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1
2 An act relating to the Florida Uniform Fiduciary
3 Income and Principal Act; amending s. 738.101, F.S.;
4 revising a short title; amending s. 738.102, F.S.;
5 revising and providing definitions governing ch. 738,
6 F.S.; amending s. 738.103, F.S.; specifying the scope
7 of ch. 738, F.S.; amending s. 738.104, F.S.;
8 specifying circumstances under which ch. 738, F.S.,
9 applies to a trust; repealing s. 738.1041, F.S.,
10 relating to total return unitrusts; repealing s.
11 738.105, F.S., relating to judicial control of
12 discretionary powers; amending s. 738.201, F.S.;
13 specifying the duties of a fiduciary; providing that a
14 fiduciary's allocation, determination, or exercise of
15 discretion is presumed to be fair and reasonable to
16 all beneficiaries; requiring a fiduciary to take
17 specified actions; authorizing a fiduciary to exercise
18 discretionary power of administration under specified
19 circumstances; requiring the fiduciary to consider
20 specified factors before exercising such discretionary
21 power; providing for applicability; amending s.
22 738.202, F.S.; defining the term "fiduciary decision";
23 prohibiting a court from ordering a fiduciary to
24 change his or her decision unless the decision was an
25 abuse of discretionary power; prohibiting a court from

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26 determining that a fiduciary abused its discretion
 27 under specified conditions; authorizing a court to
 28 order a specified remedy; authorizing a court to
 29 determine whether a proposed fiduciary decision will
 30 result in an abuse of discretion; providing that a
 31 beneficiary who opposes a proposed decision has the
 32 burden to establish that such decision is an abuse of
 33 discretion; requiring that any attorney fees incurred
 34 in defending an action related to the abuse of a
 35 fiduciary's discretion be paid from trust assets;
 36 creating s. 738.203, F.S.; authorizing a fiduciary to
 37 adjust between income and principal if such adjustment
 38 assists in administering the trust or estate
 39 impartially; providing construction; providing that a
 40 fiduciary is not liable to another for an adjustment,
 41 or failure to adjust, between income and principal
 42 made in good faith; requiring a fiduciary to consider
 43 certain relevant factors when considering such
 44 adjustment; prohibiting a fiduciary from exercising or
 45 considering such adjustment if certain conditions
 46 exist; revising applicability; authorizing a fiduciary
 47 to release or delegate to a cofiduciary specified
 48 powers to adjust under specified conditions; providing
 49 requirements and powers for any such releases and
 50 delegations; providing applicability; requiring that

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51 the description of an exercise of the power to adjust
 52 between income and principal contain specified
 53 information; amending s. 738.301, F.S.; defining
 54 terms; amending s. 738.302, F.S.; specifying
 55 applicability of specified provisions; authorizing the
 56 conversion of an income trust to a unitrust;
 57 restricting provisions to trusts that are
 58 beneficiaries of an estate; providing construction;
 59 providing that a fiduciary acting in good faith is not
 60 liable to a person affected by a certain action or
 61 inaction; amending s. 738.303, F.S.; specifying the
 62 authority of a fiduciary with respect to the
 63 administration of certain trusts; providing the
 64 circumstances under which a fiduciary may perform such
 65 actions; authorizing a beneficiary or a fiduciary to
 66 request the court to allow the beneficiary or
 67 fiduciary to take a specified action; requiring a
 68 fiduciary to inform specified persons of a decision to
 69 take action; authorizing a beneficiary to request a
 70 court to direct the fiduciary to take the requested
 71 action under specified circumstances; requiring
 72 fiduciaries to consider specified factors before
 73 taking a certain action; authorizing a fiduciary to
 74 release or delegate the power to take certain actions;
 75 creating s. 738.304, F.S.; requiring a certain notice

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76 | to be sent to specified parties; providing
 77 | applicability; authorizing a person to consent to a
 78 | specified action in a record; providing that such
 79 | person does not need to be sent notice of such action;
 80 | providing requirements for such notices; creating s.
 81 | 738.305, F.S.; requiring a fiduciary of a unitrust to
 82 | follow a certain policy; providing rules for a
 83 | unitrust policy; providing additional actions a
 84 | unitrust policy may contain; creating s. 738.306,
 85 | F.S.; requiring a unitrust rate to be within a
 86 | specified range; authorizing a unitrust policy to
 87 | provide for specified limits within such range;
 88 | requiring a fiduciary who is a non-independent person
 89 | to use a specified unitrust rate; creating s. 738.307,
 90 | F.S.; requiring a unitrust policy to provide a
 91 | specified method for determining fair market value of
 92 | an asset in determining a unitrust amount; authorizing
 93 | specified unitrust policies to provide methods for
 94 | determining a certain net fair market value;
 95 | prohibiting certain property from being included in
 96 | the determination of the value of a trust; creating s.
 97 | 738.308, F.S.; requiring a unitrust policy to provide
 98 | a specified period; specifying that such period must
 99 | be a calendar year; authorizing a unitrust policy to
 100 | provide certain standards for periods; creating s.

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101 738.309, F.S.; providing applicability; authorizing a
 102 trustee of an express unitrust to determine the
 103 unitrust amount by reference to the net fair market
 104 value of the unitrust's assets in a specified
 105 timeframe; providing that distribution of a unitrust
 106 amount is considered a distribution of all the net
 107 income of an express unitrust and is considered an
 108 income interest; specifying that the unitrust amount
 109 is considered a reasonable apportionment of the total
 110 return of the express unitrust; providing that an
 111 express unitrust that allows a distribution in excess
 112 of a specified unitrust rate is considered a
 113 distribution of all of the income of the unitrust;
 114 authorizing an express unitrust to provide a mechanism
 115 for changing the unitrust rate and for conversion from
 116 a unitrust to an income trust or from an income trust
 117 to a unitrust; specifying that unless an express
 118 unitrust prohibits the power to change the rate or
 119 convert the trust, the trustee has such power;
 120 authorizing the governing instrument of an express
 121 unitrust to grant the trustee discretion to adopt a
 122 certain practice; specifying that unless an express
 123 unitrust provides otherwise, the distribution of an
 124 amount is considered a distribution from specified
 125 sources in a specified order of priority; authorizing

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126 a governing instrument of an express unitrust to allow
 127 exclusion of specified assets; providing that the use
 128 of such assets may be considered equivalent to income
 129 or to the unitrust amount; creating s. 738.310, F.S.;
 130 requiring a trustee, after the conversion of an income
 131 trust to a unitrust, to consider the unitrust amount
 132 paid from certain sources in a specified order of
 133 priority; amending s. 738.401, F.S.; defining terms;
 134 specifying that an attribute or action of an entity
 135 includes an attribute or action from any other entity
 136 in which the initial entity has an ownership interest
 137 or holds another interest; requiring a fiduciary to
 138 allocate certain money and tangible personal property
 139 to income; requiring a fiduciary to allocate specified
 140 property and money to principal; providing that
 141 certain money received in an entity distribution is a
 142 capital distribution in specified circumstances;
 143 specifying that in cases of capital distribution, the
 144 amount received in an entity distribution must be
 145 reduced to the extent that cumulative distributions
 146 from the entity to the fiduciary are within certain
 147 ranges; authorizing a fiduciary to consider additional
 148 information before deciding to make or change a
 149 decision to make a payment to a beneficiary; providing
 150 that if a fiduciary receives specified additional

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151 information after a distribution to a beneficiary, the
152 fiduciary is not required to change or recover the
153 payment; authorizing a fiduciary in such a situation
154 to exercise other specified powers; revising
155 definitions; requiring a fiduciary to allocate certain
156 money and property to principal; providing the
157 mechanism for such allocation; defining the term
158 "public entity"; conforming provisions to changes made
159 by the act; amending s. 738.402, F.S.; conforming
160 provisions to changes made by the act; amending s.
161 738.403, F.S.; providing applicability; authorizing a
162 fiduciary to make certain determinations separately
163 and differently from the decisions concerning
164 distributions of income or principal; conforming
165 provisions to changes made by the act; making
166 technical changes; creating s. 738.404, F.S.;
167 specifying receipts that a fiduciary must allocate to
168 principal; creating s. 738.405, F.S.; providing for
169 the allocation of income from rental property;
170 creating s. 738.406, F.S.; specifying applicability;
171 requiring a fiduciary to allocate to income certain
172 amounts received as interest; requiring a fiduciary to
173 allocate to income increments in value of certain
174 bonds or other obligations; creating s. 738.407, F.S.;
175 specifying applicability; requiring a fiduciary to

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176 allocate proceeds from insurance policies or contracts
 177 to principal in a specified manner; creating s.
 178 738.408, F.S.; specifying circumstances under which a
 179 fiduciary may allocate an insubstantial allocation to
 180 principal, subject to certain conditions and
 181 limitations; creating s. 738.409, F.S.; defining
 182 terms; specifying the manner in which a fiduciary may
 183 determine incomes of separate funds; providing duties
 184 of a fiduciary of a marital trust and other trusts;
 185 requiring a fiduciary of a nonseparate fund to
 186 calculate internal income in a specified manner;
 187 providing construction; transferring, renumbering, and
 188 amending s. 738.603, F.S.; revising the definition of
 189 the term "liquidating asset"; providing applicability;
 190 requiring a fiduciary to allocate to income and
 191 principal the receipts produced by liquidating assets
 192 in a certain manner; transferring, renumbering, and
 193 amending s. 738.604, F.S.; requiring a fiduciary to
 194 allocate the receipts from interests in minerals,
 195 water, or other natural resources to income,
 196 principal, or between income and principal under
 197 specified conditions; revising applicability;
 198 providing that an allocation between income and
 199 principal from a receipt from a natural resource is
 200 presumed equitable under a specified condition;

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201 providing construction; transferring, renumbering, and
 202 amending s. 738.605, F.S.; requiring a fiduciary to
 203 allocate receipts from timber to income, principal, or
 204 between income and principal under specified
 205 conditions; revising applicability; transferring,
 206 renumbering, and amending s. 738.606, F.S.;
 207 authorizing a settlor's spouse to require the trustee
 208 of a trust that receives certain property to make such
 209 property produce income under specified conditions;
 210 authorizing the trustee to take specified actions if
 211 directed by such spouse; providing that the trustee
 212 decides whether to take one or a combination of such
 213 actions; revising applicability; providing
 214 construction; transferring, renumbering, and amending
 215 s. 738.607, F.S.; revising the definition of the term
 216 "derivative"; requiring a fiduciary to allocate
 217 specified percentages of certain receipts and
 218 disbursements to income and allocate the balance to
 219 principal; providing construction; requiring certain
 220 fiduciaries to allocate a specified percentage to
 221 income and allocate the balance to principal of
 222 certain amounts; transferring, renumbering, and
 223 amending s. 738.608, F.S.; requiring a fiduciary to
 224 allocate to income a receipt from or related to asset-
 225 backed securities under a specified condition;

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226 requiring a fiduciary to allocate to income a
 227 specified percentage of receipts from the transaction
 228 and the disbursement of a payment received as a result
 229 of an interest in an asset-backed security; conforming
 230 provisions to changes made by the act; creating s.
 231 738.416, F.S.; requiring a fiduciary to make specified
 232 allocations from receipts from other financial
 233 instruments or arrangements; providing construction;
 234 amending s. 738.501, F.S.; specifying the manner by
 235 which a fiduciary must make disbursements from income;
 236 amending s. 738.502, F.S.; specifying the manner by
 237 which a fiduciary must make disbursements from
 238 principal; amending s. 738.503, F.S.; defining the
 239 term "depreciation"; specifying the manner by which a
 240 fiduciary may make transfers from income to principal
 241 to account for depreciation; amending s. 738.504,
 242 F.S.; specifying the manner by which a fiduciary may
 243 make transfers from principal to income for
 244 reimbursements; transferring, renumbering, and
 245 amending s. 738.704, F.S.; providing that a fiduciary
 246 that makes or expects to make a certain principal
 247 disbursement may transfer an appropriate amount from
 248 income to principal in one or more accounting periods;
 249 providing applicability; making technical changes;
 250 deleting a provision relating to payments necessary to

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251 avoid defaulting on a mortgage or security interest on
 252 certain property; transferring, renumbering, and
 253 amending s. 738.705, F.S.; revising the sources from
 254 which a fiduciary must pay a tax required by a share
 255 of an entity's taxable income; requiring a fiduciary
 256 to adjust income or principal receipts if the taxes
 257 paid are reduced due to a deduction for a payment made
 258 to a beneficiary; providing construction; making
 259 technical changes; transferring, renumbering, and
 260 amending s. 738.706, F.S.; revising the circumstances
 261 under which a fiduciary may make adjustments between
 262 income and principal to offset shifts in the economic
 263 interests or tax benefits of specified beneficiaries;
 264 requiring a fiduciary to charge a beneficiary to
 265 reimburse the principal if the beneficiary benefits
 266 from an applicable tax deduction; requiring the share
 267 of reimbursement for each fiduciary or beneficiary to
 268 be the same as its share of the decrease in income
 269 tax; authorizing such fiduciary to charge a
 270 beneficiary to offset the estate tax by obtaining
 271 payment from the beneficiary, withholding an amount
 272 from future distributions, or adopting another method
 273 or combination of methods; creating s. 738.508, F.S.;
 274 defining terms; specifying the manner by which
 275 property expenses are apportioned between a tenant and

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276 remainderman; providing applicability and
 277 construction; amending s. 738.601, F.S.; providing
 278 applicability; specifying the manner by which a
 279 fiduciary determines and distributes net income;
 280 providing circumstances under which a fiduciary may
 281 not reduce certain principal or income receipts;
 282 amending s. 738.602, F.S.; providing that certain
 283 beneficiaries of non-unitrusts are entitled to receive
 284 a specified share of net income; providing that
 285 certain requirements apply in determining a
 286 beneficiary's share of net income; providing
 287 construction; amending s. 738.701, F.S.; providing
 288 that an income beneficiary is entitled to net income
 289 when an asset is subject to a certain trust or
 290 successive interest; providing that an asset becomes
 291 subject to a specified trust on certain dates;
 292 amending s. 738.702, F.S.; specifying the manner by
 293 which a fiduciary allocates certain receipts and makes
 294 disbursements when a decedent dies or income interest
 295 begins; providing construction; amending s. 738.703,
 296 F.S.; defining the term "undistributed income";
 297 specifying the manner by which a fiduciary makes
 298 allocations of undistributed income when income
 299 interest ends; amending s. 738.801, F.S.; providing
 300 for uniform application and construction of the act;

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301 amending s. 738.802, F.S.; providing construction in
 302 relation to federal law; amending s. 738.803, F.S.;
 303 making a technical change; amending s. 738.804, F.S.;
 304 revising application of ch. 738, F.S., to conform to
 305 changes made by the act; providing an effective date.
 306

307 Be It Enacted by the Legislature of the State of Florida:
 308

309 Section 1. Section 738.101, Florida Statutes, is amended
 310 to read:

311 738.101 Short title.—This chapter may be cited as the
 312 "Florida Uniform Fiduciary Income and Principal ~~and Income~~ Act."

313 Section 2. Section 738.102, Florida Statutes, is amended
 314 to read:

315 738.102 Definitions.—As used in this chapter, the term:

316 (1) "Accounting period" means a calendar year unless
 317 ~~another 12-month period is selected by a fiduciary~~ selects
 318 another period of 12 calendar months or approximately 12
 319 calendar months. The term includes a part ~~portion~~ of a calendar
 320 year or another period of 12 calendar months or approximately 12
 321 calendar months which ~~other 12-month period that begins when an~~
 322 ~~income interest~~ begins or ends when an income interest ends.

323 (2) "Asset-backed security," as provided in s. 738.415,
 324 means a security that is serviced primarily by the cash flows of
 325 a discrete pool of fixed or revolving receivables or other

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326 financial assets that by their terms convert to cash within a
 327 finite time. The term includes rights or other assets that
 328 ensure the servicing or timely distribution of proceeds to the
 329 holder of the asset-backed security. The term does not include
 330 an asset to which s. 738.401, s. 738.409, or s. 738.414 applies.

331 (3) "Beneficiary" includes:

332 (a) For a trust:

333 1. A current beneficiary, including a current income
 334 beneficiary and a beneficiary that may receive only principal;

335 2. A remainder beneficiary; and

336 3. Any other successor beneficiary;

337 (b) For an estate, an heir, and a devisee; and

338 (c) For a life estate or term interest, a person who holds
 339 a life estate, a term interest, or a remainder or other interest
 340 following a life estate or term interest means, in the case of a
 341 decedent's estate, an heir or devisee and, in the case of a
 342 trust, an income beneficiary or a remainder beneficiary.

343 (4)-(3) "Carrying value" means the fair market value at the
 344 time the assets are received by the fiduciary. For an estate and
 345 for a trust the estates of decedents and trusts described in s.
 346 733.707(3), after the settlor's grantor's death, the assets are
 347 considered received as of the date of the settlor's death. If
 348 there is a change in fiduciaries, a majority of the continuing
 349 fiduciaries may elect to adjust the carrying values to reflect
 350 the fair market value of the assets at the beginning of their

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351 administration. If such election is made, it must be reflected
352 on the first accounting filed after the election. For assets
353 acquired during the administration of the estate or trust, the
354 carrying value is equal to the acquisition costs of the asset.
355 Carrying value of assets should not be arbitrarily "written up"
356 or "written down." In some circumstances, including, but not
357 limited to, those described in ss. 738.410 and 738.602, carrying
358 value may be adjusted with proper disclosure to reflect changes
359 in carrying value applied in a consistent manner.

360 (5) "Court" means a circuit court of this state.

361 (6) "Current income beneficiary" means a beneficiary to
362 which a fiduciary may or must distribute net income, regardless
363 of whether the fiduciary also distributes principal to the
364 beneficiary.

365 (7) "Distribution" means a payment or transfer by a
366 fiduciary to a beneficiary in the beneficiary's capacity as a
367 beneficiary, without consideration other than the beneficiary's
368 right to receive the payment or transfer under the terms of the
369 trust as defined in this section, will, life estate, or term
370 interest. "Distribute," "distributed," and "distributee" have
371 corresponding meanings.

372 (8) "Estate" means a decedent's estate, including the
373 property of the decedent as the estate is originally constituted
374 and the property of the estate as it exists at any time during
375 administration.

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376 (9)(4) "Fiduciary" includes means a trustee, a trust
 377 director as defined in s. 736.0103, or a personal
 378 representative, and a person acting under a delegation from a
 379 fiduciary or a trustee. The term also includes a person that
 380 holds property for a successor beneficiary whose interest may be
 381 affected by an allocation of receipts and expenditures between
 382 income and principal. If there are two or more cofiduciaries,
 383 the term includes all cofiduciaries acting under the terms of
 384 the trust and applicable law ~~an executor, administrator,~~
 385 ~~successor personal representative, special administrator, or a~~
 386 ~~person performing substantially the same function.~~

387 (10)(5) "Income" means money or other property that a
 388 fiduciary receives as current return from a principal asset. The
 389 term includes a part ~~portion~~ of receipts from a sale, exchange,
 390 or liquidation of a principal asset, to the extent provided in
 391 ss. 738.401-738.416 ~~ss. 738.401-738.403 and s. 738.503.~~

392 ~~(6) "Income beneficiary" means a person to whom net income~~
 393 ~~of a trust is or may be payable.~~

394 (11)(7) "Income interest" means the right of a current ~~an~~
 395 income beneficiary to receive all or part of net income, whether
 396 the terms of the trust require the net income to be distributed
 397 or authorize the net income to be distributed in the fiduciary's
 398 ~~trustee's~~ discretion. The term includes the right of a current
 399 beneficiary to use property held by a fiduciary.

400 (12) "Independent person" means a person who is not:

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401 (a) For a trust:
 402 1. A qualified beneficiary as defined in s. 736.0103;
 403 2. A settlor of the trust;
 404 3. An individual whose legal obligation to support a
 405 beneficiary may be satisfied by a distribution from the trust;
 406 or
 407 4. Any trustee whom an interested distributee has the
 408 power to remove and replace with a related or subordinate party.
 409 (b) For an estate, a beneficiary;
 410 (c) A spouse, a parent, a brother, a sister, or an issue
 411 of an individual described in paragraph (a) or paragraph (b);
 412 (d) A corporation, a partnership, a limited liability
 413 company, or another entity in which persons described in
 414 paragraphs (a), (b), and (c), in the aggregate, have voting
 415 control; or
 416 (e) An employee of a person described in paragraph (a),
 417 paragraph (b), paragraph (c), or paragraph (d).
 418 (13) "Internal Revenue Code" means the Internal Revenue
 419 Code of 1986, as amended.
 420 (14)-(8) "Mandatory income interest" means the right of a
 421 current ~~an~~ income beneficiary to receive net income that the
 422 terms of the trust require the fiduciary to distribute.
 423 (15)-(9) "Net income" means the total allocations ~~receipts~~
 424 ~~allocated to income~~ during an accounting period to income under
 425 the terms of a trust and this chapter minus the disbursements

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426 ~~made from income~~ during the period, other than distributions,
 427 allocated to income under the terms of the trust and this
 428 chapter. To the extent that the trust is a unitrust under ss.
 429 738.301-738.310, the term means the unitrust amount determined
 430 under ss. 738.301-738.310. The term includes the amount of an
 431 adjustment from principal to income under s. 738.203. The term
 432 does not include the amount of an adjustment ~~plus or minus~~
 433 ~~transfers under this chapter to or~~ from income to principal
 434 under s. 738.203 ~~during the period.~~

435 ~~(16)-(10)~~ "Person" means an individual, a business or a
 436 nonprofit entity, corporation, business trust, an estate, a
 437 trust, partnership, limited liability company, association,
 438 joint venture, a public corporation, or any other legal or
 439 ~~commercial entity or~~ a government or governmental subdivision,
 440 agency, or instrumentality, or other legal entity.

441 (17) "Personal representative" means an executor, an
 442 administrator, a successor personal representative, a special
 443 administrator, or a person that performs substantially the same
 444 function with respect to an estate under the law governing the
 445 person's status.

446 ~~(18)-(11)~~ "Principal" means property held in trust for
 447 distribution to, production of income for, or use by a current
 448 or successor ~~a remainder beneficiary when the trust terminates.~~

449 (19) "Record" means information inscribed on a tangible
 450 medium or stored in an electronic or other medium and is

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451 retrievable in perceivable form.

452 (20) "Settlor" means a person, including a testator, who
 453 creates or contributes property to a trust. If more than one
 454 person creates or contributes property to a trust, the term
 455 includes each person, to the extent of the trust property
 456 attributable to that person's contribution, except to the extent
 457 that another person has the power to revoke or withdraw that
 458 portion.

459 (21) "Special tax benefit" means:

460 (a) Exclusion of a transfer to a trust from gifts
 461 described in s. 2503(b) of the Internal Revenue Code because of
 462 the qualification of an income interest in the trust as a
 463 present interest in property;

464 (b) Status as a qualified subchapter S trust described in
 465 s. 1361(d) (3) of the Internal Revenue Code at a time the trust
 466 holds stock of an S corporation described in s. 1361(a) (1) of
 467 the Internal Revenue Code;

468 (c) An estate or gift tax marital deduction for a transfer
 469 to a trust under s. 2056 or s. 2523 of the Internal Revenue Code
 470 which depends or depended in whole or in part on the right of
 471 the settlor's spouse to receive the net income of the trust;

472 (d) Exemption in whole or in part of a trust from the
 473 federal generation-skipping transfer tax imposed by s. 2601 of
 474 the Internal Revenue Code because the trust was irrevocable on
 475 September 25, 1985, if there is any possibility that:

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476 1. A taxable distribution as defined in s. 2612(b) of the
 477 Internal Revenue Code could be made from the trust; or

478 2. A taxable termination as defined in s. 2612(a) of the
 479 Internal Revenue Code could occur with respect to the trust; or

480 (e) An inclusion ratio as defined in s. 2642(a) of the
 481 Internal Revenue Code of the trust which is less than one, if
 482 there is any possibility that:

483 1. A taxable distribution as defined in s. 2612(b) of the
 484 Internal Revenue Code could be made from the trust; or

485 2. A taxable termination as defined in s. 2612(a) of the
 486 Internal Revenue Code could occur with respect to the trust.

487 (22) "Successive interest" means the interest of a
 488 successor beneficiary.

489 (23)-(12) "Successor ~~Remainder~~ beneficiary" means a person
 490 entitled to receive income or principal or to use property when
 491 an income interest or other current interest ends.

492 (24)-(13) "Terms of a trust" means:

493 (a) Except as otherwise provided in paragraph (b), the
 494 manifestation of the settlor's intent regarding a trust's
 495 provisions as:

496 1. Expressed in the will or trust instrument; or

497 2. Established by other evidence that would be admissible
 498 in a judicial proceeding.

499 (b) The trust's provisions as established, determined, or
 500 amended by:

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501 1. A trustee or trust director in accordance with the
 502 applicable law;
 503 2. A court order; or
 504 3. A nonjudicial settlement agreement under s. 736.0111.
 505 (c) For an estate, a will; or
 506 (d) For a life estate or term interest, the corresponding
 507 manifestation of the rights of the beneficiaries to the extent
 508 provided in s. 738.508 ~~the manifestation of the intent of a~~
 509 ~~grantor or decedent with respect to the trust, expressed in a~~
 510 ~~manner that admits of its proof in a judicial proceeding,~~
 511 ~~whether by written or spoken words or by conduct.~~
 512 (25) "Trust" includes an express trust, whether private or
 513 charitable, with additions to the trust, wherever and however
 514 created; and a trust created or determined by a judgment or
 515 decree under which the trust is to be administered in the manner
 516 of an express trust. The term does not include a constructive
 517 trust; a resulting trust; a conservatorship; a custodial
 518 arrangement under the Florida Uniform Transfers to Minors Act; a
 519 business trust providing for certificates to be issued to
 520 beneficiaries; a common trust fund; a land trust under s.
 521 689.071; a trust created by the form of the account or by the
 522 deposit agreement at a financial institution; a voting trust; a
 523 security arrangement; a liquidation trust; a trust for the
 524 primary purpose of paying debts, dividends, interest, salaries,
 525 wages, profits, pensions, retirement benefits, or employee

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526 benefits of any kind; or an arrangement under which a person is
 527 a nominee, an escrowee, or an agent for another.

528 (26)-(14) "Trustee" means a person, other than a personal
 529 representative, that owns or holds property for the benefit of a
 530 beneficiary. The term includes an original, additional, or
 531 successor trustee, regardless of whether they are ~~or not~~
 532 appointed or confirmed by a court.

533 (27) "Will" means any testamentary instrument recognized
 534 under applicable law which makes a legally effective disposition
 535 of an individual's property, effective at the individual's
 536 death. The term includes a codicil or other amendment to a
 537 testamentary instrument.

538 Section 3. Section 738.103, Florida Statutes, is amended
 539 to read:

540 (Substantial rewording of section. See
 541 s. 738.103, F.S., for present text.)

542 738.103 Scope.—Except as otherwise provided in the terms
 543 of a trust or this chapter, this chapter applies to all of the
 544 following:

545 (1) A trust or an estate.

546 (2) A life estate or other term interest in which the
 547 interest of one or more persons will be succeeded by the
 548 interest of one or more other persons to the extent provided in
 549 s. 738.508.

550 Section 4. Section 738.104, Florida Statutes, is amended

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551 to read:

552 (Substantial rewording of section. See
 553 s. 738.104, F.S., for present text.)

554 738.104 Governing law.—Except as otherwise provided in the
 555 terms of a trust or this chapter, this chapter applies when this
 556 state is the principal place of administration of a trust or
 557 estate or the situs of property that is not held in a trust or
 558 estate and is subject to a life estate or other term interest
 559 described in s. 738.103(2). By accepting the trusteeship of a
 560 trust having its principal place of administration in this state
 561 or by moving the principal place of administration of a trust to
 562 this state, the trustee submits to the application of this
 563 chapter to any matter within the scope of this chapter involving
 564 the trust.

565 Section 5. Section 738.1041, Florida Statutes, is
 566 repealed.

567 Section 6. Section 738.105, Florida Statutes, is repealed.

568 Section 7. Section 738.201, Florida Statutes, is amended

569 to read:

570 (Substantial rewording of section. See
 571 s. 738.201, F.S., for present text.)

572 738.201 Fiduciary duties; general principles.—

573 (1) In making an allocation or determination or exercising
 574 discretion under this chapter, a fiduciary shall do all of the
 575 following:

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576 (a) Act in good faith, based on what is a fair and
 577 reasonable fee to all beneficiaries;

578 (b) Administer a trust or estate impartially, except to
 579 the extent that the terms of the trust manifest an intent that
 580 the fiduciary favors one or more beneficiaries;

581 (c) Administer the trust or estate in accordance with the
 582 terms of the trust, even if there is a different provision in
 583 this chapter.

584 (d) Administer the trust or estate in accordance with this
 585 chapter, except to the extent that the terms of the trust
 586 provide otherwise or authorize the fiduciary to determine
 587 otherwise.

588 (2) A fiduciary's allocation, determination, or exercise
 589 of discretion under this chapter is presumed to be fair and
 590 reasonable to all beneficiaries. A fiduciary may exercise a
 591 discretionary power of administration given to the fiduciary by
 592 the terms of the trust, and an exercise of the power that
 593 produces a result different from a result required or permitted
 594 by this chapter does not create an inference that the fiduciary
 595 abused the fiduciary's discretion.

596 (3) A fiduciary shall:

597 (a) Add a receipt to principal, to the extent that the
 598 terms of the trust and this chapter do not allocate the receipt
 599 between income and principal;

600 (b) Charge a disbursement to principal, to the extent that

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601 the terms of the trust and this chapter do not allocate the
 602 disbursement between income and principal; and

603 (c) Within 65 days after the fiscal year ends, add any
 604 undistributed income to principal, unless otherwise provided by
 605 the terms of the trust.

606 (4) A fiduciary may exercise the power to adjust under s.
 607 738.203(1), convert an income trust to a unitrust under ss.
 608 738.301-738.310, change the percentage or method used to
 609 calculate a unitrust amount under ss. 738.301-738.310, or
 610 convert a unitrust to an income trust under ss. 738.301-738.310
 611 if the fiduciary determines the exercise of the power will
 612 assist the fiduciary to administer the trust or estate
 613 impartially.

614 (5) The fiduciary must consider the following factors in
 615 making the determination in subsection (4), including:

616 (a) The terms of the trust.

617 (b) The nature, distribution standards, and expected
 618 duration of the trust.

619 (c) The effect of the allocation rules, including specific
 620 adjustments between income and principal, under ss. 738.301-
 621 738.416.

622 (d) The desirability of liquidity and regularity of
 623 income.

624 (e) The desirability of the preservation and appreciation
 625 of principal.

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626 (f) The extent to which an asset is used or may be used by
 627 a beneficiary.

628 (g) The increase or decrease in the value of principal
 629 assets, reasonably determined by the fiduciary.

630 (h) Whether and to what extent the terms of the trust give
 631 the fiduciary power to accumulate income or invade principal or
 632 prohibit the fiduciary from accumulating income or invading
 633 principal.

634 (i) The extent to which the fiduciary has accumulated
 635 income or invaded principal in preceding accounting periods.

636 (j) The effect of current and reasonably expected economic
 637 conditions.

638 (k) The reasonably expected tax consequences of the
 639 exercise of the power.

640 (l) The identities and circumstances of the beneficiaries.

641 (6) Except as provided in ss. 738.301-738.310, this
 642 chapter pertains to the administration of a trust and is
 643 applicable to any trust that is administered in this state or
 644 under its law. This chapter also applies to any estate that is
 645 administered in this state unless the provision is limited in
 646 application to a trustee, rather than a fiduciary.

647 Section 8. Section 738.202, Florida Statutes, is amended
 648 to read:

649 (Substantial rewording of section. See
 650 s. 738.202, F.S., for present text.)

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651 738.202 Judicial review of exercise of discretionary
 652 power; request for instruction.-

653 (1) As used in this section, the term "fiduciary decision"
 654 means any of the following:

655 (a) A fiduciary's allocation between income and principal
 656 or other determination regarding income and principal required
 657 or authorized by the terms of the trust or this chapter.

658 (b) The fiduciary's exercise or nonexercise of a
 659 discretionary power regarding income and principal granted by
 660 the terms of the trust or this chapter, including the power to
 661 adjust under s. 738.203, convert an income trust to a unitrust
 662 under ss. 738.301-738.310, change the percentage or method used
 663 to calculate a unitrust amount under ss. 738.301-738.310,
 664 convert a unitrust to an income trust under ss. 738.301-738.310,
 665 or the method used to make property productive of income under
 666 s. 738.413.

667 (c) The fiduciary's implementation of a decision described
 668 in paragraph (a) or paragraph (b).

669 (2) The court may not order a fiduciary to change a
 670 fiduciary decision unless the court determines that the
 671 fiduciary decision was an abuse of the fiduciary's discretion. A
 672 court may not determine that a fiduciary abused its discretion
 673 merely because the court would have exercised the discretion in
 674 a different manner or would not have exercised the discretion.

675 (3) If the court determines that a fiduciary decision was

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676 an abuse of the fiduciary's discretion, the court may order a
677 remedy authorized by law, including those prescribed under ss.
678 736.1001 and 736.1002. Following such a determination by the
679 court, the remedy is to place the beneficiaries in the positions
680 the beneficiaries would have occupied if the fiduciary had not
681 abused its discretion, as follows:

682 (a) The court may order the fiduciary to exercise or
683 refrain from exercising the power to adjust under s. 738.203;

684 (b) The court may order the fiduciary to exercise or
685 refrain from exercising the power to convert an income trust to
686 a unitrust under ss. 738.301-738.310, change the percentage or
687 method used to calculate a unitrust amount under ss. 738.301-
688 738.310, or convert a unitrust to an income trust under ss.
689 738.301-738.310;

690 (c) The court may compel the fiduciary to take any of the
691 actions listed under s. 738.413;

692 (d) To the extent that the abuse of discretion has
693 resulted in no distribution to a beneficiary or a distribution
694 that is too small, the court shall require the fiduciary to
695 distribute from the trust to the beneficiary an amount the court
696 determines will restore the beneficiary, in whole or in part, to
697 his or her appropriate position;

698 (e) To the extent that the abuse of discretion has
699 resulted in a distribution to a beneficiary that is too large,
700 the court shall restore the beneficiaries, the trust, or both,

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701 in whole or in part, to their appropriate positions by requiring
 702 the fiduciary to withhold an amount from one or more future
 703 distributions to the beneficiary who received the distribution
 704 that was too large or requiring that beneficiary to return some
 705 or all of the distribution to the trust; or

706 (f) To the extent that the court is unable, after applying
 707 paragraphs (a)-(e), to restore the beneficiaries or the trust,
 708 or both, to the positions they would have occupied if the
 709 fiduciary had not abused its discretion, the court may require
 710 the fiduciary to pay an appropriate amount from its own funds to
 711 one or more of the beneficiaries or the trust or both.

712 (4) On petition by the fiduciary for instruction, the
 713 court may determine whether a proposed fiduciary decision will
 714 result in an abuse of the fiduciary's discretion. If the
 715 petition describes the proposed decision, contains sufficient
 716 information to inform the beneficiary of the reasons for making
 717 the proposed decision and the facts on which the fiduciary
 718 relies, and explains how the beneficiary will be affected by the
 719 proposed decision, a beneficiary who opposes the proposed
 720 decision has the burden to establish that it will result in an
 721 abuse of the fiduciary's discretion.

722 (5) If an action is instituted alleging an abuse of
 723 discretion in the exercise or nonexercise of the fiduciary's
 724 discretion under this chapter and the court determines no abuse
 725 of discretion has occurred, the fiduciary's costs and attorney

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726 fees incurred in defending the action shall be paid from the
727 trust assets.

728 Section 9. Section 738.203, Florida Statutes, is created
729 to read:

730 738.203 Fiduciary's power to adjust.-

731 (1) Except as otherwise provided in the terms of a trust
732 or this section, a fiduciary, in a record without court
733 approval, may adjust between income and principal if the
734 fiduciary determines that the exercise of the power to adjust
735 will assist the fiduciary in administering the trust or estate
736 impartially.

737 (2) This section does not create a duty to exercise or
738 consider the power to adjust under subsection (1) or to inform a
739 beneficiary about the applicability of this section.

740 (3) A fiduciary that in good faith exercises or fails to
741 exercise the power to adjust under subsection (1) is not liable
742 to a person affected by the exercise or failure to exercise.

743 (4) In deciding whether and to what extent to exercise the
744 power to adjust under subsection (1), a fiduciary shall consider
745 all factors the fiduciary considers relevant, including relevant
746 factors in s. 738.201(5) and the application of ss. 738.401(9),
747 738.408, and 738.413.

748 (5) A fiduciary may not exercise the power under
749 subsection (1) to make an adjustment or under s. 738.408 to make
750 a determination that an allocation is insubstantial if:

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751 (a) The adjustment or determination would reduce the
752 amount payable to a current income beneficiary from a trust that
753 qualifies for a special tax benefit, except to the extent that
754 the adjustment is made to provide for a reasonable apportionment
755 of the total return of the trust between the current income
756 beneficiary and successor beneficiaries;

757 (b) The adjustment or determination would change the
758 amount payable to a beneficiary, as a fixed annuity or a fixed
759 fraction of the value of the trust assets, under the terms of
760 the trust;

761 (c) The adjustment or determination would reduce an amount
762 that is permanently set aside for a charitable purpose under the
763 terms of the trust unless both income and principal are set
764 aside for the charitable purpose;

765 (d) Possessing or exercising the power would cause a
766 person to be treated as the owner of all or part of the trust
767 for federal income tax purposes and the person would not be
768 treated as the owner if the fiduciary did not possess the power
769 to adjust;

770 (e) Possessing or exercising the power would cause all or
771 part of the value of the trust assets to be included in the
772 gross estate of an individual for federal real estate tax
773 purposes and the assets would not be included in the gross
774 estate of the individual if the fiduciary did not possess the
775 power to adjust;

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776 (f) Possessing or exercising the power would cause an
 777 individual to be treated as making a gift for federal gift tax
 778 purposes;

779 (g) The fiduciary is not an independent person;

780 (h) The trust is irrevocable and provides for income to be
 781 paid to the settlor, and possessing or exercising the power
 782 would cause the adjusted principal or income to be considered an
 783 available resource or available income under a public-benefit
 784 program; or

785 (i) The trust is a unitrust under ss. 738.301-738.310.

786 (6) If paragraph (5)(d), paragraph (5)(e), paragraph
 787 (5)(f), or paragraph (5)(g) applies to a fiduciary:

788 (a) A cofiduciary to which paragraphs (5)(d)-(g) do not
 789 apply may exercise the power to adjust, unless the exercise of
 790 the power by the remaining cofiduciary or cofiduciaries is not
 791 permitted by the terms of the trust or law other than this
 792 chapter; or

793 (b) If there is no cofiduciary to which paragraphs (5)(d)-
 794 (g) do not apply, the fiduciary may appoint a cofiduciary to
 795 which paragraphs (5)(d)-(g) do not apply which may be a special
 796 fiduciary with limited powers, and the appointed cofiduciary may
 797 exercise the power to adjust under subsection (1), unless the
 798 appointment of a cofiduciary or the exercise of the power by a
 799 cofiduciary is not permitted by the terms of the trust or law
 800 other than this chapter.

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801 (7) A fiduciary may release or delegate to a cofiduciary
 802 the power to adjust under subsection (1) if the fiduciary
 803 determines that the fiduciary's possession or exercise of the
 804 power will or may:

805 (a) Cause a result described in paragraph (5)(a),
 806 paragraph (5)(b), paragraph (5)(c), paragraph (5)(d), paragraph
 807 (5)(e), paragraph (5)(f), or paragraph (5)(h); or

808 (b) Deprive the trust of a tax benefit or impose a tax
 809 burden not described in paragraph (5)(a), paragraph (5)(b),
 810 paragraph (5)(c), paragraph (5)(d), paragraph (5)(e), or
 811 paragraph (5)(f).

812 (8) A fiduciary's release or delegation to a cofiduciary
 813 under subsection (7) of the power to adjust under subsection
 814 (1):

815 (a) Must be in a record;

816 (b) Applies to the entire power, unless the release or
 817 delegation provides a limitation, which may be a limitation to
 818 the power to adjust:

- 819 1. From income to principal;
- 820 2. From principal to income;
- 821 3. For specified property; or
- 822 4. In specified circumstances.

823 (c) For a delegation, may be modified by a redelegation
 824 under this subsection by the cofiduciary to which the delegation
 825 is made; and

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826 (d) Subject to paragraph (c), is permanent, unless the
 827 release or delegation provides a specified period, including a
 828 period measured by the life of an individual or the lives of
 829 more than one individual.

830 (9) Terms of a trust that deny or limit the power to
 831 adjust between income and principal do not affect the
 832 application of this section, unless the terms of the trust
 833 expressly deny or limit the power to adjust under subsection
 834 (1).

835 (10) The exercise of the power to adjust under subsection
 836 (1) in any accounting period may apply to the current period,
 837 the immediately preceding period, and one or more subsequent
 838 periods.

839 (11) A description of the exercise of the power to adjust
 840 under subsection (1) must be:

841 (a) Included in a report, if any, sent to beneficiaries
 842 under s. 736.0813; or

843 (b) Communicated at least annually to the qualified
 844 beneficiaries as defined in s. 736.0103 other than the Attorney
 845 General.

846 (12) With respect to a trust in existence on January 1,
 847 2003:

848 (a) A fiduciary may not have the power to adjust under
 849 this section until the statement required in subsection (13) is
 850 provided and either no objection is made or any objection which

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851 is made has been terminated.

852 1. An objection is made if, within 60 days after the date
853 of the statement required in subsection (13), a super majority
854 of the eligible beneficiaries deliver to the fiduciary a written
855 objection to the application of this section to such trust. An
856 objection shall be deemed to be delivered to the fiduciary on
857 the date the objection is mailed to the mailing address listed
858 in the notice provided in subsection (13).

859 2. An objection is terminated upon the earlier of the
860 receipt of consent from a super majority of eligible
861 beneficiaries of the class that made the objection, or the
862 resolution of the objection under paragraph (c).

863 (b) An objection or consent under this section may be
864 executed by a legal representative or natural guardian of a
865 beneficiary without the filing of any proceeding or approval of
866 any court.

867 (c) If an objection is delivered to the fiduciary, then
868 the fiduciary may petition the circuit court for an order
869 quashing the objection and vesting in such fiduciary the power
870 to adjust under this section. The burden will be on the
871 objecting beneficiaries to prove that the power to adjust would
872 be inequitable, illegal, or otherwise in contravention of the
873 settlor's intent. The court may award costs and attorney fees
874 relating to the fiduciary's petition in the same manner as in
875 chancery actions. When costs and attorney fees are to be paid

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876 out of the trust, the court may, in its discretion, direct from
877 which part of the trust they shall be paid.

878 (d) If no timely objection is made or if the fiduciary is
879 vested with the power to adjust by court order, the fiduciary
880 may thereafter exercise the power to adjust without providing
881 notice of its intent to do so unless, in vesting the fiduciary
882 with the power to adjust, the court determines that unusual
883 circumstances require otherwise.

884 (e)1. If a fiduciary makes a good faith effort to comply
885 with the notice provisions of subsection (13), but fails to
886 deliver notice to one or more beneficiaries entitled to such
887 notice, neither the validity of the notice required under this
888 subsection nor the fiduciary's power to adjust under this
889 section shall be affected until the fiduciary has actual notice
890 that one or more beneficiaries entitled to notice were not
891 notified. Until the fiduciary has actual notice of the notice
892 deficiency, the fiduciary shall have all of the powers and
893 protections granted a fiduciary with the power to adjust under
894 this chapter.

895 2. When the fiduciary has actual notice that one or more
896 beneficiaries entitled to notice under subsection (13) were not
897 notified, the fiduciary's power to adjust under this section
898 shall cease until all beneficiaries who are entitled to such
899 notice, including those who were previously provided with such
900 notice, are notified and given the opportunity to object as

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901 provided for under this subsection.

902 (f) The objection of a super majority of eligible
903 beneficiaries under this subsection shall be valid for a period
904 of 1 year after the date of the notice set forth in subsection
905 (13). Upon expiration of the objection, the fiduciary may
906 thereafter give a new notice under subsection (13).

907 (g) This section is not intended to create or imply a duty
908 of the fiduciary of a trust existing on January 1, 2003, to seek
909 a power to adjust under this subsection or to give the notice
910 described in subsection (13) if the fiduciary does not desire to
911 have a power to adjust under this section, and no inference of
912 impropriety shall be made as the result of a fiduciary not
913 seeking a power to adjust under this subsection.

914 (13) (a) A fiduciary of a trust in existence on January 1,
915 2003, that is not prohibited under subsection (5) from
916 exercising the power to adjust shall, any time before initially
917 exercising the power, provide to all eligible beneficiaries a
918 statement containing the following:

919 1. The name, telephone number, street address, and mailing
920 address of the fiduciary and of any person who may be contacted
921 for further information;

922 2. A statement that unless a super majority of the
923 eligible beneficiaries objects to the application of this
924 section to the trust within 60 days after the date the statement
925 pursuant to this subsection was served, this section shall apply

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926 to the trust; and

927 3. A statement that, if this section applies to the trust,
 928 the fiduciary will have the power to adjust between income and
 929 principal and that such a power may have an effect on the
 930 distributions to such beneficiary from the trust.

931 (b) The statement may contain information regarding a
 932 fiduciary's obligation with respect to the power to adjust
 933 between income and principal under this section.

934 (c) The statement shall be served informally, in the
 935 manner provided in the Florida Rules of Civil Procedure relating
 936 to service of pleadings subsequent to the initial pleading. The
 937 statement may be served on a legal representative or natural
 938 guardian of a beneficiary without the filing of any proceeding
 939 or approval of any court.

940 (14) For purposes of subsections (12) and (13), the term:

941 (a) "Eligible beneficiaries" means:

942 1. If at the time the determination is made there are one
 943 or more beneficiaries described in s. 736.0103(19) (c), the
 944 beneficiaries described in s. 736.0103(19) (a) and (c); or

945 2. If there is no beneficiary described in s.
 946 736.0103(19) (c), the beneficiaries described in s.
 947 736.0103(19) (a) and (b).

948 (b) "Super majority of the eligible beneficiaries" means:

949 1. If at the time the determination is made there are one
 950 or more beneficiaries described in s. 736.0103(19) (c), at least

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951 two-thirds in interest of the beneficiaries described in s.
 952 736.0103(19) (a) or two-thirds in interest of the beneficiaries
 953 described in s. 736.0103(19) (c), if the interests of the
 954 beneficiaries are reasonably ascertainable; otherwise, it means
 955 two-thirds in number of either such class; or

956 2. If there is no beneficiary described in s.
 957 736.0103(19) (c), at least two-thirds in interest of the
 958 beneficiaries described in s. 736.0103(19) (a) or two-thirds in
 959 interest of the beneficiaries described in s. 736.0103(19) (b),
 960 if the interests of the beneficiaries are reasonably
 961 ascertainable, otherwise, two-thirds in number of either such
 962 class.

963 (15) A trust exists on January 1, 2003, if it is not
 964 revocable on January 1, 2003. A trust is revocable if revocable
 965 by the settlor alone or in conjunction with any other person. A
 966 trust is not revocable for purposes of this section if revocable
 967 by the settlor only with the consent of all persons having a
 968 beneficial interest in the property.

969 Section 10. Section 738.301, Florida Statutes, is amended
 970 to read:

971 (Substantial rewording of section. See
 972 s. 738.301, F.S., for present text).

973 738.301 Definitions.—For purposes of this section and ss.
 974 738.302–738.310:

975 (1) "Applicable value" means the amount of the net fair

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976 market value of a trust taken into account under s. 738.307.

977 (2) "Express unitrust" means a trust for which, under the
 978 terms of the trust without regard to this section and ss.
 979 738.302-738.310, net income must be calculated as a unitrust
 980 amount.

981 (3) "Income trust" means a trust, created by an inter
 982 vivos or testamentary instrument, that directs or permits the
 983 trustee to distribute the net income of the trust to one or more
 984 persons, in fixed proportions or in amounts or proportions
 985 determined by the trustee and regardless of whether the trust
 986 directs or permits the trustee to distribute the principal of
 987 the trust to one or more such persons.

988 (4) "Net fair market value of a trust" means the fair
 989 market value of the assets of the trust, less the reasonably
 990 known noncontingent liabilities of the trust.

991 (5) "Unitrust" means a trust for which net income is a
 992 unitrust amount. The term includes an express unitrust.

993 (6) "Unitrust amount" means an amount computed by
 994 multiplying a determined value of a trust by a determined
 995 percentage. For a unitrust administered under a unitrust policy,
 996 the term means the applicable value multiplied by the unitrust
 997 rate.

998 (7) "Unitrust policy" means a policy described in ss.
 999 738.301-738.310 and adopted under s. 738.303.

1000 (8) "Unitrust rate" means the rate used to compute the

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1001 unitrust amount for a unitrust administered under a unitrust
 1002 policy.

1003 Section 11. Section 738.302, Florida Statutes, is amended
 1004 to read:

1005 (Substantial rewording of section. See
 1006 s. 738.302, F.S., for present text.)

1007 738.302 Applications; duties and remedies.—

1008 (1) Except as otherwise provided in subsection (2), ss.
 1009 738.301-738.310 apply to all of the following:

1010 (a) An income trust, unless the terms of the trust
 1011 expressly prohibit the use of ss. 738.301-738.310 by a specific
 1012 reference to this paragraph or corresponding provision of prior
 1013 law, or an explicit expression of intent that net income not be
 1014 calculated as a unitrust amount.

1015 (b) An express unitrust, except to the extent that the
 1016 terms of the trust explicitly:

1017 1. Prohibit the use of ss. 738.301-738.310 by a specific
 1018 reference to this paragraph or corresponding provision of prior
 1019 law;

1020 2. Prohibit conversion to an income trust; or

1021 3. Limit changes to the method of calculating the unitrust
 1022 amount.

1023 (c) A unitrust that had been converted from an income
 1024 trust.

1025 (2) The provisions of ss. 738.301-738.310 do not apply to

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1026 a trust described in s. 170(f)(2)(B), s. 642(c)(5), s. 664(d),
 1027 s. 2702(a)(3)(A)(ii) or (iii), or s. 2702(b) of the Internal
 1028 Revenue Code.

1029 (3) An income trust to which ss. 738.301-738.310 apply
 1030 under paragraph (1)(a) may be converted to a unitrust under ss.
 1031 738.301-738.310 regardless of the terms of the trust concerning
 1032 distributions. Conversion to a unitrust under ss. 738.301-
 1033 738.310 does not affect other terms of the trust concerning
 1034 distributions of income or principal.

1035 (4) Sections 738.301-738.310 apply to an estate only to
 1036 the extent that a trust is a beneficiary of the estate. To the
 1037 extent of the trust's interest in the estate, the estate may be
 1038 administered as a unitrust, the administration of the estate as
 1039 a unitrust may be discontinued, or the percentage or method used
 1040 to calculate the unitrust amount may be changed, in the same
 1041 manner as for a trust under those sections.

1042 (5) The provisions of ss. 738.301-738.310 do not create a
 1043 duty to take or consider action under ss. 738.301-738.310 or to
 1044 inform a beneficiary about the applicability of ss. 738.301-
 1045 738.310.

1046 (6) A fiduciary that in good faith takes or fails to take
 1047 an action under ss. 738.301-738.310 is not liable to a person
 1048 affected by the action or inaction.

1049 Section 12. Section 738.303, Florida Statutes, is amended
 1050 to read:

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1051 (Substantial rewording of section. See
 1052 s. 738.303, F.S., for present text.)
 1053 738.303 Authority of fiduciary.—
 1054 (1) By complying with subsections (2) and (6), and without
 1055 court approval, a fiduciary may do any of the following:
 1056 (a) Convert an income trust to a unitrust if the fiduciary
 1057 adopts in a record a unitrust policy for the trust which
 1058 provides:
 1059 1. That in administering the trust, the net income of the
 1060 trust will be a unitrust amount rather than net income
 1061 determined without regard to ss. 738.301-738.310; and
 1062 2. The percentage and method used to calculate the
 1063 unitrust amount.
 1064 (b) Change the percentage or method used to calculate a
 1065 unitrust amount for a unitrust if the fiduciary adopts in a
 1066 record a unitrust policy or an amendment or replacement of a
 1067 unitrust policy providing charges in the percentage or method
 1068 used to calculate the unitrust amount.
 1069 (c) Convert a unitrust to an income trust if the fiduciary
 1070 adopts in a record a determination that, in administering the
 1071 trust, the net income of the trust will be net income determined
 1072 without regard to ss. 738.301-738.310 rather than a unitrust
 1073 amount.
 1074 (2) A fiduciary may take an action under subsection (1) if
 1075 all of the following apply:

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1076 (a) The fiduciary determines that the action will assist
 1077 the fiduciary to administer a trust impartially.

1078 (b) The fiduciary sends a notice in a record to the
 1079 qualified beneficiaries determined under ss. 736.0103 and
 1080 736.0110 in the manner required by s. 738.304, describing and
 1081 proposing to take the action.

1082 (c) The fiduciary sends a copy of the notice under
 1083 paragraph (b) to each settlor of the trust which is:

- 1084 1. If an individual, living; or
- 1085 2. If not an individual, in existence.

1086 (d) At least one member of each class of the qualified
 1087 beneficiaries determined under ss. 736.0103 and 736.0110, other
 1088 than the Attorney General, receiving the notice under paragraph
 1089 (b) is:

- 1090 1. If an individual, legally competent;
- 1091 2. If not an individual, in existence; or
- 1092 3. Represented in the manner provided in s. 738.304(2).

1093 (e) The fiduciary does not receive, by the date specified
 1094 in the notice under s. 738.304(4) (e), an objection in a record
 1095 to the action proposed under paragraph (b) from a person to
 1096 which the notice under paragraph (b) is sent.

1097 (3) If a fiduciary receives, not later than the date
 1098 stated in the notice under s. 738.304(4) (e), an objection in a
 1099 record described in s. 738.304(4) (d) to a proposed action, the
 1100 fiduciary or a beneficiary may request the court to have the

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1101 action taken as proposed, taken with modifications, or
1102 prevented. A person described in s. 738.304(1) may oppose the
1103 proposed action in the proceeding under this subsection
1104 regardless of whether the person:

1105 (a) Consented under s. 738.304(3); or
1106 (b) Objected under s. 738.304(4) (d).

1107 (4) If, after sending a notice under paragraph (2) (b), a
1108 fiduciary decides not to take the action proposed in the notice,
1109 the fiduciary must notify in a record each person described in
1110 s. 738.304(1) of the decision not to take the action and the
1111 reasons for the decision.

1112 (5) If a beneficiary requests in a record that a fiduciary
1113 take an action described in subsection (1) and the fiduciary
1114 declines to act or does not act within 60 days after receiving
1115 the request, the beneficiary may request the court to direct the
1116 fiduciary to take the action requested.

1117 (6) In deciding whether and how to take an action
1118 authorized in subsection (1), or whether and how to respond to a
1119 request by a beneficiary under subsection (5), a fiduciary must
1120 consider all factors relevant to the trust and beneficiaries,
1121 including the relevant factors listed in s. 738.201(5).

1122 (7) A fiduciary may release or delegate the power to
1123 convert an income trust to a unitrust under paragraph (1) (a),
1124 change the percentage or method used to calculate a unitrust
1125 amount under paragraph (1) (b), or convert a unitrust to an

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1126 income trust under paragraph (1) (c), for a reason described in
 1127 s. 738.203(7) and in the manner described in s. 738.203(8).

1128 Section 13. Section 738.304, Florida Statutes, is created
 1129 to read:

1130 738.304 Notice.-

1131 (1) A notice required by s. 738.303(2)(b) must be sent in
 1132 a manner authorized under s. 736.0109 to all of the following:

1133 (a) The qualified beneficiaries determined under s.
 1134 736.0103, other than the Attorney General.

1135 (b) Each person that is granted a power over the trust by
 1136 the terms of the trust, to the extent that the power is
 1137 exercisable when the person is not then serving as a trustee:

1138 1. Including all of the following:

1139 a. Power over the investment, management, or distribution
 1140 of trust property or other matters of trust administration.

1141 b. Power to appoint or remove a trustee or person
 1142 described in this paragraph.

1143 2. Excluding all of the following:

1144 a. Power of appointment.

1145 b. Power of a beneficiary over the trust, to the extent
 1146 that the exercise or nonexercise of the power affects the
 1147 beneficial interest of the beneficiary or another beneficiary
 1148 represented by the beneficiary under ss. 736.0301-736.0306 with
 1149 respect to the exercise or nonexercise of the power.

1150 c. Power over the trust if the terms of the trust provide

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1151 that the power is held in a nonfiduciary capacity and the power
1152 must be held in a nonfiduciary capacity to achieve a tax
1153 objective under the Internal Revenue Code.

1154 (c) Each person that is granted a power by the terms of
1155 the trust to appoint or remove a trustee or person described in
1156 paragraph (b) to the extent the power is exercisable when the
1157 person that exercises the power is not then serving as a trustee
1158 or person described in paragraph (b).

1159 (2) The representation provisions of ss. 736.0301-736.0306
1160 apply to notice under this section.

1161 (3) A person may consent in a record at any time to action
1162 proposed under s. 738.303(2)(b). A notice required by s.
1163 738.303(2)(b) need not be sent to a person that consents under
1164 this subsection.

1165 (4) A notice required under s. 738.303(2)(b) must include
1166 all of the following:

1167 (a) The action proposed under s. 738.303(2)(b).

1168 (b) For a conversion of an income trust to a unitrust, a
1169 copy of the unitrust policy adopted under s. 738.303(1)(a).

1170 (c) For a change in the percentage or method used to
1171 calculate the unitrust amount, a copy of the unitrust policy or
1172 amendment or replacement of the unitrust policy adopted under s.
1173 738.303(1)(b).

1174 (d) A statement that the person to which the notice is
1175 sent may object to the proposed action by stating in a record

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1176 the basis for the objection and sending or delivering the record
 1177 to the fiduciary.

1178 (e) The date by which an objection under paragraph (d)
 1179 must be received by the fiduciary, which must be at least 30
 1180 days after the date the notice is sent.

1181 (f) The date on which the action is proposed to be taken
 1182 and the date on which the action is proposed to take effect.

1183 (g) The name and contact information of the fiduciary.

1184 (h) The name and contact information of a person that may
 1185 be contacted for additional information.

1186 Section 14. Section 738.305, Florida Statutes, is created
 1187 to read:

1188 738.305 Unitrust policy.—

1189 (1) In administering a unitrust under ss. 738.301-738.310,
 1190 a fiduciary shall follow a unitrust policy adopted under s.
 1191 738.303(1)(a) or (b) or amended or replaced under s.
 1192 738.303(1)(b).

1193 (2) A unitrust policy must provide all of the following:

1194 (a) The unitrust rate or method for determining the
 1195 unitrust rate under s. 738.306.

1196 (b) The method for determining the applicable value under
 1197 s. 738.307.

1198 (c) The rules described in ss. 738.306-738.310 which apply
 1199 in the administration of the unitrust, whether the rules are:

1200 1. Mandatory as provided in ss. 738.307(1) and (3),

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1201 738.308(1), and 738.310; or
 1202 2. Optional as provided in ss. 738.306, 738.307(2), and
 1203 738.308(2), to the extent that the fiduciary elects to adopt
 1204 those rules.
 1205 (3) A unitrust policy may do any of the following:
 1206 (a) Provide methods and standards for:
 1207 1. Determining the timing of the distributions;
 1208 2. Making distributions in cash or in kind or partly in
 1209 cash and partly in kind; or
 1210 3. Correcting an underpayment or overpayment to a
 1211 beneficiary based on the unitrust amount if there is an error in
 1212 calculating the unitrust amount.
 1213 (b) Specify sources and the order of sources, including
 1214 categories of income for federal income tax purposes, from which
 1215 distributions of a unitrust amount are paid.
 1216 (c) Provide other standards and rules that the fiduciary
 1217 determines serve the interests of the beneficiaries.
 1218 Section 15. Section 738.306, Florida Statutes, is created
 1219 to read:
 1220 738.306 Unitrust rate.—
 1221 (1) A unitrust rate must be at least 3 percent and not
 1222 more than 5 percent. Within those limits, the unitrust rate may
 1223 be:
 1224 (a) A fixed unitrust rate; or
 1225 (b)1. A unitrust rate that is determined for each period

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1226 using:

1227 a. A market index or other published data; or

1228 b. A mathematical blend of market indices or other

1229 published data over a stated number of preceding periods.

1230 2. If the rate calculated under this paragraph would be

1231 less than 3, the rate is 3; and if the rate calculated would be

1232 more than 5, the rate is 5.

1233 (2) Within the limits of subsection (1), a unitrust policy

1234 may provide for any of the following:

1235 (a) A limit on how much the unitrust rate determined under

1236 paragraph (1)(b) may increase over the unitrust rate for the

1237 preceding period or a mathematical blend of unitrust rates over

1238 a stated number of preceding periods.

1239 (b) A limit on how much the unitrust rate determined under

1240 paragraph (1)(b) may decrease below the unitrust rate for the

1241 preceding period or a mathematical blend of unitrust rates over

1242 a stated number of preceding periods.

1243 (c) A mathematical blend of any of the unitrust rates

1244 determined under paragraph (1)(b) and paragraphs (a) and (b).

1245 (3) If the fiduciary is not an independent person, the

1246 percentage used to calculate the unitrust amount is the rate

1247 determined under s. 7520(a)(2) of the Internal Revenue Code in

1248 effect for the month the conversion under this section becomes

1249 effective and for each January thereafter; however, if the rate

1250 determined under s. 7520(a)(2) of the Internal Revenue Code

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1251 exceeds 5 percent, the unitrust rate is 5 percent, and if the
 1252 rate determined under s. 7520(a)(2) of the Internal Revenue Code
 1253 is less than 3 percent, the unitrust rate is 3 percent.

1254 Section 16. Section 738.307, Florida Statutes, is created
 1255 to read:

1256 738.307 Applicable value.—

1257 (1) A unitrust policy must provide the method for
 1258 determining the fair market value of an asset for the purpose of
 1259 determining the unitrust amount, including all of the following:

1260 (a) The frequency of valuing the asset, which need not
 1261 require a valuation in every period.

1262 (b) The date for valuing the asset in each period in which
 1263 the asset is valued.

1264 (2) Except as otherwise provided in s. 738.309, a unitrust
 1265 policy may provide methods for determining the amount of the net
 1266 fair market value of the trust to take into account in
 1267 determining the applicable value, including any of the
 1268 following:

1269 (a) Obtaining an appraisal of an asset for which fair
 1270 market value is not readily available.

1271 (b) Excluding specific assets or groups or types of assets
 1272 in addition to those described in subsection (3).

1273 (c) Making other exceptions or modifications of the
 1274 treatment of specific assets or groups or types of assets.

1275 (d) Including identification and treatment of cash or

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1276 property held for distribution.

1277 (e) Using an average of fair market values over a stated
 1278 number of preceding periods, not to exceed 3 calendar years.

1279 (f) Determining the reasonable known liabilities of the
 1280 trust, including treatment of liabilities to conform with the
 1281 treatment of assets under paragraphs (a)-(e).

1282 (3) The following property may not be included in
 1283 determining the value of the trust:

1284 (a) Any residential property or any tangible personal
 1285 property that, as of the first business day of the current
 1286 valuation year, one or more current beneficiaries of the trust
 1287 have or have had the right to occupy or have or have had the
 1288 right to possess or control, other than in his or her capacity
 1289 as trustee of the trust. Instead, the right of occupancy or the
 1290 right to possession and control is the unitrust amount with
 1291 respect to such property; however, the unitrust amount must be
 1292 adjusted to take into account partial distributions from or
 1293 receipt into the trust of such property during the valuation
 1294 year;

1295 (b) Any asset specifically given to a beneficiary and the
 1296 return on investment on such property, which return on
 1297 investment must be distributable to the beneficiary; and

1298 (c) Any asset while held in an estate.

1299 Section 17. Section 738.308, Florida Statutes, is created
 1300 to read:

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1301 738.308 Period.—

1302 (1) A unitrust policy must provide the period used under

1303 ss. 738.306 and 738.307. The period must be the calendar year.

1304 (2) A unitrust policy may provide standards for:

1305 (a) Using fewer preceding periods under s. 738.306(1)(b)1.

1306 or (2)(a) or (b) if:

1307 1. The trust was not in existence in a preceding period;

1308 or

1309 2. Market indices or other published data are not

1310 available for a preceding period;

1311 (b) Using fewer preceding periods under 738.307(2)(e) if:

1312 1. The trust was not in existence in a preceding period;

1313 or

1314 2. Fair market values are not available for a preceding

1315 period; and

1316 (c) Prorating a unitrust amount on a daily basis for a

1317 part of a period in which the trust or the administration of the

1318 trust as a unitrust or the interest of any beneficiary commences

1319 or terminates.

1320 Section 18. Section 738.309, Florida Statutes, is created

1321 to read:

1322 738.309 Express unitrust.—

1323 (1) This section applies to a trust that, by its governing

1324 instrument, requires or allows income or net income to be

1325 calculated as a unitrust amount.

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1326 (2) The trustee of an express unitrust may determine the
1327 unitrust amount by reference to the net fair market value of the
1328 unitrust's assets in 1 or more years.

1329 (3) Distribution of a unitrust amount is considered a
1330 distribution of all of the net income of an express unitrust and
1331 is considered to be an income interest.

1332 (4) The unitrust amount is considered to be a reasonable
1333 apportionment of the total return of an express unitrust.

1334 (5) An express unitrust that provides or allows a
1335 distribution based on a unitrust rate in excess of 5 percent per
1336 year of the net fair market value of the unitrust assets is
1337 considered a distribution of all of the income of the unitrust
1338 and a distribution of principal of the unitrust to the extent
1339 that the distribution exceeds 5 percent per year.

1340 (6) An express unitrust may provide a mechanism for
1341 changing the unitrust rate, similar to the mechanism provided
1342 under s. 738.306, based upon the factors noted in that section,
1343 and may provide for a conversion from a unitrust to an income
1344 trust or a reconversion of an income trust to a unitrust under
1345 s. 738.303.

1346 (7) If an express unitrust does not specifically or by
1347 reference to s. 738.306 prohibit a power to change the unitrust
1348 rate or to convert to an income trust under s. 738.303, the
1349 trustee must have such power.

1350 (8) The governing instrument of an express unitrust may

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1351 grant the trustee discretion to adopt a consistent practice of
 1352 treating capital gains as part of the unitrust amount to the
 1353 extent that the unitrust amount exceeds the income determined as
 1354 if the trust were not an express unitrust, or the governing
 1355 instrument may specify the ordering of classes of income.

1356 (9) Unless the terms of the express unitrust specifically
 1357 provide otherwise as provided in subsection (8), the
 1358 distribution of a unitrust amount is considered a distribution
 1359 made from the following sources, which are listed in order of
 1360 priority:

1361 (a) Net accounting income determined under this chapter as
 1362 if the trust were not a unitrust;

1363 (b) Ordinary income not allocable to net accounting
 1364 income;

1365 (c) Net realized short-term capital gains;

1366 (d) Net realized long-term capital gains; and

1367 (e) The principal of the trust.

1368 (10) The governing instrument of an express unitrust may
 1369 provide that the trustee may exclude assets used by the
 1370 unitrust's beneficiary, including, but not limited to, a
 1371 residence property or tangible personal property, from the net
 1372 fair market value of the unitrust's assets for the purposes of
 1373 computing the unitrust amount. The use of these assets may be
 1374 considered equivalent to income or to the unitrust amount.

1375 Section 19. Section 738.310, Florida Statutes, is created

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1376 to read:

1377 738.310 Other rules.—Following the conversion of an income
 1378 trust to a unitrust, the trustee shall consider the unitrust
 1379 amount as paid from the following sources, which are listed in
 1380 order of priority:

1381 (1) Net accounting income determined under this chapter as
 1382 if the trust were not a unitrust;

1383 (2) Ordinary income not allocable to net accounting
 1384 income;

1385 (3) Net realized short-term capital gains;

1386 (4) Net realized long-term capital gains; and

1387 (5) The principal of the trust.

1388 Section 20. Section 738.401, Florida Statutes, is amended
 1389 to read:

1390 738.401 Character of receipts from entity.—

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

1392 (a) "Capital distribution" means an entity distribution of
 1393 money which is a:

1394 1. Return of capital; or

1395 2. Distribution in total or partial liquidation of the
 1396 entity.

1397 (b) "Entity":

1398 1. Means a corporation, partnership, limited liability
 1399 company, regulated investment company, real estate investment
 1400 trust, common trust fund, or any other organization or

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1401 arrangement in which a fiduciary owns or holds ~~has~~ an interest,
 1402 regardless of whether the entity is a taxpayer for federal
 1403 income tax purposes; and

1404 2. Does not include:

1405 a. A trust or estate to which s. 738.402 applies;

1406 b. A business or other activity to which s. 738.403
 1407 applies which is not conducted by an entity described in
 1408 subparagraph 1.;

1409 c. An asset-backed security; or

1410 d. An instrument or arrangement to which s. 738.416
 1411 applies ~~other than a trust or estate to which s. 738.402~~
 1412 ~~applies, a business or activity to which s. 738.403 applies, or~~
 1413 ~~an asset-backed security to which s. 738.608 applies.~~

1414 (c) "Entity distribution" means a payment or transfer by
 1415 an entity to a person in the person's capacity as an owner or
 1416 holder of an interest in the entity.

1417 (d) "Lookback period" means the accounting period and the
 1418 preceding two accounting periods or, if less, the number of
 1419 accounting periods, or portion of accounting periods, that the
 1420 interest in the entity has been held by the fiduciary.

1421 (2) In this section, an attribute or action of an entity
 1422 includes an attribute or action of any other entity in which the
 1423 initial entity owns or holds an interest, including an interest
 1424 owned or held indirectly through another entity.

1425 (3) Except as otherwise provided in paragraphs (4) (b),

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1426 ~~(c), and (d) this section,~~ a fiduciary shall allocate to income:
 1427 (a) Money received in an entity distribution; and
 1428 (b) Tangible personal property of nominal value received
 1429 from the money received from an entity.

1430 ~~(4)-(3) Except as otherwise provided in this section,~~ A
 1431 fiduciary shall allocate the following ~~receipts from an entity~~
 1432 to principal:

1433 (a) Property received in an entity distribution which is
 1434 not:

1435 1. other than Money; or

1436 2. Tangible personal property of nominal value.

1437 (b) Money received in an entity ~~one~~ distribution ~~or a~~
 1438 ~~series of related distributions~~ in an exchange for part or all
 1439 of the fiduciary's a trust's or estate's interest in the entity
 1440 to the extent that the entity distribution reduces the
 1441 fiduciary's interest in the entity relative to the interest of
 1442 other persons that own or hold interests in the entity.

1443 (c) Money received in an entity distribution that is a
 1444 capital distribution, to the extent not allocated to income
 1445 ~~total or partial liquidation of the entity.~~

1446 (d) Money received in an entity distribution from an
 1447 entity that is a regulated investment company or a real estate
 1448 investment trust if the money received represents short-term or
 1449 long-term capital gain realized within the entity.

1450 ~~(e) Money received from an entity listed on a public stock~~

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1451 ~~exchange during any year of the trust or estate which exceeds 10~~
1452 ~~percent of the fair market value of the trust's or estate's~~
1453 ~~interest in the entity on the first day of that year. The amount~~
1454 ~~to be allocated to principal must be reduced to the extent that~~
1455 ~~the cumulative distributions from the entity to the trust or~~
1456 ~~estate allocated to income do not exceed a cumulative annual~~
1457 ~~return of 3 percent of the fair market value of the interest in~~
1458 ~~the entity at the beginning of each year or portion of a year~~
1459 ~~for the number of years or portion of years in the period that~~
1460 ~~the interest in the entity has been held by the trust or estate.~~
1461 ~~If a trustee has exercised a power to adjust under s. 738.104~~
1462 ~~during any period the interest in the entity has been held by~~
1463 ~~the trust, the trustee, in determining the total income~~
1464 ~~distributions from that entity, must take into account the~~
1465 ~~extent to which the exercise of that power resulted in income to~~
1466 ~~the trust from that entity for that period. If the income of the~~
1467 ~~trust for any period has been computed under s. 738.1041, the~~
1468 ~~trustee, in determining the total income distributions from that~~
1469 ~~entity for that period, must take into account the portion of~~
1470 ~~the unitrust amount paid as a result of the ownership of the~~
1471 ~~trust's interest in the entity for that period.~~

1472 (5)~~(4)~~ If a fiduciary elects, or continues an election
1473 made by its predecessor, to reinvest dividends in shares of
1474 stock of a distributing corporation or fund, whether evidenced
1475 by new certificates or entries on the books of the distributing

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1476 entity, the new shares retain their character as income.
 1477 (6)(5) Except as otherwise provided in subsections (10)
 1478 and (11), money received in an entity distribution is a capital
 1479 distribution ~~Money is received in partial liquidation:~~
 1480 (a) To the extent that the entity, at or near the time of
 1481 the entity ~~a~~ distribution, indicates that such money is a
 1482 capital ~~distribution in partial liquidation; or~~
 1483 (b) To the extent that the total amount of money and
 1484 property received by the fiduciary in the entity in a
 1485 distribution or a series of related entity distributions is or
 1486 will be greater than from an entity that is not listed on a
 1487 public stock exchange exceeds 20 percent of the fiduciary's
 1488 ~~trust's or estate's~~ pro rata share of the entity's gross assets,
 1489 as shown by the entity's year-end financial statements
 1490 immediately preceding the initial receipt.
 1491
 1492 ~~This subsection does not apply to an entity to which subsection~~
 1493 ~~(7) applies.~~
 1494 (7)(6) In the case of a capital distribution, the amount
 1495 received in an entity distribution allocated to principal must
 1496 be reduced to the extent that the cumulative distributions from
 1497 the entity to the fiduciary ~~Money may not be taken into account~~
 1498 ~~in determining any excess under paragraph (5) (b), to the extent~~
 1499 ~~that the cumulative distributions from the entity to the trust~~
 1500 ~~or the estate~~ allocated to income do not exceed the greater of:

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1501 (a) A cumulative annual return of 3 percent of the
 1502 entity's carrying value computed at the beginning of each
 1503 accounting period, or portion of an accounting period, during
 1504 the lookback period ~~for the number of years or portion of years~~
 1505 ~~that the entity was held by the fiduciary.~~ If a fiduciary
 1506 ~~trustee~~ has exercised a power to adjust under s. 738.203 during
 1507 the lookback period, the fiduciary ~~s. 738.104 during any period~~
 1508 ~~the interest in the entity has been held by the trust, the~~
 1509 ~~trustee,~~ in determining the total income distributions from that
 1510 entity, must take into account the extent to which the exercise
 1511 of the power resulted in income to the fiduciary trust from that
 1512 entity for that period. If the income of a fiduciary during the
 1513 lookback trust ~~for any period~~ has been computed under ss.
 1514 738.301-738.310, the fiduciary pursuant to s. 738.1041, the
 1515 ~~trustee,~~ in determining the total income distributions from the
 1516 entity for that period, must take into account the portion of
 1517 the unitrust amount paid as a result of the ownership of the
 1518 trust's interest in the entity for that period; or
 1519 (b) In ~~if~~ the case of an entity ~~is~~ treated as a
 1520 partnership, subchapter S corporation, or ~~a~~ disregarded entity
 1521 under pursuant to the Internal Revenue Code ~~of 1986, as amended,~~
 1522 the amount of income tax attributable to the fiduciary's trust's
 1523 ~~or estate's~~ ownership share of the entity, based on its pro rata
 1524 share of the taxable income of the entity that distributes the
 1525 money, during the lookback period ~~for the number of years or~~

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1526 ~~portion of years that the interest in the entity was held by the~~
 1527 ~~fiduciary, calculated as if all of the ~~that~~ tax was incurred by~~
 1528 ~~the fiduciary.~~

1529 (8) If a fiduciary receives additional information about
 1530 the application of this section to an entity distribution before
 1531 the fiduciary has paid part of the entity distribution to a
 1532 beneficiary, the fiduciary may consider the additional
 1533 information before making the payment to the beneficiary and may
 1534 change a decision to make the payment to the beneficiary.

1535 (9) If a fiduciary receives additional information about
 1536 the application of this section to an entity distribution after
 1537 the fiduciary has paid part of the entity distribution to a
 1538 beneficiary, the fiduciary is not required to change or recover
 1539 the payment to the beneficiary but may consider that information
 1540 in determining whether to exercise its other powers, including
 1541 but not limited to the power to adjust under s. 738.203.

1542 ~~(10)-(7)~~ The following applies to money or property
 1543 received by a private trustee as a distribution from an
 1544 investment entity described in this subsection:

1545 (a) The trustee shall first treat as income of the trust
 1546 all of the money or property received from the investment entity
 1547 in the current accounting period ~~year~~ which would be considered
 1548 income under this chapter if the trustee had directly held the
 1549 trust's pro rata share of the assets of the investment entity.
 1550 For this purpose, all distributions received in the current

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1551 accounting period ~~year~~ must be aggregated.

1552 (b) The trustee shall next treat as income of the trust
 1553 any additional money or property received in the current
 1554 accounting period ~~year~~ which would have been considered income
 1555 in the prior 2 accounting periods ~~years~~ under paragraph (a) if
 1556 additional money or property had been received from the
 1557 investment entity in any of those prior 2 accounting periods
 1558 ~~years~~. The amount to be treated as income must ~~shall~~ be reduced
 1559 by any distributions of money or property made by the investment
 1560 entity to the trust during the current and the prior 2
 1561 accounting periods ~~years~~ which were treated as income under this
 1562 paragraph.

1563 (c) The remainder of the distribution, if any, is treated
 1564 as principal.

1565 (d) As used in this subsection, the term:

1566 1. "Investment entity" means an entity, other than a
 1567 business activity conducted by the trustee described in s.
 1568 738.403 or an entity that is listed on a public stock exchange,
 1569 which is treated as a partnership, subchapter S corporation, or
 1570 disregarded entity under ~~pursuant to~~ the Internal Revenue Code
 1571 ~~of 1986, as amended,~~ and which normally derives 50 percent or
 1572 more of its annual cumulative net income from interest,
 1573 dividends, annuities, royalties, rental activity, or other
 1574 passive investments, including income from the sale or exchange
 1575 of such passive investments.

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1576 2. "Private trustee" means a trustee who is a natural
 1577 person, but is not an independent person as set forth in s.
 1578 738.102 ~~only if the trustee is unable to use the power to adjust~~
 1579 ~~between income and principal with respect to receipts from~~
 1580 ~~entities described in this subsection pursuant to s. 738.104. A~~
 1581 ~~bank, trust company, or other commercial trustee is not~~
 1582 ~~considered a private trustee.~~

1583 (11) A fiduciary shall allocate to principal any money and
 1584 property the fiduciary receives in a distribution or series of
 1585 related distributions from a public entity which are greater
 1586 than 10 percent of the fair market value of the fiduciary's
 1587 interest in the public entity on the first day of the accounting
 1588 period. The amount to be allocated to principal must be reduced
 1589 to the extent that the cumulative distributions from the entity
 1590 to the fiduciary allocated to income do not exceed a cumulative
 1591 annual return of 3 percent of the fair market value of the
 1592 interest in the entity at the beginning of each accounting
 1593 period, or portion of an accounting period, during the lookback
 1594 period. If a fiduciary has exercised a power to adjust under s.
 1595 738.203 during the lookback period, the fiduciary, in
 1596 determining the total income distributions from that entity,
 1597 must take into account the extent to which the exercise of that
 1598 power resulted in income to the fiduciary from that entity for
 1599 that period. If the income of the fiduciary during the lookback
 1600 period has been computed under ss. 738.301-738.310, the

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1601 fiduciary, in determining the total income distribution from
 1602 that entity for that period, must take into account the portion
 1603 of the unitrust amount paid as a result of the ownership of the
 1604 trust's interest in the entity for that period. As used in this
 1605 subsection, the term "public entity" means an entity listed on a
 1606 public stock exchange.

1607 (12)-(8) This section must ~~shall~~ be applied before ss.
 1608 738.506 and 738.507 ~~ss. 738.705 and 738.706~~ and does not modify
 1609 or change any of the provisions of those sections.

1610 Section 21. Section 738.402, Florida Statutes, is amended
 1611 to read:

1612 738.402 Distribution from trust or estate.—A fiduciary
 1613 shall allocate to income an amount received as a distribution of
 1614 income, including a unitrust distribution under ss. 738.301-
 1615 738.310, from a trust or an estate in which the fiduciary ~~trust~~
 1616 has an interest, other than an interest a purchased in a trust
 1617 that is an investment entity, and shall ~~interest and~~ allocate to
 1618 principal an amount received as a distribution of principal from
 1619 the ~~such a~~ trust or estate. If a fiduciary purchases, or
 1620 receives from a settlor, an interest in a trust that is an
 1621 investment entity, ~~or a decedent or donor transfers an interest~~
 1622 ~~in such a trust to a fiduciary,~~ s. 738.401, s. 738.415, or s.
 1623 738.416 ~~or s. 738.608~~ applies to a receipt from the trust.

1624 Section 22. Section 738.403, Florida Statutes, is amended
 1625 to read:

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1626 738.403 Business and other activity ~~activities~~ conducted
 1627 by fiduciary.—

1628 (1) ~~This section applies to If a fiduciary who conducts a~~
 1629 business or other activity conducted by a fiduciary if the
 1630 fiduciary determines that it is in the best interests of
 1631 ~~interest of all~~ the beneficiaries to account separately for the
 1632 business or other activity instead of:

1633 (a) Accounting for the business or other activity as part
 1634 of the fiduciary's ~~trust's or estate's~~ general accounting
 1635 records; or

1636 (b) Conducting the business or other activity through an
 1637 entity described in s. 738.401(1)(b). ~~the~~

1638 (2) A fiduciary may account separately under this section
 1639 ~~maintain separate accounting records~~ for the transactions of a
 1640 ~~the~~ business or another ~~other~~ activity, regardless of whether ~~or~~
 1641 ~~not the~~ assets of the ~~such~~ business or other activity are
 1642 segregated from other ~~trust or estate~~ assets held by the
 1643 fiduciary.

1644 (3) ~~(2)~~ A fiduciary who accounts separately under this
 1645 section for a business or other activity:

1646 (a) May determine:

1647 1. The extent to which the net cash receipts of the
 1648 business or other activity must be retained for:

1649 a. Working capital;

1650 b. The acquisition or replacement of fixed assets; and

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1651 c. Other reasonably foreseeable needs of the business or
 1652 other activity; and ~~working capital, the acquisition or~~
 1653 ~~replacement of fixed assets, and other reasonably foreseeable~~
 1654 ~~needs of the business or activity, and~~

1655 2. The extent to which the remaining net cash receipts are
 1656 accounted for as principal or income in the fiduciary's ~~trust's~~
 1657 ~~or estate's~~ general accounting records for the trust.

1658 (b) May make a determination under paragraph (a)
 1659 separately and differently from the fiduciary's decisions
 1660 concerning distributions of income or principal; and

1661 (c) Shall account for the net amount received from the
 1662 sale of an asset of ~~If a fiduciary sells assets of~~ the business
 1663 or other activity, other than a sale in the ordinary course of
 1664 the business or other activity, ~~the fiduciary must account for~~
 1665 ~~the net amount received~~ as principal in the fiduciary's ~~trust's~~
 1666 ~~or estate's~~ general accounting records for the trust, to the
 1667 extent the fiduciary determines that the net amount received is
 1668 no longer required in the conduct of the business or other
 1669 activity.

1670 (4)-(3) Activities for which a fiduciary may account
 1671 separately under this section ~~maintain separate accounting~~
 1672 ~~records~~ include:

1673 (a) Retail, manufacturing, service, and other traditional
 1674 business activities.

1675 (b) Farming.

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- 1676 (c) Raising and selling livestock and other animals.
- 1677 (d) Managing ~~Management of~~ rental properties.
- 1678 (e) Extracting ~~Extraction of~~ minerals and other natural
 1679 resources.
- 1680 (f) Growing and cutting timber ~~operations~~.
- 1681 (g) An activity ~~Activities~~ to which s. 738.414, s.
 1682 738.415, or s. 738.416 ~~s. 738.607~~ applies.
- 1683 (h) Any other business conducted by the fiduciary.
- 1684 Section 23. Section 738.404, Florida Statutes, is created
 1685 to read:
- 1686 738.404 Principal receipts.—A fiduciary shall allocate to
 1687 principal:
- 1688 (1) To the extent not allocated to income under this
 1689 chapter, an asset received from any of the following:
- 1690 (a) An individual during the individual's lifetime.
- 1691 (b) An estate.
- 1692 (c) A trust on termination of an income interest.
- 1693 (d) A payor under a contract naming the fiduciary as
 1694 beneficiary.
- 1695 (2) Except as otherwise provided in ss. 738.401-738.416,
 1696 money or other property received from the sale, exchange,
 1697 liquidation, or change in the form of a principal asset.
- 1698 (3) An amount recovered from a third party to reimburse
 1699 the fiduciary because of a disbursement described in s.
 1700 738.502(1) or for another reason to the extent not based on the

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1701 loss of income.

1702 (4) Proceeds of property taken by eminent domain except

1703 that proceeds awarded for loss of income in an accounting period

1704 are income if a current income beneficiary had a mandatory

1705 income interest during the period.

1706 (5) Net income received in an accounting period during

1707 which there is no beneficiary to which a fiduciary may or must

1708 distribute income.

1709 (6) Other receipts as provided in ss. 738.408-738.416.

1710 Section 24. Section 738.405, Florida Statutes, is created

1711 to read:

1712 738.405 Rental property.—To the extent that a fiduciary

1713 does not account for the management of rental property as a

1714 business under s. 738.403, the fiduciary shall allocate to

1715 income an amount received as rent of real or personal property,

1716 including an amount received for cancellation or renewal of a

1717 lease. An amount received as a refundable deposit, including a

1718 security deposit or a deposit that is to be applied as rent for

1719 future periods:

1720 (1) Must be added to principal and held subject to the

1721 terms of the lease, except as otherwise provided by law other

1722 than this chapter; and

1723 (2) Is not allocated to income or available for

1724 distribution to a beneficiary until the fiduciary's contractual

1725 obligations have been satisfied with respect to that amount.

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1726 Section 25. Section 738.406, Florida Statutes, is created
 1727 to read:

1728 738.406 Receipt on obligation to be paid in money.-

1729 (1) This section does not apply to an obligation to which
 1730 s. 738.409, s. 738.410, s. 738.411, s. 738.412, s. 738.414, s.
 1731 738.415, or s. 738.416 applies.

1732 (2) A fiduciary shall allocate to income, without
 1733 provision for amortization of premium, an amount received as
 1734 interest on an obligation to pay money to the fiduciary,
 1735 including an amount received as consideration for prepaying
 1736 principal.

1737 (3) A fiduciary shall allocate to principal an amount
 1738 received from the sale, redemption, or other disposition of an
 1739 obligation to pay money to the fiduciary.

1740 (4) A fiduciary shall allocate to income the increment in
 1741 value of a bond or other obligation for the payment of money
 1742 bearing no stated interest but payable or redeemable, at
 1743 maturity or another future time, in an amount that exceeds the
 1744 amount in consideration of which it was issued. If the increment
 1745 in value accrues and becomes payable pursuant to a fixed
 1746 schedule of appreciation, it may be distributed to the
 1747 beneficiary who was the income beneficiary at the time of
 1748 increment from the first principal cash available or, if none is
 1749 available, when the increment is realized by sale, redemption,
 1750 or other disposition. If unrealized increment is distributed as

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1751 income but out of principal, the principal must be reimbursed
 1752 for the increment when realized. If, in the reasonable judgment
 1753 of the fiduciary, exercised in good faith, the ultimate payment
 1754 of the bond principal is in doubt, the fiduciary may withhold
 1755 the payment of incremental interest to the income beneficiary.

1756 Section 26. Section 738.407, Florida Statutes, is created
 1757 to read:

1758 738.407 Insurance policy or contract.—

1759 (1) This section does not apply to a contract to which s.
 1760 738.409 applies.

1761 (2) Except as otherwise provided in subsection (3), a
 1762 fiduciary shall allocate to principal the proceeds of a life
 1763 insurance policy or other contract received by the fiduciary as
 1764 beneficiary, including a contract that insures against damage
 1765 to, destruction of, or loss of title to an asset. The fiduciary
 1766 shall allocate dividends on an insurance policy to income to the
 1767 extent that premiums on the policy are paid from income and to
 1768 principal to the extent premiums on the policy are paid from
 1769 principal.

1770 (3) A fiduciary shall allocate to income proceeds of a
 1771 contract that insures the fiduciary against loss of:

1772 (a) Occupancy or other use by a current income
 1773 beneficiary;

1774 (b) Income; or

1775 (c) Subject to s. 738.403, profits from a business.

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1776 Section 27. Section 738.408, Florida Statutes, is created
 1777 to read:

1778 738.408 Insubstantial allocation not required.-

1779 (1) If a fiduciary determines that an allocation between
 1780 income and principal required by s. 738.409, s. 738.410, s.
 1781 738.411, s. 738.412, or s. 738.415 is insubstantial, the
 1782 fiduciary may allocate the entire amount to principal, unless s.
 1783 738.203(5) applies to the allocation.

1784 (2) A fiduciary may presume an allocation is insubstantial
 1785 under subsection (1) if:

1786 (a) The amount of the allocation would increase or
 1787 decrease net income in an accounting period, as determined
 1788 before the allocation, by less than 10 percent; and

1789 (b) The asset producing the receipt to be allocated has a
 1790 carrying value less than 10 percent of the total carrying value
 1791 of the assets owned or held by the fiduciary at the beginning of
 1792 the accounting period.

1793 (3) The power to make a determination under subsection (1)
 1794 may be:

1795 (a) Exercised by a cofiduciary in the manner described in
 1796 s. 738.203(6); or

1797 (b) Released or delegated for a reason described in s.
 1798 738.203(7) and in the manner described in s. 738.203(8).

1799 Section 28. Section 738.409, Florida Statutes, is created
 1800 to read:

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1801 738.409 Deferred compensation, annuity, or similar
 1802 payment.—
 1803 (1) As used in this section, the term:
 1804 (a) "Internal income of the separate fund" means the
 1805 amount determined under subsection (2).
 1806 (b) "Marital trust" means a trust:
 1807 1. Of which the settlor's surviving spouse is the only
 1808 current income beneficiary and is entitled to a distribution of
 1809 all the current net income of the trust; and
 1810 2. That qualifies for a marital deduction with respect to
 1811 the settlor's estate under the Internal Revenue Code or
 1812 comparable law of any state because:
 1813 a. An election to qualify for a marital deduction under s.
 1814 2056(b) (7) of the Internal Revenue Code has been made;
 1815 b. The trust qualified for a marital deduction under s.
 1816 2056(b) (5) of the Internal Revenue Code; or
 1817 c. The trust otherwise qualifies for a marital deduction.
 1818 (c) "Nonseparate fund" means an annuity, a deferred
 1819 compensation plan, a pension plan, or other fund for which the
 1820 value of the participant's or account owner's right to receive
 1821 benefits can be determined only by the occurrence of a date or
 1822 event as defined in the instrument governing the fund.
 1823 (d) "Payment" means an amount a fiduciary may receive over
 1824 a fixed number of years or during the life of one or more
 1825 individuals because of services rendered or property transferred

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1826 to the payor in exchange for future amounts the fiduciary may
1827 receive. The term includes an amount received in money or
1828 property from the payor's general assets or from a separate fund
1829 created by the payor.

1830 (e) "Percent calculated" means a percent equal to the rate
1831 determined under s. 7520 of the Internal Revenue Code in effect
1832 for the month preceding the beginning of the accounting period;
1833 however, if the percent calculated exceeds 5 percent, it must be
1834 reduced to 5 percent, and if the percent calculated is less than
1835 3 percent, it must be increased to 3 percent. Notwithstanding
1836 the preceding sentence, a fiduciary who is an independent person
1837 as defined in s. 738.102 may set the percent calculated at a
1838 percentage no less than 3 percent and no greater than 5 percent.

1839 (f) "Separate fund" includes a private or commercial
1840 annuity, an individual retirement account, and a pension,
1841 profit-sharing, stock-bonus, stock ownership plan, or other
1842 deferred compensation fund holding assets exclusively for the
1843 benefit of a participant or account owner.

1844 (2) For each accounting period, the following rules apply
1845 to a separate fund:

1846 (a) The fiduciary may determine the internal income of the
1847 separate fund as if the separate fund were a trust subject to
1848 this chapter.

1849 (b) Alternatively, the fiduciary may deem the internal
1850 income of the separate fund to equal the percent calculated of

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1851 the value of the separate fund according to the most recent
1852 statement of value preceding the beginning of the accounting
1853 period. The fiduciary is not liable for good faith reliance upon
1854 any valuation supplied by the person or persons in possession of
1855 the fund. If the fiduciary makes or terminates an election under
1856 this paragraph, the fiduciary must make such disclosure in a
1857 trust disclosure document that satisfies the requirements of s.
1858 736.1008(4)(c).

1859 (c) If the fiduciary cannot determine the value of the
1860 separate fund under paragraph (b), the value of the separate
1861 fund is deemed to equal the present value of the expected future
1862 payments as determined under s. 7520 of the Internal Revenue
1863 Code for the month preceding the beginning of the accounting
1864 period for which the computation is made.

1865 (d) The fiduciary may elect the method of determining the
1866 income of the fund pursuant to this subsection and may change
1867 the method of determining income of the fund for any future
1868 accounting period.

1869 (3) A fiduciary shall allocate a payment received from a
1870 separate fund during an accounting period to income, to the
1871 extent of the internal income of the separate fund during the
1872 period, and allocate the balance to principal.

1873 (4) The fiduciary of a marital trust shall:

1874 (a) Withdraw from a separate fund the amount the current
1875 income beneficiary of the trust requests the fiduciary to

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1876 withdraw, not greater than the amount by which the internal
 1877 income of the separate fund during the accounting period exceeds
 1878 the amount the fiduciary otherwise receives from the separate
 1879 fund during the period.

1880 (b) Transfer from principal to income the amount the
 1881 current income beneficiary requests the fiduciary to transfer,
 1882 but not greater than the amount by which the internal income of
 1883 the separate fund during the period exceeds the amount the
 1884 fiduciary receives from the separate fund during the period
 1885 after the application of paragraph (a).

1886 (c) Distribute to the current income beneficiary as
 1887 income:

1888 1. The amount of the internal income of the separate fund
 1889 received or withdrawn during the period; and

1890 2. The amount transferred from principal to income under
 1891 paragraph (b).

1892 (5) For a trust, other than a marital trust, of which one
 1893 or more current income beneficiaries are entitled to a
 1894 distribution of all the current net income, the fiduciary shall
 1895 transfer from principal to income the amount by which the
 1896 internal income of the separate fund during the accounting
 1897 period exceeds the amount the fiduciary receives from the
 1898 separate fund during the period.

1899 (6) The fiduciary of a nonseparate fund shall calculate
 1900 internal income of the fund as the percent calculated of the

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1901 present value of the right to receive the remaining payments as
 1902 determined under s. 7520(a)(2) of the Internal Revenue Code for
 1903 the month preceding the beginning of the accounting period.

1904 (7) If a fiduciary owns a separate fund or a nonseparate
 1905 fund before January 1, 2025, the fiduciary may determine
 1906 internal income, allocate payments, and account for unwithdrawn
 1907 internal income as provided in this section or in the manner
 1908 used by the fiduciary before January 1, 2025. Such fiduciary is
 1909 not required to consider subsection (5). If the fiduciary
 1910 acquires a separate fund or a nonseparate fund on or after
 1911 January 1, 2025, the fiduciary must calculate internal income,
 1912 allocate payments, and account for unwithdrawn internal income
 1913 as provided in this section.

1914 Section 29. Section 738.603, Florida Statutes, is
 1915 transferred, renumbered as section 738.410, Florida Statutes,
 1916 and amended to read:

1917 738.410 ~~738.603~~ Liquidating asset.—

1918 (1) As used in ~~For purposes of~~ this section, the term
 1919 "liquidating asset" means an asset whose value ~~the value of~~
 1920 ~~which~~ will diminish or terminate because the asset is expected
 1921 to produce receipts for a ~~period of~~ limited time duration. The
 1922 term includes a leasehold, patent, copyright, royalty right, and
 1923 right to receive payments during a period of ~~for~~ more than 1
 1924 year under an arrangement that does not provide for the payment
 1925 of interest on the unpaid balance. ~~The term does not include a~~

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1926 ~~payment subject to s. 738.602, resources subject to s. 738.604,~~
 1927 ~~timber subject to s. 738.605, an activity subject to s. 738.607,~~
 1928 ~~an asset subject to s. 738.608, or any asset for which the~~
 1929 ~~fiduciary establishes a reserve for depreciation under s.~~
 1930 ~~738.703.~~

1931 (2) This section does not apply to a receipt that is
 1932 subject to s. 738.401, s. 738.409, s. 738.411, s. 738.412, s.
 1933 738.414, s. 738.415, s. 738.416, or s. 738.503.

1934 (3) A fiduciary shall allocate to income a receipt
 1935 produced by a liquidating asset to the extent that the receipt
 1936 does not exceed 5 percent of the receipts from the carrying
 1937 value of the asset at the beginning of the accounting period and
 1938 allocate a liquidating asset and the balance to principal the
 1939 balance of the receipt.

1940 (4) The amount ~~Amounts~~ allocated to principal shall reduce
 1941 the carrying value of the liquidating asset, but not below zero.
 1942 Amounts received in excess of the remaining carrying value must
 1943 be allocated to principal.

1944 Section 30. Section 738.604, Florida Statutes, is
 1945 transferred, renumbered as section 738.411, Florida Statutes,
 1946 and amended to read:

1947 738.411 ~~738.604~~ Minerals, water, and other natural
 1948 resources.—

1949 (1) To the extent that ~~If~~ a fiduciary does not account for
 1950 a receipt ~~accounts for receipts~~ from an interest in minerals,

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1951 water, or other natural resources as a business under s. 738.403
 1952 ~~pursuant to this section, the fiduciary shall allocate the~~
 1953 ~~receipt such receipts as follows:~~

1954 (a) To income, to the extent received:

1955 1. If received As nominal delay rental or nominal annual
 1956 rent on a lease;

1957 2. As a factor for interest or the equivalent of interest
 1958 under an agreement creating a production payment; or

1959 3. On account of an interest in renewable water;~~a~~
 1960 ~~receipt shall be allocated to income.~~

1961 (b) To principal, if received from a production payment, a
 1962 ~~receipt shall be allocated to income if and to the extent that~~
 1963 ~~subparagraph (a)2. does not apply; or the agreement creating the~~
 1964 ~~production payment provides a factor for interest or its~~
 1965 ~~equivalent. The balance shall be allocated to principal.~~

1966 (c) Between income and principal equitably, to the extent
 1967 received:

1968 1. On account of an interest in nonrenewable water;

1969 2. If an amount received As a royalty, shut-in-well
 1970 payment, take-or-pay payment, or bonus; or,~~or delay rental is~~
 1971 ~~more than nominal, 90 percent shall be allocated to principal~~
 1972 ~~and the balance to income.~~

1973 3.(d) If an amount is received From a working interest or
 1974 any other interest not provided for in paragraph (a) or,
 1975 paragraph (b) or subparagraph 1. or subparagraph 2.~~or~~

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1976 | ~~paragraph (c), 90 percent of the net amount received shall be~~
 1977 | ~~allocated to principal and the balance to income.~~

1978 | (2) ~~An amount received on account of an interest in water~~
 1979 | ~~that is renewable shall be allocated to income. If the water is~~
 1980 | ~~not renewable, 90 percent of the amount shall be allocated to~~
 1981 | ~~principal and the balance to income.~~

1982 | ~~(3)~~ This section ~~chapter~~ applies to an interest owned or
 1983 | held by a fiduciary regardless of whether ~~or not~~ a settlor
 1984 | ~~decedent or donor~~ was extracting minerals, water, or other
 1985 | natural resources before the fiduciary owned or held the
 1986 | ~~interest became subject to the trust or estate.~~

1987 | (3) An allocation of a receipt under paragraph (1)(c) is
 1988 | presumed to be equitable if the amount allocated to principal is
 1989 | equal to the amount allowed by the Internal Revenue Code as a
 1990 | deduction for depletion of the interest.

1991 | (4) If a fiduciary ~~trust or estate~~ owns or holds an
 1992 | interest in minerals, water, or other natural resources before
 1993 | January 1, 2025 ~~on January 1, 2003~~, the fiduciary may allocate
 1994 | receipts from the interest as provided in this section ~~chapter~~
 1995 | or in the manner used by the fiduciary before January 1, 2025
 1996 | ~~January 1, 2003~~. If the fiduciary ~~trust or estate~~ acquires an
 1997 | interest in minerals, water, or other natural resources on or
 1998 | after January 1, 2025 ~~January 1, 2003~~, the fiduciary must ~~shall~~
 1999 | allocate receipts from the interest as provided in this section
 2000 | ~~chapter~~.

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2001 Section 31. Section 738.605, Florida Statutes, is
 2002 transferred, renumbered as section 738.412, Florida Statutes,
 2003 and amended to read:

2004 738.412 ~~738.605~~ Timber.—

2005 (1) To the extent that ~~If~~ a fiduciary does not account
 2006 ~~accounts~~ for receipts from the sale of timber and related
 2007 products as a business under s. 738.403 ~~pursuant to this~~
 2008 ~~section,~~ the fiduciary shall allocate the ~~such~~ net receipts ~~as~~
 2009 ~~follows:~~

2010 (a) To income, to the extent that the amount of timber cut
 2011 ~~removed~~ from the land does not exceed the rate of growth of the
 2012 timber ~~during the accounting periods in which a beneficiary has~~
 2013 ~~a mandatory income interest;~~

2014 (b) To principal, to the extent that the amount of timber
 2015 cut removed from the land exceeds the rate of growth of the
 2016 timber or the net receipts are from the sale of standing timber;

2017 (c) ~~To or~~ Between income and principal if the net receipts
 2018 are from the lease of land used for growing and cutting timber
 2019 ~~timberland~~ or from a contract to cut timber from land ~~owned by a~~
 2020 ~~trust or estate~~ by determining the amount of timber cut removed
 2021 from the land under the lease or contract and applying the rules
 2022 in paragraphs (a) and (b); or

2023 (d) To principal, to the extent that advance payments,
 2024 bonuses, and other payments are not allocated under ~~pursuant to~~
 2025 paragraph (a), paragraph (b), or paragraph (c).

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2026 (2) In determining net receipts to be allocated under
 2027 ~~pursuant to~~ subsection (1), a fiduciary shall deduct and
 2028 transfer to principal a reasonable amount for depletion.

2029 (3) This section ~~chapter~~ applies to land owned or held by
 2030 a fiduciary regardless of whether or not a settlor decedent or
 2031 ~~donor~~ was cutting ~~harvesting~~ timber from the land property
 2032 before the fiduciary owned or held the property ~~became subject~~
 2033 ~~to the trust or estate.~~

2034 (4) If a fiduciary ~~trust or estate~~ owns or holds an
 2035 interest in land used for growing and cutting timber before
 2036 January 1, 2025 ~~timberland on January 1, 2003~~, the fiduciary may
 2037 allocate net receipts from the sale of timber and related
 2038 products as provided in this section ~~chapter~~ or in the manner
 2039 used by the fiduciary before January 1, 2025 ~~January 1, 2003~~. If
 2040 the fiduciary ~~trust or estate~~ acquires an interest in land used
 2041 for growing and cutting timber on or after January 1, 2025
 2042 ~~timberland after January 1, 2003~~, the fiduciary must ~~shall~~
 2043 allocate net receipts from the sale of timber and related
 2044 products as provided in this section ~~chapter~~.

2045 Section 32. Section 738.606, Florida Statutes, is
 2046 transferred, renumbered as section 738.413, Florida Statutes,
 2047 and amended to read:

2048 738.413 ~~738.606~~ Marital deduction property not productive
 2049 of income.—

2050 (1) If a trust received property for which a gift or

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2051 estate tax marital deduction was under the Internal Revenue Code
 2052 or comparable law of any state is allowed, for all or if part of
 2053 a trust received property satisfying, or if assets are
 2054 transferred to a trust that satisfies the requirements of s.
 2055 732.2025(2) (a) and (c), and such property has assets have been
 2056 used in whole or in part to satisfy an election by a surviving
 2057 spouse under s. 732.2125, and the settlor's spouse holds a
 2058 mandatory income interest in the trust, the spouse may require
 2059 the trustee, to the extent that the trust assets otherwise do
 2060 consist of property that, in the aggregate, does not provide the
 2061 spouse with sufficient income from or use of the trust assets to
 2062 qualify for the deduction, or to satisfy an election by a
 2063 surviving spouse under s. 732.2125, to make the property
 2064 productive of income within a reasonable time. The trustee may:
 2065 (a) Convert property to property productive of income
 2066 within a reasonable time;
 2067 (b) Exercise the power to adjust under s. 738.203;
 2068 (c) Exercise the power to convert to or from a unitrust
 2069 under s. 738.303; or
 2070 (d) Exercise the fiduciary's authority under the terms of
 2071 the trust to otherwise provide the surviving spouse with
 2072 sufficient income from the trust assets, or the use of the trust
 2073 assets, to qualify for the marital deduction, or to satisfy an
 2074 election by a surviving spouse under s. 732.2125.
 2075 (2) The trustee may decide which action or combination of

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2076 actions listed in subsection (1) to take.

2077 (3) Subsection (1) shall apply, ~~and if amounts the trustee~~
 2078 ~~transfers from principal to income under s. 738.104 and~~
 2079 ~~distributes to the spouse from principal pursuant to the terms~~
 2080 ~~of the trust are insufficient to provide the spouse with the~~
 2081 ~~beneficial enjoyment required to obtain the marital deduction,~~
 2082 ~~even though, in the case of an elective share trust~~ under s.
 2083 732.2025(2), a marital deduction is not made or is only
 2084 partially made, ~~the spouse may require the trustee of such~~
 2085 ~~marital trust or elective share trust to make property~~
 2086 ~~productive of income, convert property within a reasonable time,~~
 2087 ~~or exercise the power conferred by ss. 738.104 and 738.1041.~~

2088 (4) The terms of a trust as defined in s. 738.102 may not
 2089 supersede this section unless such terms explicitly reference
 2090 this section ~~The trustee may decide which action or combination~~
 2091 ~~of actions to take.~~

2092 ~~(2) In cases not governed by subsection (1), proceeds from~~
 2093 ~~the sale or other disposition of an asset are principal without~~
 2094 ~~regard to the amount of income the asset produces during any~~
 2095 ~~accounting period.~~

2096 Section 33. Section 738.607, Florida Statutes, is
 2097 transferred, renumbered as section 738.414, Florida Statutes,
 2098 and amended to read:

2099 738.414 ~~738.607~~ Derivatives or ~~and~~ options.—

2100 (1) As used in ~~For purposes of~~ this section, the term

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2101 "derivative" means a contract, an ~~or financial~~ instrument, or
 2102 other arrangement, ~~or a combination of contracts, and financial~~
 2103 instruments, or other arrangements, of which the value, rights,
 2104 and obligations are, in whole or in part, dependent on or
 2105 derived from an underlying ~~which gives a trust the right or~~
 2106 ~~obligation to participate in some or all changes in the price of~~
 2107 ~~a tangible or intangible asset, a~~ ~~or~~ group of tangible or
 2108 intangible assets, an index, or an occurrence of an event. The
 2109 term includes stocks, fixed income securities, and financial
 2110 instruments and arrangements based on indices, commodities,
 2111 interest rates, weather-related events, and credit-default
 2112 events ~~assets, or changes in a rate, an index of prices or~~
 2113 ~~rates, or other market indicator for an asset or a group of~~
 2114 ~~assets.~~

2115 (2) To the extent that a fiduciary does not account for a
 2116 transaction in derivatives as a business under s. 738.403 ~~for~~
 2117 ~~transactions in derivatives,~~ the fiduciary shall allocate 10
 2118 percent of ~~to principal~~ receipts from the transaction and 10
 2119 percent of ~~and~~ disbursements made in connection with the
 2120 transaction to income and allocate the balance to principal
 2121 ~~those transactions.~~

2122 (3) Subsection (4) applies if:

2123 (a) A fiduciary:

2124 1. If a fiduciary Grants an option to buy property from a
 2125 the trust, regardless of ~~or estate~~ whether ~~or not~~ the trust ~~or~~

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2126 ~~estate~~ owns the property when the option is granted;i~~r~~

2127 2. Grants an option that permits another person to sell

2128 property to the trust;i or

2129 3. ~~estate, or~~ Acquires an option to buy property for the

2130 trust or ~~estate or~~ an option to sell an asset owned by the trust

2131 ~~or estate~~;i~~r~~ and

2132 (b) The fiduciary or other owner of the asset is required

2133 to deliver the asset if the option is exercised,~~an amount~~

2134 ~~received for granting the option shall be allocated to~~

2135 ~~principal. An amount paid to acquire the option shall be paid~~

2136 ~~from principal.~~

2137 (4) If this subsection applies, the fiduciary must

2138 allocate 10 percent to income and allocate the balance to

2139 principal of the following amounts:

2140 (a) An amount received for granting the option;

2141 (b) An amount paid to acquire the option; and

2142 (c) A Gain or loss realized on ~~upon~~ the exercise,

2143 exchange, settlement, offset, closing, or expiration of the

2144 option ~~of an option, including an option granted to a grantor of~~

2145 ~~the trust or estate for services rendered, shall be allocated to~~

2146 ~~principal.~~

2147 Section 34. Section 738.608, Florida Statutes, is

2148 transferred, renumbered as section 738.415, Florida Statutes,

2149 and amended to read:

2150 738.415 ~~738.608~~ Asset-backed securities.-

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2151 (1) Except as otherwise provided in subsection (2), a
 2152 fiduciary shall allocate to income a receipt from or related to
 2153 an asset-backed security, as defined in s. 738.102, to the
 2154 extent that the payor identifies the payment as being from ~~For~~
 2155 ~~purposes of this section, "asset-backed security" means an asset~~
 2156 ~~the value of which is based upon the right given the owner to~~
 2157 ~~receive distributions from the proceeds of financial assets that~~
 2158 ~~provide collateral for the security. The term includes an asset~~
 2159 ~~that gives the owner the right to receive from the collateral~~
 2160 ~~financial assets only the interest or other current return and~~
 2161 allocate to principal the balance of the receipt ~~or only the~~
 2162 ~~proceeds other than interest or current return. The term does~~
 2163 ~~not include an asset to which s. 738.401 or s. 738.602 applies.~~

2164 (2) If a fiduciary receives one or more payments in
 2165 exchange for part or all of the fiduciary's interest in an
 2166 asset-backed security, including a liquidation or redemption of
 2167 the fiduciary's interest in the security ~~trust or estate~~
 2168 ~~receives a payment from interest or other current return and~~
 2169 ~~from other proceeds of the collateral financial assets, the~~
 2170 fiduciary ~~must~~ shall allocate to income 10 percent of receipts
 2171 from the transaction and 10 percent of disbursements made in
 2172 connection with the transaction, and allocate to principal the
 2173 ~~portion of the payment which the payor identifies as being from~~
 2174 ~~interest or other current return and allocate the balance of the~~
 2175 receipts and disbursements ~~payment to principal.~~

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2176 ~~(3) If a trust or estate receives one or more payments in~~
 2177 ~~exchange for the trust's or estate's entire interest in an~~
 2178 ~~asset-backed security during a single accounting period, the~~
 2179 ~~fiduciary shall allocate the payments to principal. If a payment~~
 2180 ~~is one of a series of payments that will result in the~~
 2181 ~~liquidation of the trust's or estate's interest in the security~~
 2182 ~~over more than a single accounting period, the fiduciary shall~~
 2183 ~~allocate 10 percent of the payment to income and the balance to~~
 2184 ~~principal.~~

2185 Section 35. Section 738.416, Florida Statutes, is created
 2186 to read:

2187 738.416 Other financial instrument or arrangement.—A
 2188 fiduciary shall allocate receipts from or related to a financial
 2189 instrument or arrangement not otherwise addressed by this
 2190 chapter. The allocation must be consistent with ss. 738.414 and
 2191 738.415.

2192 Section 36. Section 738.501, Florida Statutes, is amended
 2193 to read:

2194 (Substantial rewording of section. See
 2195 s. 738.501, F.S., for present text.)

2196 738.501 Disbursement from income.—Subject to s. 738.504,
 2197 and except as otherwise provided in s. 738.601(3)(b) or (c), a
 2198 fiduciary shall disburse from income:

2199 (1) One-half of:

2200 (a) The regular compensation of the fiduciary and of any

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2201 person providing investment advisory, custodial, or other
 2202 services to the fiduciary to the extent that income is
 2203 sufficient; and

2204 (b) An expense for an accounting, judicial or nonjudicial
 2205 proceeding, or other matter that involves both income and
 2206 successive interests to the extent income is sufficient.

2207 (2) The balance of the disbursements described in
 2208 subsection (1), to the extent that a fiduciary who is an
 2209 independent person determines that making those disbursements
 2210 from income would be in the interests of the beneficiaries.

2211 (3) Any other ordinary expense incurred in connection with
 2212 administration, management, or preservation of property and
 2213 distribution of income, including interest, an ordinary repair,
 2214 a regularly recurring tax assessed against principal, and an
 2215 expense of an accounting, judicial or nonjudicial proceeding, or
 2216 other matter that involves primarily an income interest, to the
 2217 extent that income is sufficient.

2218 (4) A premium on insurance covering loss of a principal
 2219 asset or income from or use of the asset.

2220 Section 37. Section 738.502, Florida Statutes, is amended
 2221 to read:

2222 (Substantial rewording of section. See
 2223 s. 738.502, F.S., for present text.)

2224 738.502 Disbursement from principal.—

2225 (1) Subject to s. 738.505, and except as otherwise

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2226 provided in s. 738.601(3)(b), a fiduciary shall disburse all of
 2227 the following from principal:

2228 (a) The balance of the disbursements described in s.
 2229 738.501(1) and (3), after application of s. 738.501(2).

2230 (b) The fiduciary's compensation calculated on principal
 2231 as a fee for acceptance, distribution, or termination.

2232 (c) A payment of an expense to prepare for or execute a
 2233 sale or other disposition of property.

2234 (d) A payment on the principal of a trust debt.

2235 (e) A payment of an expense of an accounting, judicial or
 2236 nonjudicial proceeding, or other matter that involves primarily
 2237 principal, including a proceeding to construe the terms of the
 2238 trust or protect property.

2239 (f) A payment of a premium for insurance, including title
 2240 insurance, not described in s. 738.501(4) of which the fiduciary
 2241 is the owner and beneficiary.

2242 (g) A payment of estate, inheritance, and other transfer
 2243 taxes, including penalties, apportioned to the trust.

2244 (h) A payment related to environmental matters including:

2245 1. Reclamation;

2246 2. Assessing environmental conditions;

2247 3. Remedying and removing environmental contamination;

2248 4. Monitoring remedial activities and the release of

2249 substances;

2250 5. Preventing future releases of substances;

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2251 6. Collecting amounts from persons liable or potentially
 2252 liable for the costs of the activities described in
 2253 subparagraphs 1.-5.;

2254 7. Penalties imposed under environmental laws or
 2255 regulations;

2256 8. Other actions to comply with environmental laws or
 2257 regulations;

2258 9. Statutory or common law claims by third parties; and

2259 10 Defending claims based on environmental matters.

2260 (i) A payment of a premium for insurance for matters
 2261 described in paragraph (h).

2262 (2) If a principal asset is encumbered with an obligation
 2263 that requires income from the asset to be paid directly to a
 2264 creditor, the fiduciary must transfer from principal to income
 2265 an amount equal to the income paid to the creditor in reduction
 2266 of the principal balance of the obligation.

2267 Section 38. Section 738.503, Florida Statutes, is amended
 2268 to read:

2269 (Substantial rewording of section. See

2270 s. 738.503, F.S., for present text.)

2271 738.503 Transfers from income to principal for
 2272 depreciation.—

2273 (1) For purposes of this section, "depreciation" means a
 2274 reduction in value due to wear, tear, decay, corrosion, or
 2275 gradual obsolescence of a tangible asset having a useful life of

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2276 more than 1 year.

2277 (2) A fiduciary may transfer to principal a reasonable

2278 amount of the net cash receipts from a principal asset that is

2279 subject to depreciation but may not transfer any amount for

2280 depreciation:

2281 (a) Of the part of real property used or available for use

2282 by a beneficiary as a residence;

2283 (b) Of tangible personal property held or made available

2284 for the personal use or enjoyment of a beneficiary; or

2285 (c) Under this section, to the extent that the fiduciary

2286 accounts:

2287 1. Under s. 738.410 for the asset; or

2288 2. Under s. 738.403 for the business or other activity in

2289 which the asset is used.

2290 (3) An amount transferred to principal under this section

2291 need not be separately held.

2292 Section 39. Section 738.504, Florida Statutes, is amended

2293 to read:

2294 (Substantial rewording of section. See

2295 s. 738.504, F.S., for present text.)

2296 738.504 Reimbursement of income from principal.—

2297 (1) If a fiduciary makes or expects to make an income

2298 disbursement described in subsection (2), the fiduciary may

2299 transfer an appropriate amount from principal to income in one

2300 or more accounting periods to reimburse income.

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2301 (2) To the extent that the fiduciary has not been and does
 2302 not expect to be reimbursed by a third party, income
 2303 disbursements to which subsection (1) applies include:

2304 (a) An amount chargeable to principal but paid from income
 2305 because principal is illiquid;

2306 (b) A disbursement made to prepare property for sale,
 2307 including improvements and commissions; and

2308 (c) A disbursement described in s. 738.502(1).

2309 (3) If an asset whose ownership gives rise to an income
 2310 disbursement becomes subject to a successive interest after an
 2311 income interest ends, the fiduciary may continue to make
 2312 transfers under subsection (1).

2313 Section 40. Section 738.704, is transferred, renumbered as
 2314 section 738.505, Florida Statutes, and amended to read:

2315 738.505 ~~738.704~~ Reimbursement of principal from income
 2316 ~~Transfers from income to reimburse principal.-~~

2317 (1) If a fiduciary makes or expects to make a principal a
 2318 ~~principal~~ disbursement described in subsection (2) ~~this section,~~
 2319 the fiduciary may transfer an appropriate amount from income to
 2320 principal in one or more accounting periods to reimburse
 2321 principal or to provide a reserve for future principal
 2322 disbursements.

2323 ~~(2) Principal disbursements to which subsection (1)~~
 2324 ~~applies include the following, but only~~ To the extent that a the
 2325 fiduciary has not been and does not expect to be reimbursed by a

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2326 third party, principal disbursements to which subsection (1)
 2327 applies include:

2328 (a) An amount chargeable to income but paid from principal
 2329 because income is not sufficient; ~~the amount is unusually large.~~

2330 (b) The cost of an improvement to principal, whether a
 2331 change to an existing asset or the construction of a new asset,
 2332 including a special assessment; ~~Disbursements made to prepare~~
 2333 property for rental, including tenant allowances, leasehold
 2334 improvements, and broker's commissions.

2335 (c) A disbursement made to prepare property for rental,
 2336 including tenant allowances, leasehold improvements, and
 2337 commissions; ~~Disbursements described in s. 738.702(1)(g).~~

2338 (d) A periodic payment on an obligation secured by a
 2339 principal asset, to the extent the amount transferred from
 2340 income to principal for depreciation is less than the periodic
 2341 payment; and

2342 (e) A disbursement described in s. 738.502(1).

2343 (3) If an ~~the~~ asset whose ~~the~~ ownership of which gives
 2344 rise to a principal disbursement ~~the disbursements~~ becomes
 2345 subject to a successive ~~income~~ interest after an income interest
 2346 ends, the ~~a~~ fiduciary may continue to make transfers under
 2347 transfer amounts from income to principal as provided in
 2348 subsection (1).

2349 ~~(4) To the extent principal cash is not sufficient to pay~~
 2350 ~~the principal balance of payments due on mortgaged property,~~

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2351 ~~income may be applied to such payment in order to avoid a~~
 2352 ~~default on any mortgage or security interest securing the~~
 2353 ~~property. Income shall be reimbursed for such payments out of~~
 2354 ~~the first available principal cash. If the asset the ownership~~
 2355 ~~of which gives rise to the disbursements described in this~~
 2356 ~~subsection becomes subject to a successive income interest after~~
 2357 ~~an income interest ends, all rights of the initial income~~
 2358 ~~interest shall lapse, and amounts remaining due from principal~~
 2359 ~~shall not be a lien on the assets of the trust.~~

2360 Section 41. Section 738.705, Florida Statutes, is
 2361 transferred, renumbered as section 738.506, Florida Statutes,
 2362 and amended to read:

2363 738.506 ~~738.705~~ Income taxes.—

2364 (1) A tax required to be paid by a fiduciary which is
 2365 based on receipts allocated to income must ~~shall~~ be paid from
 2366 income.

2367 (2) A tax required to be paid by a fiduciary which is
 2368 based on receipts allocated to principal must ~~shall~~ be paid from
 2369 principal, even if the tax is called an income tax by the taxing
 2370 authority.

2371 (3) Subject to subsection (4) and ss. 738.504, 738.505,
 2372 and 738.507, a tax required to be paid by a fiduciary on a the
 2373 ~~trust's or estate's~~ share of an entity's taxable income in an
 2374 accounting period must ~~shall~~ be paid from ~~proportionately~~:

2375 (a) ~~From~~ Income and principal proportionately to the

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2376 allocation between income and principal of ~~to the extent~~
 2377 receipts from the entity in the period ~~are allocated to income.~~

2378 ~~(b) From principal to the extent receipts from the entity~~
 2379 ~~are allocated to principal.~~

2380 ~~(c) From~~ Principal to the extent that the tax exceeds the
 2381 income taxes payable by the trust or estate exceed the total
 2382 receipts from the entity in the period.

2383 (4) After applying subsections (1), (2), and (3), a
 2384 fiduciary shall adjust income or principal receipts, to the
 2385 extent the taxes that the fiduciary pays are reduced because of
 2386 a deduction for a payment made to a beneficiary.

2387 (5) Subject to the limitations and excluded assets
 2388 provided under s. 736.08145, a reimbursement of state or federal
 2389 income tax elected to be made by a fiduciary pursuant to s.
 2390 736.08145 must be allocated and paid under paragraphs (3)(a) and

2391 ~~(b) After applying subsections (1)-(3), the fiduciary shall~~
 2392 ~~adjust income or principal receipts to the extent that the~~
 2393 ~~trust's or estate's income taxes are reduced, but not~~
 2394 ~~eliminated, because the trust or estate receives a deduction for~~
 2395 ~~payments made to a beneficiary. The amount distributable to that~~
 2396 ~~beneficiary as income as a result of this adjustment shall be~~
 2397 ~~equal to the cash received by the trust or estate, reduced, but~~
 2398 ~~not below zero, by the entity's taxable income allocable to the~~
 2399 ~~trust or estate multiplied by the trust's or estate's income tax~~
 2400 ~~rate. The reduced amount shall be divided by the difference~~

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2401 ~~between 1 and the trust's or estate's income tax rate in order~~
 2402 ~~to determine the amount distributable to that beneficiary as~~
 2403 ~~income before giving effect to other receipts or disbursements~~
 2404 ~~allocable to that beneficiary's interest.~~

2405 Section 42. Section 738.706, Florida Statutes, is
 2406 transferred, renumbered as section 738.507, Florida Statutes,
 2407 and amended to read:

2408 738.507 ~~738.706~~ Adjustment ~~Adjustments~~ between principal
 2409 and income because of taxes.—

2410 (1) A fiduciary may make an adjustment ~~adjustments~~ between
 2411 ~~principal and income~~ and principal to offset the shifting of
 2412 economic interests or tax benefits between current income
 2413 beneficiaries and successor ~~remainder~~ beneficiaries which arises
 2414 ~~arise~~ from:

2415 (a) An election or decision ~~Elections and decisions, other~~
 2416 ~~than those described in paragraph (b), that the fiduciary makes~~
 2417 ~~from time to time~~ regarding a tax matter, other than a decision
 2418 to claim an income tax deduction to which subsection (2) applies
 2419 ~~matters;~~

2420 (b) An income tax or ~~any~~ other tax ~~that is~~ imposed on ~~upon~~
 2421 the fiduciary or a beneficiary as a result of a transaction
 2422 involving the fiduciary or a distribution by ~~from~~ the fiduciary
 2423 ~~estate or trust; or~~

2424 (c) ~~The~~ Ownership by the fiduciary ~~an estate or trust~~ of
 2425 an interest in an entity a part of whose taxable income,

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2426 regardless of whether ~~or not~~ distributed, is includable in the
 2427 taxable income of the fiduciary estate, trust, or a beneficiary;
 2428 or

2429 (d) An election or decision a fiduciary makes to reimburse
 2430 any tax under s. 736.08145.

2431 (2) If the amount of an estate tax marital ~~deduction~~ or
 2432 charitable ~~contribution~~ deduction is reduced because a fiduciary
 2433 deducts an amount paid from principal for income tax purposes
 2434 instead of deducting it ~~such amount~~ for estate tax purposes,
 2435 and, as a result, estate taxes paid from principal are increased
 2436 and income taxes paid by a fiduciary or a ~~an estate, trust, or~~
 2437 beneficiary are decreased, the fiduciary shall charge each
 2438 ~~estate, trust, or~~ beneficiary that benefits from the decrease in
 2439 income tax to shall reimburse the principal from which the
 2440 increase in estate tax is paid. The total reimbursement must
 2441 ~~shall~~ equal the increase in the estate tax, to the extent that
 2442 the principal used to pay the increase would have qualified for
 2443 a marital ~~deduction~~ or charitable ~~contribution~~ deduction but for
 2444 the payment. The ~~proportionate~~ share of the reimbursement for
 2445 each fiduciary ~~estate, trust,~~ or beneficiary whose income taxes
 2446 are reduced must shall be the same as its ~~such estate's,~~
 2447 ~~trust's, or beneficiary's~~ proportionate share of the total
 2448 decrease in income tax. ~~An estate or trust shall reimburse~~
 2449 ~~principal from income.~~

2450 (3) A fiduciary that charges a beneficiary under

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2451 subsection (2) may offset the charge by obtaining payment from
 2452 the beneficiary, withholding an amount from future distributions
 2453 to the beneficiary, or adopting another method or combination of
 2454 methods.

2455 Section 43. Section 738.508, Florida Statutes, is created
 2456 to read:

2457 738.508 Apportionment of property expenses between tenant
 2458 and remainderman.—

2459 (1) For purposes of this section, the term:

2460 (a) "Remainderman" means the holder of the remainder
 2461 interests after the expiration of a tenant's estate in property.

2462 (b) "Tenant" means the holder of an estate for life or
 2463 term of years in real property or personal property, or both.

2464 (2) If a trust has not been created, expenses shall be
 2465 apportioned between the tenant and remainderman as follows:

2466 (a) The following expenses are allocated to and shall be
 2467 paid by the tenant:

2468 1. All ordinary expenses incurred in connection with the
 2469 administration, management, or preservation of the property,
 2470 including interest, ordinary repairs, regularly recurring taxes
 2471 assessed against the property, and expenses of a proceeding or
 2472 other matter that concerns primarily the tenant's estate or use
 2473 of the property.

2474 2. Recurring premiums on insurance covering the loss of
 2475 the property or the loss of income from or use of the property.

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2476 3. Any of the expenses described in subparagraph (b)3.
 2477 which are attributable to the use of the property by the tenant.

2478 (b) The following expenses are allocated to and shall be
 2479 paid by the remainderman:

2480 1. Payments on the principal of a debt secured by the
 2481 property, except to the extent that the debt is for expenses
 2482 allocated to the tenant.

2483 2. Expenses of a proceeding or other matter that concerns
 2484 primarily the title to the property, other than title to the
 2485 tenant's estate.

2486 3. Except as provided in subparagraph (a)3., expenses
 2487 related to environmental matters, including reclamation,
 2488 assessing environmental conditions, remedying and removing
 2489 environmental contamination, monitoring remedial activities and
 2490 the release of substances, preventing future releases of
 2491 substances, collecting amounts from persons liable or
 2492 potentially liable for the costs of such activities, penalties
 2493 imposed under environmental laws or regulations and other
 2494 payments made to comply with those laws or regulations,
 2495 statutory or common law claims by third parties, and defending
 2496 claims based on environmental matters.

2497 4. Extraordinary repairs.

2498 (c) If the tenant or remainderman incurred an expense for
 2499 the benefit of his or her own estate without consent or
 2500 agreement of the other, he or she must pay such expense in full.

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2501 (d) Except as provided in paragraph (c), the cost of, or
 2502 special taxes or assessments for, an improvement representing an
 2503 addition of value to property forming part of the principal
 2504 shall be paid by the tenant if the improvement is not reasonably
 2505 expected to outlast the estate of the tenant. In all other
 2506 cases, only a part shall be paid by the tenant while the
 2507 remainder shall be paid by the remainderman. The part payable by
 2508 the tenant is ascertainable by taking that percentage of the
 2509 total that is found by dividing the present value of the
 2510 tenant's estate by the present value of an estate of the same
 2511 form as that of the tenant, except that it is limited for a
 2512 period corresponding to the reasonably expected duration of the
 2513 improvement. The computation of present values of the estates
 2514 shall be made by using the rate determined under s. 7520(a)(2)
 2515 of the Internal Revenue Code then in effect and, in the case of
 2516 an estate for life, the official mortality tables then in effect
 2517 under s. 7520 of the Internal Revenue Code. Other evidence of
 2518 duration or expectancy may not be considered.

2519 (3) This section does not apply to the extent that it is
 2520 inconsistent with the instrument creating the estates, the
 2521 agreement of the parties, or the specific direction of the
 2522 Internal Revenue Code taxing or other applicable law.

2523 (4) The common law applicable to tenants and remaindermen
 2524 supplements this section, except as modified by this section or
 2525 other laws.

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2526 Section 44. Section 738.601, Florida Statutes, is amended
 2527 to read:

2528 (Substantial rewording of section. See
 2529 s. 738.601, F.S., for present text.)

2530 738.601 Determination and distribution of net income.—

2531 (1) This section applies when:

2532 (a) The death of an individual results in the creation of
 2533 an estate or trust; or

2534 (b) An income interest in a trust terminates, whether the
 2535 trust continues or is distributed.

2536 (2) A fiduciary of an estate or trust with an income
 2537 interest that terminates shall determine, under subsection (6)
 2538 and ss. 738.401-738.508 and 738.701-738.703, the amount of net
 2539 income and net principal receipts received from property
 2540 specifically given to a beneficiary. The fiduciary shall
 2541 distribute the net income and net principal receipts to the
 2542 beneficiary who is to receive the specific property.

2543 (3) A fiduciary shall determine the income and net income
 2544 of an estate or income interest in a trust which terminates,
 2545 other than the amount of net income determined under subsection
 2546 (2), under ss. 738.401-738.508 and 738.701-738.703, and by:

2547 (a) Including in net income all income from property used
 2548 or sold to discharge liabilities.

2549 (b) Paying from income or principal, in the fiduciary's
 2550 discretion, fees of attorneys, accountants, and fiduciaries;

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2551 court costs and other expenses of administration; and interest
 2552 on estate and inheritance taxes and other taxes imposed because
 2553 of the decedent's death, but the fiduciary may pay the expenses
 2554 from income of property passing to a trust for which the
 2555 fiduciary claims an estate tax marital or charitable deduction
 2556 under the Internal Revenue Code or comparable law of any state
 2557 only to the extent that:

2558 1. The payment of the expenses from income will not cause
 2559 the reduction or loss of the deduction; or

2560 2. The fiduciary makes an adjustment under s. 738.507(2);
 2561 and

2562 (c) Paying from principal other disbursements made or
 2563 incurred in connection with the settlement of the estate or the
 2564 winding up of an income interest that terminates, including:

2565 1. To the extent authorized by the decedent's will, the
 2566 terms of the trust, or applicable law, debts, funeral expenses,
 2567 disposition of remains, family allowances, estate and
 2568 inheritance taxes, and other taxes imposed because of the
 2569 decedent's death; and

2570 2. Related penalties apportioned by the decedent's will,
 2571 the terms of the trust, or applicable law to the estate or
 2572 income interest that terminates.

2573 (4) If a decedent's will or the terms of a trust provide
 2574 for the payment of interest or the equivalent of interest to a
 2575 beneficiary who receives a pecuniary amount outright, the

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2576 fiduciary shall make the payment from net income determined
2577 under subsection (3) or from principal to the extent that net
2578 income is insufficient.

2579 (5) A fiduciary shall distribute net income remaining
2580 after payments required by subsection (4) in the manner
2581 described in s. 738.602 to all other beneficiaries, including a
2582 beneficiary who receives a pecuniary amount in trust, even if
2583 the beneficiary holds an unqualified power to withdraw assets
2584 from the trust or other presently exercisable general power of
2585 appointment over the trust.

2586 (6) A fiduciary may not reduce principal or income
2587 receipts from property described in subsection (2) because of a
2588 payment described in s. 738.501 or s. 738.502 to the extent that
2589 the decedent's will, the terms of the trust, or applicable law
2590 requires the fiduciary to make the payment from assets other
2591 than the property or that the fiduciary recovers or expects to
2592 recover the payment from a third party. The net income and
2593 principal receipts from the property must be determined by
2594 including the amount the fiduciary receives or pays regarding
2595 the property, whether the amount accrued or became due before,
2596 on, or after the date of the decedent's death or an income
2597 interest's terminating event, and making a reasonable provision
2598 for an amount the estate or income interest may become obligated
2599 to pay after the property is distributed.

2600 Section 45. Section 738.602, Florida Statutes, is amended

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2601 to read:

2602 (Substantial rewording of section. See

2603 s. 738.602, F.S., for present text.)

2604 738.602 Distribution to successor beneficiary.—

2605 (1) Except to the extent that ss. 738.301-738.310 apply

2606 for a beneficiary that is a trust, each beneficiary described in

2607 s. 738.601(5) is entitled to receive a share of the net income

2608 equal to the beneficiary's fractional interest in undistributed

2609 principal assets, using carrying values as of the distribution

2610 date. If a fiduciary makes more than one distribution of assets

2611 to beneficiaries to which this section applies, each

2612 beneficiary, including a beneficiary who does not receive part

2613 of the distribution, is entitled, as of each distribution date,

2614 to a share of the net income the fiduciary received after the

2615 decedent's death, an income interest's other terminating event,

2616 or the preceding distribution by the fiduciary.

2617 (2) In determining a beneficiary's share of net income

2618 under subsection (1), the following rules apply:

2619 (a) The beneficiary is entitled to receive a share of the

2620 net income equal to the beneficiary's fractional interest in the

2621 undistributed principal assets immediately before the

2622 distribution date.

2623 (b) The beneficiary's fractional interest under paragraph

2624 (a) must be calculated:

2625 1. On the aggregate carrying value of the assets as of the

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2626 distribution date; and
 2627 2. Reduced by:
 2628 a. Any liabilities of the estate or trust;
 2629 b. Property specifically given to a beneficiary under the
 2630 decedent's will or the terms of the trust; and
 2631 c. Property required to pay pecuniary amounts not in
 2632 trust.
 2633 (c) If a disproportionate distribution of principal is
 2634 made to any beneficiary, the respective fractional interests of
 2635 all beneficiaries in the undistributed principal assets must be
 2636 recomputed by:
 2637 1. Adjusting the carrying value of the principal assets to
 2638 their fair market value before the distribution;
 2639 2. Reducing the fractional interest of the recipient of
 2640 the disproportionate distribution in the remaining principal
 2641 assets by the fair market value of the principal distribution;
 2642 and
 2643 3. Recomputing the fractional interests of all
 2644 beneficiaries in the remaining principal assets based upon the
 2645 now restated carrying values.
 2646 (d) The distribution date under paragraph (a) may be the
 2647 date as of which the fiduciary calculates the value of the
 2648 assets if that date is reasonably near the date on which the
 2649 assets are distributed. All distributions to a beneficiary must
 2650 be valued based on the assets' fair market value on the date of

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2651 the distribution.

2652 (3) To the extent that a fiduciary does not distribute
 2653 under this section all the collected but undistributed net
 2654 income to each beneficiary as of a distribution date, the
 2655 fiduciary shall maintain records showing the interest of each
 2656 beneficiary in the net income.

2657 (4) If this section applies to income from an asset, a
 2658 fiduciary may apply the requirements in this section to net gain
 2659 or loss realized from the disposition of the asset after the
 2660 decedent's date of death, an income interest's terminating
 2661 event, or the preceding distribution by the fiduciary.

2662 (5) The carrying value or fair market value of trust
 2663 assets shall be determined on an asset-by-asset basis and is
 2664 conclusive if reasonable and determined in good faith.
 2665 Determinations of fair market value based on appraisals
 2666 performed within 2 years before or after the valuation date are
 2667 presumed reasonable. The values of trust assets are conclusively
 2668 presumed to be reasonable and determined in good faith unless
 2669 proven otherwise in a proceeding commenced by or on behalf of a
 2670 person interested in the trust within the time provided in s.
 2671 736.1008.

2672 Section 46. Section 738.701, Florida Statutes, is amended
 2673 to read:

2674 (Substantial rewording of section. See
 2675 s. 738.701, F.S., for present text.)

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2676 738.701 When right to income begins and ends.—
 2677 (1) An income beneficiary is entitled to net income in
 2678 accordance with the terms of the trust from the date an income
 2679 interest begins. The income interest begins on the date
 2680 specified in the terms of the trust or, if no date is specified,
 2681 on the date an asset becomes subject to:
 (a) The trust for the current income beneficiary; or
 2683 (b) A successive interest for a successor beneficiary.
 2684 (2) An asset becomes subject to a trust under paragraph
 2685 (1)(a):
 (a) For an asset that is transferred to the trust during
 2687 the settlor's life, on the date the asset is transferred;
 2688 (b) For an asset that becomes subject to the trust because
 2689 of a decedent's death, on the date of the decedent's death, even
 2690 if there is an intervening period of administration of the
 2691 decedent's estate; or
 (c) For an asset that is transferred to a fiduciary by a
 2693 third party because of a decedent's death, on the date of the
 2694 decedent's death.
 2695 (3) An asset becomes subject to a successive interest
 2696 under paragraph (1)(b) on the day after the preceding income
 2697 interest ends, as determined under subsection (4), even if there
 2698 is an intervening period of administration to wind up the
 2699 preceding income interest.
 2700 (4) An income interest ends on the day before an income

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2701 beneficiary dies or another terminating event occurs, or on the
 2702 last day of a period during which there is no beneficiary to
 2703 which a fiduciary may or must distribute income.

2704 Section 47. Section 738.702, Florida Statutes, is amended
 2705 to read:

2706 (Substantial rewording of section. See
 2707 s. 738.702, F.S., for present text.)

2708 738.702 Apportionment of receipts and disbursements when
 2709 decedent dies or income interest begins.-

2710 (1) A fiduciary shall allocate an income receipt or
 2711 disbursement, other than a receipt to which s. 738.601(2)
 2712 applies, to principal if its due date occurs before the date on
 2713 which:

2714 (a) For an estate, the decedent died; or

2715 (b) For a trust or successive interest, an income interest
 2716 begins.

2717 (2) If the due date of a periodic income receipt or
 2718 disbursement occurs on or after the date on which a decedent
 2719 died or an income interest begins, a fiduciary must allocate the
 2720 receipt or disbursement to income.

2721 (3) If an income receipt or disbursement is not periodic
 2722 or has no due date, a fiduciary must treat the receipt or
 2723 disbursement under this section as accruing from day to day. The
 2724 fiduciary shall allocate to principal the portion of the receipt
 2725 or disbursement accruing before the date on which a decedent

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2726 died or an income interest begins, and shall allocate to income
 2727 the balance.

2728 (4) A receipt or disbursement is periodic under
 2729 subsections (2) and (3) if:

2730 (a) The receipt or disbursement must be paid at regular
 2731 intervals under an obligation to make payments; or

2732 (b) The payor customarily makes payments at regular
 2733 intervals.

2734 (5) An item of income or an obligation is due under this
 2735 section on the date the payor is required to make a payment. If
 2736 a payment date is not stated, there is no due date.

2737 (6) Distributions to shareholders or other owners from an
 2738 entity to which s. 738.401 applies are due:

2739 (a) On the date fixed by or on behalf of the entity for
 2740 determining the persons entitled to receive the distribution;

2741 (b) If no date is fixed, on the date of the decision by or
 2742 on behalf of the entity to make the distribution; or

2743 (c) If no date is fixed and the fiduciary does not know
 2744 the date of the decision by or on behalf of the entity to make
 2745 the distribution, on the date the fiduciary learns of the
 2746 decision.

2747 (7) Section 733.817 controls over any provision of this
 2748 chapter to the contrary.

2749 Section 48. Section 738.703, Florida Statutes, is amended
 2750 to read:

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2751 (Substantial rewording of section. See
2752 s. 738.703, F.S., for present text.)
2753 738.703 Apportionment when income interest ends.—
2754 (1) As used in this section, the term "undistributed
2755 income" means net income received on or before the date on which
2756 an income interest ends. The term does not include an item of
2757 income or expense which is due or accrued or net income that has
2758 been added or is required to be added to principal under the
2759 terms of the trust.

2760 (2) Except as otherwise provided in subsection (3), when a
2761 mandatory income interest of a beneficiary ends, the fiduciary
2762 shall pay the beneficiary's share of the undistributed income
2763 that is not disposed of under the terms of the trust to the
2764 beneficiary or, if the beneficiary does not survive the date the
2765 interest ends, to the beneficiary's estate.

2766 (3) If a beneficiary has an unqualified power to withdraw
2767 more than 5 percent of the value of a trust immediately before
2768 an income interest ends:

2769 (a) The fiduciary shall allocate to principal the
2770 undistributed income from the portion of the trust which may be
2771 withdrawn; and

2772 (b) Subsection (2) applies only to the balance of the
2773 undistributed income.

2774 (4) When a fiduciary's obligation to pay a fixed annuity
2775 or a fixed fraction of the value of assets ends, the fiduciary

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2776 shall prorate the final payment as required to preserve income
 2777 tax, gift tax, estate tax, or other tax benefits.

2778 Section 49. Section 738.801, Florida Statutes, is amended
 2779 to read:

2780 (Substantial rewording of section. See
 2781 s. 738.801, F.S., for present text.)

2782 738.801 Uniformity of application and construction.—In
 2783 applying and construing this act, consideration shall be given
 2784 to the need to promote uniformity of the law with respect to its
 2785 subject matter among states that enact it.

2786 Section 50. Section 738.802, Florida Statutes, is amended
 2787 to read:

2788 (Substantial rewording of section. See
 2789 s. 738.802, F.S., for present text.)

2790 738.802 Relation to Electronic Signatures in Global and
 2791 National Commerce Act.—This chapter modifies, limits, or
 2792 supersedes the Electronic Signatures in Global and National
 2793 Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not modify,
 2794 limit, or supersede section 101(c) of that act, 15 U.S.C. s.
 2795 7001(c), or authorize electronic delivery of any of the notices
 2796 described in s. 103(b) of that act, 15 U.S.C. s. 7003(b). This
 2797 chapter does not modify, limit, or supersede s. 117.285.

2798 Section 51. Section 738.803, Florida Statutes, is amended
 2799 to read:

2800 738.803 Severability.—If any provision of this chapter or

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2801 its application to any person or circumstance is held invalid,
 2802 the invalidity does ~~shall~~ not affect other provisions or
 2803 applications of this chapter which can be given effect without
 2804 the invalid provision or application, and to this end the
 2805 provisions of this chapter are severable.

2806 Section 52. Section 738.804, Florida Statutes, is amended
 2807 to read:

2808 738.804 Application.—Except as provided in the terms of
 2809 the trust ~~instrument, the will,~~ or this chapter, this chapter
 2810 shall apply to any receipt or expense received or incurred and
 2811 any disbursement made after January 1, 2025 ~~January 1, 2003~~, by
 2812 any trust or ~~decedent's~~ estate, whether established before or
 2813 after January 1, 2025 ~~January 1, 2003~~, and whether the asset
 2814 involved was acquired by the trustee or personal representative
 2815 before or after January 1, 2025 ~~January 1, 2003~~. Receipts or
 2816 expenses received or incurred and disbursements made before
 2817 January 1, 2025, must ~~January 1, 2003,~~ shall be governed by the
 2818 law of this state in effect at the time of the event, except as
 2819 otherwise expressly provided in the ~~will or~~ terms of the trust
 2820 or in this chapter.

2821 Section 53. This act shall take effect January 1, 2025.