

By Senator Fasano

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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
29 clarify that provisions apply to all fiduciaries;

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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:

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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.

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

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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(e),~~ 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

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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

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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
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

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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,
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

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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
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

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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

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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 kind
280 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 reconversion.

283 (e) Such other administrative issues as may be necessary or
284 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

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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
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 the
317 current beneficiary or beneficiaries are to receive an amount
318 other than a reasonable current return from the trust;

319 (b) The trust is a trust described in the Internal Revenue

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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 ~~(e) 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 total
341 return unitrust that becomes ~~which will become~~ effective as
342 provided in the trust instrument ~~document~~ without requiring a
343 conversion under this section.

344 (a) An express total return unitrust created by the grantor
345 of the trust is ~~shall be~~ treated as a unitrust ~~under this~~
346 ~~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

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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.(e) 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

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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 a
392 distribution to a beneficiary that is too large, the court shall
393 restore the beneficiaries, the trust, or both, in whole or in
394 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 ~~fiduciary~~,

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

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

422 738.201 Determination and distribution of net income.—After
423 a decedent dies, in the case of an estate, or after an income
424 interest in a trust ends, the following rules apply:

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

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

435 (a) Including in net income all income from property used

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436 to discharge liabilities.

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

447 (c) Paying from principal all other disbursements made or
448 incurred in connection with the settlement of a decedent's
449 estate or the winding up of a terminating income interest,
450 including debts, funeral expenses, disposition of remains,
451 family allowances, and death taxes and related penalties that
452 are apportioned to the estate or terminating income interest by
453 the will, the terms of the trust, or applicable law.

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

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465 ~~entitled under applicable law if the pecuniary amount were~~
466 ~~required to be paid under a will.~~

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

475 Section 6. Section 738.202, Florida Statutes, is amended to
476 read:

477 738.202 Distribution to residuary and remainder
478 beneficiaries.—

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

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

493 (a) The beneficiary is entitled to receive a portion of the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

554 738.301 When right to income begins and ends.—An income
555 beneficiary is entitled to net income from the date on which the
556 income interest begins.

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

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

563 738.302 Apportionment of receipts and disbursements when
564 decedent dies or income interest begins.—

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

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

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581 allocated to income.

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

584 738.303 Apportionment when income interest ends.—

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

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

601 Section 10. Section 738.401, Florida Statutes, is amended
602 to read:

603 738.401 Character of receipts.—

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

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610 an asset-backed security to which s. 738.608 applies.

611 (2) Except as otherwise provided in this section, a
612 fiduciary trustee shall allocate to income money received from
613 an entity.

614 (3) Except as otherwise provided in this section, a
615 fiduciary trustee shall allocate the following receipts from an
616 entity to principal:

617 (a) Property other than money.

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

621 (c) Money received in total or partial liquidation of the
622 entity.

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

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

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639 any period the interest in the entity was held by the trust, the
640 trustee, in determining the total income distributions from that
641 entity, must take into account the extent to which the exercise
642 of that power resulted in income to the trust from that entity
643 for that period. If the income of the trust for any period was
644 computed under s. 738.1041, the trustee, in determining the
645 total income distributions from that entity for that period,
646 must take into account the portion of the unitrust amount paid
647 as a result of the ownership of the trust's interest in the
648 entity for that period.

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

654 (5) Money is received in partial liquidation:

655 (a) To the extent the entity, at or near the time of a
656 distribution, indicates that such money is a distribution in
657 partial liquidation; or

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

664
665 This subsection does not apply to an entity to which subsection
666 (7) applies.

667 (6) Money may not ~~is not received in partial liquidation,~~

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668 ~~nor may money~~ be taken into account in determining any excess
669 under paragraph (5) (b), to the extent that the cumulative
670 distributions from the entity to the trust or the estate
671 allocated to income do not exceed the greater of: such money
672 ~~does not exceed the amount of income tax a trustee or~~
673 ~~beneficiary must pay on taxable income of the entity that~~
674 ~~distributes the money.~~

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

689 (b) If the entity is treated as a partnership, subchapter S
690 corporation, or a disregarded entity pursuant to the Internal
691 Revenue Code of 1986, as amended, the amount of income tax
692 attributable to the trust's or estate's ownership share of the
693 entity, based on its pro rata share of the taxable income of the
694 entity that distributes the money, for the number of years or
695 portion of years that the interest in the entity was held by the
696 fiduciary, calculated as if all of that tax was incurred by the

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697 fiduciary.

698 (7) The following applies ~~special rules shall apply~~ to
699 moneys or property received by a private trustee as a
700 distribution from an entity ~~entities~~ described in this
701 subsection:

702 (a) If treated as a partnership, subchapter S corporation,
703 or disregarded entity pursuant to the Internal Revenue Code of
704 1986, as amended, the trustee shall first treat as income of the
705 trust all of the money or property received from the investment
706 entity in the current year which would be considered income
707 under this chapter if the trustee had directly held the trust's
708 pro rata share of the assets of the investment entity. For this
709 purpose, all distributions received in the current year must be
710 aggregated.

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

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

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

723 1. "Investment entity" means an entity, other than a
724 business activity conducted by the trustee described in s.
725 738.403 or an entity that is listed on a public stock exchange,

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726 which is treated as a partnership, subchapter S corporation, or
727 disregarded entity pursuant to the Internal Revenue Code of
728 1986, as amended, and which normally derives 50 percent or more
729 of its annual cumulative net income from interest, dividends,
730 annuities, royalties, rental activity, or other passive
731 investments, including income from the sale or exchange of such
732 passive investments.

733 2. "Private trustee" means a trustee who is a natural
734 person, but only if the trustee is unable to use the power to
735 adjust between income and principal with respect to receipts
736 from entities described in this subsection pursuant to s.
737 738.104. A bank, trust company, or other commercial trustee is
738 not considered a private trustee.

739 (8) This section shall be applied before ss. 738.705 and
740 738.706 and does not modify or change any of the provisions of
741 those sections.

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

749 ~~(b) If trust assets include any interest in an investment~~
750 ~~entity, the designated amount of moneys or property received~~
751 ~~from the investment entity shall be treated by the trustee in~~
752 ~~the same manner as if the trustee had directly held the trust's~~
753 ~~pro rata share of the assets of the investment entity~~
754 ~~attributable to the distribution of such designated amount.~~

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

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

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

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

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

772 ~~b. The amount of income of the investment entity for the~~
773 ~~current year and the prior 2 years, as reported to the trustee~~
774 ~~by the investment entity for federal income tax purposes, less~~
775 ~~any distributions of moneys or property made by the investment~~
776 ~~entity to the trustee during the prior 2 years.~~

777 ~~3. "Investment entity" means a targeted entity that~~
778 ~~normally derives 50 percent or more of its annual cumulative net~~
779 ~~income from interest, dividends, annuities, royalties, rental~~
780 ~~activity, or other passive investments, including income from~~
781 ~~the sale or exchange of such passive investments.~~

782 ~~4. "Private trustee" means a trustee who is an individual,~~
783 ~~but only if the trustee is unable to utilize the power to adjust~~

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784 ~~between income and principal with respect to receipts from~~
785 ~~entities described in this subsection pursuant to s. 738.104. A~~
786 ~~bank, trust company, or other commercial trustee shall not be~~
787 ~~considered to be a private trustee.~~

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

792 ~~6. "Undistributed cumulative net income" means the trust's~~
793 ~~pro rata share of cumulative net income, less all prior~~
794 ~~distributions from the targeted entity to the trust that have~~
795 ~~been allocated to income.~~

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

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

807 Section 11. Section 738.402, Florida Statutes, is amended
808 to read:

809 738.402 Distribution from trust or estate.—A fiduciary
810 ~~trustee~~ shall allocate to income an amount received as a
811 distribution of income from a trust or an estate in which the
812 trust has an interest other than a purchased interest and shall

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813 allocate to principal an amount received as a distribution of
814 principal from such a trust or estate. If a fiduciary trustee
815 purchases an interest in a trust that is an investment entity,
816 or a decedent or donor transfers an interest in such a trust to
817 a fiduciary trustee, s. 738.401 or s. 738.608 applies to a
818 receipt from the trust.

819 Section 12. Section 738.403, Florida Statutes, is amended
820 to read:

821 738.403 Business and other activities conducted by
822 fiduciary trustee.—

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

832 (2) A fiduciary trustee who accounts separately for a
833 business or other activity may determine the extent to which the
834 net cash receipts of the such business or activity must be
835 retained for working capital, the acquisition or replacement of
836 fixed assets, and other reasonably foreseeable needs of the
837 business or activity, and the extent to which the remaining net
838 cash receipts are accounted for as principal or income in the
839 trust's general accounting records. If a fiduciary trustee sells
840 assets of the business or other activity, other than in the
841 ordinary course of the business or activity, the fiduciary must

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842 ~~trustee shall~~ account for the net amount received as principal
843 in the trust's general accounting records to the extent the
844 fiduciary trustee determines that the amount received is no
845 longer required in the conduct of the business.

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

848 (a) Retail, manufacturing, service, and other traditional
849 business activities.

850 (b) Farming.

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

852 (d) Management of rental properties.

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

854 (f) Timber operations.

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

856 Section 13. Section 738.501, Florida Statutes, is amended
857 to read:

858 738.501 Principal receipts.—A fiduciary trustee shall
859 allocate to principal:

860 (1) To the extent not allocated to income under this
861 chapter, assets received from a transferor during the
862 transferor's lifetime, a decedent's estate, a trust with a
863 terminating income interest, or a payor under a contract naming
864 the trust or its fiduciary trustee as beneficiary.

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

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

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

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

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

879 Section 14. Section 738.502, Florida Statutes, is amended
880 to read:

881 738.502 Rental property. ~~If To the extent~~ a fiduciary
882 ~~trustee~~ accounts for receipts from rental property pursuant to
883 this section, the fiduciary ~~trustee~~ shall allocate to income an
884 amount received as rent of real or personal property, including
885 an amount received for cancellation or renewal of a lease. An
886 amount received as a refundable deposit, including a security
887 deposit or a deposit that is to be applied as rent for future
888 periods, must ~~shall~~ be added to principal and held subject to
889 the terms of the lease and is not available for distribution to
890 a beneficiary until the trustee's contractual obligations have
891 been satisfied with respect to that amount.

892 Section 15. Subsections (1), (2), and (3) of section
893 738.503, Florida Statutes, are amended to read:

894 738.503 Obligation to pay money.—

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

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

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

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

923 738.504 Insurance policies and similar contracts.—

924 (1) Except as otherwise provided in subsection (2), a
925 fiduciary ~~trustee~~ shall allocate to principal the proceeds of a
926 life insurance policy or other contract in which the trust or
927 its fiduciary ~~trustee~~ is named as beneficiary, including a
928 contract that insures the trust or its fiduciary ~~trustee~~ against

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929 loss for damage to, destruction of, or loss of title to a trust
930 asset. The fiduciary ~~trustee~~ shall allocate dividends on an
931 insurance policy to income if the premiums on the policy are
932 paid from income and to principal if the premiums are paid from
933 principal.

934 (2) A fiduciary ~~trustee~~ shall allocate to income the
935 proceeds of a contract that insures the fiduciary ~~trustee~~
936 against loss of occupancy or other use by an income beneficiary,
937 loss of income, or, subject to s. 738.403, loss of profits from
938 a business.

939 Section 17. Section 738.601, Florida Statutes, is amended
940 to read:

941 738.601 Insubstantial allocations not required.—If a
942 fiduciary ~~trustee~~ determines that an allocation between
943 principal and income required by s. 738.602, s. 738.603, s.
944 738.604, s. 738.605, or s. 738.608 is insubstantial, the
945 fiduciary ~~trustee~~ may allocate the entire amount to principal
946 unless one of the circumstances described in s. 738.104(3)
947 applies to the allocation. This power may be exercised by a
948 cofiduciary under ~~co~~~~trustee~~~~in~~ the circumstances described in s.
949 738.104(4) and may be released for the reasons and in the manner
950 described in s. 738.104(5). An allocation is presumed to be
951 insubstantial if:

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

955 (2) The value of the asset producing the receipt for which
956 the allocation would be made is less than 10 percent of the
957 total value of the trust's assets at the beginning of the

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958 accounting period.

959 Section 18. Section 738.602, Florida Statutes, is amended
960 to read:

961 738.602 Payments from deferred compensation plans,
962 annuities, and retirement plans or accounts.—

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

964 (a) "Fund" means a private or commercial annuity, an
965 individual retirement account, an individual retirement annuity,
966 a deferred compensation plan, a pension plan, a profit-sharing
967 plan, a stock-bonus plan, an employee stock-ownership plan, or
968 another similar arrangement in which federal income tax is
969 deferred.

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

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

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

983 (e) "Separate account" means a fund holding assets
984 exclusively for the benefit of a participant or account owner
985 and:

986 1. The value of such assets or the value of the separate

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987 account is ascertainable at any time; or

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

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

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

994 2. As a unitrust amount calculated by multiplying the fair
995 market value of the fund as of the first day of the first
996 accounting period and, thereafter, as of the last day of the
997 accounting period that immediately precedes the accounting
998 period during which a payment is received by the percentage
999 determined in accordance with s. 738.1041(2)(b)2.a. The
1000 fiduciary ~~trustee~~ shall determine such percentage as of the
1001 first month that the fiduciary's ~~trustee's~~ election to treat the
1002 income of the fund as a unitrust amount becomes effective. For
1003 purposes of this subparagraph, "fair market value" means the
1004 fair market value of the assets held in the fund as of the
1005 applicable valuation date determined as provided in this
1006 subparagraph. The fiduciary ~~trustee~~ is not liable for good faith
1007 reliance upon any valuation supplied by the person or persons in
1008 possession of the fund. If the fiduciary ~~trustee~~ makes or
1009 terminates an election under this subparagraph, the fiduciary
1010 ~~trustee~~ shall make such disclosure in a trust disclosure
1011 document that satisfies the requirements of s. 736.1008(4)(a).
1012 (b) The fiduciary may ~~trustee shall have discretion to~~
1013 elect the method of determining the income of the fund pursuant
1014 to this subsection and may change the method of determining
1015 income of the fund for any future accounting period.

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1016 (3) For a fund that is a nonseparate account, income of the
1017 fund is a unitrust amount determined by calculating the present
1018 value of the right to receive the remaining payments under 26
1019 U.S.C. s. 7520 of the Internal Revenue Code as of the first day
1020 of the accounting period and multiplying it by the percentage
1021 determined in accordance with s. 738.1041(2)(b)2.a. The
1022 fiduciary ~~trustee~~ shall determine the unitrust amount as of the
1023 first month that the fiduciary's ~~trustee's~~ election to treat the
1024 income of the fund as a unitrust amount becomes effective.

1025 (4) Except for those trusts described in subsection (5),
1026 the fiduciary ~~trustee~~ shall allocate to income the lesser of the
1027 payment received from a fund or the income determined under
1028 subsection (2) or subsection (3). Any remaining amount shall be
1029 allocated to principal ~~a payment from a fund as follows:~~

1030 ~~(a) That portion of the payment the payor characterizes as~~
1031 ~~income shall be allocated to income, and any remaining portion~~
1032 ~~of the payment shall be allocated to principal.~~

1033 ~~(b) To the extent that the payor does not characterize any~~
1034 ~~portion of a payment as income or principal and the trustee can~~
1035 ~~ascertain the income of the fund by the fund's account~~
1036 ~~statements or any other reasonable source, the trustee shall~~
1037 ~~allocate to income the lesser of the income of the fund or the~~
1038 ~~entire payment and shall allocate to principal any remaining~~
1039 ~~portion of the payment.~~

1040 ~~(c) If the trustee, acting reasonably and in good faith,~~
1041 ~~determines that neither paragraph (a) nor paragraph (b) applies~~
1042 ~~and all or part of the payment is required to be made, the~~
1043 ~~trustee shall allocate to income 10 percent of the portion of~~
1044 ~~the payment that is required to be made during the accounting~~

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1045 ~~period and shall allocate the balance to principal. If no part~~
1046 ~~of a payment is required to be made or the payment received is~~
1047 ~~the entire amount to which the trustee is entitled, the trustee~~
1048 ~~shall allocate the entire payment to principal. For purposes of~~
1049 ~~this paragraph, a payment is not "required to be made" to the~~
1050 ~~extent the payment is made because the trustee exercises a right~~
1051 ~~of withdrawal.~~

1052 (5) For a trust that which, in order to qualify for the
1053 estate or gift tax marital deduction under the Internal Revenue
1054 Code or comparable law of any state, entitles the spouse to all
1055 of the income of the trust, and the terms of the trust are
1056 silent as to the time and frequency for distribution of the
1057 income of the fund, ~~then~~:

1058 (a) For a fund that is a separate account, unless the
1059 spouse directs the fiduciary trustee to leave the income of the
1060 fund in the fund, the fiduciary trustee shall withdraw and pay
1061 to the spouse, at least no less frequently than annually:

1062 1. All of the income of the fund determined in accordance
1063 with subparagraph (2)(a)1.; or

1064 2. The income of the fund as a unitrust amount determined
1065 in accordance with subparagraph (2)(a)2.

1066 (b) For a fund that is a nonseparate account, the fiduciary
1067 ~~trustee~~ shall withdraw and pay to the spouse, at least no less
1068 ~~frequently than~~ annually, the income of the fund as a unitrust
1069 amount determined in accordance with subsection (3).

1070 (6) This section does not apply to payments to which s.
1071 738.603 applies.

1072 Section 19. Section 738.603, Florida Statutes, is amended
1073 to read:

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1074 738.603 Liquidating asset.—

1075 (1) For purposes of this section, the term "liquidating
 1076 asset" means an asset the value of which will diminish or
 1077 terminate because the asset is expected to produce receipts for
 1078 a period of limited duration. The term includes a leasehold,
 1079 patent, copyright, royalty right, and right to receive payments
 1080 for during a period of more than 1 year under an arrangement
 1081 that does not provide for the payment of interest on the unpaid
 1082 balance. The term does not include a payment subject to s.
 1083 738.602, resources subject to s. 738.604, timber subject to s.
 1084 738.605, an activity subject to s. 738.607, an asset subject to
 1085 s. 738.608, or any asset for which the fiduciary trustee
 1086 establishes a reserve for depreciation under s. 738.703.

1087 (2) A fiduciary trustee shall allocate to income 5 ~~10~~
 1088 percent of the receipts from the carrying value of a liquidating
 1089 asset and the balance to principal. Amounts allocated to
 1090 principal may not reduce the carrying value of the liquidating
 1091 asset below zero. Amounts received in excess of the remaining
 1092 carrying value must be allocated to principal.

1093 Section 20. Subsections (1) and (4) of section 738.604,
 1094 Florida Statutes, are amended to read:

1095 738.604 Minerals, water, and other natural resources.—

1096 (1) ~~If To the extent~~ a fiduciary trustee accounts for
 1097 receipts from an interest in minerals or other natural resources
 1098 pursuant to this section, the fiduciary trustee shall allocate
 1099 such receipts as follows:

1100 (a) If received as nominal delay rental or nominal annual
 1101 rent on a lease, a receipt shall be allocated to income.

1102 (b) If received from a production payment, a receipt shall

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1103 be allocated to income if and to the extent the agreement
 1104 creating the production payment provides a factor for interest
 1105 or its equivalent. The balance shall be allocated to principal.

1106 (c) If an amount received as a royalty, shut-in-well
 1107 payment, take-or-pay payment, bonus, or delay rental is more
 1108 than nominal, 90 percent shall be allocated to principal and the
 1109 balance to income.

1110 (d) If an amount is received from a working interest or any
 1111 other interest not provided for in paragraph (a), paragraph (b),
 1112 or paragraph (c), 90 percent of the net amount received shall be
 1113 allocated to principal and the balance to income.

1114 (4) If a trust owns an interest in minerals, water, or
 1115 other natural resources on January 1, 2003, the fiduciary
 1116 ~~trustee~~ may allocate receipts from the interest as provided in
 1117 this chapter or in the manner used by the fiduciary trustee
 1118 before January 1, 2003. If the trust acquires an interest in
 1119 minerals, water, or other natural resources after January 1,
 1120 2003, the trustee shall allocate receipts from the interest as
 1121 provided in this chapter.

1122 Section 21. Subsections (1), (2), and (4) of section
 1123 738.605, Florida Statutes, are amended to read:

1124 738.605 Timber.—

1125 (1) If ~~To the extent~~ a fiduciary trustee accounts for
 1126 receipts from the sale of timber and related products pursuant
 1127 to this section, the fiduciary trustee shall allocate such ~~the~~
 1128 net receipts as follows:

1129 (a) To income to the extent the amount of timber removed
 1130 from the land does not exceed the rate of growth of the timber
 1131 during the accounting periods in which a beneficiary has a

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1132 mandatory income interest;

1133 (b) To principal to the extent the amount of timber removed
1134 from the land exceeds the rate of growth of the timber or the
1135 net receipts are from the sale of standing timber;

1136 (c) To or between income and principal if the net receipts
1137 are from the lease of timberland or from a contract to cut
1138 timber from land owned by a trust by determining the amount of
1139 timber removed from the land under the lease or contract and
1140 applying the rules in paragraphs (a) and (b); or

1141 (d) To principal to the extent advance payments, bonuses,
1142 and other payments are not allocated pursuant to paragraph (a),
1143 paragraph (b), or paragraph (c).

1144 (2) In determining net receipts to be allocated pursuant to
1145 subsection (1), a fiduciary ~~trustee~~ shall deduct and transfer to
1146 principal a reasonable amount for depletion.

1147 (4) If a trust owns an interest in timberland on January 1,
1148 2003, the fiduciary ~~trustee~~ may allocate net receipts from the
1149 sale of timber and related products as provided in this chapter
1150 or in the manner used by the fiduciary ~~trustee~~ before January 1,
1151 2003. If the trust acquires an interest in timberland after
1152 January 1, 2003, the fiduciary ~~trustee~~ shall allocate net
1153 receipts from the sale of timber and related products as
1154 provided in this chapter.

1155 Section 22. Subsection (1) of section 738.606, Florida
1156 Statutes, is amended to read:

1157 738.606 Property not productive of income.—

1158 (1) If a marital deduction under the Internal Revenue Code
1159 or comparable law of any state is allowed for all or part of a
1160 trust the income of which must ~~is required to~~ be distributed to

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1161 the grantor's spouse and the assets of which consist
1162 substantially of property that does not provide the spouse with
1163 sufficient income from or use of the trust assets, and if the
1164 amounts the fiduciary ~~trustee~~ transfers from principal to income
1165 under s. 738.104 and distributes to the spouse from principal
1166 pursuant to the terms of the trust are insufficient to provide
1167 the spouse with the beneficial enjoyment required to obtain the
1168 marital deduction, the spouse may require the fiduciary ~~trustee~~
1169 to make property productive of income, convert property within a
1170 reasonable time, or exercise the power conferred by ss. 738.104
1171 and 738.1041. The fiduciary ~~trustee~~ may decide which action or
1172 combination of actions to take.

1173 Section 23. Subsections (2) and (3) of section 738.607,
1174 Florida Statutes, are amended to read:

1175 738.607 Derivatives and options.-

1176 (2) To the extent a fiduciary ~~trustee~~ does not account
1177 under s. 738.403 for transactions in derivatives, the fiduciary
1178 ~~trustee~~ shall allocate to principal receipts from and
1179 disbursements made in connection with those transactions.

1180 (3) If a fiduciary ~~trustee~~ grants an option to buy property
1181 from the trust whether or not the trust owns the property when
1182 the option is granted, grants an option that permits another
1183 person to sell property to the trust, or acquires an option to
1184 buy property for the trust or an option to sell an asset owned
1185 by the trust, and the fiduciary ~~trustee~~ or other owner of the
1186 asset is required to deliver the asset if the option is
1187 exercised, an amount received for granting the option shall be
1188 allocated to principal. An amount paid to acquire the option
1189 shall be paid from principal. A gain or loss realized upon the

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1190 exercise of an option, including an option granted to a grantor
1191 of the trust for services rendered, shall be allocated to
1192 principal.

1193 Section 24. Subsections (2) and (3) of section 738.608,
1194 Florida Statutes, are amended to read:

1195 738.608 Asset-backed securities.—

1196 (2) If a trust receives a payment from interest or other
1197 current return and from other proceeds of the collateral
1198 financial assets, the fiduciary ~~trustee~~ shall allocate to income
1199 the portion of the payment which the payor identifies as being
1200 from interest or other current return and ~~shall~~ allocate the
1201 balance of the payment to principal.

1202 (3) If a trust receives one or more payments in exchange
1203 for the trust's entire interest in an asset-backed security
1204 during a single accounting period, the fiduciary ~~trustee~~ shall
1205 allocate the payments to principal. If a payment is one of a
1206 series of payments that will result in the liquidation of the
1207 trust's interest in the security over more than a single
1208 accounting period, the fiduciary ~~trustee~~ shall allocate 10
1209 percent of the payment to income and the balance to principal.

1210 Section 25. Section 738.701, Florida Statutes, is amended
1211 to read:

1212 738.701 Disbursements from income.—A fiduciary ~~trustee~~
1213 shall make the following disbursements from income to the extent
1214 they are not disbursements to which s. 738.201(2) ~~(a) or~~ (c)
1215 applies:

1216 (1) One-half of the regular compensation of the fiduciary
1217 ~~trustee~~ and of any person providing investment advisory or
1218 custodial services to the fiduciary ~~trustee~~.

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1219 (2) One-half of all expenses for accountings, judicial
1220 proceedings, or other matters that involve both the income and
1221 remainder interests.

1222 (3) All of the other ordinary expenses incurred in
1223 connection with the administration, management, or preservation
1224 of trust property and the distribution of income, including
1225 interest, ordinary repairs, regularly recurring taxes assessed
1226 against principal, and expenses of a proceeding or other matter
1227 that concerns primarily the income interest.

1228 (4) Recurring premiums on insurance covering the loss of a
1229 principal asset or the loss of income from or use of the asset.

1230 Section 26. Subsection (1) of section 738.702, Florida
1231 Statutes, is amended to read:

1232 738.702 Disbursements from principal.-

1233 (1) A fiduciary ~~trustee~~ shall make the following
1234 disbursements from principal:

1235 (a) The remaining one-half of the disbursements described
1236 in s. 738.701(1) and (2).

1237 (b) All of the fiduciary's ~~trustee's~~ compensation
1238 calculated on principal as a fee for acceptance, distribution,
1239 or termination and disbursements made to prepare property for
1240 sale.

1241 (c) Payments on the principal of a trust debt.

1242 (d) Expenses of a proceeding that concerns primarily
1243 principal, including a proceeding to construe the trust or will,
1244 or to protect the trust, estate, or its property.

1245 (e) Premiums paid on a policy of insurance not described in
1246 s. 738.701(4) of which the trust or estate is the owner and
1247 beneficiary.

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1248 (f) Estate, inheritance, and other transfer taxes,
1249 including penalties, apportioned to the trust.

1250 (g) Disbursements related to environmental matters,
1251 including reclamation, assessing environmental conditions,
1252 remedying and removing environmental contamination, monitoring
1253 remedial activities and the release of substances, preventing
1254 future releases of substances, collecting amounts from persons
1255 liable or potentially liable for the costs of such activities,
1256 penalties imposed under environmental laws or regulations and
1257 other payments made to comply with those laws or regulations,
1258 statutory or common law claims by third parties, and defending
1259 claims based on environmental matters.

1260 (h) Payments representing extraordinary repairs or expenses
1261 incurred in making a capital improvement to principal, including
1262 special assessments; however, a fiduciary ~~trustee~~ may establish
1263 an allowance for depreciation out of income to the extent
1264 permitted by s. 738.703.

1265 Section 27. Subsection (2) of section 738.703, Florida
1266 Statutes, is amended to read:

1267 738.703 Transfers from income to principal for
1268 depreciation.—

1269 (2) A fiduciary ~~trustee~~ may transfer to principal a
1270 reasonable amount of the net cash receipts from a principal
1271 asset that is subject to depreciation but may not transfer any
1272 amount for depreciation:

1273 (a) Of that portion of real property used or available for
1274 use by a beneficiary as a residence or of tangible personal
1275 property held or made available for the personal use or
1276 enjoyment of a beneficiary;

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1277 (b) During the administration of a decedent's estate; or

1278 (c) Under this section if the fiduciary ~~trustee~~ is
1279 accounting under s. 738.403 for the business or activity in
1280 which the asset is used.

1281 Section 28. Subsections (1), (2), and (3) of section
1282 738.704, Florida Statutes, are amended to read:

1283 738.704 Transfers from income to reimburse principal.—

1284 (1) If a fiduciary ~~trustee~~ makes or expects to make a
1285 principal disbursement described in this section, the fiduciary
1286 ~~trustee~~ may transfer an appropriate amount from income to
1287 principal in one or more accounting periods to reimburse
1288 principal or to provide a reserve for future principal
1289 disbursements.

1290 (2) Principal disbursements to which subsection (1) applies
1291 include the following, but only to the extent the fiduciary
1292 ~~trustee~~ has not been and does not expect to be reimbursed by a
1293 third party:

1294 (a) An amount chargeable to income but paid from principal
1295 because the amount is unusually large.

1296 (b) Disbursements made to prepare property for rental,
1297 including tenant allowances, leasehold improvements, and
1298 broker's commissions.

1299 (c) Disbursements described in s. 738.702(1)(g).

1300 (3) If the asset the ownership of which gives rise to the
1301 disbursements becomes subject to a successive income interest
1302 after an income interest ends, a fiduciary ~~trustee~~ may continue
1303 to transfer amounts from income to principal as provided in
1304 subsection (1).

1305 Section 29. Section 738.705, Florida Statutes, is amended

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1306 to read:

1307 738.705 Income taxes.—

1308 (1) A tax required to be paid by a fiduciary ~~trustee~~ based
1309 on receipts allocated to income shall be paid from income.

1310 (2) A tax required to be paid by a fiduciary ~~trustee~~ based
1311 on receipts allocated to principal shall be paid from principal,
1312 even if the tax is called an income tax by the taxing authority.

1313 (3) A tax required to be paid by a fiduciary ~~trustee~~ on the
1314 trust's or estate's share of an entity's taxable income shall be
1315 paid proportionately:

1316 (a) From income to the extent receipts from the entity are
1317 allocated to income; ~~and~~

1318 (b) From principal to the extent:

1319 ~~1. receipts from the entity are allocated to principal; and~~

1320 ~~2. The trust's share of the entity's taxable income exceeds~~
1321 ~~the total receipts described in paragraph (a) and subparagraph~~
1322 ~~1.~~

1323 (c) From principal to the extent that the income taxes
1324 payable by the trust or estate exceed the total distributions
1325 from the entity.

1326 (4) After applying subsections (1)-(3), the fiduciary shall
1327 adjust income or principal receipts to the extent that the
1328 trust's or estate's income taxes are reduced, but not
1329 eliminated, because the trust or estate receives a deduction for
1330 payments made to a beneficiary. The amount distributable to that
1331 beneficiary as income as a result of this adjustment shall be
1332 equal to the cash received by the trust or estate, reduced, but
1333 not below zero, by the entity's taxable income allocable to the
1334 trust or estate multiplied by the trust's or estate's income tax

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1335 rate. The reduced amount shall be divided by the difference
1336 between 1 and the trust's or estate's income tax rate in order
1337 to determine the amount distributable to that beneficiary as
1338 income before giving effect to other receipts or disbursements
1339 allocable to that beneficiary's interest. For purposes of this
1340 section, receipts allocated to principal or income shall be
1341 reduced by the amount distributed to a beneficiary from
1342 principal or income for which the trust receives a deduction in
1343 calculating the tax.

1344 Section 30. Section 738.801, Florida Statutes, is amended
1345 to read:

1346 (Substantial rewording of section. See
1347 s. 738.801, F.S., for present text.)

1348 738.801 Apportionment of expenses; improvements.-

1349 (1) For purposes of this section, the term:

1350 (a) "Remainderman" means the holder of the remainder
1351 interests after the expiration of a tenant's estate in property.

1352 (b) "Tenant" means the holder of an estate for life or term
1353 of years in real property or personal property, or both.

1354 (2) If a trust has not been created, expenses shall be
1355 apportioned between the tenant and remainderman as follows:

1356 (a) The following expenses are allocated to and shall be
1357 paid by the tenant:

1358 1. All ordinary expenses incurred in connection with the
1359 administration, management, or preservation of the property,
1360 including interest, ordinary repairs, regularly recurring taxes
1361 assessed against the property, and expenses of a proceeding or
1362 other matter that concerns primarily the tenant's estate or use
1363 of the property.

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1364 2. Recurring premiums on insurance covering the loss of the
1365 property or the loss of income from or use of the property.

1366 3. Any of the expenses described in subparagraph (b)3.
1367 which are attributable to the use of the property by the tenant.

1368 (b) The following expenses are allocated to and shall be
1369 paid by the remainderman:

1370 1. Payments on the principal of a debt secured by the
1371 property, except to the extent the debt is for expenses
1372 allocated to the tenant.

1373 2. Expenses of a proceeding or other matter that concerns
1374 primarily the title to the property, other than title to the
1375 tenant's estate.

1376 3. Except as provided in subparagraph (a)3., expenses
1377 related to environmental matters, including reclamation,
1378 assessing environmental conditions, remedying and removing
1379 environmental contamination, monitoring remedial activities and
1380 the release of substances, preventing future releases of
1381 substances, collecting amounts from persons liable or
1382 potentially liable for the costs of such activities, penalties
1383 imposed under environmental laws or regulations and other
1384 payments made to comply with those laws or regulations,
1385 statutory or common law claims by third parties, and defending
1386 claims based on environmental matters.

1387 4. Extraordinary repairs.

1388 (c) If the tenant or remainderman incurred an expense for
1389 the benefit of his or her own estate without consent or
1390 agreement of the other, he or she must pay such expense in full.

1391 (d) Except as provided in paragraph (c), the cost of, or
1392 special taxes or assessments for, an improvement representing an

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1393 addition of value to property forming part of the principal
1394 shall be paid by the tenant if the improvement is not reasonably
1395 expected to outlast the estate of the tenant. In all other
1396 cases, only a part shall be paid by the tenant while the
1397 remainder shall be paid by the remainderman. The part payable by
1398 the tenant is ascertainable by taking that percentage of the
1399 total that is found by dividing the present value of the
1400 tenant's estate by the present value of an estate of the same
1401 form as that of the tenant, except that it is limited for a
1402 period corresponding to the reasonably expected duration of the
1403 improvement. The computation of present values of the estates
1404 shall be made by using the rate defined in 26 U.S.C. s. 7520,
1405 then in effect and, in the case of an estate for life, the
1406 official mortality tables then in effect under 26 U.S.C. s.
1407 7520. Other evidence of duration or expectancy may not be
1408 considered.

1409 (3) This section does not apply to the extent it is
1410 inconsistent with the instrument creating the estates, the
1411 agreement of the parties, or the specific direction of the
1412 taxing or other statutes.

1413 (4) The common law applicable to tenants and remaindermen
1414 supplements this section, except as modified by this section or
1415 other laws.

1416 Section 31. Section 738.804, Florida Statutes, is amended
1417 to read:

1418 738.804 Application.—

1419 (1) Except as provided in s. 738.1041(9), this chapter
1420 pertains to the administration of a trust and is applicable to
1421 any trust that is administered in this state or under its law.

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1422 This chapter also applies to any estate that is administered in
1423 this state unless the provision is limited in application to a
1424 trustee, rather than a fiduciary.

1425 (2) Except as provided in the trust instrument, the will,
1426 or this chapter, this chapter applies ~~shall apply~~ to any receipt
1427 or expense received or incurred and any disbursement made after
1428 January 1, 2003, by any trust or decedent's estate, whether
1429 established before or after January 1, 2003, and whether the
1430 asset involved was acquired by the trustee or personal
1431 representative before or after January 1, 2003. Receipts or
1432 expenses received or incurred and disbursements made before
1433 January 1, 2003, are ~~shall be~~ governed by the law of this state
1434 in effect at the time of the event, except as otherwise
1435 expressly provided in the will or terms of the trust or under ~~in~~
1436 this chapter.

1437 Section 32. This act shall take effect January 1, 2013.