calculate the unitrust
157 amount if, ~~provided~~ the percentage used is not greater than 5
158 percent or ~~not~~ less than 3 percent;

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

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

163 2. The interested trustee or disinterested trustee
164 administers the trust such that:

165 a. The percentage used to calculate the unitrust amount is
166 50 percent of the ~~applicable federal~~ rate as defined in the
167 Internal Revenue Code, 26 U.S.C. s. 7520, in effect for the
168 month the conversion under this section becomes effective and

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169 for each January thereafter; however, if the percentage
170 calculated exceeds 5 percent, the unitrust percentage is ~~shall~~
171 ~~be~~ 5 percent and if the percentage calculated is less than 3
172 percent, the unitrust percentage is ~~shall be~~ 3 percent; and

173 b. The fair market value of the trust shall be determined
174 at least annually on an asset-by-asset basis, reasonably and in
175 good faith, in accordance with ~~the provisions of s. 738.202(5),~~
176 except the following property may ~~shall~~ not be included in
177 determining the value of the trust:

178 (I) Any residential property or any tangible personal
179 property that, as of the first business day of the current
180 valuation year, one or more current beneficiaries of the trust
181 have or have had the right to occupy, or have or have had the
182 right to possess or control, ~~(other than in his or her capacity~~
183 ~~as trustee of the trust),~~ and instead the right of occupancy or
184 the right to possession and control is ~~shall be deemed to be~~ the
185 unitrust amount with respect to such property; however, the
186 unitrust amount must ~~shall~~ be adjusted to take into account
187 partial distributions from or receipt into the trust of such
188 property during the valuation year;~~:-~~

189 (II) Any asset specifically given to a beneficiary and the
190 return on investment on such property, which return on
191 investment shall be distributable to the ~~such~~ beneficiary; or~~:-~~

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

194 (c) The trustee sends written notice of its intention to
195 take such action, along with copies of the ~~such~~ written
196 statement regarding trust distributions and this section, and,

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197 | if applicable, the determinations of ~~either~~ the trustee or the
 198 | disinterested person to:

- 199 | 1. The grantor of the trust, if living.
- 200 | 2. All living persons who are currently receiving or
 201 | eligible to receive distributions of income from ~~of~~ the trust.
- 202 | 3. All living persons who would receive distributions of
 203 | principal of the trust if the trust were to terminate at the
 204 | time of ~~the~~ giving ~~of~~ such notice ~~(without regard to the~~
 205 | exercise of any power of appointment,~~)~~ or, if the trust does not
 206 | provide for its termination, all living persons who would
 207 | receive or be eligible to receive distributions of income or
 208 | principal of the trust if the persons identified in subparagraph
 209 | 2. were deceased.
- 210 | 4. All persons acting as advisers or protectors of the
 211 | trust.

212 |
 213 | Notice under this paragraph shall be served informally~~,~~ in the
 214 | manner provided in the Florida Rules of Civil Procedure relating
 215 | to service of pleadings subsequent to the initial pleading.
 216 | Notice may be served on a legal representative or natural
 217 | guardian of a person without ~~the~~ filing ~~of~~ any proceeding or
 218 | approval of any court;

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

221 | (e) Persons ~~No person~~ receiving ~~such~~ notice under each of
 222 | subparagraphs (c)2. and 3. do not object ~~objects,~~ by written
 223 | instrument delivered to the trustee, to the proposed action of
 224 | the trustee or the determinations of the disinterested person

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225 within 60 days after service of such notice. An objection ~~under~~
 226 ~~this section~~ may be executed by a legal representative or
 227 natural guardian of a person without ~~the~~ filing ~~of~~ any
 228 proceeding or approval of any court.

229 (3) If a trustee desires to convert an income trust to a
 230 total return unitrust, ~~reconvert a total return unitrust to an~~
 231 income trust, or change the percentage used to calculate the
 232 unitrust amount or the method used to determine a fair market
 233 value of the trust but does not have the ability to or elects
 234 not to do it under subsection (2), the trustee may petition the
 235 circuit court for such order as the trustee deems appropriate.
 236 In that event, the court, in its own discretion or on the
 237 petition of such trustee or any person having an income or
 238 remainder interest in the trust, may appoint a disinterested
 239 person who, acting in a fiduciary capacity, shall present such
 240 information to the court as is ~~shall be~~ necessary for the court
 241 to make a determination hereunder.

242 ~~(4) All determinations made pursuant to sub-subparagraph~~
 243 ~~(2)(b)2.b. shall be conclusive if reasonable and made in good~~
 244 ~~faith. Such determination shall be conclusively presumed to have~~
 245 ~~been made reasonably and in good faith unless proven otherwise~~
 246 ~~in a proceeding commenced by or on behalf of a person interested~~
 247 ~~in the trust within the time provided in s. 736.1008. The burden~~
 248 ~~will be on the objecting interested party to prove that the~~
 249 ~~determinations were not made reasonably and in good faith.~~

250 (4)(5) Following the conversion of an income trust to a
 251 total return unitrust, the trustee:

252 (a) Shall treat the unitrust amount as if it were net

253 income of the trust for purposes of determining the amount
 254 available, from time to time, for distribution from the trust.

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

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

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

272 (5)~~(6)~~ In administering a total return unitrust, the
 273 trustee may, ~~in its sole discretion but~~ subject to the
 274 provisions of the governing instrument, determine:

275 (a) The effective date of the conversion.

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

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

281 (d) If the trust is reconverted to an income trust, the
 282 effective date of such reversion.

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

285 (6)~~(7)~~ Conversion to a total return unitrust under ~~the~~
 286 ~~provisions of~~ this section does ~~shall~~ not affect any other
 287 provision of the governing instrument, if any, regarding
 288 distributions of principal.

289 (7)~~(8)~~ Any trustee or disinterested person who in good
 290 faith takes or fails to take any action under this section is
 291 ~~shall~~ not be liable to any person affected by such action or
 292 inaction, regardless of whether such person received written
 293 notice as provided in this section or ~~and regardless of whether~~
 294 such person was under a legal disability at the time of the
 295 delivery of such notice. Such person's exclusive remedy is ~~shall~~
 296 ~~be~~ to obtain, under subsection (8) ~~(9)~~, an order of the court
 297 directing the trustee to convert an income trust to a total
 298 return unitrust, to reconvert from a total return unitrust to an
 299 income trust, or to change the percentage used to calculate the
 300 unitrust amount. If a court determines that the trustee or
 301 disinterested person has not acted in good faith in taking or
 302 failing to take any action under this section, ~~the provisions of~~
 303 s. 738.105(3) applies ~~apply~~.

304 (8)~~(9)~~ If a majority in interest of ~~either~~ the income or
 305 remainder beneficiaries of an income trust has delivered to the
 306 trustee a written objection to the amount of the income
 307 distributions of the trust, and, if the trustee has failed to
 308 resolve the objection to the satisfaction of the objecting

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309 beneficiaries within 6 months after ~~from the~~ receipt of such
310 written objection, ~~then~~ the objecting beneficiaries may petition
311 the court in accordance with subsection (3).

312 (9) ~~(10)~~ This section pertains ~~shall be construed as~~
313 ~~pertaining~~ to the administration of a trust and is applicable to
314 any trust that is administered ~~either~~ in this state or under
315 Florida law unless:

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

319 (b) The trust is a trust described in the Internal Revenue
320 Code, 26 U.S.C. s. 170(f)(2)(B), s. 642(c)(5), s. 664(d), s.
321 2702(a)(3), or s. 2702(b);

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

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

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

330 (d) The governing instrument expressly prohibits use of
331 this section by specific reference to the section. A provision
332 in the governing instrument that, "The provisions of section
333 738.1041, Florida Statutes, as amended, or any corresponding
334 provision of future law, may ~~shall~~ not be used in the
335 administration of this trust," or similar words reflecting such
336 intent are ~~shall be~~ sufficient to preclude the use of this

337 section; ~~or~~

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

340 (10) ~~(11)~~ The grantor of a trust may create an express
 341 total return unitrust that becomes ~~which will become~~ effective
 342 as provided in the trust instrument ~~document~~ without requiring a
 343 conversion under this section.

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

348 1. ~~(a)~~ That distributions from the trust will be unitrust
 349 amounts and the manner in which the unitrust amount will be
 350 calculated; ~~and the method in which the fair market value of the~~
 351 ~~trust will be determined.~~

352 2. ~~(b)~~ The percentage to be used to calculate the unitrust
 353 amount if, ~~provided~~ the percentage used is not greater than 5
 354 percent nor less than 3 percent.

355 (b) The trust instrument may also contain provisions
 356 specifying:

357 1. ~~(c)~~ The method to be used in determining the fair market
 358 value of the trust, including whether to use an average fair
 359 market value or the fair market value of the assets held by the
 360 trust at the beginning of the current year; or-

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

363 (c) The remaining provisions of this section establish the
 364 method of determining the fair market value of the trust if the

365 trust instrument is silent as to subparagraph (b)1., and to
 366 specify those assets, if any, which are to be excluded in
 367 determining the unitrust amount if the trust instrument is
 368 silent as to subparagraph (b)2.

369 Section 4. Subsections (1), (3), and (4) of section
 370 738.105, Florida Statutes, are amended to read:

371 738.105 Judicial control of discretionary powers.—

372 (1) A court may ~~shall~~ not change a trustee's ~~fiduciary's~~
 373 decision to exercise or not to exercise a discretionary power
 374 conferred by this chapter unless the court determines that the
 375 decision was an abuse of the trustee's ~~fiduciary's~~ discretion. A
 376 court may ~~shall~~ not determine that a trustee ~~fiduciary~~ abused
 377 its discretion merely because the court would have exercised the
 378 discretion in a different manner or would not have exercised the
 379 discretion.

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

385 (a) To the extent the abuse of discretion has resulted in
 386 no distribution to a beneficiary or a distribution that is too
 387 small, the court shall require the trustee ~~fiduciary~~ to
 388 distribute from the trust to the beneficiary an amount the court
 389 determines will restore the beneficiary, in whole or in part, to
 390 his or her appropriate position.

391 (b) To the extent the abuse of discretion has resulted in
 392 a distribution to a beneficiary that is too large, the court

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393 shall restore the beneficiaries, the trust, or both, in whole or
394 in part, to their appropriate positions by requiring the trustee
395 ~~fiduciary~~ to withhold an amount from one or more future
396 distributions to the beneficiary who received the distribution
397 that was too large or requiring that beneficiary to return some
398 or all of the distribution to the trust.

399 (c) To the extent the court is unable, after applying
400 paragraphs (a) and (b), to restore the beneficiaries or the
401 trust, or both, to the positions they would have occupied if the
402 trustee ~~fiduciary~~ had not abused its discretion, the court may
403 require the trustee ~~fiduciary~~ to pay an appropriate amount from
404 its own funds to one or more of the beneficiaries or the trust
405 or both.

406 (4) Upon the filing of a petition by the trustee
407 ~~fiduciary~~, the court having jurisdiction over the trust or
408 estate shall determine whether a proposed exercise or
409 nonexercise by the trustee ~~fiduciary~~ of a discretionary power
410 conferred by this chapter will result in an abuse of the
411 trustee's ~~fiduciary's~~ discretion. If the petition describes the
412 proposed exercise or nonexercise of the power and contains
413 sufficient information to inform the beneficiaries of the
414 reasons for the proposal, the facts upon which the trustee
415 ~~fiduciary~~ relies, and an explanation of how the income and
416 remainder beneficiaries will be affected by the proposed
417 exercise or nonexercise of the power, a beneficiary who
418 challenges the proposed exercise or nonexercise has the burden
419 of establishing that such exercise or nonexercise will result in
420 an abuse of discretion.

421 Section 5. Subsections (1) through (4) of section 738.201,
 422 Florida Statutes, are amended to read:

423 738.201 Determination and distribution of net income.—
 424 After a decedent dies, in the case of an estate, or after an
 425 income interest in a trust ends, the following rules apply:

426 (1) A fiduciary of an estate or of a terminating income
 427 interest shall determine the amount of net income and net
 428 principal receipts received from property specifically given to
 429 a beneficiary under ~~the rules in ss. 738.301-738.706 which apply~~
 430 ~~to trustees and the rules in~~ subsection (5). The fiduciary shall
 431 distribute the net income and net principal receipts to the
 432 beneficiary who is to receive the specific property.

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

436 (a) Including in net income all income from property used
 437 to discharge liabilities.

438 (b) Paying from income or principal, in the fiduciary's
 439 discretion, fees of attorneys, accountants, and fiduciaries and
 440 court costs and other expenses of administration. However, ~~and~~
 441 ~~interest on death taxes,~~ but the fiduciary may pay interest on
 442 death taxes ~~those expenses~~ from income of property passing to a
 443 trust for which the fiduciary claims an estate tax marital or
 444 charitable deduction under the Internal Revenue Code or
 445 comparable law of any state only to the extent the payment of
 446 those expenses from income will not cause the reduction or loss
 447 of the deduction.

448 (c) Paying from principal all other disbursements made or

449 incurred in connection with the settlement of a decedent's
 450 estate or the winding up of a terminating income interest,
 451 including debts, funeral expenses, disposition of remains,
 452 family allowances, and death taxes and related penalties that
 453 are apportioned to the estate or terminating income interest by
 454 the will, the terms of the trust, or applicable law.

455 (3) If ~~A fiduciary shall distribute to~~ a beneficiary who
 456 receives a pecuniary amount outright is also entitled to receive
 457 ~~the interest on the amount~~ or any other amount provided by the
 458 will ~~or,~~ the terms of the trust, a fiduciary shall distribute
 459 the interest ~~or applicable law~~ from net income determined under
 460 subsection (2) or from principal to the extent net income is
 461 insufficient. ~~If a beneficiary is to receive a pecuniary amount~~
 462 ~~outright from a trust after an income interest ends and no~~
 463 ~~interest or other amount is provided for by the terms of the~~
 464 ~~trust or applicable law, the fiduciary shall distribute the~~
 465 ~~interest or other amount to which the beneficiary would be~~
 466 ~~entitled under applicable law if the pecuniary amount were~~
 467 ~~required to be paid under a will.~~

468 (4) A fiduciary shall distribute the net income remaining
 469 after distributions required under subsections (1)-(3) ~~by~~
 470 ~~subsection (3)~~ in the manner described in s. 738.202 to all
 471 other beneficiaries, including a beneficiary who receives a
 472 pecuniary amount in trust, even if the beneficiary holds an
 473 unqualified power to withdraw assets from the trust or other
 474 presently exercisable general power of appointment over the
 475 trust.

476 Section 6. Section 738.202, Florida Statutes, is amended

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477 to read:

478 738.202 Distribution to residuary and remainder
 479 beneficiaries.—

480 (1) Each beneficiary described in s. 738.201(4) is
 481 entitled to receive a portion of the net income remaining after
 482 the application of s. 738.201(1)-(3), which is equal to the
 483 beneficiary's fractional interest in undistributed principal
 484 assets, using carrying values as of the distribution date. If a
 485 fiduciary makes more than one distribution of assets to
 486 beneficiaries to whom this section applies, each beneficiary,
 487 including one who does not receive part of the distribution, is
 488 entitled, as of each distribution date, to the net income the
 489 fiduciary ~~has~~ received after the date of death or terminating
 490 event or earlier distribution date but has not distributed as of
 491 the current distribution date.

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

494 (a) The beneficiary is entitled to receive a portion of
 495 the net income equal to the beneficiary's fractional interest in
 496 the carrying value of the undistributed principal assets
 497 immediately before the distribution date, excluding the amount
 498 of unpaid liabilities ~~including assets that later may be sold to~~
 499 ~~meet principal obligations.~~

500 (b) The beneficiary's fractional interest in the
 501 undistributed principal assets shall be calculated: without
 502 ~~regard to~~

503 1. At the time the interest began and adjusted for any
 504 disproportionate distributions since the interest began;

505 2. By excluding any liabilities of the estate or trust
 506 from the calculation;

507 3. By also excluding property specifically given to a
 508 beneficiary and property required to pay pecuniary amounts not
 509 in trust; and-

510 ~~4.(e) The beneficiary's fractional interest in the~~
 511 ~~undistributed principal assets shall be calculated~~ On the basis
 512 of the aggregate carrying value of those assets determined under
 513 subsection (1) as of the distribution date without reducing the
 514 value by any unpaid principal obligation.

515 (c) If a disproportionate distribution of principal is
 516 made to a beneficiary, the respective fractional interests of
 517 all beneficiaries in the remaining underlying assets shall be
 518 recomputed by:

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

521 2. Reducing the fractional interest of the recipient of
 522 the disproportionate distribution in the remaining principal
 523 assets by the fair market value of the principal distribution;
 524 and

525 3. Recomputing the fractional interests of all
 526 beneficiaries in the remaining principal assets based upon the
 527 now restated carrying values.

528 ~~(d) The distribution date for purposes of this section may~~
 529 ~~be the date as of which the fiduciary calculates the value of~~
 530 ~~the assets if that date is reasonably near the date on which~~
 531 ~~assets are actually distributed.~~

532 (3) If a fiduciary does not distribute all of the

533 collected but undistributed net income to each person as of a
 534 distribution date, the fiduciary shall maintain appropriate
 535 records showing the interest of each beneficiary in that net
 536 income.

537 (4) A fiduciary may apply the provisions of rules ~~in~~ this
 538 section, to the extent the fiduciary considers appropriate, to
 539 net gain or loss realized after the date of death or terminating
 540 event or earlier distribution date from the disposition of a
 541 principal asset if this section applies to the income from the
 542 asset.

543 (5) The carrying value or fair market value of trust
 544 assets shall be determined on an asset-by-asset basis and are
 545 ~~shall be~~ conclusive if reasonable and determined in good faith.
 546 Determinations of fair market value based on appraisals
 547 performed within 2 years before or after the valuation date are
 548 ~~shall be~~ presumed reasonable. The values ~~value~~ of trust assets
 549 are ~~shall be~~ conclusively presumed to be reasonable and
 550 determined in good faith unless proven otherwise in a proceeding
 551 commenced by or on behalf of a person interested in the trust
 552 within the time provided in s. 736.1008.

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

555 Section 7. Subsection (4) of section 738.301, Florida
 556 Statutes, is amended to read:

557 738.301 When right to income begins and ends.—An income
 558 beneficiary is entitled to net income from the date on which the
 559 income interest begins.

560 (4) An income interest ends on the day before an income

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561 beneficiary dies or another terminating event occurs, or on the
 562 last day of a period during which there is no beneficiary to
 563 whom a fiduciary ~~trustee~~ may distribute income.

564 Section 8. Subsections (1) and (2) of section 738.302,
 565 Florida Statutes, are amended to read:

566 738.302 Apportionment of receipts and disbursements when
 567 decedent dies or income interest begins.—

568 (1) A fiduciary ~~trustee~~ shall allocate an income receipt
 569 or disbursement other than one to which s. 738.201(1) applies to
 570 principal if the due date of the receipt or disbursement occurs
 571 before a decedent dies in the case of an estate or before an
 572 income interest begins in the case of a trust or successive
 573 income interest.

574 (2) A fiduciary ~~trustee~~ shall allocate an income receipt
 575 or disbursement to income if the due date of the receipt or
 576 disbursement occurs on or after the date on which a decedent
 577 dies or an income interest begins and the due date is a periodic
 578 due date. An income receipt or disbursement shall be treated as
 579 accruing from day to day if the due date of the receipt or
 580 disbursement is not periodic or the receipt or disbursement has
 581 no due date. The portion of the receipt or disbursement accruing
 582 before the date on which a decedent dies or an income interest
 583 begins shall be allocated to principal and the balance shall be
 584 allocated to income.

585 Section 9. Subsections (2) and (3) of section 738.303,
 586 Florida Statutes, are amended to read:

587 738.303 Apportionment when income interest ends.—

588 (2) When a mandatory income interest ends, the fiduciary

589 ~~trustee~~ shall pay to a mandatory income beneficiary who survives
 590 that date, or the estate of a deceased mandatory income
 591 beneficiary whose death causes the interest to end, the
 592 beneficiary's share of the undistributed income that is not
 593 disposed of under the terms of the trust unless the beneficiary
 594 has an unqualified power to revoke more than 5 percent of the
 595 trust immediately before the income interest ends. In the latter
 596 case, the undistributed income from the portion of the trust
 597 that may be revoked shall be added to principal.

598 (3) When a fiduciary's ~~trustee's~~ obligation to pay a fixed
 599 annuity or a fixed fraction of the value of the trust's assets
 600 ends, the fiduciary ~~trustee~~ shall prorate the final payment if
 601 and to the extent required by applicable law to accomplish a
 602 purpose of the trust or its grantor relating to income, gift,
 603 estate, or other tax requirements.

604 Section 10. Section 738.401, Florida Statutes, is amended
 605 to read:

606 738.401 Character of receipts.—

607 (1) For purposes of this section, the term "entity" means
 608 a corporation, partnership, limited liability company, regulated
 609 investment company, real estate investment trust, common trust
 610 fund, or any other organization in which a fiduciary ~~trustee~~ has
 611 an interest other than a trust or estate to which s. 738.402
 612 applies, a business or activity to which s. 738.403 applies, or
 613 an asset-backed security to which s. 738.608 applies.

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

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

620 (a) Property other than money.

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

624 (c) Money received in total or partial liquidation of the
625 entity.

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

630 (e) Money received from an entity listed on a public stock
631 exchange during any year of the trust or estate which exceeds 10
632 percent of the fair market value of the trust's or estate's
633 interest in the entity on the first day of that year. The amount
634 to be allocated to principal must be reduced to the extent that
635 the cumulative distributions from the entity to the trust or
636 estate allocated to income does not exceed a cumulative annual
637 return of 3 percent of the fair market value of the interest in
638 the entity at the beginning of each year or portion of a year
639 for the number of years or portion of years in the period that
640 the interest in the entity was held by the trust or estate. If a
641 trustee has exercised a power to adjust under s. 738.104 during
642 any period the interest in the entity was held by the trust, the
643 trustee, in determining the total income distributions from that
644 entity, must take into account the extent to which the exercise

645 of that power resulted in income to the trust from that entity
 646 for that period. If the income of the trust for any period was
 647 computed under s. 738.1041, the trustee, in determining the
 648 total income distributions from that entity for that period,
 649 must take into account the portion of the unitrust amount paid
 650 as a result of the ownership of the trust's interest in the
 651 entity for that period.

652 (4) If a fiduciary ~~trustee~~ elects, or continues an
 653 election made by its predecessor, to reinvest dividends in
 654 shares of stock of a distributing corporation or fund, whether
 655 evidenced by new certificates or entries on the books of the
 656 distributing entity, the new shares ~~shall~~ retain their character
 657 as income.

658 (5) Money is received in partial liquidation:

659 (a) To the extent the entity, at or near the time of a
 660 distribution, indicates that such money is a distribution in
 661 partial liquidation; or

662 (b) If the total amount of money and property received in
 663 a distribution or series of related distributions from an entity
 664 that is not listed on a public stock exchange is greater than 20
 665 percent of the trust or estate's pro rata share of the entity's
 666 gross assets, as shown by the entity's year-end financial
 667 statements immediately preceding the initial receipt.

668
 669 This subsection does not apply to an entity to which subsection

670 (7) applies.

671 (6) Money may not ~~is not received in partial liquidation,~~
 672 ~~nor may money~~ be taken into account in determining any excess

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673 | under paragraph (5) (b), to the extent that the cumulative
674 | distributions from the entity to the trust or the estate
675 | allocated to income do not exceed the greater of: ~~such money~~
676 | ~~does not exceed the amount of income tax a trustee or~~
677 | ~~beneficiary must pay on taxable income of the entity that~~
678 | ~~distributes the money.~~

679 | (a) A cumulative annual return of 3 percent of the
680 | entity's carrying value computed at the beginning of each period
681 | for the number of years or portion of years that the entity was
682 | held by the fiduciary. If a trustee has exercised a power to
683 | adjust under s. 738.104 during any period the interest in the
684 | entity was held by the trust, the trustee, in determining the
685 | total income distributions from that entity, must take into
686 | account the extent to which exercise of the power resulted in
687 | income to the trust from that entity for that period. If the
688 | income of a trust for any period was computed pursuant to s.
689 | 738.1041, the trustee, in determining the total income
690 | distributions from the entity for that period, must take into
691 | account the portion of the unitrust amount paid as a result of
692 | the ownership of the trust's interest in the entity for that
693 | period; or

694 | (b) If the entity is treated as a partnership, subchapter
695 | S corporation, or a disregarded entity pursuant to the Internal
696 | Revenue Code of 1986, as amended, the amount of income tax
697 | attributable to the trust's or estate's ownership share of the
698 | entity, based on its pro rata share of the taxable income of the
699 | entity that distributes the money, for the number of years or
700 | portion of years that the interest in the entity was held by the

701 fiduciary, calculated as if all of that tax was incurred by the
 702 fiduciary.

703 (7) The following applies ~~special rules shall apply~~ to
 704 moneys or property received by a private trustee as a
 705 distribution from an entity ~~entities~~ described in this
 706 subsection:

707 (a) If treated as a partnership, subchapter S corporation,
 708 or disregarded entity pursuant to the Internal Revenue Code of
 709 1986, as amended, the trustee shall first treat as income of the
 710 trust all of the money or property received from the investment
 711 entity in the current year which would be considered income
 712 under this chapter if the trustee had directly held the trust's
 713 pro rata share of the assets of the investment entity. For this
 714 purpose, all distributions received in the current year must be
 715 aggregated.

716 (b) The trustee shall next treat as income of the trust
 717 any additional money or property received in the current year
 718 which would have been considered income in the prior 2 years
 719 under paragraph (a) if additional money or property had been
 720 received from the investment entity in any of those prior 2
 721 years. The amount to be treated as income shall be reduced by
 722 any distributions of money or property made by the investment
 723 entity to the trust during the current and prior 2 years which
 724 were treated as income under this paragraph.

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

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

728 1. "Investment entity" means an entity, other than a

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729 business activity conducted by the trustee described in s.
730 738.403 or an entity that is listed on a public stock exchange,
731 which is treated as a partnership, subchapter S corporation, or
732 disregarded entity pursuant to the Internal Revenue Code of
733 1986, as amended, and which normally derives 50 percent or more
734 of its annual cumulative net income from interest, dividends,
735 annuities, royalties, rental activity, or other passive
736 investments, including income from the sale or exchange of such
737 passive investments.

738 2. "Private trustee" means a trustee who is a natural
739 person, but only if the trustee is unable to use the power to
740 adjust between income and principal with respect to receipts
741 from entities described in this subsection pursuant to s.
742 738.104. A bank, trust company, or other commercial trustee is
743 not considered a private trustee.

744 (8) This section shall be applied before ss. 738.705 and
745 738.706 and does not modify or change any of the provisions of
746 those sections.

747 ~~(a) Moneys or property received from a targeted entity~~
748 ~~that is not an investment entity which do not exceed the trust's~~
749 ~~pro rata share of the undistributed cumulative net income of the~~
750 ~~targeted entity during the time an ownership interest in the~~
751 ~~targeted entity was held by the trust shall be allocated to~~
752 ~~income. The balance of moneys or property received from a~~
753 ~~targeted entity shall be allocated to principal.~~

754 ~~(b) If trust assets include any interest in an investment~~
755 ~~entity, the designated amount of moneys or property received~~
756 ~~from the investment entity shall be treated by the trustee in~~

757 ~~the same manner as if the trustee had directly held the trust's~~
758 ~~pro rata share of the assets of the investment entity~~
759 ~~attributable to the distribution of such designated amount.~~

760 ~~Thereafter, distributions shall be treated as principal.~~

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

763 ~~1. "Cumulative net income" means the targeted entity's net~~
764 ~~income as determined using the method of accounting regularly~~
765 ~~used by the targeted entity in preparing its financial~~
766 ~~statements, or if no financial statements are prepared, the net~~
767 ~~book income computed for federal income tax purposes, for every~~
768 ~~year an ownership interest in the entity is held by the trust.~~
769 ~~The trust's pro rata share shall be the cumulative net income~~
770 ~~multiplied by the percentage ownership of the trust.~~

771 ~~2. "Designated amount" means moneys or property received~~
772 ~~from an investment entity during any year that is equal to the~~
773 ~~amount of the distribution that does not exceed the greater of:~~

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

777 ~~b. The amount of income of the investment entity for the~~
778 ~~current year and the prior 2 years, as reported to the trustee~~
779 ~~by the investment entity for federal income tax purposes, less~~
780 ~~any distributions of moneys or property made by the investment~~
781 ~~entity to the trustee during the prior 2 years.~~

782 ~~3. "Investment entity" means a targeted entity that~~
783 ~~normally derives 50 percent or more of its annual cumulative net~~
784 ~~income from interest, dividends, annuities, royalties, rental~~

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785 ~~activity, or other passive investments, including income from~~
786 ~~the sale or exchange of such passive investments.~~

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

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

797 ~~6. "Undistributed cumulative net income" means the trust's~~
798 ~~pro rata share of cumulative net income, less all prior~~
799 ~~distributions from the targeted entity to the trust that have~~
800 ~~been allocated to income.~~

801 ~~(d) This subsection shall not be construed to modify or~~
802 ~~change any of the provisions of ss. 738.705 and 738.706 relating~~
803 ~~to income taxes.~~

804 ~~(8) A trustee may rely upon a statement made by an entity~~
805 ~~about the source or character of a distribution, about the~~
806 ~~amount of profits of a targeted entity, or about the nature and~~
807 ~~value of assets of an investment entity if the statement is made~~
808 ~~at or near the time of distribution by the entity's board of~~
809 ~~directors or other person or group of persons authorized to~~
810 ~~exercise powers to pay money or transfer property comparable to~~
811 ~~those of a corporation's board of directors.~~

812 Section 11. Section 738.402, Florida Statutes, is amended

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813 to read:

814 738.402 Distribution from trust or estate.—A fiduciary
815 ~~trustee~~ shall allocate to income an amount received as a
816 distribution of income from a trust or an estate in which the
817 trust has an interest other than a purchased interest and ~~shall~~
818 allocate to principal an amount received as a distribution of
819 principal from such a trust or estate. If a fiduciary trustee
820 purchases an interest in a trust that is an investment entity,
821 or a decedent or donor transfers an interest in such a trust to
822 a fiduciary trustee, s. 738.401 or s. 738.608 applies to a
823 receipt from the trust.

824 Section 12. Section 738.403, Florida Statutes, is amended
825 to read:

826 738.403 Business and other activities conducted by
827 fiduciary trustee.—

828 (1) If a fiduciary trustee who conducts a business or
829 other activity determines that it is in the best interest of all
830 the beneficiaries to account separately for the business or
831 activity instead of accounting for the business or activity as
832 part of the trust's general accounting records, the fiduciary
833 ~~trustee~~ may maintain separate accounting records for the
834 transactions of the ~~such~~ business or other activity, whether or
835 not the assets of such business or activity are segregated from
836 other trust assets.

837 (2) A fiduciary trustee who accounts separately for a
838 business or other activity may determine the extent to which the
839 net cash receipts of the ~~such~~ business or activity must be
840 retained for working capital, the acquisition or replacement of

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841 fixed assets, and other reasonably foreseeable needs of the
842 business or activity, and the extent to which the remaining net
843 cash receipts are accounted for as principal or income in the
844 trust's general accounting records. If a fiduciary ~~trustee~~ sells
845 assets of the business or other activity, other than in the
846 ordinary course of the business or activity, the fiduciary must
847 ~~trustee shall~~ account for the net amount received as principal
848 in the trust's general accounting records to the extent the
849 fiduciary ~~trustee~~ determines that the amount received is no
850 longer required in the conduct of the business.

851 (3) Activities for which a fiduciary ~~trustee~~ may maintain
852 separate accounting records include:

853 (a) Retail, manufacturing, service, and other traditional
854 business activities.

855 (b) Farming.

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

857 (d) Management of rental properties.

858 (e) Extraction of minerals and other natural resources.

859 (f) Timber operations.

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

861 Section 13. Section 738.501, Florida Statutes, is amended
862 to read:

863 738.501 Principal receipts.—A fiduciary ~~trustee~~ shall
864 allocate to principal:

865 (1) To the extent not allocated to income under this
866 chapter, assets received from a transferor during the
867 transferor's lifetime, a decedent's estate, a trust with a
868 terminating income interest, or a payor under a contract naming

869 the trust or its fiduciary ~~trustee~~ as beneficiary.

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

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

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

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

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

884 Section 14. Section 738.502, Florida Statutes, is amended
885 to read:

886 738.502 Rental property.—~~If To the extent~~ a fiduciary
887 ~~trustee~~ accounts for receipts from rental property pursuant to
888 this section, the fiduciary ~~trustee~~ shall allocate to income an
889 amount received as rent of real or personal property, including
890 an amount received for cancellation or renewal of a lease. An
891 amount received as a refundable deposit, including a security
892 deposit or a deposit that is to be applied as rent for future
893 periods, must ~~shall~~ be added to principal and held subject to
894 the terms of the lease and is not available for distribution to
895 a beneficiary until the trustee's contractual obligations have
896 been satisfied with respect to that amount.

897 Section 15. Subsections (1), (2), and (3) of section
 898 738.503, Florida Statutes, are amended to read:

899 738.503 Obligation to pay money.—

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

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

909 (3) The increment in value of a bond or other obligation
 910 for the payment of money bearing no stated interest but payable
 911 at a future time in excess of the price at which it was issued
 912 or purchased, if purchased after issuance, is distributable as
 913 income. If the increment in value accrues and becomes payable
 914 pursuant to a fixed schedule of appreciation, it may be
 915 distributed to the beneficiary who was the income beneficiary at
 916 the ~~this~~ time of increment from the first principal cash
 917 available or, if none is available, when the increment is
 918 realized by sale, redemption, or other disposition. If ~~When~~
 919 unrealized increment is distributed as income but out of
 920 principal, the principal must ~~shall~~ be reimbursed for the
 921 increment when realized. If, in the reasonable judgment of the
 922 fiduciary ~~trustee~~, exercised in good faith, the ultimate payment
 923 of the bond principal is in doubt, the fiduciary ~~trustee~~ may
 924 withhold the payment of incremental interest to the income

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925 beneficiary.

926 Section 16. Subsections (1) and (2) of section 738.504,
927 Florida Statutes, are amended to read:

928 738.504 Insurance policies and similar contracts.—

929 (1) Except as otherwise provided in subsection (2), a
930 fiduciary trustee shall allocate to principal the proceeds of a
931 life insurance policy or other contract in which the trust or
932 its fiduciary trustee is named as beneficiary, including a
933 contract that insures the trust or its fiduciary trustee against
934 loss for damage to, destruction of, or loss of title to a trust
935 asset. The fiduciary trustee shall allocate dividends on an
936 insurance policy to income if the premiums on the policy are
937 paid from income and to principal if the premiums are paid from
938 principal.

939 (2) A fiduciary trustee shall allocate to income the
940 proceeds of a contract that insures the fiduciary trustee
941 against loss of occupancy or other use by an income beneficiary,
942 loss of income, or, subject to s. 738.403, loss of profits from
943 a business.

944 Section 17. Section 738.601, Florida Statutes, is amended
945 to read:

946 738.601 Insubstantial allocations not required.—If a
947 fiduciary trustee determines that an allocation between
948 principal and income required by s. 738.602, s. 738.603, s.
949 738.604, s. 738.605, or s. 738.608 is insubstantial, the
950 fiduciary trustee may allocate the entire amount to principal
951 unless one of the circumstances described in s. 738.104(3)
952 applies to the allocation. This power may be exercised by a

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953 cofiduciary under ~~co-trustee~~ in the circumstances described in s.
 954 738.104(4) and may be released for the reasons and in the manner
 955 described in s. 738.104(5). An allocation is presumed to be
 956 insubstantial if:

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

960 (2) The value of the asset producing the receipt for which
 961 the allocation would be made is less than 10 percent of the
 962 total value of the trust's assets at the beginning of the
 963 accounting period.

964 Section 18. Section 738.602, Florida Statutes, is amended
 965 to read:

966 738.602 Payments from deferred compensation plans,
 967 annuities, and retirement plans or accounts.—

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

969 (a) "Fund" means a private or commercial annuity, an
 970 individual retirement account, an individual retirement annuity,
 971 a deferred compensation plan, a pension plan, a profit-sharing
 972 plan, a stock-bonus plan, an employee stock-ownership plan, or
 973 another similar arrangement in which federal income tax is
 974 deferred.

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

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

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981 (d) "Payment" means a distribution from a fund that a
982 fiduciary ~~trustee~~ may receive over a fixed number of years or
983 during the life of one or more individuals because of services
984 rendered or property transferred to the payor in exchange for
985 future payments. The term includes a distribution made in money
986 or property from the payor's general assets or from a fund
987 created by the payor or payee.

988 (e) "Separate account" means a fund holding assets
989 exclusively for the benefit of a participant or account owner
990 and:

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

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

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

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

999 2. As a unitrust amount calculated by multiplying the fair
1000 market value of the fund as of the first day of the first
1001 accounting period and, thereafter, as of the last day of the
1002 accounting period that immediately precedes the accounting
1003 period during which a payment is received by the percentage
1004 determined in accordance with s. 738.1041(2)(b)2.a. The
1005 fiduciary ~~trustee~~ shall determine such percentage as of the
1006 first month that the fiduciary's ~~trustee's~~ election to treat the
1007 income of the fund as a unitrust amount becomes effective. For
1008 purposes of this subparagraph, "fair market value" means the

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1009 fair market value of the assets held in the fund as of the
 1010 applicable valuation date determined as provided in this
 1011 subparagraph. The fiduciary ~~trustee~~ is not liable for good faith
 1012 reliance upon any valuation supplied by the person or persons in
 1013 possession of the fund. If the fiduciary ~~trustee~~ makes or
 1014 terminates an election under this subparagraph, the fiduciary
 1015 ~~trustee~~ shall make such disclosure in a trust disclosure
 1016 document that satisfies the requirements of s. 736.1008(4) (a).

1017 (b) The fiduciary ~~may trustee shall have discretion to~~
 1018 elect the method of determining the income of the fund pursuant
 1019 to this subsection and may change the method of determining
 1020 income of the fund for any future accounting period.

1021 (3) For a fund that is a nonseparate account, income of
 1022 the fund is a unitrust amount determined by calculating the
 1023 present value of the right to receive the remaining payments
 1024 under 26 U.S.C. s. 7520 of the Internal Revenue Code as of the
 1025 first day of the accounting period and multiplying it by the
 1026 percentage determined in accordance with s. 738.1041(2) (b)2.a.
 1027 The fiduciary ~~trustee~~ shall determine the unitrust amount as of
 1028 the first month that the fiduciary's ~~trustee's~~ election to treat
 1029 the income of the fund as a unitrust amount becomes effective.

1030 (4) Except for those trusts described in subsection (5),
 1031 the fiduciary ~~trustee~~ shall allocate to income the lesser of the
 1032 payment received from a fund or the income determined under
 1033 subsection (2) or subsection (3). Any remaining amount shall be
 1034 allocated to principal ~~a payment from a fund as follows:~~

1035 (a) ~~That portion of the payment the payor characterizes as~~
 1036 ~~income shall be allocated to income, and any remaining portion~~

1037 ~~of the payment shall be allocated to principal.~~

1038 ~~(b) To the extent that the payor does not characterize any~~
 1039 ~~portion of a payment as income or principal and the trustee can~~
 1040 ~~ascertain the income of the fund by the fund's account~~
 1041 ~~statements or any other reasonable source, the trustee shall~~
 1042 ~~allocate to income the lesser of the income of the fund or the~~
 1043 ~~entire payment and shall allocate to principal any remaining~~
 1044 ~~portion of the payment.~~

1045 ~~(c) If the trustee, acting reasonably and in good faith,~~
 1046 ~~determines that neither paragraph (a) nor paragraph (b) applies~~
 1047 ~~and all or part of the payment is required to be made, the~~
 1048 ~~trustee shall allocate to income 10 percent of the portion of~~
 1049 ~~the payment that is required to be made during the accounting~~
 1050 ~~period and shall allocate the balance to principal. If no part~~
 1051 ~~of a payment is required to be made or the payment received is~~
 1052 ~~the entire amount to which the trustee is entitled, the trustee~~
 1053 ~~shall allocate the entire payment to principal. For purposes of~~
 1054 ~~this paragraph, a payment is not "required to be made" to the~~
 1055 ~~extent the payment is made because the trustee exercises a right~~
 1056 ~~of withdrawal.~~

1057 (5) For a trust that ~~which~~, in order to qualify for the
 1058 estate or gift tax marital deduction under the Internal Revenue
 1059 Code or comparable law of any state, entitles the spouse to all
 1060 of the income of the trust, and the terms of the trust are
 1061 silent as to the time and frequency for distribution of the
 1062 income of the fund, ~~then:~~

1063 (a) For a fund that is a separate account, unless the
 1064 spouse directs the fiduciary ~~trustee~~ to leave the income of the

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1065 fund in the fund, the fiduciary ~~trustee~~ shall withdraw and pay
 1066 to the spouse, at least ~~no less frequently than~~ annually:

1067 1. All of the income of the fund determined in accordance
 1068 with subparagraph (2) (a)1.; or

1069 2. The income of the fund as a unitrust amount determined
 1070 in accordance with subparagraph (2) (a)2.

1071 (b) For a fund that is a nonseparate account, the
 1072 fiduciary ~~trustee~~ shall withdraw and pay to the spouse, at least
 1073 ~~no less frequently than~~ annually, the income of the fund as a
 1074 unitrust amount determined in accordance with subsection (3).

1075 (6) This section does not apply to payments to which s.
 1076 738.603 applies.

1077 Section 19. Section 738.603, Florida Statutes, is amended
 1078 to read:

1079 738.603 Liquidating asset.—

1080 (1) For purposes of this section, the term "liquidating
 1081 asset" means an asset the value of which will diminish or
 1082 terminate because the asset is expected to produce receipts for
 1083 a period of limited duration. The term includes a leasehold,
 1084 patent, copyright, royalty right, and right to receive payments
 1085 for ~~during a period of~~ more than 1 year under an arrangement
 1086 that does not provide for the payment of interest on the unpaid
 1087 balance. The term does not include a payment subject to s.
 1088 738.602, resources subject to s. 738.604, timber subject to s.
 1089 738.605, an activity subject to s. 738.607, an asset subject to
 1090 s. 738.608, or any asset for which the fiduciary ~~trustee~~
 1091 establishes a reserve for depreciation under s. 738.703.

1092 (2) A fiduciary ~~trustee~~ shall allocate to income 5 ~~10~~

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1093 | percent of the receipts from the carrying value of a liquidating
 1094 | asset and the balance to principal. Amounts allocated to
 1095 | principal may not reduce the carrying value of the liquidating
 1096 | asset below zero. Amounts received in excess of the remaining
 1097 | carrying value must be allocated to principal.

1098 | Section 20. Subsections (1) and (4) of section 738.604,
 1099 | Florida Statutes, are amended to read:

1100 | 738.604 Minerals, water, and other natural resources.—

1101 | (1) If ~~To the extent~~ a fiduciary trustee accounts for
 1102 | receipts from an interest in minerals or other natural resources
 1103 | pursuant to this section, the fiduciary trustee shall allocate
 1104 | such receipts as follows:

1105 | (a) If received as nominal delay rental or nominal annual
 1106 | rent on a lease, a receipt shall be allocated to income.

1107 | (b) If received from a production payment, a receipt shall
 1108 | be allocated to income if and to the extent the agreement
 1109 | creating the production payment provides a factor for interest
 1110 | or its equivalent. The balance shall be allocated to principal.

1111 | (c) If an amount received as a royalty, shut-in-well
 1112 | payment, take-or-pay payment, bonus, or delay rental is more
 1113 | than nominal, 90 percent shall be allocated to principal and the
 1114 | balance to income.

1115 | (d) If an amount is received from a working interest or
 1116 | any other interest not provided for in paragraph (a), paragraph
 1117 | (b), or paragraph (c), 90 percent of the net amount received
 1118 | shall be allocated to principal and the balance to income.

1119 | (4) If a trust owns an interest in minerals, water, or
 1120 | other natural resources on January 1, 2003, the fiduciary

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1121 ~~trustee~~ may allocate receipts from the interest as provided in
 1122 this chapter or in the manner used by the fiduciary ~~trustee~~
 1123 before January 1, 2003. If the trust acquires an interest in
 1124 minerals, water, or other natural resources after January 1,
 1125 2003, the trustee shall allocate receipts from the interest as
 1126 provided in this chapter.

1127 Section 21. Subsections (1), (2), and (4) of section
 1128 738.605, Florida Statutes, are amended to read:

1129 738.605 Timber.—

1130 (1) If ~~To the extent~~ a fiduciary ~~trustee~~ accounts for
 1131 receipts from the sale of timber and related products pursuant
 1132 to this section, the fiduciary ~~trustee~~ shall allocate such ~~the~~
 1133 net receipts as follows:

1134 (a) To income to the extent the amount of timber removed
 1135 from the land does not exceed the rate of growth of the timber
 1136 during the accounting periods in which a beneficiary has a
 1137 mandatory income interest;

1138 (b) To principal to the extent the amount of timber
 1139 removed from the land exceeds the rate of growth of the timber
 1140 or the net receipts are from the sale of standing timber;

1141 (c) To or between income and principal if the net receipts
 1142 are from the lease of timberland or from a contract to cut
 1143 timber from land owned by a trust by determining the amount of
 1144 timber removed from the land under the lease or contract and
 1145 applying the rules in paragraphs (a) and (b); or

1146 (d) To principal to the extent advance payments, bonuses,
 1147 and other payments are not allocated pursuant to paragraph (a),
 1148 paragraph (b), or paragraph (c).

1149 (2) In determining net receipts to be allocated pursuant
 1150 to subsection (1), a fiduciary ~~trustee~~ shall deduct and transfer
 1151 to principal a reasonable amount for depletion.

1152 (4) If a trust owns an interest in timberland on January
 1153 1, 2003, the fiduciary ~~trustee~~ may allocate net receipts from
 1154 the sale of timber and related products as provided in this
 1155 chapter or in the manner used by the fiduciary ~~trustee~~ before
 1156 January 1, 2003. If the trust acquires an interest in timberland
 1157 after January 1, 2003, the fiduciary ~~trustee~~ shall allocate net
 1158 receipts from the sale of timber and related products as
 1159 provided in this chapter.

1160 Section 22. Subsection (1) of section 738.606, Florida
 1161 Statutes, is amended to read:

1162 738.606 Property not productive of income.—

1163 (1) If a marital deduction under the Internal Revenue Code
 1164 or comparable law of any state is allowed for all or part of a
 1165 trust the income of which must ~~is required to~~ be distributed to
 1166 the grantor's spouse and the assets of which consist
 1167 substantially of property that does not provide the spouse with
 1168 sufficient income from or use of the trust assets, and if the
 1169 amounts the fiduciary ~~trustee~~ transfers from principal to income
 1170 under s. 738.104 and distributes to the spouse from principal
 1171 pursuant to the terms of the trust are insufficient to provide
 1172 the spouse with the beneficial enjoyment required to obtain the
 1173 marital deduction, the spouse may require the fiduciary ~~trustee~~
 1174 to make property productive of income, convert property within a
 1175 reasonable time, or exercise the power conferred by ss. 738.104
 1176 and 738.1041. The fiduciary ~~trustee~~ may decide which action or

1177 combination of actions to take.

1178 Section 23. Subsections (2) and (3) of section 738.607,
1179 Florida Statutes, are amended to read:

1180 738.607 Derivatives and options.—

1181 (2) To the extent a fiduciary ~~trustee~~ does not account
1182 under s. 738.403 for transactions in derivatives, the fiduciary
1183 ~~trustee~~ shall allocate to principal receipts from and
1184 disbursements made in connection with those transactions.

1185 (3) If a fiduciary ~~trustee~~ grants an option to buy
1186 property from the trust whether or not the trust owns the
1187 property when the option is granted, grants an option that
1188 permits another person to sell property to the trust, or
1189 acquires an option to buy property for the trust or an option to
1190 sell an asset owned by the trust, and the fiduciary ~~trustee~~ or
1191 other owner of the asset is required to deliver the asset if the
1192 option is exercised, an amount received for granting the option
1193 shall be allocated to principal. An amount paid to acquire the
1194 option shall be paid from principal. A gain or loss realized
1195 upon the exercise of an option, including an option granted to a
1196 grantor of the trust for services rendered, shall be allocated
1197 to principal.

1198 Section 24. Subsections (2) and (3) of section 738.608,
1199 Florida Statutes, are amended to read:

1200 738.608 Asset-backed securities.—

1201 (2) If a trust receives a payment from interest or other
1202 current return and from other proceeds of the collateral
1203 financial assets, the fiduciary ~~trustee~~ shall allocate to income
1204 the portion of the payment which the payor identifies as being

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1205 from interest or other current return and ~~shall~~ allocate the
 1206 balance of the payment to principal.

1207 (3) If a trust receives one or more payments in exchange
 1208 for the trust's entire interest in an asset-backed security
 1209 during a single accounting period, the fiduciary ~~trustee~~ shall
 1210 allocate the payments to principal. If a payment is one of a
 1211 series of payments that will result in the liquidation of the
 1212 trust's interest in the security over more than a single
 1213 accounting period, the fiduciary ~~trustee~~ shall allocate 10
 1214 percent of the payment to income and the balance to principal.

1215 Section 25. Section 738.701, Florida Statutes, is amended
 1216 to read:

1217 738.701 Disbursements from income.—A fiduciary ~~trustee~~
 1218 shall make the following disbursements from income to the extent
 1219 they are not disbursements to which s. 738.201(2) ~~(a) or~~ (c)
 1220 applies:

1221 (1) One-half of the regular compensation of the fiduciary
 1222 ~~trustee~~ and of any person providing investment advisory or
 1223 custodial services to the fiduciary ~~trustee~~.

1224 (2) One-half of all expenses for accountings, judicial
 1225 proceedings, or other matters that involve both the income and
 1226 remainder interests.

1227 (3) All of the other ordinary expenses incurred in
 1228 connection with the administration, management, or preservation
 1229 of trust property and the distribution of income, including
 1230 interest, ordinary repairs, regularly recurring taxes assessed
 1231 against principal, and expenses of a proceeding or other matter
 1232 that concerns primarily the income interest.

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1233 (4) Recurring premiums on insurance covering the loss of a
 1234 principal asset or the loss of income from or use of the asset.

1235 Section 26. Subsection (1) of section 738.702, Florida
 1236 Statutes, is amended to read:

1237 738.702 Disbursements from principal.—

1238 (1) A fiduciary ~~trustee~~ shall make the following
 1239 disbursements from principal:

1240 (a) The remaining one-half of the disbursements described
 1241 in s. 738.701(1) and (2).

1242 (b) All of the fiduciary's ~~trustee's~~ compensation
 1243 calculated on principal as a fee for acceptance, distribution,
 1244 or termination and disbursements made to prepare property for
 1245 sale.

1246 (c) Payments on the principal of a trust debt.

1247 (d) Expenses of a proceeding that concerns primarily
 1248 principal, including a proceeding to construe the trust or will,
 1249 or to protect the trust, estate, or its property.

1250 (e) Premiums paid on a policy of insurance not described
 1251 in s. 738.701(4) of which the trust or estate is the owner and
 1252 beneficiary.

1253 (f) Estate, inheritance, and other transfer taxes,
 1254 including penalties, apportioned to the trust.

1255 (g) Disbursements related to environmental matters,
 1256 including reclamation, assessing environmental conditions,
 1257 remedying and removing environmental contamination, monitoring
 1258 remedial activities and the release of substances, preventing
 1259 future releases of substances, collecting amounts from persons
 1260 liable or potentially liable for the costs of such activities,

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1261 penalties imposed under environmental laws or regulations and
 1262 other payments made to comply with those laws or regulations,
 1263 statutory or common law claims by third parties, and defending
 1264 claims based on environmental matters.

1265 (h) Payments representing extraordinary repairs or
 1266 expenses incurred in making a capital improvement to principal,
 1267 including special assessments; however, a fiduciary ~~trustee~~ may
 1268 establish an allowance for depreciation out of income to the
 1269 extent permitted by s. 738.703.

1270 Section 27. Subsection (2) of section 738.703, Florida
 1271 Statutes, is amended to read:

1272 738.703 Transfers from income to principal for
 1273 depreciation.—

1274 (2) A fiduciary ~~trustee~~ may transfer to principal a
 1275 reasonable amount of the net cash receipts from a principal
 1276 asset that is subject to depreciation but may not transfer any
 1277 amount for depreciation:

1278 (a) Of that portion of real property used or available for
 1279 use by a beneficiary as a residence or of tangible personal
 1280 property held or made available for the personal use or
 1281 enjoyment of a beneficiary;

1282 (b) During the administration of a decedent's estate; or

1283 (c) Under this section if the fiduciary ~~trustee~~ is
 1284 accounting under s. 738.403 for the business or activity in
 1285 which the asset is used.

1286 Section 28. Subsections (1), (2), and (3) of section
 1287 738.704, Florida Statutes, are amended to read:

1288 738.704 Transfers from income to reimburse principal.—

1289 (1) If a fiduciary ~~trustee~~ makes or expects to make a
 1290 principal disbursement described in this section, the fiduciary
 1291 ~~trustee~~ may transfer an appropriate amount from income to
 1292 principal in one or more accounting periods to reimburse
 1293 principal or to provide a reserve for future principal
 1294 disbursements.

1295 (2) Principal disbursements to which subsection (1)
 1296 applies include the following, but only to the extent the
 1297 fiduciary ~~trustee~~ has not been and does not expect to be
 1298 reimbursed by a third party:

1299 (a) An amount chargeable to income but paid from principal
 1300 because the amount is unusually large.

1301 (b) Disbursements made to prepare property for rental,
 1302 including tenant allowances, leasehold improvements, and
 1303 broker's commissions.

1304 (c) Disbursements described in s. 738.702(1)(g).

1305 (3) If the asset the ownership of which gives rise to the
 1306 disbursements becomes subject to a successive income interest
 1307 after an income interest ends, a fiduciary ~~trustee~~ may continue
 1308 to transfer amounts from income to principal as provided in
 1309 subsection (1).

1310 Section 29. Section 738.705, Florida Statutes, is amended
 1311 to read:

1312 738.705 Income taxes.—

1313 (1) A tax required to be paid by a fiduciary ~~trustee~~ based
 1314 on receipts allocated to income shall be paid from income.

1315 (2) A tax required to be paid by a fiduciary ~~trustee~~ based
 1316 on receipts allocated to principal shall be paid from principal,

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1317 even if the tax is called an income tax by the taxing authority.

1318 (3) A tax required to be paid by a fiduciary ~~trustee~~ on
 1319 the trust's or estate's share of an entity's taxable income
 1320 shall be paid proportionately:

1321 (a) From income to the extent receipts from the entity are
 1322 allocated to income; ~~and~~

1323 (b) From principal to the extent:

1324 ~~1.~~ receipts from the entity are allocated to principal;
 1325 and

1326 ~~2. The trust's share of the entity's taxable income~~
 1327 ~~exceeds the total receipts described in paragraph (a) and~~
 1328 ~~subparagraph 1.~~

1329 (c) From principal to the extent that the income taxes
 1330 payable by the trust or estate exceed the total distributions
 1331 from the entity.

1332 (4) After applying subsections (1)-(3), the fiduciary
 1333 shall adjust income or principal receipts to the extent that the
 1334 trust's or estate's income taxes are reduced, but not
 1335 eliminated, because the trust or estate receives a deduction for
 1336 payments made to a beneficiary. The amount distributable to that
 1337 beneficiary as income as a result of this adjustment shall be
 1338 equal to the cash received by the trust or estate, reduced, but
 1339 not below zero, by the entity's taxable income allocable to the
 1340 trust or estate multiplied by the trust's or estate's income tax
 1341 rate. The reduced amount shall be divided by the difference
 1342 between 1 and the trust's or estate's income tax rate in order
 1343 to determine the amount distributable to that beneficiary as
 1344 income before giving effect to other receipts or disbursements

1345 allocable to that beneficiary's interest. ~~For purposes of this~~
 1346 ~~section, receipts allocated to principal or income shall be~~
 1347 ~~reduced by the amount distributed to a beneficiary from~~
 1348 ~~principal or income for which the trust receives a deduction in~~
 1349 ~~calculating the tax.~~

1350 Section 30. Section 738.801, Florida Statutes, is amended
 1351 to read:

1352 (Substantial rewording of section. See
 1353 s. 738.801, F.S., for present text.)

1354 738.801 Apportionment of expenses; improvements.-

1355 (1) For purposes of this section, the term:

1356 (a) "Remainderman" means the holder of the remainder
 1357 interests after the expiration of a tenant's estate in property.

1358 (b) "Tenant" means the holder of an estate for life or
 1359 term of years in real property or personal property, or both.

1360 (2) If a trust has not been created, expenses shall be
 1361 apportioned between the tenant and remainderman as follows:

1362 (a) The following expenses are allocated to and shall be
 1363 paid by the tenant:

1364 1. All ordinary expenses incurred in connection with the
 1365 administration, management, or preservation of the property,
 1366 including interest, ordinary repairs, regularly recurring taxes
 1367 assessed against the property, and expenses of a proceeding or
 1368 other matter that concerns primarily the tenant's estate or use
 1369 of the property.

1370 2. Recurring premiums on insurance covering the loss of
 1371 the property or the loss of income from or use of the property.

1372 3. Any of the expenses described in subparagraph (b)3.

1373 which are attributable to the use of the property by the tenant.

1374 (b) The following expenses are allocated to and shall be
 1375 paid by the remainderman:

1376 1. Payments on the principal of a debt secured by the
 1377 property, except to the extent the debt is for expenses
 1378 allocated to the tenant.

1379 2. Expenses of a proceeding or other matter that concerns
 1380 primarily the title to the property, other than title to the
 1381 tenant's estate.

1382 3. Except as provided in subparagraph (a)3., expenses
 1383 related to environmental matters, including reclamation,
 1384 assessing environmental conditions, remedying and removing
 1385 environmental contamination, monitoring remedial activities and
 1386 the release of substances, preventing future releases of
 1387 substances, collecting amounts from persons liable or
 1388 potentially liable for the costs of such activities, penalties
 1389 imposed under environmental laws or regulations and other
 1390 payments made to comply with those laws or regulations,
 1391 statutory or common law claims by third parties, and defending
 1392 claims based on environmental matters.

1393 4. Extraordinary repairs.

1394 (c) If the tenant or remainderman incurred an expense for
 1395 the benefit of his or her own estate without consent or
 1396 agreement of the other, he or she must pay such expense in full.

1397 (d) Except as provided in paragraph (c), the cost of, or
 1398 special taxes or assessments for, an improvement representing an
 1399 addition of value to property forming part of the principal
 1400 shall be paid by the tenant if the improvement is not reasonably

1401 expected to outlast the estate of the tenant. In all other
 1402 cases, only a part shall be paid by the tenant while the
 1403 remainder shall be paid by the remainderman. The part payable by
 1404 the tenant is ascertainable by taking that percentage of the
 1405 total that is found by dividing the present value of the
 1406 tenant's estate by the present value of an estate of the same
 1407 form as that of the tenant, except that it is limited for a
 1408 period corresponding to the reasonably expected duration of the
 1409 improvement. The computation of present values of the estates
 1410 shall be made by using the rate defined in 26 U.S.C. s. 7520,
 1411 then in effect and, in the case of an estate for life, the
 1412 official mortality tables then in effect under 26 U.S.C. s.
 1413 7520. Other evidence of duration or expectancy may not be
 1414 considered.

1415 (3) This section does not apply to the extent it is
 1416 inconsistent with the instrument creating the estates, the
 1417 agreement of the parties, or the specific direction of the
 1418 taxing or other statutes.

1419 (4) The common law applicable to tenants and remaindermen
 1420 supplements this section, except as modified by this section or
 1421 other laws.

1422 Section 31. Section 738.804, Florida Statutes, is amended
 1423 to read:

1424 738.804 Application.—

1425 (1) Except as provided in s. 738.1041(9), this chapter
 1426 pertains to the administration of a trust and is applicable to
 1427 any trust that is administered in this state or under its law.
 1428 This chapter also applies to any estate that is administered in

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1429 this state unless the provision is limited in application to a
1430 trustee, rather than a fiduciary.

1431 (2) Except as provided in the trust instrument, the will,
1432 or this chapter, this chapter applies ~~shall apply~~ to any receipt
1433 or expense received or incurred and any disbursement made after
1434 January 1, 2003, by any trust or decedent's estate, whether
1435 established before or after January 1, 2003, and whether the
1436 asset involved was acquired by the trustee or personal
1437 representative before or after January 1, 2003. Receipts or
1438 expenses received or incurred and disbursements made before
1439 January 1, 2003, are ~~shall be~~ governed by the law of this state
1440 in effect at the time of the event, except as otherwise
1441 expressly provided in the will or terms of the trust or under ~~in~~
1442 this chapter.

1443 Section 32. This act shall take effect January 1, 2013.