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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/26/2012	.	
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The Committee on Judiciary (Joyner) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

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

(3) "Carrying value" means the fair market value at the
time the assets are received by the fiduciary. For the estates
of decedents and trusts described in s. 733.707(3), after the
grantor's death, the assets are considered received as of the



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14 date of death. If there is a change in fiduciaries, a majority
15 of the continuing fiduciaries may elect to adjust the carrying
16 values to reflect the fair market value of the assets at the
17 beginning of their administration. If such election is made, it
18 must be reflected on the first accounting filed after the
19 election. For assets acquired during the administration of the
20 estate or trust, the carrying value is equal to the acquisition
21 costs of the asset.

22 Section 2. Subsection (3) is added to section 738.103,
23 Florida Statutes, to read:

24 738.103 Fiduciary duties; general principles.—

25 (3) Except as provided in s. 738.1041(9), this chapter
26 pertains to the administration of a trust and is applicable to
27 any trust that is administered in this state or under its law.
28 This chapter also applies to any estate that is administered in
29 this state unless the provision is limited in application to a
30 trustee, rather than a fiduciary.

31 Section 3. Subsections (5) and (11) of section 738.104,
32 Florida Statutes, are amended to read:

33 738.104 Trustee's power to adjust.—

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

37 ~~(b)~~ A trustee may release the entire power to adjust
38 conferred by subsection (1) or may release only the power to
39 adjust from income to principal or the power to adjust from
40 principal to income if the trustee is uncertain about whether
41 possessing or exercising the power will cause a result described
42 in paragraphs (3)(a)-(e) or paragraph (3)(g) or if the trustee



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43 determines that possessing or exercising the power will or may
44 deprive the trust of a tax benefit or impose a tax burden not
45 described in subsection (3).

46 ~~(e) A release under this subsection may be permanent or for~~
47 ~~a specified period, including a period measured by the life of~~
48 ~~an individual. Notwithstanding anything contrary to this~~
49 ~~subsection, a release of the power to adjust pursuant to~~
50 ~~paragraph (a) shall remain effective only for as long as the~~
51 ~~trust is administered as a unitrust pursuant to s. 738.1041.~~

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

55 Section 4. Section 738.1041, Florida Statutes, is amended
56 to read:

57 738.1041 Total return unitrust.—

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

59 (a) "Average fair market value" means the average of the
60 fair market values of assets held by the trust at the beginning
61 of the current and each of the 2 preceding years, or for the
62 entire term of the trust if there are less than 2 preceding
63 years, and adjusted as follows:

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

67 2. If assets have been distributed from the trust during
68 the years used to determine the average, other than in
69 satisfaction of the unitrust amount, the amount of each
70 distribution is subtracted from all years in which such
71 distribution was not included.



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72 **(b)**~~(a)~~ "Disinterested person" means a person who is not a
73 "related or subordinate party" ~~as defined in s. 672(e) of the~~
74 ~~United States Internal Revenue Code, 26 U.S.C. ss. 1 et seq., or~~
75 ~~any successor provision thereof,~~ with respect to the person then
76 acting as trustee of the trust and excludes the grantor and any
77 interested trustee.

78 **(c)**~~(b)~~ "Fair market value" means the fair market value of
79 the assets held by the trust as otherwise determined under this
80 chapter, reduced by all known noncontingent liabilities.

81 **(d)**~~(e)~~ "Income trust" means a trust, created by ~~either~~ an
82 inter vivos or a testamentary instrument, which directs or
83 permits the trustee to distribute the net income of the trust to
84 one or more persons, ~~either~~ in fixed proportions or in amounts
85 or proportions determined by the trustee and regardless of
86 whether the trust directs or permits the trustee to distribute
87 the principal of the trust to one or more such persons.

88 **(e)**~~(d)~~ "Interested distributee" means a person to whom
89 distributions of income or principal can currently be made and
90 who has the power to remove the existing trustee and designate
91 as successor a person who may be a "related or subordinate
92 party," ~~as defined in the Internal Revenue Code, 26 U.S.C. s.~~
93 ~~672(e),~~ with respect to such distributee.

94 **(f)**~~(e)~~ "Interested trustee" means an individual trustee to
95 whom the net income or principal of the trust can currently be
96 distributed or would be distributed if the trust were then to
97 terminate and be distributed, any trustee whom an interested
98 distributee has the power to remove and replace with a related
99 or subordinate party ~~as defined in paragraph (d),~~ or an
100 individual trustee whose legal obligation to support a



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101 beneficiary may be satisfied by distributions of income and
102 principal of the trust.

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

106 (h) ~~(f)~~ "Unitrust amount" means the amount determined by
107 multiplying the average fair market value of the assets as
108 calculated defined in paragraph (a) ~~(b)~~ by the percentage
109 calculated under paragraph (2) (b).

110 (2) A trustee may, without court approval, convert an
111 income trust to a total return unitrust, reconvert a total
112 return unitrust to an income trust, or change the percentage
113 used to calculate the unitrust amount or the method used to
114 determine the fair market value of the trust if:

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

117 1. In the case of a trust being administered as an income
118 trust, that future distributions from the trust will be unitrust
119 amounts rather than net income, and indicates the manner in
120 which the unitrust amount will be calculated and the method in
121 which the fair market value of the trust will be determined.

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

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

126 b. The percentage used to calculate the unitrust amount or
127 the method used to determine the fair market value of the trust
128 will be changed, and indicates the manner in which the new
129 unitrust amount will be calculated and the method in which the



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130 new fair market value of the trust will be determined;
131 (b) The trustee determines the terms of the unitrust under
132 one of the following methods:
133 1. A disinterested trustee determines, or if there is no
134 trustee other than an interested trustee, the interested trustee
135 appoints a disinterested person who, in its sole discretion but
136 acting in a fiduciary capacity, determines for the interested
137 trustee:
138 a. The percentage to be used to calculate the unitrust
139 amount, provided the percentage used is not greater than 5
140 percent nor less than 3 percent;
141 b. The method to be used in determining the fair market
142 value of the trust; and
143 c. Which assets, if any, are to be excluded in determining
144 the unitrust amount; or
145 2. The interested trustee or disinterested trustee
146 administers the trust such that:
147 a. The percentage used to calculate the unitrust amount is
148 50 percent of the ~~applicable federal~~ rate as defined in the
149 Internal Revenue Code, 26 U.S.C. s. 7520, in effect for the
150 month the conversion under this section becomes effective and
151 for each January thereafter; however, if the percentage
152 calculated exceeds 5 percent, the unitrust percentage ~~is shall~~
153 ~~be~~ 5 percent and if the percentage calculated is less than 3
154 percent, the unitrust percentage ~~is shall be~~ 3 percent; and
155 b. The fair market value of the trust shall be determined
156 at least annually on an asset-by-asset basis, reasonably and in
157 good faith, in accordance with ~~the provisions of~~ s. 738.202(5),
158 except the following property shall not be included in



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159 determining the value of the trust:

160 (I) Any residential property or any tangible personal
161 property that, as of the first business day of the current
162 valuation year, one or more current beneficiaries of the trust
163 have or have had the right to occupy, or have or have had the
164 right to possess or control, ~~other than in his or her capacity~~
165 ~~as trustee of the trust~~, and instead the right of occupancy or
166 the right to possession and control ~~is shall be deemed to be~~ the
167 unitrust amount with respect to such property; however, the
168 unitrust amount must ~~shall~~ be adjusted to take into account
169 partial distributions from or receipt into the trust of such
170 property during the valuation year;~~-~~

171 (II) Any asset specifically given to a beneficiary and the
172 return on investment on such property, which return on
173 investment shall be distributable to the such beneficiary; or-

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

176 (c) The trustee sends written notice of its intention to
177 take such action, along with copies of the such written
178 statement regarding trust distributions and this section, and,
179 if applicable, the determinations of ~~either~~ the trustee or the
180 disinterested person to:

- 181 1. The grantor of the trust, if living.
- 182 2. All living persons who are currently receiving or
183 eligible to receive distributions of income from ~~of~~ the trust.
- 184 3. All living persons who would receive distributions of
185 principal of the trust if the trust were to terminate at the
186 time of ~~the~~ giving ~~of~~ such notice ~~(without regard to the~~
187 exercise of any power of appointment,~~)~~ or, if the trust does not



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188 provide for its termination, all living persons who would
189 receive or be eligible to receive distributions of income or
190 principal of the trust if the persons identified in subparagraph
191 2. were deceased.

192 4. All persons acting as advisers or protectors of the
193 trust.

194

195 Notice under this paragraph shall be served informally, in the
196 manner provided in the Florida Rules of Civil Procedure relating
197 to service of pleadings subsequent to the initial pleading.
198 Notice may be served on a legal representative or natural
199 guardian of a person without ~~the~~ filing ~~of~~ any proceeding or
200 approval of any court;

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

203 (e) No person receiving such notice objects, by written
204 instrument delivered to the trustee, to the proposed action of
205 the trustee or the determinations of the disinterested person
206 within 60 days after service of such notice. An objection ~~under~~
207 ~~this section~~ may be executed by a legal representative or
208 natural guardian of a person without ~~the~~ filing ~~of~~ any
209 proceeding or approval of any court.

210 (3) If a trustee desires to convert an income trust to a
211 total return unitrust, reconvert a total return unitrust to an
212 income trust, or change the percentage used to calculate the
213 unitrust amount or the method used to determine a fair market
214 value of the trust but does not have the ability to or elects
215 not to do it under subsection (2), the trustee may petition the
216 circuit court for such order as the trustee deems appropriate.



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217 In that event, the court, in its own discretion or on the
218 petition of such trustee or any person having an income or
219 remainder interest in the trust, may appoint a disinterested
220 person who, acting in a fiduciary capacity, shall present such
221 information to the court as is ~~shall be~~ necessary for the court
222 to make a determination hereunder.

223 ~~(4) All determinations made pursuant to sub-subparagraph~~
224 ~~(2)(b)2.b. shall be conclusive if reasonable and made in good~~
225 ~~faith. Such determination shall be conclusively presumed to have~~
226 ~~been made reasonably and in good faith unless proven otherwise~~
227 ~~in a proceeding commenced by or on behalf of a person interested~~
228 ~~in the trust within the time provided in s. 736.1008. The burden~~
229 ~~will be on the objecting interested party to prove that the~~
230 ~~determinations were not made reasonably and in good faith.~~

231 (4)~~(5)~~ Following the conversion of an income trust to a
232 total return unitrust, the trustee:

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

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

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



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

253 (5)~~(6)~~ In administering a total return unitrust, the
254 trustee may, in its sole discretion but subject to the
255 provisions of the governing instrument, determine:

256 (a) The effective date of the conversion.

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

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

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

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

266 (6)~~(7)~~ Conversion to a total return unitrust under ~~the~~
267 ~~provisions of~~ this section does ~~shall~~ not affect any other
268 provision of the governing instrument, if any, regarding
269 distributions of principal.

270 (7)~~(8)~~ Any trustee or disinterested person who in good
271 faith takes or fails to take any action under this section is
272 ~~shall~~ not be liable to any person affected by such action or
273 inaction, regardless of whether such person received written
274 notice as provided in this section or ~~and regardless of whether~~



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275 such person was under a legal disability at the time of the
276 delivery of such notice. Such person's exclusive remedy ~~is shall~~
277 ~~be~~ to obtain, under subsection (8) ~~(9)~~, an order of the court
278 directing the trustee to convert an income trust to a total
279 return unitrust, to reconvert from a total return unitrust to an
280 income trust, or to change the percentage used to calculate the
281 unitrust amount. If a court determines that the trustee or
282 disinterested person has not acted in good faith in taking or
283 failing to take any action under this section, ~~the provisions of~~
284 s. 738.105(3) applies ~~apply~~.

285 (8) ~~(9)~~ If a majority in interest of ~~either~~ the income or
286 remainder beneficiaries of an income trust has delivered to the
287 trustee a written objection to the amount of the income
288 distributions of the trust, and, if the trustee has failed to
289 resolve the objection to the satisfaction of the objecting
290 beneficiaries within 6 months after ~~from the~~ receipt of such
291 written objection, ~~then~~ the objecting beneficiaries may petition
292 the court in accordance with subsection (3).

293 (9) ~~(10)~~ This section pertains ~~shall be construed as~~
294 ~~pertaining~~ to the administration of a trust and is applicable to
295 any trust that is administered ~~either~~ in this state or under
296 Florida law unless:

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

300 (b) The trust is a trust described in the Internal Revenue
301 Code, 26 U.S.C. s. 170(f)(2)(B), s. 642(c)(5), s. 664(d), s.
302 2702(a)(3), or s. 2702(b);

303 (c) One or more persons to whom the trustee could



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304 distribute income have a power of withdrawal over the trust:

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

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

311 (d) The governing instrument expressly prohibits use of
312 this section by specific reference to the section. A provision
313 in the governing instrument that, "The provisions of section
314 738.1041, Florida Statutes, as amended, or any corresponding
315 provision of future law, may shall not be used in the
316 administration of this trust," or similar words reflecting such
317 intent are shall be sufficient to preclude the use of this
318 section; ~~or~~

319 ~~(e) The trust is a trust with respect to which a trustee~~
320 ~~currently possesses the power to adjust under s. 738.104.~~

321 ~~(10)(11)~~ The grantor of a trust may create an express total
322 return unitrust that ~~which~~ will be ~~become~~ effective as provided
323 in the trust instrument ~~document~~ without requiring a conversion
324 under this section.

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

329 1.(a) That distributions from the trust will be unitrust
330 amounts and the manner in which the unitrust amount will be
331 calculated; ~~and the method in which the fair market value of the~~
332 ~~trust will be determined.~~



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333 2.(b) The percentage to be used to calculate the unitrust
334 amount, provided the percentage used is not greater than 5
335 percent nor less than 3 percent.

336 (b) The trust instrument may also contain provisions
337 specifying:

338 1.(e) The method to be used in determining the fair market
339 value of the trust, including whether to use an average fair
340 market value or the fair market value of the assets held by the
341 trust at the beginning of the current year; or-

342 2.(d) Which assets, if any, are to be excluded in
343 determining the unitrust amount.

344 (c) This section establishes the method of determining the
345 fair market value of the trust if the trust instrument is silent
346 as to subparagraph (b)1., and to specify those assets, if any,
347 which are to be excluded in determining the unitrust amount if
348 the trust instrument is silent as to subparagraph (b)2.

349 Section 5. Subsections (1), (3), and (4) of section
350 738.105, Florida Statutes, are amended to read:

351 738.105 Judicial control of discretionary powers.-

352 (1) A court may ~~shall~~ not change a trustee's fiduciary's
353 decision to exercise or not to exercise a discretionary power
354 conferred by this chapter unless the court determines that the
355 decision was an abuse of the trustee's fiduciary's discretion. A
356 court may ~~shall~~ not determine that a trustee fiduciary abused
357 its discretion merely because the court would have exercised the
358 discretion in a different manner or would not have exercised the
359 discretion.

360 (3) If a court determines that a trustee fiduciary has
361 abused its discretion, the remedy is ~~shall be~~ to restore the



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362 income and remainder beneficiaries to the positions they would
363 have occupied if the trustee ~~fiduciary~~ had not abused its
364 discretion, in accordance with ~~according to~~ the following rules:

365 (a) To the extent the abuse of discretion has resulted in
366 no distribution to a beneficiary or a distribution that is too
367 small, the court shall require the trustee ~~fiduciary~~ to
368 distribute from the trust to the beneficiary an amount the court
369 determines will restore the beneficiary, in whole or in part, to
370 his or her appropriate position.

371 (b) To the extent the abuse of discretion has resulted in a
372 distribution to a beneficiary that is too large, the court shall
373 restore the beneficiaries, the trust, or both, in whole or in
374 part, to their appropriate positions by requiring the trustee
375 ~~fiduciary~~ to withhold an amount from one or more future
376 distributions to the beneficiary who received the distribution
377 that was too large or requiring that beneficiary to return some
378 or all of the distribution to the trust.

379 (c) To the extent the court is unable, after applying
380 paragraphs (a) and (b), to restore the beneficiaries or, the
381 trust, or both, to the positions they would have occupied if the
382 trustee ~~fiduciary~~ had not abused its discretion, the court may
383 require the trustee ~~fiduciary~~ to pay an appropriate amount from
384 its own funds to one or more of the beneficiaries or the trust
385 or both.

386 (4) Upon the filing of a petition by the trustee ~~fiduciary~~,
387 the court having jurisdiction over the trust ~~or estate~~ shall
388 determine whether a proposed exercise or nonexercise by the
389 trustee ~~fiduciary~~ of a discretionary power conferred by this
390 chapter will result in an abuse of the trustee's ~~fiduciary's~~



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391 discretion. If the petition describes the proposed exercise or
392 nonexercise of the power and contains sufficient information to
393 inform the beneficiaries of the reasons for the proposal, the
394 facts upon which the trustee ~~fiduciary~~ relies, and an
395 explanation of how the income and remainder beneficiaries will
396 be affected by the proposed exercise or nonexercise of the
397 power, a beneficiary who challenges the proposed exercise or
398 nonexercise has the burden of establishing that such exercise or
399 nonexercise will result in an abuse of discretion.

400 Section 6. Subsections (1) through (4) of section 738.201,
401 Florida Statutes, are amended to read:

402 738.201 Determination and distribution of net income.—After
403 a decedent dies, in the case of an estate, or after an income
404 interest in a trust ends, the following rules apply:

405 (1) A fiduciary of an estate or of a terminating income
406 interest shall determine the amount of net income and net
407 principal receipts received from property specifically given to
408 a beneficiary under ~~the rules in ss. 738.301-738.706 which apply~~
409 ~~to trustees and the rules in~~ subsection (5). The fiduciary shall
410 distribute the net income and net principal receipts to the
411 beneficiary who is to receive the specific property.

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

415 (a) Including in net income all income from property used
416 to discharge liabilities.

417 (b) Paying from income or principal, in the fiduciary's
418 discretion, fees of attorneys, accountants, and fiduciaries;
419 court costs and other expenses of administration; and interest



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420 on death taxes, ~~but~~ The fiduciary may pay those expenses from
421 income of property passing to a trust for which the fiduciary
422 claims an estate tax marital or charitable deduction under the
423 Internal Revenue Code or comparable law of any state only to the
424 extent the payment of those expenses from income will not cause
425 the reduction or loss of the deduction.

426 (c) Paying from principal all other disbursements made or
427 incurred in connection with the settlement of a decedent's
428 estate or the winding up of a terminating income interest,
429 including debts, funeral expenses, disposition of remains,
430 family allowances, and death taxes and related penalties that
431 are apportioned to the estate or terminating income interest by
432 the will, the terms of the trust, or applicable law.

433 (3) ~~If A fiduciary shall distribute to a beneficiary who~~
434 ~~receives a pecuniary devise amount outright is also entitled to~~
435 ~~receive the interest or any other amount on the devise under the~~
436 ~~terms of provided by the will or, the terms of the trust, the~~
437 ~~fiduciary shall distribute the interest or other amount~~
438 ~~applicable law~~ from net income determined under subsection (2)
439 or from principal to the extent net income is insufficient. ~~If a~~
440 ~~beneficiary is to receive a pecuniary amount outright from a~~
441 ~~trust after an income interest ends and no interest or other~~
442 ~~amount is provided for by the terms of the trust or applicable~~
443 ~~law, the fiduciary shall distribute the interest or other amount~~
444 ~~to which the beneficiary would be entitled under applicable law~~
445 ~~if the pecuniary amount were required to be paid under a will.~~

446 (4) A fiduciary shall distribute the net income remaining
447 after distributions required under subsections (1)-(3) by
448 ~~subsection (3)~~ in the manner described in s. 738.202 to all



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449 other beneficiaries, including a beneficiary who receives a
450 pecuniary amount in trust, even if the beneficiary holds an
451 unqualified power to withdraw assets from the trust or other
452 presently exercisable general power of appointment over the
453 trust.

454 Section 7. Section 738.202, Florida Statutes, is amended to
455 read:

456 738.202 Distribution to residuary and remainder
457 beneficiaries.—

458 (1) Each beneficiary described in s. 738.201(4) is entitled
459 to receive a portion of the net income remaining after the
460 application of s. 738.201(1)-(3), which is equal to the
461 beneficiary's fractional interest in undistributed principal
462 assets, using carrying values as of the distribution date. If a
463 fiduciary makes more than one distribution of assets to
464 beneficiaries to whom this section applies, each beneficiary,
465 including one who does not receive part of the distribution, is
466 entitled, as of each distribution date, to the net income the
467 fiduciary ~~has~~ received after the date of death or terminating
468 event or earlier distribution date but has not distributed as of
469 the current distribution date.

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

472 (a) The beneficiary is entitled to receive a portion of the
473 net income equal to the beneficiary's fractional interest in the
474 carrying value of the undistributed principal assets immediately
475 before the distribution date, excluding the amount of unpaid
476 liabilities including assets that later may be sold to meet
477 principal obligations.



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478 (b) The beneficiary's fractional interest in the
479 undistributed principal assets shall be calculated: ~~without~~
480 ~~regard to~~

481 1. At the time the interest began and adjusted for any
482 disproportionate distributions since the interest began;

483 2. By excluding any liabilities of the estate or trust from
484 the calculation;

485 3. By also excluding property specifically given to a
486 beneficiary and property required to pay pecuniary amounts not
487 in trust; and-

488 ~~4.(c) The beneficiary's fractional interest in the~~
489 ~~undistributed principal assets shall be calculated~~ On the basis
490 of the aggregate carrying value of those assets determined under
491 subsection (1) as of the distribution date ~~without reducing the~~
492 ~~value by any unpaid principal obligation.~~

493 (c) If a disproportionate distribution of principal is made
494 to any beneficiary, the respective fractional interests of all
495 beneficiaries in the remaining underlying assets shall be
496 recomputed by:

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

499 2. Reducing the fractional interest of the recipient of the
500 disproportionate distribution in the remaining principal assets
501 by the fair market value of the principal distribution; and

502 3. Recomputing the fractional interests of all
503 beneficiaries in the remaining principal assets based upon the
504 now restated carrying values.

505 ~~(d) The distribution date for purposes of this section may~~
506 ~~be the date as of which the fiduciary calculates the value of~~



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507 ~~the assets if that date is reasonably near the date on which~~
508 ~~assets are actually distributed.~~

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

513 (4) A fiduciary may apply the provisions of rules ~~in~~ this
514 section, to the extent the fiduciary considers appropriate, to
515 net gain or loss realized after the date of death or terminating
516 event or earlier distribution date from the disposition of a
517 principal asset if this section applies to the income from the
518 asset.

519 (5) The carrying value or fair market value of trust assets
520 shall be determined on an asset-by-asset basis and are ~~shall be~~
521 conclusive if reasonable and determined in good faith.
522 Determinations of fair market value based on appraisals
523 performed within 2 years before or after the valuation date are
524 ~~shall be~~ presumed reasonable. The values ~~value~~ of trust assets
525 are ~~shall be~~ conclusively presumed to be reasonable and
526 determined in good faith unless proven otherwise in a proceeding
527 commenced by or on behalf of a person interested in the trust
528 within the time provided in s. 736.1008.

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

531 Section 8. Subsection (4) of section 738.301, Florida
532 Statutes, is amended to read:

533 738.301 When right to income begins and ends.—An income
534 beneficiary is entitled to net income from the date on which the
535 income interest begins.



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

540 Section 9. Subsections (1) and (2) of section 738.302,
541 Florida Statutes, are amended to read:

542 738.302 Apportionment of receipts and disbursements when
543 decedent dies or income interest begins.—

544 (1) A fiduciary ~~trustee~~ shall allocate an income receipt or
545 disbursement other than one to which s. 738.201(1) applies to
546 principal if the due date of the receipt or disbursement occurs
547 before a decedent dies in the case of an estate or before an
548 income interest begins in the case of a trust or successive
549 income interest.

550 (2) A fiduciary ~~trustee~~ shall allocate an income receipt or
551 disbursement to income if the due date of the receipt or
552 disbursement occurs on or after the date on which a decedent
553 dies or an income interest begins and the due date is a periodic
554 due date. An income receipt or disbursement shall be treated as
555 accruing from day to day if the due date of the receipt or
556 disbursement is not periodic or the receipt or disbursement has
557 no due date. The portion of the receipt or disbursement accruing
558 before the date on which a decedent dies or an income interest
559 begins shall be allocated to principal and the balance shall be
560 allocated to income.

561 Section 10. Subsections (2) and (3) of section 738.303,
562 Florida Statutes, are amended to read:

563 738.303 Apportionment when income interest ends.—

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



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565 ~~trustee~~ shall pay to a mandatory income beneficiary who survives
566 that date, or the estate of a deceased mandatory income
567 beneficiary whose death causes the interest to end, the
568 beneficiary's share of the undistributed income that is not
569 disposed of under the terms of the trust unless the beneficiary
570 has an unqualified power to revoke more than 5 percent of the
571 trust immediately before the income interest ends. In the latter
572 case, the undistributed income from the portion of the trust
573 that may be revoked shall be added to principal.

574 (3) When a fiduciary's ~~trustee's~~ obligation to pay a fixed
575 annuity or a fixed fraction of the value of the trust's assets
576 ends, the fiduciary ~~trustee~~ shall prorate the final payment if
577 and to the extent required by applicable law to accomplish a
578 purpose of the trust or its grantor relating to income, gift,
579 estate, or other tax requirements.

580 Section 11. Section 738.401, Florida Statutes, is amended
581 to read:

582 738.401 Character of receipts.—

583 (1) For purposes of this section, the term "entity" means a
584 corporation, partnership, limited liability company, regulated
585 investment company, real estate investment trust, common trust
586 fund, or any other organization in which a fiduciary ~~trustee~~ has
587 an interest other than a trust or estate to which s. 738.402
588 applies, a business or activity to which s. 738.403 applies, or
589 an asset-backed security to which s. 738.608 applies.

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

593 (3) Except as otherwise provided in this section, a



594 fiduciary trustee shall allocate the following receipts from an
595 entity to principal:

596 (a) Property other than money.

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

600 (c) Money received in total or partial liquidation of the
601 entity.

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

606 (e) Money received from an entity listed on a public stock
607 exchange during any year of the trust or estate which exceeds 10
608 percent of the fair market value of the trust's or estate's
609 interest in the entity on the first day of that year. The amount
610 to be allocated to principal must be reduced to the extent that
611 the cumulative distributions from the entity to the trust or
612 estate allocated to income does not exceed a cumulative annual
613 return of 3 percent of the fair market value of the interest in
614 the entity at the beginning of each year or portion of a year
615 for the number of years or portion of years in the period that
616 the interest in the entity has been held by the trust or estate.
617 If a trustee has exercised a power to adjust under s. 738.104
618 during any period the interest in the entity has been held by
619 the trust, the trustee, in determining the total income
620 distributions from that entity, must take into account the
621 extent to which the exercise of that power resulted in income to
622 the trust from that entity for that period. If the income of the



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623 trust for any period has been computed under s. 738.1041, the
624 trustee, in determining the total income distributions from that
625 entity for that period, must take into account the portion of
626 the unitrust amount paid as a result of the ownership of the
627 trust's interest in the entity for that period.

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

633 (5) Money is received in partial liquidation:

634 (a) To the extent the entity, at or near the time of a
635 distribution, indicates that such money is a distribution in
636 partial liquidation; or

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

644
645 This subsection does not apply to an entity to which subsection
646 (7) applies.

647 (6) Money may not ~~is not received in partial liquidation,~~
648 ~~nor may money~~ be taken into account in determining any excess
649 under paragraph (5) (b), to the extent that the cumulative
650 distributions from the entity to the trust or the estate
651 allocated to income do not exceed the greater of: such money



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652 ~~does not exceed the amount of income tax a trustee or~~
653 ~~beneficiary must pay on taxable income of the entity that~~
654 ~~distributes the money.~~

655 (a) A cumulative annual return of 3 percent of the entity's
656 carrying value computed at the beginning of each period for the
657 number of years or portion of years that the entity was held by
658 the fiduciary. If a trustee has exercised a power to adjust
659 under s. 738.104 during any period the interest in the entity
660 has been held by the trust, the trustee, in determining the
661 total income distributions from that entity, must take into
662 account the extent to which exercise of the power resulted in
663 income to the trust from that entity for that period. If the
664 income of a trust for any period has been computed pursuant to
665 s. 738.1041, the trustee, in determining the total income
666 distributions from the entity for that period, must take into
667 account the portion of the unitrust amount paid as a result of
668 the ownership of the trust's interest in the entity for that
669 period; or

670 (b) If the entity is treated as a partnership, subchapter S
671 corporation, or a disregarded entity pursuant to the Internal
672 Revenue Code of 1986, as amended, the amount of income tax
673 attributable to the trust's or estate's ownership share of the
674 entity, based on its pro rata share of the taxable income of the
675 entity that distributes the money, for the number of years or
676 portion of years that the interest in the entity was held by the
677 fiduciary, calculated as if all of that tax was incurred by the
678 fiduciary.

679 (7) The following ~~applies~~ special rules shall apply to
680 money ~~monies~~ or property received by a private trustee as a



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681 distribution from an investment entity ~~entities~~ described in
682 this subsection:

683 (a) The trustee shall first treat as income of the trust
684 all of the money or property received from the investment entity
685 in the current year which would be considered income under this
686 chapter if the trustee had directly held the trust's pro rata
687 share of the assets of the investment entity. For this purpose,
688 all distributions received in the current year must be
689 aggregated.

690 (b) The trustee shall next treat as income of the trust any
691 additional money or property received in the current year which
692 would have been considered income in the prior 2 years under
693 paragraph (a) if additional money or property had been received
694 from the investment entity in any of those prior 2 years. The
695 amount to be treated as income shall be reduced by any
696 distributions of money or property made by the investment entity
697 to the trust during the current and prior 2 years which were
698 treated as income under this paragraph.

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

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

702 1. "Investment entity" means an entity, other than a
703 business activity conducted by the trustee described in s.
704 738.403 or an entity that is listed on a public stock exchange,
705 which is treated as a partnership, subchapter S corporation, or
706 disregarded entity pursuant to the Internal Revenue Code of
707 1986, as amended, and which normally derives 50 percent or more
708 of its annual cumulative net income from interest, dividends,
709 annuities, royalties, rental activity, or other passive



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710 investments, including income from the sale or exchange of such
711 passive investments.

712 2. "Private trustee" means a trustee who is a natural
713 person, but only if the trustee is unable to use the power to
714 adjust between income and principal with respect to receipts
715 from entities described in this subsection pursuant to s.
716 738.104. A bank, trust company, or other commercial trustee is
717 not considered a private trustee.

718 (8) This section shall be applied before ss. 738.705 and
719 738.706 and does not modify or change any of the provisions of
720 those sections.

721 ~~(a) Moneys or property received from a targeted entity that~~
722 ~~is not an investment entity which do not exceed the trust's pro~~
723 ~~rata share of the undistributed cumulative net income of the~~
724 ~~targeted entity during the time an ownership interest in the~~
725 ~~targeted entity was held by the trust shall be allocated to~~
726 ~~income. The balance of moneys or property received from a~~
727 ~~targeted entity shall be allocated to principal.~~

728 ~~(b) If trust assets include any interest in an investment~~
729 ~~entity, the designated amount of moneys or property received~~
730 ~~from the investment entity shall be treated by the trustee in~~
731 ~~the same manner as if the trustee had directly held the trust's~~
732 ~~pro rata share of the assets of the investment entity~~
733 ~~attributable to the distribution of such designated amount.~~
734 ~~Thereafter, distributions shall be treated as principal.~~

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

737 ~~1. "Cumulative net income" means the targeted entity's net~~
738 ~~income as determined using the method of accounting regularly~~



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739 ~~used by the targeted entity in preparing its financial~~
740 ~~statements, or if no financial statements are prepared, the net~~
741 ~~book income computed for federal income tax purposes, for every~~
742 ~~year an ownership interest in the entity is held by the trust.~~
743 ~~The trust's pro rata share shall be the cumulative net income~~
744 ~~multiplied by the percentage ownership of the trust.~~

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

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

751 ~~b. The amount of income of the investment entity for the~~
752 ~~current year and the prior 2 years, as reported to the trustee~~
753 ~~by the investment entity for federal income tax purposes, less~~
754 ~~any distributions of moneys or property made by the investment~~
755 ~~entity to the trustee during the prior 2 years.~~

756 ~~3. "Investment entity" means a targeted entity that~~
757 ~~normally derives 50 percent or more of its annual cumulative net~~
758 ~~income from interest, dividends, annuities, royalties, rental~~
759 ~~activity, or other passive investments, including income from~~
760 ~~the sale or exchange of such passive investments.~~

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

767 ~~5. "Targeted entity" means any entity that is treated as a~~



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768 ~~partnership, subchapter S corporation, or disregarded entity~~
769 ~~pursuant to the Internal Revenue Code of 1986, as amended, other~~
770 ~~than an entity described in s. 738.403.~~

771 ~~6. "Undistributed cumulative net income" means the trust's~~
772 ~~pro rata share of cumulative net income, less all prior~~
773 ~~distributions from the targeted entity to the trust that have~~
774 ~~been allocated to income.~~

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

778 ~~(8) A trustee may rely upon a statement made by an entity~~
779 ~~about the source or character of a distribution, about the~~
780 ~~amount of profits of a targeted entity, or about the nature and~~
781 ~~value of assets of an investment entity if the statement is made~~
782 ~~at or near the time of distribution by the entity's board of~~
783 ~~directors or other person or group of persons authorized to~~
784 ~~exercise powers to pay money or transfer property comparable to~~
785 ~~those of a corporation's board of directors.~~

786 Section 12. Section 738.402, Florida Statutes, is amended
787 to read:

788 738.402 Distribution from trust or estate.—A fiduciary
789 ~~trustee~~ shall allocate to income an amount received as a
790 distribution of income from a trust or an estate in which the
791 trust has an interest other than a purchased interest and ~~shall~~
792 allocate to principal an amount received as a distribution of
793 principal from such a trust or estate. If a fiduciary ~~trustee~~
794 purchases an interest in a trust that is an investment entity,
795 or a decedent or donor transfers an interest in such a trust to
796 a fiduciary ~~trustee~~, s. 738.401 or s. 738.608 applies to a



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797 receipt from the trust.

798 Section 13. Section 738.403, Florida Statutes, is amended
799 to read:

800 738.403 Business and other activities conducted by
801 fiduciary trustee.-

802 (1) If a fiduciary trustee who conducts a business or other
803 activity determines that it is in the best interest of all the
804 beneficiaries to account separately for the business or activity
805 instead of accounting for the business or activity as part of
806 the trust's or estate's general accounting records, the
807 fiduciary trustee may maintain separate accounting records for
808 the transactions of the such business or other activity, whether
809 or not the assets of such business or activity are segregated
810 from other trust or estate assets.

811 (2) A fiduciary trustee who accounts separately for a
812 business or other activity may determine the extent to which the
813 net cash receipts of the such business or activity must be
814 retained for working capital, the acquisition or replacement of
815 fixed assets, and other reasonably foreseeable needs of the
816 business or activity, and the extent to which the remaining net
817 cash receipts are accounted for as principal or income in the
818 trust's or estate's general accounting records. If a fiduciary
819 ~~trustee~~ sells assets of the business or other activity, other
820 than in the ordinary course of the business or activity, the
821 fiduciary must trustee shall account for the net amount received
822 as principal in the trust's or estate's general accounting
823 records to the extent the fiduciary trustee determines that the
824 amount received is no longer required in the conduct of the
825 business.



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

828 (a) Retail, manufacturing, service, and other traditional
829 business activities.

830 (b) Farming.

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

832 (d) Management of rental properties.

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

834 (f) Timber operations.

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

836 Section 14. Section 738.501, Florida Statutes, is amended
837 to read:

838 738.501 Principal receipts.—A fiduciary trustee shall
839 allocate to principal:

840 (1) To the extent not allocated to income under this
841 chapter, assets received from a donor transferor during the
842 donor's transferor's lifetime, a decedent's estate, a trust with
843 a terminating income interest, or a payor under a contract
844 naming the trust, estate, or fiduciary its trustee as
845 beneficiary.

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

849 (3) Amounts recovered from third parties to reimburse the
850 trust or estate because of disbursements described in s.
851 738.702(1)(g) or for other reasons to the extent not based on
852 the loss of income.

853 (4) Proceeds of property taken by eminent domain; however,
854 ~~but~~ a separate award made for the loss of income with respect to



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855 an accounting period during which a current income beneficiary
856 had a mandatory income interest is income.

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

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

861 Section 15. Section 738.502, Florida Statutes, is amended
862 to read:

863 738.502 Rental property.—~~If To the extent~~ a fiduciary
864 ~~trustee~~ accounts for receipts from rental property pursuant to
865 this section, the fiduciary ~~trustee~~ shall allocate to income an
866 amount received as rent of real or personal property, including
867 an amount received for cancellation or renewal of a lease. An
868 amount received as a refundable deposit, including a security
869 deposit or a deposit that is to be applied as rent for future
870 periods, must ~~shall~~ be added to principal and held subject to
871 the terms of the lease and is not available for distribution to
872 a beneficiary until the fiduciary's ~~trustee's~~ contractual
873 obligations have been satisfied with respect to that amount.

874 Section 16. Subsections (1), (2), and (3) of section
875 738.503, Florida Statutes, are amended to read:

876 738.503 Obligation to pay money.—

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

882 (2) Except as otherwise provided herein, a fiduciary
883 ~~trustee~~ shall allocate to principal an amount received from the



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884 sale, redemption, or other disposition of an obligation to pay
885 money to the fiduciary trustee.

886 (3) The increment in value of a bond or other obligation
887 for the payment of money bearing no stated interest but payable
888 at a future time in excess of the price at which it was issued
889 or purchased, if purchased after issuance, is distributable as
890 income. If the increment in value accrues and becomes payable
891 pursuant to a fixed schedule of appreciation, it may be
892 distributed to the beneficiary who was the income beneficiary at
893 the ~~this~~ time of increment from the first principal cash
894 available or, if none is available, when the increment is
895 realized by sale, redemption, or other disposition. If ~~When~~
896 unrealized increment is distributed as income but out of
897 principal, the principal must ~~shall~~ be reimbursed for the
898 increment when realized. If, in the reasonable judgment of the
899 fiduciary trustee, exercised in good faith, the ultimate payment
900 of the bond principal is in doubt, the fiduciary trustee may
901 withhold the payment of incremental interest to the income
902 beneficiary.

903 Section 17. Subsections (1) and (2) of section 738.504,
904 Florida Statutes, are amended to read:

905 738.504 Insurance policies and similar contracts.—

906 (1) Except as otherwise provided in subsection (2), a
907 fiduciary trustee shall allocate to principal the proceeds of a
908 life insurance policy or other contract in which the trust,
909 estate, or fiduciary ~~its trustee~~ is named as beneficiary,
910 including a contract that insures the trust, estate, or
911 fiduciary ~~its trustee~~ against loss for damage to, destruction
912 of, or loss of title to a trust or estate asset. The fiduciary



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913 ~~trustee~~ shall allocate dividends on an insurance policy to
914 income if the premiums on the policy are paid from income and to
915 principal if the premiums are paid from principal.

916 (2) A fiduciary ~~trustee~~ shall allocate to income the
917 proceeds of a contract that insures the fiduciary ~~trustee~~
918 against loss of occupancy or other use by an income beneficiary,
919 loss of income, or, subject to s. 738.403, loss of profits from
920 a business.

921 Section 18. Section 738.601, Florida Statutes, is amended
922 to read:

923 738.601 Insubstantial allocations not required.—If a
924 fiduciary ~~trustee~~ determines that an allocation between
925 principal and income required by s. 738.602, s. 738.603, s.
926 738.604, s. 738.605, or s. 738.608 is insubstantial, the
927 fiduciary ~~trustee~~ may allocate the entire amount to principal
928 unless one of the circumstances described in s. 738.104(3)
929 applies to the allocation. This power may be exercised by a
930 cofiduciary under ~~cotrustee in~~ the circumstances described in s.
931 738.104(4) and may be released for the reasons and in the manner
932 described in s. 738.104(5). An allocation is presumed to be
933 insubstantial if:

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

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

941 Section 19. Section 738.602, Florida Statutes, is amended



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942 to read:

943 738.602 Payments from deferred compensation plans,
944 annuities, and retirement plans or accounts.—

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

946 (a) "Fund" means a private or commercial annuity, an
947 individual retirement account, an individual retirement annuity,
948 a deferred compensation plan, a pension plan, a profit-sharing
949 plan, a stock-bonus plan, an employee stock-ownership plan, or
950 another similar arrangement in which federal income tax is
951 deferred.

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

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

958 (d) "Payment" means a distribution from a fund that a
959 fiduciary trustee may receive over a fixed number of years or
960 during the life of one or more individuals because of services
961 rendered or property transferred to the payor in exchange for
962 future payments. The term includes a distribution made in money
963 or property from the payor's general assets or from a fund
964 created by the payor or payee.

965 (e) "Separate account" means a fund holding assets
966 exclusively for the benefit of a participant or account owner
967 and:

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

970 2. The administrator of the fund maintains records that



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971 show receipts and disbursements associated with such assets.

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

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

976 2. As a unitrust amount calculated by multiplying the fair
977 market value of the fund as of the first day of the first
978 accounting period and, thereafter, as of the last day of the
979 accounting period that immediately precedes the accounting
980 period during which a payment is received by the percentage
981 determined in accordance with s. 738.1041(2)(b)2.a. The
982 fiduciary ~~trustee~~ shall determine such percentage as of the
983 first month that the fiduciary's ~~trustee's~~ election to treat the
984 income of the fund as a unitrust amount becomes effective. For
985 purposes of this subparagraph, "fair market value" means the
986 fair market value of the assets held in the fund as of the
987 applicable valuation date determined as provided in this
988 subparagraph. The fiduciary ~~trustee~~ is not liable for good faith
989 reliance upon any valuation supplied by the person or persons in
990 possession of the fund. If the fiduciary ~~trustee~~ makes or
991 terminates an election under this subparagraph, the fiduciary
992 ~~trustee~~ shall make such disclosure in a trust disclosure
993 document that satisfies the requirements of s. 736.1008(4)(a).

994 (b) The fiduciary ~~may trustee shall have discretion to~~
995 elect the method of determining the income of the fund pursuant
996 to this subsection and may change the method of determining
997 income of the fund for any future accounting period.

998 (3) For a fund that is a nonseparate account, income of the
999 fund is a unitrust amount determined by calculating the present



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1000 value of the right to receive the remaining payments under 26
1001 U.S.C. s. 7520 of the Internal Revenue Code as of the first day
1002 of the accounting period and multiplying it by the percentage
1003 determined in accordance with s. 738.1041(2)(b)2.a. The
1004 fiduciary trustee shall determine the unitrust amount as of the
1005 first month that the fiduciary's trustee's election to treat the
1006 income of the fund as a unitrust amount becomes effective.

1007 (4) Except for those trusts described in subsection (5),
1008 the fiduciary trustee shall allocate to income the lesser of the
1009 payment received from a fund or the income determined under
1010 subsection (2) or subsection (3). Any remaining amount of the
1011 payment shall be allocated to principal ~~a payment from a fund as~~
1012 ~~follows:~~

1013 ~~(a) That portion of the payment the payor characterizes as~~
1014 ~~income shall be allocated to income, and any remaining portion~~
1015 ~~of the payment shall be allocated to principal.~~

1016 ~~(b) To the extent that the payor does not characterize any~~
1017 ~~portion of a payment as income or principal and the trustee can~~
1018 ~~ascertain the income of the fund by the fund's account~~
1019 ~~statements or any other reasonable source, the trustee shall~~
1020 ~~allocate to income the lesser of the income of the fund or the~~
1021 ~~entire payment and shall allocate to principal any remaining~~
1022 ~~portion of the payment.~~

1023 ~~(c) If the trustee, acting reasonably and in good faith,~~
1024 ~~determines that neither paragraph (a) nor paragraph (b) applies~~
1025 ~~and all or part of the payment is required to be made, the~~
1026 ~~trustee shall allocate to income 10 percent of the portion of~~
1027 ~~the payment that is required to be made during the accounting~~
1028 ~~period and shall allocate the balance to principal. If no part~~



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1029 ~~of a payment is required to be made or the payment received is~~
1030 ~~the entire amount to which the trustee is entitled, the trustee~~
1031 ~~shall allocate the entire payment to principal. For purposes of~~
1032 ~~this paragraph, a payment is not "required to be made" to the~~
1033 ~~extent the payment is made because the trustee exercises a right~~
1034 ~~of withdrawal.~~

1035 (5) For a trust that which, in order to qualify for the
1036 estate or gift tax marital deduction under the Internal Revenue
1037 Code or comparable law of any state, entitles the spouse to all
1038 of the income of the trust, and the terms of the trust are
1039 silent as to the time and frequency for distribution of the
1040 income of the fund, ~~then~~:

1041 (a) For a fund that is a separate account, unless the
1042 spouse directs the fiduciary trustee to leave the income of the
1043 fund in the fund, the fiduciary trustee shall withdraw and pay
1044 to the spouse, at least no less frequently than annually:

1045 1. All of the income of the fund determined in accordance
1046 with subparagraph (2) (a)1.; or

1047 2. The income of the fund as a unitrust amount determined
1048 in accordance with subparagraph (2) (a)2.

1049 (b) For a fund that is a nonseparate account, the fiduciary
1050 ~~trustee~~ shall withdraw and pay to the spouse, at least no less
1051 ~~frequently than~~ annually, the income of the fund as a unitrust
1052 amount determined in accordance with subsection (3).

1053 (6) This section does not apply to payments to which s.
1054 738.603 applies.

1055 Section 20. Section 738.603, Florida Statutes, is amended
1056 to read:

1057 738.603 Liquidating asset.—



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1058 (1) For purposes of this section, the term "liquidating
1059 asset" means an asset the value of which will diminish or
1060 terminate because the asset is expected to produce receipts for
1061 a period of limited duration. The term includes a leasehold,
1062 patent, copyright, royalty right, and right to receive payments
1063 for ~~during a period of~~ more than 1 year under an arrangement
1064 that does not provide for the payment of interest on the unpaid
1065 balance. The term does not include a payment subject to s.
1066 738.602, resources subject to s. 738.604, timber subject to s.
1067 738.605, an activity subject to s. 738.607, an asset subject to
1068 s. 738.608, or any asset for which the fiduciary ~~trustee~~
1069 establishes a reserve for depreciation under s. 738.703.

1070 (2) A fiduciary ~~trustee~~ shall allocate to income 5 ~~10~~
1071 percent of the receipts from the carrying value of a liquidating
1072 asset and the balance to principal. Amounts allocated to
1073 principal shall reduce the carrying value of the liquidating
1074 asset, but not below zero. Amounts received in excess of the
1075 remaining carrying value must be allocated to principal.

1076 Section 21. Subsections (1), (3), and (4) of section
1077 738.604, Florida Statutes, are amended to read:

1078 738.604 Minerals, water, and other natural resources.—

1079 (1) If ~~To the extent~~ a fiduciary ~~trustee~~ accounts for
1080 receipts from an interest in minerals or other natural resources
1081 pursuant to this section, the fiduciary ~~trustee~~ shall allocate
1082 such receipts as follows:

1083 (a) If received as nominal delay rental or nominal annual
1084 rent on a lease, a receipt shall be allocated to income.

1085 (b) If received from a production payment, a receipt shall
1086 be allocated to income if and to the extent the agreement



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1087 creating the production payment provides a factor for interest
1088 or its equivalent. The balance shall be allocated to principal.

1089 (c) If an amount received as a royalty, shut-in-well
1090 payment, take-or-pay payment, bonus, or delay rental is more
1091 than nominal, 90 percent shall be allocated to principal and the
1092 balance to income.

1093 (d) If an amount is received from a working interest or any
1094 other interest not provided for in paragraph (a), paragraph (b),
1095 or paragraph (c), 90 percent of the net amount received shall be
1096 allocated to principal and the balance to income.

1097 (3) This chapter applies whether or not a decedent or donor
1098 was extracting minerals, water, or other natural resources
1099 before the interest became subject to the trust or estate.

1100 (4) If a trust or estate owns an interest in minerals,
1101 water, or other natural resources on January 1, 2003, the
1102 fiduciary trustee may allocate receipts from the interest as
1103 provided in this chapter or in the manner used by the fiduciary
1104 trustee before January 1, 2003. If the trust or estate acquires
1105 an interest in minerals, water, or other natural resources after
1106 January 1, 2003, the fiduciary trustee shall allocate receipts
1107 from the interest as provided in this chapter.

1108 Section 22. Section 738.605, Florida Statutes, is amended
1109 to read:

1110 738.605 Timber.—

1111 (1) ~~If To the extent~~ a fiduciary trustee accounts for
1112 receipts from the sale of timber and related products pursuant
1113 to this section, the fiduciary trustee shall allocate such the
1114 net receipts as follows:

1115 (a) To income to the extent the amount of timber removed



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1116 from the land does not exceed the rate of growth of the timber
1117 during the accounting periods in which a beneficiary has a
1118 mandatory income interest;

1119 (b) To principal to the extent the amount of timber removed
1120 from the land exceeds the rate of growth of the timber or the
1121 net receipts are from the sale of standing timber;

1122 (c) To or between income and principal if the net receipts
1123 are from the lease of timberland or from a contract to cut
1124 timber from land owned by a trust or estate by determining the
1125 amount of timber removed from the land under the lease or
1126 contract and applying the rules in paragraphs (a) and (b); or

1127 (d) To principal to the extent advance payments, bonuses,
1128 and other payments are not allocated pursuant to paragraph (a),
1129 paragraph (b), or paragraph (c).

1130 (2) In determining net receipts to be allocated pursuant to
1131 subsection (1), a fiduciary ~~trustee~~ shall deduct and transfer to
1132 principal a reasonable amount for depletion.

1133 (3) This chapter applies whether or not a decedent or donor
1134 ~~transferor~~ was harvesting timber from the property before the
1135 property became subject to the trust or estate.

1136 (4) If a trust or estate owns an interest in timberland on
1137 January 1, 2003, the fiduciary ~~trustee~~ may allocate net receipts
1138 from the sale of timber and related products as provided in this
1139 chapter or in the manner used by the fiduciary ~~trustee~~ before
1140 January 1, 2003. If the trust or estate acquires an interest in
1141 timberland after January 1, 2003, the fiduciary ~~trustee~~ shall
1142 allocate net receipts from the sale of timber and related
1143 products as provided in this chapter.

1144 Section 23. Subsection (1) of section 738.606, Florida



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1145 Statutes, is amended to read:

1146 738.606 Property not productive of income.—

1147 (1) If a marital deduction under the Internal Revenue Code
1148 or comparable law of any state is allowed for all or part of a
1149 trust the income of which must ~~is required to~~ be distributed to
1150 the grantor's spouse and the assets of which consist
1151 substantially of property that does not provide the spouse with
1152 sufficient income from or use of the trust assets, and if the
1153 amounts the trustee transfers from principal to income under s.
1154 738.104 and distributes to the spouse from principal pursuant to
1155 the terms of the trust are insufficient to provide the spouse
1156 with the beneficial enjoyment required to obtain the marital
1157 deduction, the spouse may require the trustee to make property
1158 productive of income, convert property within a reasonable time,
1159 or exercise the power conferred by ss. 738.104 and 738.1041. The
1160 trustee may decide which action or combination of actions to
1161 take.

1162 Section 24. Subsections (2) and (3) of section 738.607,
1163 Florida Statutes, are amended to read:

1164 738.607 Derivatives and options.—

1165 (2) To the extent a fiduciary ~~trustee~~ does not account
1166 under s. 738.403 for transactions in derivatives, the fiduciary
1167 ~~trustee~~ shall allocate to principal receipts from and
1168 disbursements made in connection with those transactions.

1169 (3) If a fiduciary ~~trustee~~ grants an option to buy property
1170 from the trust or estate whether or not the trust or estate owns
1171 the property when the option is granted, grants an option that
1172 permits another person to sell property to the trust or estate,
1173 or acquires an option to buy property for the trust or estate or



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1174 an option to sell an asset owned by the trust or estate, and the
1175 fiduciary trustee or other owner of the asset is required to
1176 deliver the asset if the option is exercised, an amount received
1177 for granting the option shall be allocated to principal. An
1178 amount paid to acquire the option shall be paid from principal.
1179 A gain or loss realized upon the exercise of an option,
1180 including an option granted to a grantor of the trust or estate
1181 for services rendered, shall be allocated to principal.

1182 Section 25. Subsections (2) and (3) of section 738.608,
1183 Florida Statutes, are amended to read:

1184 738.608 Asset-backed securities.—

1185 (2) If a trust or estate receives a payment from interest
1186 or other current return and from other proceeds of the
1187 collateral financial assets, the fiduciary trustee shall
1188 allocate to income the portion of the payment which the payor
1189 identifies as being from interest or other current return and
1190 ~~shall~~ allocate the balance of the payment to principal.

1191 (3) If a trust or estate receives one or more payments in
1192 exchange for the trust's or estate's entire interest in an
1193 asset-backed security during a single accounting period, the
1194 fiduciary trustee shall allocate the payments to principal. If a
1195 payment is one of a series of payments that will result in the
1196 liquidation of the trust's or estate's interest in the security
1197 over more than a single accounting period, the fiduciary trustee
1198 shall allocate 10 percent of the payment to income and the
1199 balance to principal.

1200 Section 26. Section 738.701, Florida Statutes, is amended
1201 to read:

1202 738.701 Disbursements from income.—A fiduciary trustee



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1203 shall make the following disbursements from income to the extent
1204 they are not disbursements to which s. 738.201(2) ~~(a) or (c)~~
1205 applies:

1206 (1) One-half of the regular compensation of the fiduciary
1207 ~~trustee~~ and of any person providing investment advisory or
1208 custodial services to the fiduciary ~~trustee~~.

1209 (2) One-half of all expenses for accountings, judicial
1210 proceedings, or other matters that involve both the income and
1211 remainder interests.

1212 (3) All of the other ordinary expenses incurred in
1213 connection with the administration, management, or preservation
1214 of trust property and the distribution of income, including
1215 interest, ordinary repairs, regularly recurring taxes assessed
1216 against principal, and expenses of a proceeding or other matter
1217 that concerns primarily the income interest.

1218 (4) Recurring premiums on insurance covering the loss of a
1219 principal asset or the loss of income from or use of the asset.

1220 Section 27. Subsection (1) of section 738.702, Florida
1221 Statutes, is amended to read:

1222 738.702 Disbursements from principal.—

1223 (1) A fiduciary ~~trustee~~ shall make the following
1224 disbursements from principal:

1225 (a) The remaining one-half of the disbursements described
1226 in s. 738.701(1) and (2).

1227 (b) All of the trustee's compensation calculated on
1228 principal as a fee for acceptance, distribution, or termination
1229 and disbursements made to prepare property for sale.

1230 (c) Payments on the principal of a trust debt.

1231 (d) Expenses of a proceeding that concerns primarily



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1232 principal, including a proceeding to construe the trust or will,
1233 or to protect the trust, estate, or its property.

1234 (e) Premiums paid on a policy of insurance not described in
1235 s. 738.701(4) of which the trust or estate is the owner and
1236 beneficiary.

1237 (f) Estate, inheritance, and other transfer taxes,
1238 including penalties, apportioned to the trust.

1239 (g) Disbursements related to environmental matters,
1240 including reclamation, assessing environmental conditions,
1241 remedying and removing environmental contamination, monitoring
1242 remedial activities and the release of substances, preventing
1243 future releases of substances, collecting amounts from persons
1244 liable or potentially liable for the costs of such activities,
1245 penalties imposed under environmental laws or regulations and
1246 other payments made to comply with those laws or regulations,
1247 statutory or common law claims by third parties, and defending
1248 claims based on environmental matters.

1249 (h) Payments representing extraordinary repairs or expenses
1250 incurred in making a capital improvement to principal, including
1251 special assessments; however, a fiduciary trustee may establish
1252 an allowance for depreciation out of income to the extent
1253 permitted by s. 738.703.

1254 Section 28. Subsection (2) of section 738.703, Florida
1255 Statutes, is amended to read:

1256 738.703 Transfers from income to principal for
1257 depreciation.—

1258 (2) A fiduciary trustee may transfer to principal a
1259 reasonable amount of the net cash receipts from a principal
1260 asset that is subject to depreciation but may not transfer any



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1261 amount for depreciation:

1262 (a) Of that portion of real property used or available for
1263 use by a beneficiary as a residence or of tangible personal
1264 property held or made available for the personal use or
1265 enjoyment of a beneficiary;

1266 (b) During the administration of a decedent's estate; or

1267 (c) Under this section if the fiduciary ~~trustee~~ is
1268 accounting under s. 738.403 for the business or activity in
1269 which the asset is used.

1270 Section 29. Subsections (1), (2), and (3) of section
1271 738.704, Florida Statutes, are amended to read:

1272 738.704 Transfers from income to reimburse principal.—

1273 (1) If a fiduciary ~~trustee~~ makes or expects to make a
1274 principal disbursement described in this section, the fiduciary
1275 ~~trustee~~ may transfer an appropriate amount from income to
1276 principal in one or more accounting periods to reimburse
1277 principal or to provide a reserve for future principal
1278 disbursements.

1279 (2) Principal disbursements to which subsection (1) applies
1280 include the following, but only to the extent the fiduciary
1281 ~~trustee~~ has not been and does not expect to be reimbursed by a
1282 third party:

1283 (a) An amount chargeable to income but paid from principal
1284 because the amount is unusually large.

1285 (b) Disbursements made to prepare property for rental,
1286 including tenant allowances, leasehold improvements, and
1287 broker's commissions.

1288 (c) Disbursements described in s. 738.702(1)(g).

1289 (3) If the asset the ownership of which gives rise to the



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1290 disbursements becomes subject to a successive income interest
1291 after an income interest ends, a fiduciary trustee may continue
1292 to transfer amounts from income to principal as provided in
1293 subsection (1).

1294 Section 30. Section 738.705, Florida Statutes, is amended
1295 to read:

1296 738.705 Income taxes.—

1297 (1) A tax required to be paid by a fiduciary trustee based
1298 on receipts allocated to income shall be paid from income.

1299 (2) A tax required to be paid by a fiduciary trustee based
1300 on receipts allocated to principal shall be paid from principal,
1301 even if the tax is called an income tax by the taxing authority.

1302 (3) A tax required to be paid by a fiduciary trustee on the
1303 trust's or estate's share of an entity's taxable income shall be
1304 paid proportionately:

1305 (a) From income to the extent receipts from the entity are
1306 allocated to income; ~~and~~

1307 (b) From principal to the extent:

1308 ~~1. receipts from the entity are allocated to principal; and~~

1309 ~~2. The trust's share of the entity's taxable income exceeds~~
1310 ~~the total receipts described in paragraph (a) and subparagraph~~
1311 ~~1.~~

1312 (c) From principal to the extent that the income taxes
1313 payable by the trust or estate exceed the total receipts from
1314 the entity.

1315 (4) After applying subsections (1)-(3), the fiduciary shall
1316 adjust income or principal receipts to the extent that the
1317 trust's or estate's income taxes are reduced, but not
1318 eliminated, because the trust or estate receives a deduction for



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1319 payments made to a beneficiary. The amount distributable to that
1320 beneficiary as income as a result of this adjustment shall be
1321 equal to the cash received by the trust or estate, reduced, but
1322 not below zero, by the entity's taxable income allocable to the
1323 trust or estate multiplied by the trust's or estate's income tax
1324 rate. The reduced amount shall be divided by the difference
1325 between 1 and the trust's or estate's income tax rate in order
1326 to determine the amount distributable to that beneficiary as
1327 income before giving effect to other receipts or disbursements
1328 allocable to that beneficiary's interest. For purposes of this
1329 section, receipts allocated to principal or income shall be
1330 reduced by the amount distributed to a beneficiary from
1331 principal or income for which the trust receives a deduction in
1332 calculating the tax.

1333 Section 31. Section 738.801, Florida Statutes, is amended
1334 to read:

1335 (Substantial rewording of section. See
1336 s. 738.801, F.S., for present text.)

1337 738.801 Apportionment of expenses; improvements.-

1338 (1) For purposes of this section, the term:

1339 (a) "Remainderman" means the holder of the remainder
1340 interests after the expiration of a tenant's estate in property.

1341 (b) "Tenant" means the holder of an estate for life or term
1342 of years in real property or personal property, or both.

1343 (2) If a trust has not been created, expenses shall be
1344 apportioned between the tenant and remainderman as follows:

1345 (a) The following expenses are allocated to and shall be
1346 paid by the tenant:

1347 1. All ordinary expenses incurred in connection with the



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1348 administration, management, or preservation of the property,
1349 including interest, ordinary repairs, regularly recurring taxes
1350 assessed against the property, and expenses of a proceeding or
1351 other matter that concerns primarily the tenant's estate or use
1352 of the property.

1353 2. Recurring premiums on insurance covering the loss of the
1354 property or the loss of income from or use of the property.

1355 3. Any of the expenses described in subparagraph (b)3.
1356 which are attributable to the use of the property by the tenant.

1357 (b) The following expenses are allocated to and shall be
1358 paid by the remainderman:

1359 1. Payments on the principal of a debt secured by the
1360 property, except to the extent the debt is for expenses
1361 allocated to the tenant.

1362 2. Expenses of a proceeding or other matter that concerns
1363 primarily the title to the property, other than title to the
1364 tenant's estate.

1365 3. Except as provided in subparagraph (a)3., expenses
1366 related to environmental matters, including reclamation,
1367 assessing environmental conditions, remedying and removing
1368 environmental contamination, monitoring remedial activities and
1369 the release of substances, preventing future releases of
1370 substances, collecting amounts from persons liable or
1371 potentially liable for the costs of such activities, penalties
1372 imposed under environmental laws or regulations and other
1373 payments made to comply with those laws or regulations,
1374 statutory or common law claims by third parties, and defending
1375 claims based on environmental matters.

1376 4. Extraordinary repairs.



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1377 (c) If the tenant or remainderman incurred an expense for
1378 the benefit of his or her own estate without consent or
1379 agreement of the other, he or she must pay such expense in full.

1380 (d) Except as provided in paragraph (c), the cost of, or
1381 special taxes or assessments for, an improvement representing an
1382 addition of value to property forming part of the principal
1383 shall be paid by the tenant if the improvement is not reasonably
1384 expected to outlast the estate of the tenant. In all other
1385 cases, only a part shall be paid by the tenant while the
1386 remainder shall be paid by the remainderman. The part payable by
1387 the tenant is ascertainable by taking that percentage of the
1388 total that is found by dividing the present value of the
1389 tenant's estate by the present value of an estate of the same
1390 form as that of the tenant, except that it is limited for a
1391 period corresponding to the reasonably expected duration of the
1392 improvement. The computation of present values of the estates
1393 shall be made by using the rate defined in 26 U.S.C. s. 7520,
1394 then in effect and, in the case of an estate for life, the
1395 official mortality tables then in effect under 26 U.S.C. s.
1396 7520. Other evidence of duration or expectancy may not be
1397 considered.

1398 (3) This section does not apply to the extent it is
1399 inconsistent with the instrument creating the estates, the
1400 agreement of the parties, or the specific direction of the
1401 taxing or other statutes.

1402 (4) The common law applicable to tenants and remaindermen
1403 supplements this section, except as modified by this section or
1404 other laws.

1405 Section 32. This act shall take effect January 1, 2013.



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1407 ===== T I T L E A M E N D M E N T =====

1408 And the title is amended as follows:

1409 Delete everything before the enacting clause
1410 and insert:

1411 A bill to be entitled
1412 An act relating to the Florida Uniform Principal and
1413 Income Act; amending s. 738.102, F.S.; defining the
1414 term "carrying value"; amending s. 738.103, F.S.;
1415 providing for application; amending s. 738.104, F.S.;
1416 deleting a provision authorizing a trustee to release
1417 the power to adjust between principal and income if
1418 the trustee desires to convert the form of certain
1419 trusts; limiting the power to adjust a trust; deleting
1420 a provision that provides construction and application
1421 relating to the administration of trusts in this state
1422 or under this state's law; amending s. 738.1041, F.S.;
1423 defining the term "average fair market value" and
1424 revising the term "unitrust amount"; deleting a
1425 duplicative provision relating to conclusive
1426 determinations of the terms of a unitrust; revising
1427 provisions relating to an express total return
1428 unitrust; amending s. 738.105, F.S.; substituting the
1429 term "trustee" for "fiduciary" with respect to
1430 judicial control of discretionary powers; amending s.
1431 738.201, F.S.; revising provisions relating to the
1432 determination and distribution of net income; amending
1433 s. 738.202, F.S.; revising provisions relating to
1434 distributions to residuary and remainder



1435 beneficiaries; amending ss. 738.301, 738.302, and
1436 738.303, F.S.; substituting the term "fiduciary" for
1437 "trustee" to clarify that provisions apply to all
1438 fiduciaries; amending s. 738.401, F.S.; substituting
1439 the term "fiduciary" for "trustee" to clarify that
1440 provisions apply to all fiduciaries; revising how
1441 distributions from entities are allocated between
1442 income and principal; amending ss. 738.402, 738.403,
1443 738.501, 738.502, 738.503, 738.504, and 738.601, F.S.;
1444 substituting the term "fiduciary" for "trustee" to
1445 clarify that provisions apply to all fiduciaries;
1446 amending s. 738.602, F.S.; substituting the term
1447 "fiduciary" for "trustee" to clarify that provisions
1448 apply to all fiduciaries; revising provisions relating
1449 to allocations to trusts; amending s. 738.603, F.S.;
1450 substituting the term "fiduciary" for "trustee" to
1451 clarify that provisions apply to all fiduciaries;
1452 revising provisions relating to the allocation between
1453 income and principal when liquidating assets; amending
1454 ss. 738.604, 738.605, 738.606, 738.607, 738.608,
1455 738.701, 738.702, 738.703, and 738.704, F.S.;
1456 substituting the term "fiduciary" for "trustee" to
1457 clarify that provisions apply to all fiduciaries;
1458 amending s. 738.705, F.S.; substituting the term
1459 "fiduciary" for "trustee" to clarify that provisions
1460 apply to all fiduciaries; revising the method for
1461 allocating income taxes between income and principal;
1462 amending s. 738.801, F.S.; clarifying the
1463 apportionment of expenses between tenants and



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remaindermen; providing an effective date.