

By the Committee on Judiciary; and 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"; amending s. 738.103, F.S.;
5 providing for application; amending s. 738.104, F.S.;
6 deleting a provision authorizing a trustee to release
7 the power to adjust between principal and income if
8 the trustee desires to convert the form of certain
9 trusts; limiting the power to adjust a trust; deleting
10 a provision that provides construction and application
11 relating to the administration of trusts in this state
12 or under this state's law; amending s. 738.1041, F.S.;
13 defining the term "average fair market value" and
14 redefining the term "unitrust amount"; deleting a
15 duplicative provision relating to conclusive
16 determinations of the terms of a unitrust; revising
17 provisions relating to an express total return
18 unitrust; amending s. 738.105, F.S.; substituting the
19 term "trustee" for "fiduciary" with respect to
20 judicial control of discretionary powers; amending s.
21 738.201, F.S.; revising provisions relating to the
22 determination and distribution of net income; amending
23 s. 738.202, F.S.; revising provisions relating to
24 distributions to residuary and remainder
25 beneficiaries; amending ss. 738.301, 738.302, and
26 738.303, F.S.; substituting the term "fiduciary" for
27 "trustee" to clarify that provisions apply to all
28 fiduciaries; amending s. 738.401, F.S.; substituting
29 the term "fiduciary" for "trustee" to clarify that

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30 provisions apply to all fiduciaries; revising how
31 distributions from entities are allocated between
32 income and principal; amending ss. 738.402, 738.403,
33 738.501, 738.502, 738.503, 738.504, and 738.601, F.S.;
34 substituting the term "fiduciary" for "trustee" to
35 clarify that provisions apply to all fiduciaries;
36 amending s. 738.602, F.S.; substituting the term
37 "fiduciary" for "trustee" to clarify that provisions
38 apply to all fiduciaries; revising provisions relating
39 to allocations to trusts; amending s. 738.603, F.S.;
40 substituting the term "fiduciary" for "trustee" to
41 clarify that provisions apply to all fiduciaries;
42 revising provisions relating to the allocation between
43 income and principal when liquidating assets; amending
44 ss. 738.604, 738.605, 738.606, 738.607, 738.608,
45 738.701, 738.702, 738.703, and 738.704, F.S.;
46 substituting the term "fiduciary" for "trustee" to
47 clarify that provisions apply to all fiduciaries;
48 amending s. 738.705, F.S.; substituting the term
49 "fiduciary" for "trustee" to clarify that provisions
50 apply to all fiduciaries; revising the method for
51 allocating income taxes between income and principal;
52 amending s. 738.801, F.S.; clarifying the
53 apportionment of expenses between tenants and
54 remaindermen; providing an effective date.

55
56 Be It Enacted by the Legislature of the State of Florida:

57
58 Section 1. Present subsections (3) through (13) of section

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59 738.102, Florida Statutes, are renumbered as subsections (4)
60 through (14), respectively, and a new subsection (3) is added to
61 that section, to read:

62 738.102 Definitions.—As used in this chapter, the term:

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

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

77 738.103 Fiduciary duties; general principles.—

78 (3) Except as provided in s. 738.1041(9), this chapter
79 pertains to the administration of a trust and is applicable to
80 any trust that is administered in this state or under its law.
81 This chapter also applies to any estate that is administered in
82 this state unless the provision is limited in application to a
83 trustee, rather than a fiduciary.

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

86 738.104 Trustee's power to adjust.—

87 ~~(5)(a) A trustee may release the entire power to adjust~~

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88 ~~conferred by subsection (1) if the trustee desires to convert an~~
89 ~~income trust to a total return unitrust pursuant to s. 738.1041.~~

90 ~~(b)~~ A trustee may release the entire power to adjust
91 conferred by subsection (1) or may release only the power to
92 adjust from income to principal or the power to adjust from
93 principal to income if the trustee is uncertain about whether
94 possessing or exercising the power will cause a result described
95 in paragraphs (3) (a)-(e) or paragraph (3) (g) or if the trustee
96 determines that possessing or exercising the power will or may
97 deprive the trust of a tax benefit or impose a tax burden not
98 described in subsection (3).

99 ~~(e)~~ A release under this subsection may be permanent or for
100 a specified period, including a period measured by the life of
101 an individual. ~~Notwithstanding anything contrary to this~~
102 ~~subsection, a release of the power to adjust pursuant to~~
103 ~~paragraph (a) shall remain effective only for as long as the~~
104 ~~trust is administered as a unitrust pursuant to s. 738.1041.~~

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

108 Section 4. Section 738.1041, Florida Statutes, is amended
109 to read:

110 738.1041 Total return unitrust.—

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

112 (a) "Average fair market value" means the average of the
113 fair market values of assets held by the trust at the beginning
114 of the current and each of the 2 preceding years, or for the
115 entire term of the trust if there are less than 2 preceding
116 years, and adjusted as follows:

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

120 2. If assets have been distributed from the trust during
121 the years used to determine the average, other than in
122 satisfaction of the unitrust amount, the amount of each
123 distribution is subtracted from all years in which such
124 distribution was not included.

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

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

134 (d) ~~(e)~~ "Income trust" means a trust, created by ~~either~~ an
135 inter vivos or a testamentary instrument, which directs or
136 permits the trustee to distribute the net income of the trust to
137 one or more persons, ~~either~~ in fixed proportions or in amounts
138 or proportions determined by the trustee and regardless of
139 whether the trust directs or permits the trustee to distribute
140 the principal of the trust to one or more such persons.

141 (e) ~~(d)~~ "Interested distributee" means a person to whom
142 distributions of income or principal can currently be made and
143 who has the power to remove the existing trustee and designate
144 as successor a person who may be a "related or subordinate
145 party," ~~as defined in the Internal Revenue Code, 26 U.S.C. s.~~

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146 ~~672(e)~~, with respect to such distributee.

147 (f)~~(e)~~ "Interested trustee" means an individual trustee to
148 whom the net income or principal of the trust can currently be
149 distributed or would be distributed if the trust were then to
150 terminate and be distributed, any trustee whom an interested
151 distributee has the power to remove and replace with a related
152 or subordinate party ~~as defined in paragraph (d)~~, or an
153 individual trustee whose legal obligation to support a
154 beneficiary may be satisfied by distributions of income and
155 principal of the trust.

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

159 (h)~~(f)~~ "Unitrust amount" means the amount determined by
160 multiplying the average fair market value of the assets as
161 calculated ~~defined~~ in paragraph (a) ~~(b)~~ by the percentage
162 calculated under paragraph (2) (b).

163 (2) A trustee may, without court approval, convert an
164 income trust to a total return unitrust, reconvert a total
165 return unitrust to an income trust, or change the percentage
166 used to calculate the unitrust amount or the method used to
167 determine the fair market value of the trust if:

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

170 1. In the case of a trust being administered as an income
171 trust, that future distributions from the trust will be unitrust
172 amounts rather than net income, and indicates the manner in
173 which the unitrust amount will be calculated and the method in
174 which the fair market value of the trust will be determined.

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

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

179 b. The percentage used to calculate the unitrust amount or
180 the method used to determine the fair market value of the trust
181 will be changed, and indicates the manner in which the new
182 unitrust amount will be calculated and the method in which the
183 new fair market value of the trust will be determined;

184 (b) The trustee determines the terms of the unitrust under
185 one of the following methods:

186 1. A disinterested trustee determines, or if there is no
187 trustee other than an interested trustee, the interested trustee
188 appoints a disinterested person who, in its sole discretion but
189 acting in a fiduciary capacity, determines for the interested
190 trustee:

191 a. The percentage to be used to calculate the unitrust
192 amount, provided the percentage used is not greater than 5
193 percent nor less than 3 percent;

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

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

198 2. The interested trustee or disinterested trustee
199 administers the trust such that:

200 a. The percentage used to calculate the unitrust amount is
201 50 percent of the ~~applicable federal~~ rate as defined in the
202 Internal Revenue Code, 26 U.S.C. s. 7520, in effect for the
203 month the conversion under this section becomes effective and

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204 for each January thereafter; however, if the percentage
205 calculated exceeds 5 percent, the unitrust percentage is ~~shall~~
206 ~~be~~ 5 percent and if the percentage calculated is less than 3
207 percent, the unitrust percentage is ~~shall be~~ 3 percent; and

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

213 (I) Any residential property or any tangible personal
214 property that, as of the first business day of the current
215 valuation year, one or more current beneficiaries of the trust
216 have or have had the right to occupy, or have or have had the
217 right to possess or control, other than in his or her capacity
218 ~~as trustee of the trust~~, and instead the right of occupancy or
219 the right to possession and control is ~~shall be deemed to be~~ the
220 unitrust amount with respect to such property; however, the
221 unitrust amount must ~~shall~~ be adjusted to take into account
222 partial distributions from or receipt into the trust of such
223 property during the valuation year;~~;~~

224 (II) Any asset specifically given to a beneficiary and the
225 return on investment on such property, which return on
226 investment shall be distributable to the such beneficiary; ~~or~~

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

229 (c) The trustee sends written notice of its intention to
230 take such action, along with copies of the such written
231 statement regarding trust distributions and this section, and,
232 if applicable, the determinations of ~~either~~ the trustee or the

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233 disinterested person to:

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

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

237 3. All living persons who would receive distributions of
238 principal of the trust if the trust were to terminate at the
239 time of ~~the~~ giving ~~of~~ such notice ~~(without regard to the~~
240 ~~exercise of any power of appointment,)~~ or, if the trust does not
241 provide for its termination, all living persons who would
242 receive or be eligible to receive distributions of income or
243 principal of the trust if the persons identified in subparagraph
244 2. were deceased.

245 4. All persons acting as advisers or protectors of the
246 trust.

247

248 Notice under this paragraph shall be served informally, ~~in the~~
249 manner provided in the Florida Rules of Civil Procedure relating
250 to service of pleadings subsequent to the initial pleading.

251 Notice may be served on a legal representative or natural
252 guardian of a person without ~~the~~ filing ~~of~~ any proceeding or
253 approval of any court;

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

256 (e) No person receiving such notice objects, by written
257 instrument delivered to the trustee, to the proposed action of
258 the trustee or the determinations of the disinterested person
259 within 60 days after service of such notice. An objection ~~under~~
260 ~~this section~~ may be executed by a legal representative or
261 natural guardian of a person without ~~the~~ filing ~~of~~ any

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262 proceeding or approval of any court.

263 (3) If a trustee desires to convert an income trust to a
264 total return unitrust, reconvert a total return unitrust to an
265 income trust, or change the percentage used to calculate the
266 unitrust amount or the method used to determine a fair market
267 value of the trust but does not have the ability to or elects
268 not to do it under subsection (2), the trustee may petition the
269 circuit court for such order as the trustee deems appropriate.
270 In that event, the court, in its own discretion or on the
271 petition of such trustee or any person having an income or
272 remainder interest in the trust, may appoint a disinterested
273 person who, acting in a fiduciary capacity, shall present such
274 information to the court as is ~~shall be~~ necessary for the court
275 to make a determination hereunder.

276 ~~(4) All determinations made pursuant to sub-subparagraph~~
277 ~~(2)(b)2.b. shall be conclusive if reasonable and made in good~~
278 ~~faith. Such determination shall be conclusively presumed to have~~
279 ~~been made reasonably and in good faith unless proven otherwise~~
280 ~~in a proceeding commenced by or on behalf of a person interested~~
281 ~~in the trust within the time provided in s. 736.1008. The burden~~
282 ~~will be on the objecting interested party to prove that the~~
283 ~~determinations were not made reasonably and in good faith.~~

284 (4) ~~(5)~~ Following the conversion of an income trust to a
285 total return unitrust, the trustee:

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

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

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

299 2. Net long-term capital gain described in the Internal
300 Revenue Code, 26 U.S.C. s. 1222(7), for such year, or portion
301 thereof, but only to the extent that the amount so allocated
302 together with all other amounts, including amounts described in
303 subparagraph 1., allocated to trust income for such year, or
304 portion thereof, does not exceed the unitrust amount for such
305 year, or portion thereof.

306 (5)~~(6)~~ In administering a total return unitrust, the
307 trustee may, in its sole discretion but subject to the
308 provisions of the governing instrument, determine:

309 (a) The effective date of the conversion.

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

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

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

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

319 (6)~~(7)~~ Conversion to a total return unitrust under ~~the~~

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320 ~~provisions of~~ this section does ~~shall~~ not affect any other
321 provision of the governing instrument, if any, regarding
322 distributions of principal.

323 ~~(7)-(8)~~ Any trustee or disinterested person who in good
324 faith takes or fails to take any action under this section is
325 ~~shall~~ not be liable to any person affected by such action or
326 inaction, regardless of whether such person received written
327 notice as provided in this section or ~~and regardless of whether~~
328 such person was under a legal disability at the time of the
329 delivery of such notice. Such person's exclusive remedy is ~~shall~~
330 ~~be~~ to obtain, under subsection (8) ~~(9)~~, an order of the court
331 directing the trustee to convert an income trust to a total
332 return unitrust, to reconvert from a total return unitrust to an
333 income trust, or to change the percentage used to calculate the
334 unitrust amount. If a court determines that the trustee or
335 disinterested person has not acted in good faith in taking or
336 failing to take any action under this section, ~~the provisions of~~
337 s. 738.105(3) applies ~~apply~~.

338 ~~(8)-(9)~~ If a majority in interest of ~~either~~ the income or
339 remainder beneficiaries of an income trust has delivered to the
340 trustee a written objection to the amount of the income
341 distributions of the trust, and, if the trustee has failed to
342 resolve the objection to the satisfaction of the objecting
343 beneficiaries within 6 months after ~~from~~ the receipt of such
344 written objection, ~~then~~ the objecting beneficiaries may petition
345 the court in accordance with subsection (3).

346 ~~(9)-(10)~~ This section pertains ~~shall be construed as~~
347 ~~pertaining~~ to the administration of a trust and is applicable to
348 any trust that is administered ~~either~~ in this state or under

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349 Florida law unless:

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

353 (b) The trust is a trust described in the Internal Revenue
354 Code, 26 U.S.C. s. 170(f)(2)(B), s. 642(c)(5), s. 664(d), s.
355 2702(a)(3), or s. 2702(b);

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

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

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

364 (d) The governing instrument expressly prohibits use of
365 this section by specific reference to the section. A provision
366 in the governing instrument that, "The provisions of section
367 738.1041, Florida Statutes, as amended, or any corresponding
368 provision of future law, may ~~shall~~ not be used in the
369 administration of this trust," or similar words reflecting such
370 intent are ~~shall be~~ sufficient to preclude the use of this
371 section; ~~or~~

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

374 (10) ~~(11)~~ The grantor of a trust may create an express total
375 return unitrust that ~~which~~ will be ~~become~~ effective as provided
376 in the trust instrument ~~document~~ without requiring a conversion
377 under this section.

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

382 1.(a) That distributions from the trust will be unitrust
383 amounts and the manner in which the unitrust amount will be
384 calculated; ~~and the method in which the fair market value of the~~
385 ~~trust will be determined.~~

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

389 (b) The trust instrument may also contain provisions
390 specifying:

391 1.(c) The method to be used in determining the fair market
392 value of the trust, including whether to use an average fair
393 market value or the fair market value of the assets held by the
394 trust at the beginning of the current year; or-

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

397 (c) This section establishes the method of determining the
398 fair market value of the trust if the trust instrument is silent
399 as to subparagraph (b)1., and to specify those assets, if any,
400 which are to be excluded in determining the unitrust amount if
401 the trust instrument is silent as to subparagraph (b)2.

402 Section 5. Subsections (1), (3), and (4) of section
403 738.105, Florida Statutes, are amended to read:

404 738.105 Judicial control of discretionary powers.—

405 (1) A court may ~~shall~~ not change a trustee's fiduciary's
406 decision to exercise or not to exercise a discretionary power

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407 conferred by this chapter unless the court determines that the
408 decision was an abuse of the trustee's ~~fiduciary's~~ discretion. A
409 court ~~may shall~~ not determine that a trustee ~~fiduciary~~ abused
410 its discretion merely because the court would have exercised the
411 discretion in a different manner or would not have exercised the
412 discretion.

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

418 (a) To the extent the abuse of discretion has resulted in
419 no distribution to a beneficiary or a distribution that is too
420 small, the court shall require the trustee ~~fiduciary~~ to
421 distribute from the trust to the beneficiary an amount the court
422 determines will restore the beneficiary, in whole or in part, to
423 his or her appropriate position.

424 (b) To the extent the abuse of discretion has resulted in a
425 distribution to a beneficiary that is too large, the court shall
426 restore the beneficiaries, the trust, or both, in whole or in
427 part, to their appropriate positions by requiring the trustee
428 ~~fiduciary~~ to withhold an amount from one or more future
429 distributions to the beneficiary who received the distribution
430 that was too large or requiring that beneficiary to return some
431 or all of the distribution to the trust.

432 (c) To the extent the court is unable, after applying
433 paragraphs (a) and (b), to restore the beneficiaries or the
434 trust, or both, to the positions they would have occupied if the
435 trustee ~~fiduciary~~ had not abused its discretion, the court may

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436 require the trustee ~~fiduciary~~ to pay an appropriate amount from
437 its own funds to one or more of the beneficiaries or the trust
438 or both.

439 (4) Upon the filing of a petition by the trustee ~~fiduciary~~,
440 the court having jurisdiction over the trust ~~or estate~~ shall
441 determine whether a proposed exercise or nonexercise by the
442 trustee ~~fiduciary~~ of a discretionary power conferred by this
443 chapter will result in an abuse of the trustee's ~~fiduciary's~~
444 discretion. If the petition describes the proposed exercise or
445 nonexercise of the power and contains sufficient information to
446 inform the beneficiaries of the reasons for the proposal, the
447 facts upon which the trustee ~~fiduciary~~ relies, and an
448 explanation of how the income and remainder beneficiaries will
449 be affected by the proposed exercise or nonexercise of the
450 power, a beneficiary who challenges the proposed exercise or
451 nonexercise has the burden of establishing that such exercise or
452 nonexercise will result in an abuse of discretion.

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

455 738.201 Determination and distribution of net income.—After
456 a decedent dies, in the case of an estate, or after an income
457 interest in a trust ends, the following rules apply:

458 (1) A fiduciary of an estate or of a terminating income
459 interest shall determine the amount of net income and net
460 principal receipts received from property specifically given to
461 a beneficiary under ~~the rules in ss. 738.301-738.706 which apply~~
462 ~~to trustees and the rules in~~ subsection (5). The fiduciary shall
463 distribute the net income and net principal receipts to the
464 beneficiary who is to receive the specific property.

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

468 (a) Including in net income all income from property used
469 to discharge liabilities.

470 (b) Paying from income or principal, in the fiduciary's
471 discretion, fees of attorneys, accountants, and fiduciaries;
472 court costs and other expenses of administration; and interest
473 on death taxes. ~~, but~~ The fiduciary may pay those expenses from
474 income of property passing to a trust for which the fiduciary
475 claims an estate tax marital or charitable deduction under the
476 Internal Revenue Code or comparable law of any state only to the
477 extent the payment of those expenses from income will not cause
478 the reduction or loss of the deduction.

479 (c) Paying from principal all other disbursements made or
480 incurred in connection with the settlement of a decedent's
481 estate or the winding up of a terminating income interest,
482 including debts, funeral expenses, disposition of remains,
483 family allowances, and death taxes and related penalties that
484 are apportioned to the estate or terminating income interest by
485 the will, the terms of the trust, or applicable law.

486 (3) ~~If A fiduciary shall distribute to a beneficiary who~~
487 ~~receives a pecuniary~~ devise amount outright is also entitled to
488 receive the interest or any other amount on the devise under the
489 terms of provided by the will or, the terms of the trust, the
490 fiduciary shall distribute the interest or other amount
491 ~~applicable law~~ from net income determined under subsection (2)
492 or from principal to the extent net income is insufficient. ~~If a~~
493 ~~beneficiary is to receive a pecuniary amount outright from a~~

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494 ~~trust after an income interest ends and no interest or other~~
495 ~~amount is provided for by the terms of the trust or applicable~~
496 ~~law, the fiduciary shall distribute the interest or other amount~~
497 ~~to which the beneficiary would be entitled under applicable law~~
498 ~~if the pecuniary amount were required to be paid under a will.~~

499 (4) A fiduciary shall distribute the net income remaining
500 after distributions required under subsections (1)-(3) by
501 ~~subsection (3)~~ in the manner described in s. 738.202 to all
502 other beneficiaries, including a beneficiary who receives a
503 pecuniary amount in trust, even if the beneficiary holds an
504 unqualified power to withdraw assets from the trust or other
505 presently exercisable general power of appointment over the
506 trust.

507 Section 7. Section 738.202, Florida Statutes, is amended to
508 read:

509 738.202 Distribution to residuary and remainder
510 beneficiaries.—

511 (1) Each beneficiary described in s. 738.201(4) is entitled
512 to receive a portion of the net income remaining after the
513 application of s. 738.201(1)-(3), which is equal to the
514 beneficiary's fractional interest in undistributed principal
515 assets, using carrying values as of the distribution date. If a
516 fiduciary makes more than one distribution of assets to
517 beneficiaries to whom this section applies, each beneficiary,
518 including one who does not receive part of the distribution, is
519 entitled, as of each distribution date, to the net income the
520 fiduciary ~~has~~ received after the date of death or terminating
521 event or earlier distribution date but has not distributed as of
522 the current distribution date.

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

525 (a) The beneficiary is entitled to receive a portion of the
526 net income equal to the beneficiary's fractional interest in the
527 carrying value of the undistributed principal assets immediately
528 before the distribution date, excluding the amount of unpaid
529 liabilities including assets that later may be sold to meet
530 principal obligations.

531 (b) The beneficiary's fractional interest in the
532 undistributed principal assets shall be calculated: without
533 regard to

534 1. At the time the interest began and adjusted for any
535 disproportionate distributions since the interest began;

536 2. By excluding any liabilities of the estate or trust from
537 the calculation;

538 3. By also excluding property specifically given to a
539 beneficiary and property required to pay pecuniary amounts not
540 in trust; and-

541 4. (c) The beneficiary's fractional interest in the
542 undistributed principal assets shall be calculated On the basis
543 of the aggregate carrying value of those assets determined under
544 subsection (1) as of the distribution date without reducing the
545 value by any unpaid principal obligation.

546 (c) If a disproportionate distribution of principal is made
547 to any beneficiary, the respective fractional interests of all
548 beneficiaries in the remaining underlying assets shall be
549 recomputed by:

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

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552 2. Reducing the fractional interest of the recipient of the
553 disproportionate distribution in the remaining principal assets
554 by the fair market value of the principal distribution; and

555 3. Recomputing the fractional interests of all
556 beneficiaries in the remaining principal assets based upon the
557 now restated carrying values.

558 ~~(d) The distribution date for purposes of this section may~~
559 ~~be the date as of which the fiduciary calculates the value of~~
560 ~~the assets if that date is reasonably near the date on which~~
561 ~~assets are actually distributed.~~

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

566 (4) A fiduciary may apply the provisions of ~~rules in~~ this
567 section, to the extent the fiduciary considers appropriate, to
568 net gain or loss realized after the date of death or terminating
569 event or earlier distribution date from the disposition of a
570 principal asset if this section applies to the income from the
571 asset.

572 (5) The carrying value or fair market value of trust assets
573 shall be determined on an asset-by-asset basis and are ~~shall be~~
574 ~~conclusive~~ if reasonable and determined in good faith.
575 Determinations of fair market value based on appraisals
576 performed within 2 years before or after the valuation date are
577 ~~shall be~~ presumed reasonable. The values ~~value~~ of trust assets
578 are ~~shall be~~ conclusively presumed to be reasonable and
579 determined in good faith unless proven otherwise in a proceeding
580 commenced by or on behalf of a person interested in the trust

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581 within the time provided in s. 736.1008.

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

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

586 738.301 When right to income begins and ends.—An income
587 beneficiary is entitled to net income from the date on which the
588 income interest begins.

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

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

595 738.302 Apportionment of receipts and disbursements when
596 decedent dies or income interest begins.—

597 (1) A fiduciary ~~trustee~~ shall allocate an income receipt or
598 disbursement other than one to which s. 738.201(1) applies to
599 principal if the due date of the receipt or disbursement occurs
600 before a decedent dies in the case of an estate or before an
601 income interest begins in the case of a trust or successive
602 income interest.

603 (2) A fiduciary ~~trustee~~ shall allocate an income receipt or
604 disbursement to income if the due date of the receipt or
605 disbursement occurs on or after the date on which a decedent
606 dies or an income interest begins and the due date is a periodic
607 due date. An income receipt or disbursement shall be treated as
608 accruing from day to day if the due date of the receipt or
609 disbursement is not periodic or the receipt or disbursement has

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610 no due date. The portion of the receipt or disbursement accruing
611 before the date on which a decedent dies or an income interest
612 begins shall be allocated to principal and the balance shall be
613 allocated to income.

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

616 738.303 Apportionment when income interest ends.—

617 (2) When a mandatory income interest ends, the fiduciary
618 ~~trustee~~ shall pay to a mandatory income beneficiary who survives
619 that date, or the estate of a deceased mandatory income
620 beneficiary whose death causes the interest to end, the
621 beneficiary's share of the undistributed income that is not
622 disposed of under the terms of the trust unless the beneficiary
623 has an unqualified power to revoke more than 5 percent of the
624 trust immediately before the income interest ends. In the latter
625 case, the undistributed income from the portion of the trust
626 that may be revoked shall be added to principal.

627 (3) When a fiduciary's ~~trustee's~~ obligation to pay a fixed
628 annuity or a fixed fraction of the value of the trust's assets
629 ends, the fiduciary ~~trustee~~ shall prorate the final payment if
630 and to the extent required by applicable law to accomplish a
631 purpose of the trust or its grantor relating to income, gift,
632 estate, or other tax requirements.

633 Section 11. Section 738.401, Florida Statutes, is amended
634 to read:

635 738.401 Character of receipts.—

636 (1) For purposes of this section, the term "entity" means a
637 corporation, partnership, limited liability company, regulated
638 investment company, real estate investment trust, common trust

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639 fund, or any other organization in which a fiduciary ~~trustee~~ has
640 an interest other than a trust or estate to which s. 738.402
641 applies, a business or activity to which s. 738.403 applies, or
642 an asset-backed security to which s. 738.608 applies.

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

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

649 (a) Property other than money.

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

653 (c) Money received in total or partial liquidation of the
654 entity.

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

659 (e) Money received from an entity listed on a public stock
660 exchange during any year of the trust or estate which exceeds 10
661 percent of the fair market value of the trust's or estate's
662 interest in the entity on the first day of that year. The amount
663 to be allocated to principal must be reduced to the extent that
664 the cumulative distributions from the entity to the trust or
665 estate allocated to income does not exceed a cumulative annual
666 return of 3 percent of the fair market value of the interest in
667 the entity at the beginning of each year or portion of a year

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668 for the number of years or portion of years in the period that
669 the interest in the entity has been held by the trust or estate.
670 If a trustee has exercised a power to adjust under s. 738.104
671 during any period the interest in the entity has been held by
672 the trust, the trustee, in determining the total income
673 distributions from that entity, must take into account the
674 extent to which the exercise of that power resulted in income to
675 the trust from that entity for that period. If the income of the
676 trust for any period has been computed under s. 738.1041, the
677 trustee, in determining the total income distributions from that
678 entity for that period, must take into account the portion of
679 the unitrust amount paid as a result of the ownership of the
680 trust's interest in the entity for that period.

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

686 (5) Money is received in partial liquidation:

687 (a) To the extent the entity, at or near the time of a
688 distribution, indicates that such money is a distribution in
689 partial liquidation; or

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

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697

698 This subsection does not apply to an entity to which subsection
699 (7) applies.

700 (6) Money may not ~~is not received in partial liquidation,~~
701 ~~nor may money~~ be taken into account in determining any excess
702 under paragraph (5) (b), to the extent that the cumulative
703 distributions from the entity to the trust or the estate
704 allocated to income do not exceed the greater of: such money
705 ~~does not exceed the amount of income tax a trustee or~~
706 ~~beneficiary must pay on taxable income of the entity that~~
707 ~~distributes the money.~~

708 (a) A cumulative annual return of 3 percent of the entity's
709 carrying value computed at the beginning of each period for the
710 number of years or portion of years that the entity was held by
711 the fiduciary. If a trustee has exercised a power to adjust
712 under s. 738.104 during any period the interest in the entity
713 has been held by the trust, the trustee, in determining the
714 total income distributions from that entity, must take into
715 account the extent to which exercise of the power resulted in
716 income to the trust from that entity for that period. If the
717 income of a trust for any period has been computed pursuant to
718 s. 738.1041, the trustee, in determining the total income
719 distributions from the entity for that period, must take into
720 account the portion of the unitrust amount paid as a result of
721 the ownership of the trust's interest in the entity for that
722 period; or

723 (b) If the entity is treated as a partnership, subchapter S
724 corporation, or a disregarded entity pursuant to the Internal
725 Revenue Code of 1986, as amended, the amount of income tax

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726 attributable to the trust's or estate's ownership share of the
727 entity, based on its pro rata share of the taxable income of the
728 entity that distributes the money, for the number of years or
729 portion of years that the interest in the entity was held by the
730 fiduciary, calculated as if all of that tax was incurred by the
731 fiduciary.

732 (7) The following applies ~~special rules shall apply~~ to
733 money ~~monneys~~ or property received by a private trustee as a
734 distribution from an investment entity ~~entities~~ described in
735 this subsection:

736 (a) The trustee shall first treat as income of the trust
737 all of the money or property received from the investment entity
738 in the current year which would be considered income under this
739 chapter if the trustee had directly held the trust's pro rata
740 share of the assets of the investment entity. For this purpose,
741 all distributions received in the current year must be
742 aggregated.

743 (b) The trustee shall next treat as income of the trust any
744 additional money or property received in the current year which
745 would have been considered income in the prior 2 years under
746 paragraph (a) if additional money or property had been received
747 from the investment entity in any of those prior 2 years. The
748 amount to be treated as income shall be reduced by any
749 distributions of money or property made by the investment entity
750 to the trust during the current and prior 2 years which were
751 treated as income under this paragraph.

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

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

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755 1. "Investment entity" means an entity, other than a
756 business activity conducted by the trustee described in s.
757 738.403 or an entity that is listed on a public stock exchange,
758 which is treated as a partnership, subchapter S corporation, or
759 disregarded entity pursuant to the Internal Revenue Code of
760 1986, as amended, and which normally derives 50 percent or more
761 of its annual cumulative net income from interest, dividends,
762 annuities, royalties, rental activity, or other passive
763 investments, including income from the sale or exchange of such
764 passive investments.

765 2. "Private trustee" means a trustee who is a natural
766 person, but only if the trustee is unable to use the power to
767 adjust between income and principal with respect to receipts
768 from entities described in this subsection pursuant to s.
769 738.104. A bank, trust company, or other commercial trustee is
770 not considered a private trustee.

771 (8) This section shall be applied before ss. 738.705 and
772 738.706 and does not modify or change any of the provisions of
773 those sections.

774 ~~(a) Moneys or property received from a targeted entity that~~
775 ~~is not an investment entity which do not exceed the trust's pro~~
776 ~~rata share of the undistributed cumulative net income of the~~
777 ~~targeted entity during the time an ownership interest in the~~
778 ~~targeted entity was held by the trust shall be allocated to~~
779 ~~income. The balance of moneys or property received from a~~
780 ~~targeted entity shall be allocated to principal.~~

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

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784 ~~the same manner as if the trustee had directly held the trust's~~
785 ~~pro rata share of the assets of the investment entity~~
786 ~~attributable to the distribution of such designated amount.~~
787 ~~Thereafter, distributions shall be treated as principal.~~

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

790 ~~1. "Cumulative net income" means the targeted entity's net~~
791 ~~income as determined using the method of accounting regularly~~
792 ~~used by the targeted entity in preparing its financial~~
793 ~~statements, or if no financial statements are prepared, the net~~
794 ~~book income computed for federal income tax purposes, for every~~
795 ~~year an ownership interest in the entity is held by the trust.~~
796 ~~The trust's pro rata share shall be the cumulative net income~~
797 ~~multiplied by the percentage ownership of the trust.~~

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

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

804 ~~b. The amount of income of the investment entity for the~~
805 ~~current year and the prior 2 years, as reported to the trustee~~
806 ~~by the investment entity for federal income tax purposes, less~~
807 ~~any distributions of moneys or property made by the investment~~
808 ~~entity to the trustee during the prior 2 years.~~

809 ~~3. "Investment entity" means a targeted entity that~~
810 ~~normally derives 50 percent or more of its annual cumulative net~~
811 ~~income from interest, dividends, annuities, royalties, rental~~
812 ~~activity, or other passive investments, including income from~~

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813 ~~the sale or exchange of such passive investments.~~

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

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

824 ~~6. "Undistributed cumulative net income" means the trust's~~
825 ~~pro rata share of cumulative net income, less all prior~~
826 ~~distributions from the targeted entity to the trust that have~~
827 ~~been allocated to income.~~

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

831 ~~(8) A trustee may rely upon a statement made by an entity~~
832 ~~about the source or character of a distribution, about the~~
833 ~~amount of profits of a targeted entity, or about the nature and~~
834 ~~value of assets of an investment entity if the statement is made~~
835 ~~at or near the time of distribution by the entity's board of~~
836 ~~directors or other person or group of persons authorized to~~
837 ~~exercise powers to pay money or transfer property comparable to~~
838 ~~those of a corporation's board of directors.~~

839 Section 12. Section 738.402, Florida Statutes, is amended
840 to read:

841 738.402 Distribution from trust or estate.—A fiduciary

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842 ~~trustee~~ shall allocate to income an amount received as a
843 distribution of income from a trust or an estate in which the
844 trust has an interest other than a purchased interest and ~~shall~~
845 allocate to principal an amount received as a distribution of
846 principal from such a trust or estate. If a fiduciary ~~trustee~~
847 purchases an interest in a trust that is an investment entity,
848 or a decedent or donor transfers an interest in such a trust to
849 a fiduciary ~~trustee~~, s. 738.401 or s. 738.608 applies to a
850 receipt from the trust.

851 Section 13. Section 738.403, Florida Statutes, is amended
852 to read:

853 738.403 Business and other activities conducted by
854 fiduciary ~~trustee~~.—

855 (1) If a fiduciary ~~trustee~~ who conducts a business or other
856 activity determines that it is in the best interest of all the
857 beneficiaries to account separately for the business or activity
858 instead of accounting for the business or activity as part of
859 the trust's or estate's general accounting records, the
860 fiduciary ~~trustee~~ may maintain separate accounting records for
861 the transactions of the ~~such~~ business or other activity, whether
862 or not the assets of such business or activity are segregated
863 from other trust or estate assets.

864 (2) A fiduciary ~~trustee~~ who accounts separately for a
865 business or other activity may determine the extent to which the
866 net cash receipts of the ~~such~~ business or activity must be
867 retained for working capital, the acquisition or replacement of
868 fixed assets, and other reasonably foreseeable needs of the
869 business or activity, and the extent to which the remaining net
870 cash receipts are accounted for as principal or income in the

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871 trust's or estate's general accounting records. If a fiduciary
872 ~~trustee~~ sells assets of the business or other activity, other
873 than in the ordinary course of the business or activity, the
874 fiduciary must ~~trustee shall~~ account for the net amount received
875 as principal in the trust's or estate's general accounting
876 records to the extent the fiduciary ~~trustee~~ determines that the
877 amount received is no longer required in the conduct of the
878 business.

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

881 (a) Retail, manufacturing, service, and other traditional
882 business activities.

883 (b) Farming.

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

885 (d) Management of rental properties.

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

887 (f) Timber operations.

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

889 Section 14. Section 738.501, Florida Statutes, is amended
890 to read:

891 738.501 Principal receipts.—A fiduciary ~~trustee~~ shall
892 allocate to principal:

893 (1) To the extent not allocated to income under this
894 chapter, assets received from a donor ~~transferor~~ during the
895 donor's ~~transferor's~~ lifetime, a decedent's estate, a trust with
896 a terminating income interest, or a payor under a contract
897 naming the trust, estate, or fiduciary ~~its trustee~~ as
898 beneficiary.

899 (2) Money or other property received from the sale,

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900 exchange, liquidation, or change in form of a principal asset,
901 including realized profit, subject to this section.

902 (3) Amounts recovered from third parties to reimburse the
903 trust or estate because of disbursements described in s.
904 738.702(1)(g) or for other reasons to the extent not based on
905 the loss of income.

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

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

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

914 Section 15. Section 738.502, Florida Statutes, is amended
915 to read:

916 738.502 Rental property.—~~If To the extent~~ a fiduciary
917 ~~trustee~~ accounts for receipts from rental property pursuant to
918 this section, the fiduciary ~~trustee~~ shall allocate to income an
919 amount received as rent of real or personal property, including
920 an amount received for cancellation or renewal of a lease. An
921 amount received as a refundable deposit, including a security
922 deposit or a deposit that is to be applied as rent for future
923 periods, must ~~shall~~ be added to principal and held subject to
924 the terms of the lease and is not available for distribution to
925 a beneficiary until the fiduciary's ~~trustee's~~ contractual
926 obligations have been satisfied with respect to that amount.

927 Section 16. Subsections (1), (2), and (3) of section
928 738.503, Florida Statutes, are amended to read:

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929 738.503 Obligation to pay money.-

930 (1) An amount received as interest, whether determined at a
931 fixed, variable, or floating rate, on an obligation to pay money
932 to the fiduciary trustee, including an amount received as
933 consideration for prepaying principal, shall be allocated to
934 income without any provision for amortization of premium.

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

939 (3) The increment in value of a bond or other obligation
940 for the payment of money bearing no stated interest but payable
941 at a future time in excess of the price at which it was issued
942 or purchased, if purchased after issuance, is distributable as
943 income. If the increment in value accrues and becomes payable
944 pursuant to a fixed schedule of appreciation, it may be
945 distributed to the beneficiary who was the income beneficiary at
946 the ~~this~~ time of increment from the first principal cash
947 available or, if none is available, when the increment is
948 realized by sale, redemption, or other disposition. If ~~When~~
949 unrealized increment is distributed as income but out of
950 principal, the principal must ~~shall~~ be reimbursed for the
951 increment when realized. If, in the reasonable judgment of the
952 fiduciary trustee, exercised in good faith, the ultimate payment
953 of the bond principal is in doubt, the fiduciary trustee may
954 withhold the payment of incremental interest to the income
955 beneficiary.

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

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958 738.504 Insurance policies and similar contracts.—

959 (1) Except as otherwise provided in subsection (2), a
960 fiduciary trustee shall allocate to principal the proceeds of a
961 life insurance policy or other contract in which the trust,
962 estate, or fiduciary ~~its trustee~~ is named as beneficiary,
963 including a contract that insures the trust, estate, or
964 fiduciary ~~its trustee~~ against loss for damage to, destruction
965 of, or loss of title to a trust or estate asset. The fiduciary
966 ~~trustee~~ shall allocate dividends on an insurance policy to
967 income if the premiums on the policy are paid from income and to
968 principal if the premiums are paid from principal.

969 (2) A fiduciary trustee shall allocate to income the
970 proceeds of a contract that insures the fiduciary trustee
971 against loss of occupancy or other use by an income beneficiary,
972 loss of income, or, subject to s. 738.403, loss of profits from
973 a business.

974 Section 18. Section 738.601, Florida Statutes, is amended
975 to read:

976 738.601 Insubstantial allocations not required.—If a
977 fiduciary trustee determines that an allocation between
978 principal and income required by s. 738.602, s. 738.603, s.
979 738.604, s. 738.605, or s. 738.608 is insubstantial, the
980 fiduciary trustee may allocate the entire amount to principal
981 unless one of the circumstances described in s. 738.104(3)
982 applies to the allocation. This power may be exercised by a
983 cofiduciary under ~~co-trustee in~~ the circumstances described in s.
984 738.104(4) and may be released for the reasons and in the manner
985 described in s. 738.104(5). An allocation is presumed to be
986 insubstantial if:

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

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

994 Section 19. Section 738.602, Florida Statutes, is amended
995 to read:

996 738.602 Payments from deferred compensation plans,
997 annuities, and retirement plans or accounts.—

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

999 (a) "Fund" means a private or commercial annuity, an
1000 individual retirement account, an individual retirement annuity,
1001 a deferred compensation plan, a pension plan, a profit-sharing
1002 plan, a stock-bonus plan, an employee stock-ownership plan, or
1003 another similar arrangement in which federal income tax is
1004 deferred.

1005 (b) "Income of the fund" means income that is determined
1006 according to subsection (2) or subsection (3).

1007 (c) "Nonseparate account" means a fund for which the value
1008 of the participant's or account owner's right to receive
1009 benefits can be determined only by the occurrence of a date or
1010 event as defined in the instrument governing the fund.

1011 (d) "Payment" means a distribution from a fund that a
1012 fiduciary ~~trustee~~ may receive over a fixed number of years or
1013 during the life of one or more individuals because of services
1014 rendered or property transferred to the payor in exchange for
1015 future payments. The term includes a distribution made in money

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1016 or property from the payor's general assets or from a fund
1017 created by the payor or payee.

1018 (e) "Separate account" means a fund holding assets
1019 exclusively for the benefit of a participant or account owner
1020 and:

1021 1. The value of such assets or the value of the separate
1022 account is ascertainable at any time; or

1023 2. The administrator of the fund maintains records that
1024 show receipts and disbursements associated with such assets.

1025 (2) (a) For a fund that is a separate account, income of the
1026 fund shall be determined:

1027 1. As if the fund were a trust subject to the provisions of
1028 ss. 738.401-738.706; or

1029 2. As a unitrust amount calculated by multiplying the fair
1030 market value of the fund as of the first day of the first
1031 accounting period and, thereafter, as of the last day of the
1032 accounting period that immediately precedes the accounting
1033 period during which a payment is received by the percentage
1034 determined in accordance with s. 738.1041(2)(b)2.a. The
1035 fiduciary ~~trustee~~ shall determine such percentage as of the
1036 first month that the fiduciary's ~~trustee's~~ election to treat the
1037 income of the fund as a unitrust amount becomes effective. For
1038 purposes of this subparagraph, "fair market value" means the
1039 fair market value of the assets held in the fund as of the
1040 applicable valuation date determined as provided in this
1041 subparagraph. The fiduciary ~~trustee~~ is not liable for good faith
1042 reliance upon any valuation supplied by the person or persons in
1043 possession of the fund. If the fiduciary ~~trustee~~ makes or
1044 terminates an election under this subparagraph, the fiduciary

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1045 ~~trustee~~ shall make such disclosure in a trust disclosure
1046 document that satisfies the requirements of s. 736.1008(4) (a).

1047 (b) The fiduciary may ~~trustee shall have discretion to~~
1048 elect the method of determining the income of the fund pursuant
1049 to this subsection and may change the method of determining
1050 income of the fund for any future accounting period.

1051 (3) For a fund that is a nonseparate account, income of the
1052 fund is a unitrust amount determined by calculating the present
1053 value of the right to receive the remaining payments under 26
1054 U.S.C. s. 7520 of the Internal Revenue Code as of the first day
1055 of the accounting period and multiplying it by the percentage
1056 determined in accordance with s. 738.1041(2) (b)2.a. The
1057 fiduciary ~~trustee~~ shall determine the unitrust amount as of the
1058 first month that the fiduciary's ~~trustee's~~ election to treat the
1059 income of the fund as a unitrust amount becomes effective.

1060 (4) Except for those trusts described in subsection (5),
1061 the fiduciary ~~trustee~~ shall allocate to income the lesser of the
1062 payment received from a fund or the income determined under
1063 subsection (2) or subsection (3). Any remaining amount of the
1064 payment shall be allocated to principal ~~a payment from a fund as~~
1065 ~~follows:~~

1066 (a) ~~That portion of the payment the payor characterizes as~~
1067 ~~income shall be allocated to income, and any remaining portion~~
1068 ~~of the payment shall be allocated to principal.~~

1069 (b) ~~To the extent that the payor does not characterize any~~
1070 ~~portion of a payment as income or principal and the trustee can~~
1071 ~~ascertain the income of the fund by the fund's account~~
1072 ~~statements or any other reasonable source, the trustee shall~~
1073 ~~allocate to income the lesser of the income of the fund or the~~

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1074 ~~entire payment and shall allocate to principal any remaining~~
1075 ~~portion of the payment.~~

1076 ~~(c) If the trustee, acting reasonably and in good faith,~~
1077 ~~determines that neither paragraph (a) nor paragraph (b) applies~~
1078 ~~and all or part of the payment is required to be made, the~~
1079 ~~trustee shall allocate to income 10 percent of the portion of~~
1080 ~~the payment that is required to be made during the accounting~~
1081 ~~period and shall allocate the balance to principal. If no part~~
1082 ~~of a payment is required to be made or the payment received is~~
1083 ~~the entire amount to which the trustee is entitled, the trustee~~
1084 ~~shall allocate the entire payment to principal. For purposes of~~
1085 ~~this paragraph, a payment is not "required to be made" to the~~
1086 ~~extent the payment is made because the trustee exercises a right~~
1087 ~~of withdrawal.~~

1088 (5) For a trust that which, in order to qualify for the
1089 estate or gift tax marital deduction under the Internal Revenue
1090 Code or comparable law of any state, entitles the spouse to all
1091 of the income of the trust, and the terms of the trust are
1092 silent as to the time and frequency for distribution of the
1093 income of the fund, ~~then:~~

1094 (a) For a fund that is a separate account, unless the
1095 spouse directs the fiduciary trustee to leave the income of the
1096 fund in the fund, the fiduciary trustee shall withdraw and pay
1097 to the spouse, at least no less frequently than annually:

1098 1. All of the income of the fund determined in accordance
1099 with subparagraph (2) (a)1.; or

1100 2. The income of the fund as a unitrust amount determined
1101 in accordance with subparagraph (2) (a)2.

1102 (b) For a fund that is a nonseparate account, the fiduciary

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1103 trustee shall withdraw and pay to the spouse, at least no less
1104 ~~frequently than~~ annually, the income of the fund as a unitrust
1105 amount determined in accordance with subsection (3).

1106 (6) This section does not apply to payments to which s.
1107 738.603 applies.

1108 Section 20. Section 738.603, Florida Statutes, is amended
1109 to read:

1110 738.603 Liquidating asset.—

1111 (1) For purposes of this section, the term "liquidating
1112 asset" means an asset the value of which will diminish or
1113 terminate because the asset is expected to produce receipts for
1114 a period of limited duration. The term includes a leasehold,
1115 patent, copyright, royalty right, and right to receive payments
1116 for ~~during a period of~~ more than 1 year under an arrangement
1117 that does not provide for the payment of interest on the unpaid
1118 balance. The term does not include a payment subject to s.
1119 738.602, resources subject to s. 738.604, timber subject to s.
1120 738.605, an activity subject to s. 738.607, an asset subject to
1121 s. 738.608, or any asset for which the fiduciary trustee
1122 establishes a reserve for depreciation under s. 738.703.

1123 (2) A fiduciary trustee shall allocate to income 5 ~~10~~
1124 percent of the receipts from the carrying value of a liquidating
1125 asset and the balance to principal. Amounts allocated to
1126 principal shall reduce the carrying value of the liquidating
1127 asset, but not below zero. Amounts received in excess of the
1128 remaining carrying value must be allocated to principal.

1129 Section 21. Subsections (1), (3), and (4) of section
1130 738.604, Florida Statutes, are amended to read:

1131 738.604 Minerals, water, and other natural resources.—

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1132 (1) ~~If To the extent~~ a fiduciary trustee accounts for
1133 receipts from an interest in minerals or other natural resources
1134 pursuant to this section, the fiduciary trustee shall allocate
1135 such receipts as follows:

1136 (a) If received as nominal delay rental or nominal annual
1137 rent on a lease, a receipt shall be allocated to income.

1138 (b) If received from a production payment, a receipt shall
1139 be allocated to income if and to the extent the agreement
1140 creating the production payment provides a factor for interest
1141 or its equivalent. The balance shall be allocated to principal.

1142 (c) If an amount received as a royalty, shut-in-well
1143 payment, take-or-pay payment, bonus, or delay rental is more
1144 than nominal, 90 percent shall be allocated to principal and the
1145 balance to income.

1146 (d) If an amount is received from a working interest or any
1147 other interest not provided for in paragraph (a), paragraph (b),
1148 or paragraph (c), 90 percent of the net amount received shall be
1149 allocated to principal and the balance to income.

1150 (3) This chapter applies whether or not a decedent or donor
1151 was extracting minerals, water, or other natural resources
1152 before the interest became subject to the trust or estate.

1153 (4) If a trust or estate owns an interest in minerals,
1154 water, or other natural resources on January 1, 2003, the
1155 fiduciary trustee may allocate receipts from the interest as
1156 provided in this chapter or in the manner used by the fiduciary
1157 ~~trustee~~ before January 1, 2003. If the trust or estate acquires
1158 an interest in minerals, water, or other natural resources after
1159 January 1, 2003, the fiduciary trustee shall allocate receipts
1160 from the interest as provided in this chapter.

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1161 Section 22. Section 738.605, Florida Statutes, is amended
1162 to read:

1163 738.605 Timber.—

1164 (1) ~~If To the extent~~ a fiduciary trustee accounts for
1165 receipts from the sale of timber and related products pursuant
1166 to this section, the fiduciary trustee shall allocate such the
1167 net receipts as follows:

1168 (a) To income to the extent the amount of timber removed
1169 from the land does not exceed the rate of growth of the timber
1170 during the accounting periods in which a beneficiary has a
1171 mandatory income interest;

1172 (b) To principal to the extent the amount of timber removed
1173 from the land exceeds the rate of growth of the timber or the
1174 net receipts are from the sale of standing timber;

1175 (c) To or between income and principal if the net receipts
1176 are from the lease of timberland or from a contract to cut
1177 timber from land owned by a trust or estate by determining the
1178 amount of timber removed from the land under the lease or
1179 contract and applying the rules in paragraphs (a) and (b); or

1180 (d) To principal to the extent advance payments, bonuses,
1181 and other payments are not allocated pursuant to paragraph (a),
1182 paragraph (b), or paragraph (c).

1183 (2) In determining net receipts to be allocated pursuant to
1184 subsection (1), a fiduciary trustee shall deduct and transfer to
1185 principal a reasonable amount for depletion.

1186 (3) This chapter applies whether or not a decedent or donor
1187 ~~transferor~~ was harvesting timber from the property before the
1188 property became subject to the trust or estate.

1189 (4) If a trust or estate owns an interest in timberland on

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1190 January 1, 2003, the fiduciary ~~trustee~~ may allocate net receipts
1191 from the sale of timber and related products as provided in this
1192 chapter or in the manner used by the fiduciary ~~trustee~~ before
1193 January 1, 2003. If the trust or estate acquires an interest in
1194 timberland after January 1, 2003, the fiduciary ~~trustee~~ shall
1195 allocate net receipts from the sale of timber and related
1196 products as provided in this chapter.

1197 Section 23. Subsection (1) of section 738.606, Florida
1198 Statutes, is amended to read:

1199 738.606 Property not productive of income.—

1200 (1) If a marital deduction under the Internal Revenue Code
1201 or comparable law of any state is allowed for all or part of a
1202 trust the income of which must ~~is required to~~ be distributed to
1203 the grantor's spouse and the assets of which consist
1204 substantially of property that does not provide the spouse with
1205 sufficient income from or use of the trust assets, and if the
1206 amounts the trustee transfers from principal to income under s.
1207 738.104 and distributes to the spouse from principal pursuant to
1208 the terms of the trust are insufficient to provide the spouse
1209 with the beneficial enjoyment required to obtain the marital
1210 deduction, the spouse may require the trustee to make property
1211 productive of income, convert property within a reasonable time,
1212 or exercise the power conferred by ss. 738.104 and 738.1041. The
1213 trustee may decide which action or combination of actions to
1214 take.

1215 Section 24. Subsections (2) and (3) of section 738.607,
1216 Florida Statutes, are amended to read:

1217 738.607 Derivatives and options.—

1218 (2) To the extent a fiduciary ~~trustee~~ does not account

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1219 under s. 738.403 for transactions in derivatives, the fiduciary
1220 ~~trustee~~ shall allocate to principal receipts from and
1221 disbursements made in connection with those transactions.

1222 (3) If a fiduciary ~~trustee~~ grants an option to buy property
1223 from the trust or estate whether or not the trust or estate owns
1224 the property when the option is granted, grants an option that
1225 permits another person to sell property to the trust or estate,
1226 or acquires an option to buy property for the trust or estate or
1227 an option to sell an asset owned by the trust or estate, and the
1228 fiduciary ~~trustee~~ or other owner of the asset is required to
1229 deliver the asset if the option is exercised, an amount received
1230 for granting the option shall be allocated to principal. An
1231 amount paid to acquire the option shall be paid from principal.
1232 A gain or loss realized upon the exercise of an option,
1233 including an option granted to a grantor of the trust or estate
1234 for services rendered, shall be allocated to principal.

1235 Section 25. Subsections (2) and (3) of section 738.608,
1236 Florida Statutes, are amended to read:

1237 738.608 Asset-backed securities.—

1238 (2) If a trust or estate receives a payment from interest
1239 or other current return and from other proceeds of the
1240 collateral financial assets, the fiduciary ~~trustee~~ shall
1241 allocate to income the portion of the payment which the payor
1242 identifies as being from interest or other current return and
1243 ~~shall~~ allocate the balance of the payment to principal.

1244 (3) If a trust or estate receives one or more payments in
1245 exchange for the trust's or estate's entire interest in an
1246 asset-backed security during a single accounting period, the
1247 fiduciary ~~trustee~~ shall allocate the payments to principal. If a

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1248 payment is one of a series of payments that will result in the
1249 liquidation of the trust's or estate's interest in the security
1250 over more than a single accounting period, the fiduciary ~~trustee~~
1251 shall allocate 10 percent of the payment to income and the
1252 balance to principal.

1253 Section 26. Section 738.701, Florida Statutes, is amended
1254 to read:

1255 738.701 Disbursements from income.—A fiduciary ~~trustee~~
1256 shall make the following disbursements from income to the extent
1257 they are not disbursements to which s. 738.201(2) ~~(a) or (c)~~
1258 applies:

1259 (1) One-half of the regular compensation of the fiduciary
1260 ~~trustee~~ and of any person providing investment advisory or
1261 custodial services to the fiduciary ~~trustee~~.

1262 (2) One-half of all expenses for accountings, judicial
1263 proceedings, or other matters that involve both the income and
1264 remainder interests.

1265 (3) All of the other ordinary expenses incurred in
1266 connection with the administration, management, or preservation
1267 of trust property and the distribution of income, including
1268 interest, ordinary repairs, regularly recurring taxes assessed
1269 against principal, and expenses of a proceeding or other matter
1270 that concerns primarily the income interest.

1271 (4) Recurring premiums on insurance covering the loss of a
1272 principal asset or the loss of income from or use of the asset.

1273 Section 27. Subsection (1) of section 738.702, Florida
1274 Statutes, is amended to read:

1275 738.702 Disbursements from principal.—

1276 (1) A fiduciary ~~trustee~~ shall make the following

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1277 disbursements from principal:

1278 (a) The remaining one-half of the disbursements described
1279 in s. 738.701(1) and (2).

1280 (b) All of the trustee's compensation calculated on
1281 principal as a fee for acceptance, distribution, or termination
1282 and disbursements made to prepare property for sale.

1283 (c) Payments on the principal of a trust debt.

1284 (d) Expenses of a proceeding that concerns primarily
1285 principal, including a proceeding to construe the trust or will,
1286 or to protect the trust, estate, or its property.

1287 (e) Premiums paid on a policy of insurance not described in
1288 s. 738.701(4) of which the trust or estate is the owner and
1289 beneficiary.

1290 (f) Estate, inheritance, and other transfer taxes,
1291 including penalties, apportioned to the trust.

1292 (g) Disbursements related to environmental matters,
1293 including reclamation, assessing environmental conditions,
1294 remedying and removing environmental contamination, monitoring
1295 remedial activities and the release of substances, preventing
1296 future releases of substances, collecting amounts from persons
1297 liable or potentially liable for the costs of such activities,
1298 penalties imposed under environmental laws or regulations and
1299 other payments made to comply with those laws or regulations,
1300 statutory or common law claims by third parties, and defending
1301 claims based on environmental matters.

1302 (h) Payments representing extraordinary repairs or expenses
1303 incurred in making a capital improvement to principal, including
1304 special assessments; however, a fiduciary trustee may establish
1305 an allowance for depreciation out of income to the extent

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1306 permitted by s. 738.703.

1307 Section 28. Subsection (2) of section 738.703, Florida
1308 Statutes, is amended to read:

1309 738.703 Transfers from income to principal for
1310 depreciation.—

1311 (2) A fiduciary ~~trustee~~ may transfer to principal a
1312 reasonable amount of the net cash receipts from a principal
1313 asset that is subject to depreciation but may not transfer any
1314 amount for depreciation:

1315 (a) Of that portion of real property used or available for
1316 use by a beneficiary as a residence or of tangible personal
1317 property held or made available for the personal use or
1318 enjoyment of a beneficiary;

1319 (b) During the administration of a decedent's estate; or

1320 (c) Under this section if the fiduciary ~~trustee~~ is
1321 accounting under s. 738.403 for the business or activity in
1322 which the asset is used.

1323 Section 29. Subsections (1), (2), and (3) of section
1324 738.704, Florida Statutes, are amended to read:

1325 738.704 Transfers from income to reimburse principal.—

1326 (1) If a fiduciary ~~trustee~~ makes or expects to make a
1327 principal disbursement described in this section, the fiduciary
1328 ~~trustee~~ may transfer an appropriate amount from income to
1329 principal in one or more accounting periods to reimburse
1330 principal or to provide a reserve for future principal
1331 disbursements.

1332 (2) Principal disbursements to which subsection (1) applies
1333 include the following, but only to the extent the fiduciary
1334 ~~trustee~~ has not been and does not expect to be reimbursed by a

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1335 third party:

1336 (a) An amount chargeable to income but paid from principal
1337 because the amount is unusually large.

1338 (b) Disbursements made to prepare property for rental,
1339 including tenant allowances, leasehold improvements, and
1340 broker's commissions.

1341 (c) Disbursements described in s. 738.702(1)(g).

1342 (3) If the asset the ownership of which gives rise to the
1343 disbursements becomes subject to a successive income interest
1344 after an income interest ends, a fiduciary trustee may continue
1345 to transfer amounts from income to principal as provided in
1346 subsection (1).

1347 Section 30. Section 738.705, Florida Statutes, is amended
1348 to read:

1349 738.705 Income taxes.—

1350 (1) A tax required to be paid by a fiduciary trustee based
1351 on receipts allocated to income shall be paid from income.

1352 (2) A tax required to be paid by a fiduciary trustee based
1353 on receipts allocated to principal shall be paid from principal,
1354 even if the tax is called an income tax by the taxing authority.

1355 (3) A tax required to be paid by a fiduciary trustee on the
1356 trust's or estate's share of an entity's taxable income shall be
1357 paid proportionately:

1358 (a) From income to the extent receipts from the entity are
1359 allocated to income; ~~and~~

1360 (b) From principal to the extent:

1361 ~~1. receipts from the entity are allocated to principal; and~~

1362 ~~2. The trust's share of the entity's taxable income exceeds~~
1363 ~~the total receipts described in paragraph (a) and subparagraph~~

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1364 †.

1365 (c) From principal to the extent that the income taxes
1366 payable by the trust or estate exceed the total receipts from
1367 the entity.

1368 (4) After applying subsections (1)-(3), the fiduciary shall
1369 adjust income or principal receipts to the extent that the
1370 trust's or estate's income taxes are reduced, but not
1371 eliminated, because the trust or estate receives a deduction for
1372 payments made to a beneficiary. The amount distributable to that
1373 beneficiary as income as a result of this adjustment shall be
1374 equal to the cash received by the trust or estate, reduced, but
1375 not below zero, by the entity's taxable income allocable to the
1376 trust or estate multiplied by the trust's or estate's income tax
1377 rate. The reduced amount shall be divided by the difference
1378 between 1 and the trust's or estate's income tax rate in order
1379 to determine the amount distributable to that beneficiary as
1380 income before giving effect to other receipts or disbursements
1381 allocable to that beneficiary's interest. For purposes of this
1382 section, receipts allocated to principal or income shall be
1383 reduced by the amount distributed to a beneficiary from
1384 principal or income for which the trust receives a deduction in
1385 calculating the tax.

1386 Section 31. Section 738.801, Florida Statutes, is amended
1387 to read:

1388 (Substantial rewording of section. See
1389 s. 738.801, F.S., for present text.)

1390 738.801 Apportionment of expenses; improvements.-

1391 (1) For purposes of this section, the term:

1392 (a) "Remainderman" means the holder of the remainder

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1393 interests after the expiration of a tenant's estate in property.

1394 (b) "Tenant" means the holder of an estate for life or term
1395 of years in real property or personal property, or both.

1396 (2) If a trust has not been created, expenses shall be
1397 apportioned between the tenant and remainderman as follows:

1398 (a) The following expenses are allocated to and shall be
1399 paid by the tenant:

1400 1. All ordinary expenses incurred in connection with the
1401 administration, management, or preservation of the property,
1402 including interest, ordinary repairs, regularly recurring taxes
1403 assessed against the property, and expenses of a proceeding or
1404 other matter that concerns primarily the tenant's estate or use
1405 of the property.

1406 2. Recurring premiums on insurance covering the loss of the
1407 property or the loss of income from or use of the property.

1408 3. Any of the expenses described in subparagraph (b)3.
1409 which are attributable to the use of the property by the tenant.

1410 (b) The following expenses are allocated to and shall be
1411 paid by the remainderman:

1412 1. Payments on the principal of a debt secured by the
1413 property, except to the extent the debt is for expenses
1414 allocated to the tenant.

1415 2. Expenses of a proceeding or other matter that concerns
1416 primarily the title to the property, other than title to the
1417 tenant's estate.

1418 3. Except as provided in subparagraph (a)3., expenses
1419 related to environmental matters, including reclamation,
1420 assessing environmental conditions, remedying and removing
1421 environmental contamination, monitoring remedial activities and

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1422 the release of substances, preventing future releases of
1423 substances, collecting amounts from persons liable or
1424 potentially liable for the costs of such activities, penalties
1425 imposed under environmental laws or regulations and other
1426 payments made to comply with those laws or regulations,
1427 statutory or common law claims by third parties, and defending
1428 claims based on environmental matters.

1429 4. Extraordinary repairs.

1430 (c) If the tenant or remainderman incurred an expense for
1431 the benefit of his or her own estate without consent or
1432 agreement of the other, he or she must pay such expense in full.

1433 (d) Except as provided in paragraph (c), the cost of, or
1434 special taxes or assessments for, an improvement representing an
1435 addition of value to property forming part of the principal
1436 shall be paid by the tenant if the improvement is not reasonably
1437 expected to outlast the estate of the tenant. In all other
1438 cases, only a part shall be paid by the tenant while the
1439 remainder shall be paid by the remainderman. The part payable by
1440 the tenant is ascertainable by taking that percentage of the
1441 total that is found by dividing the present value of the
1442 tenant's estate by the present value of an estate of the same
1443 form as that of the tenant, except that it is limited for a
1444 period corresponding to the reasonably expected duration of the
1445 improvement. The computation of present values of the estates
1446 shall be made by using the rate defined in 26 U.S.C. s. 7520,
1447 then in effect and, in the case of an estate for life, the
1448 official mortality tables then in effect under 26 U.S.C. s.
1449 7520. Other evidence of duration or expectancy may not be
1450 considered.

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1451 (3) This section does not apply to the extent it is
1452 inconsistent with the instrument creating the estates, the
1453 agreement of the parties, or the specific direction of the
1454 taxing or other statutes.

1455 (4) The common law applicable to tenants and remaindermen
1456 supplements this section, except as modified by this section or
1457 other laws.

1458 Section 32. This act shall take effect January 1, 2013.