

By Senator Berman

26-00106D-24

20241316__

1 A bill to be entitled
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
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

26-00106D-24

20241316__

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
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;

26-00106D-24

20241316__

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
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;

26-00106D-24

20241316__

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.
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

26-00106D-24

20241316__

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
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 and
134 revising terms; specifying that an attribute or action
135 of an entity includes an attribute or action from any
136 other entity in which the initial entity has an
137 ownership interest or holds another interest;
138 requiring a fiduciary to allocate certain money and
139 tangible personal property to income; requiring a
140 fiduciary to allocate specified property and money to
141 principal; providing that certain money received in an
142 entity distribution is a capital distribution in
143 specified circumstances; specifying that in cases of
144 capital distribution, the amount received in an entity
145 distribution must be reduced to the extent that

26-00106D-24

20241316__

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

26-00106D-24

20241316__

175 738.407, F.S.; specifying applicability; requiring a
176 fiduciary to allocate proceeds from insurance policies
177 or contracts to principal in a specified manner;
178 creating s. 738.408, F.S.; specifying circumstances
179 under which a fiduciary may allocate an insubstantial
180 allocation to principal, subject to certain conditions
181 and 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;
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

26-00106D-24

20241316__

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;
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

26-00106D-24

20241316__

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
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

26-00106D-24

20241316__

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
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

26-00106D-24

20241316__

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;
 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 to
 310 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 to
 314 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

26-00106D-24

20241316__

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
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 grantor's death, the assets are considered
347 received as of the date of the settlor's death. If there is a
348 change in fiduciaries, a majority of the continuing fiduciaries

26-00106D-24

20241316__

349 may elect to adjust the carrying values to reflect the fair
350 market value of the assets at the beginning of their
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 distribute net income, regardless of
363 whether the fiduciary also distributes principal to the
364 beneficiary.

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

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.

376 (9)~~(4)~~ "Fiduciary" includes means a trustee, a trust
377 director as defined in s. 736.0103, or a personal

26-00106D-24

20241316__

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:

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

26-00106D-24

20241316__

407 4. Any trustee whom an interested distributee has the power
 408 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 of
 411 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
 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

26-00106D-24

20241316__

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

464 (b) Status as a qualified subchapter S trust described in

26-00106D-24

20241316__

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:

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

26-00106D-24

20241316__

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:

- 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. The term
 516 does not include a constructive trust; a resulting trust; a
 517 conservatorship; a custodial arrangement under the Florida
 518 Uniform Transfers to Minors Act; a business trust providing for
 519 certificates to be issued to beneficiaries; a common trust fund;
 520 a land trust under s. 689.071; a trust created by the form of
 521 the account or by the deposit agreement at a financial
 522 institution; a voting trust; a security arrangement; a

26-00106D-24

20241316__

523 liquidation trust; a trust for the primary purpose of paying
524 debts, dividends, interest, salaries, wages, profits, pensions,
525 retirement benefits, or employee benefits of any kind; or an
526 arrangement under which a person is a nominee, an escrowee, or
527 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 to
539 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 of
543 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 to
551 read:

26-00106D-24

20241316__

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 repealed.

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

567 Section 7. Section 738.201, Florida Statutes, is amended to
568 read:

569 (Substantial rewording of section. See

570 s. 738.201, F.S., for present text.)

571 738.201 Fiduciary duties; general principles.—

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

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

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

580 (c) Administer the trust or estate in accordance with the

26-00106D-24

20241316__

581 terms of the trust, even if there is a different provision in
582 this chapter.

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

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

595 (3) A fiduciary shall:

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

599 (b) Charge a disbursement to principal, to the extent that
600 the terms of the trust and this chapter do not allocate the
601 disbursement between income and principal; and

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

605 (4) A fiduciary may exercise the power to adjust under s.
606 738.203(1), convert an income trust to a unitrust under ss.
607 738.301-738.310, change the percentage or method used to
608 calculate a unitrust amount under ss. 738.301-738.310, or
609 convert a unitrust to an income trust under ss. 738.301-738.310

26-00106D-24

20241316__

610 if the fiduciary determines the exercise of the power will
611 assist the fiduciary to administer the trust or estate
612 impartially.

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

615 (a) The terms of the trust.

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

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

621 (d) The desirability of liquidity and regularity of income.

622 (e) The desirability of the preservation and appreciation
623 of principal.

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

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

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

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

634 (j) The effect of current and reasonably expected economic
635 conditions.

636 (k) The reasonably expected tax consequences of the
637 exercise of the power.

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

26-00106D-24

20241316__

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

645 Section 8. Section 738.202, Florida Statutes, is amended to
646 read:

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

649 738.202 Judicial review of exercise of discretionary power;
650 request for instruction.—

651 (1) As used in this section, the term “fiduciary decision”
652 means any of the following:

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

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

665 (c) The fiduciary’s implementation of a decision described
666 in paragraph (a) or paragraph (b).

667 (2) The court may not order a fiduciary to change a

26-00106D-24

20241316__

668 fiduciary decision unless the court determines that the
669 fiduciary decision was an abuse of the fiduciary's discretion. A
670 court may not determine that a fiduciary abused its discretion
671 merely because the court would have exercised the discretion in
672 a different manner or would not have exercised the discretion.

673 (3) If the court determines that a fiduciary decision was
674 an abuse of the fiduciary's discretion, the court may order a
675 remedy authorized by law, including those prescribed under ss.
676 736.1001 and 736.1002. Following such a determination by the
677 court, the remedy is to place the beneficiaries in the positions
678 the beneficiaries would have occupied if the fiduciary had not
679 abused its discretion, as follows:

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

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

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

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

696 (e) To the extent that the abuse of discretion has resulted

26-00106D-24

20241316__

697 in a distribution to a beneficiary that is too large, the court
698 shall restore the beneficiaries, the trust, or both, in whole or
699 in part, to their appropriate positions by requiring the
700 fiduciary to withhold an amount from one or more future
701 distributions to the beneficiary who received the distribution
702 that was too large or requiring that beneficiary to return some
703 or all of the distribution to the trust; or

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

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

720 (5) If an action is instituted alleging an abuse of
721 discretion in the exercise or nonexercise of the fiduciary's
722 discretion under this chapter and the court determines no abuse
723 of discretion has occurred, the fiduciary's costs and attorney
724 fees incurred in defending the action shall be paid from the
725 trust assets.

26-00106D-24

20241316__

726 Section 9. Section 738.203, Florida Statutes, is created to
727 read:

728 738.203 Fiduciary's power to adjust.-

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

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

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

740 (4) In deciding whether and to what extent to exercise the
741 power to adjust under subsection (1), a fiduciary shall consider
742 all factors the fiduciary considers relevant, including relevant
743 factors in s. 738.201(5) and ss. 738.408 and 738.413.

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

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

753 (b) The adjustment or determination would change the amount
754 payable to a beneficiary, as a fixed annuity or a fixed fraction

26-00106D-24

20241316__

755 of the value of the trust assets, under the terms of the trust;
756 (c) The adjustment or determination would reduce an amount
757 that is permanently set aside for a charitable purpose under the
758 terms of the trust unless both income and principal are set
759 aside for the charitable purpose;
760 (d) Possessing or exercising the power would cause a person
761 to be treated as the owner of all or part of the trust for
762 federal income tax purposes and the person would not be treated
763 as the owner if the fiduciary did not possess the power to
764 adjust;
765 (e) Possessing or exercising the power would cause all or
766 part of the value of the trust assets to be included in the
767 gross estate of an individual for federal real estate tax
768 purposes and the assets would not be included in the gross
769 estate of the individual if the fiduciary did not possess the
770 power to adjust;
771 (f) Possessing or exercising the power would cause an
772 individual to be treated as making a gift for federal gift tax
773 purposes;
774 (g) The fiduciary is not an independent person;
775 (h) The trust is irrevocable and provides for income to be
776 paid to the settlor, and possessing or exercising the power
777 would cause the adjusted principal or income to be considered an
778 available resource or available income under a public-benefit
779 program; or
780 (i) The trust is a unitrust under ss. 738.301-738.310.
781 (6) If paragraph (5) (d), paragraph (5) (e), paragraph
782 (5) (f), or paragraph (5) (g) applies to a fiduciary:
783 (a) A cofiduciary to which paragraphs (5) (d)-(g) do not

26-00106D-24

20241316__

784 apply may exercise the power to adjust, unless the exercise of
785 the power by the remaining cofiduciary or cofiduciaries is not
786 permitted by the terms of the trust or law other than this
787 chapter; or

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

796 (7) A fiduciary may release or delegate to a cofiduciary
797 the power to adjust under subsection (1) if the fiduciary
798 determines that the fiduciary's possession or exercise of the
799 power will or may:

800 (a) Cause a result described in paragraph (5) (a), paragraph
801 (5) (b), paragraph (5) (c), paragraph (5) (d), paragraph (5) (e),
802 paragraph (5) (f), or paragraph (5) (h); or

803 (b) Deprive the trust of a tax benefit or impose a tax
804 burden not described in paragraph (5) (a), paragraph (5) (b),
805 paragraph (5) (c), paragraph (5) (d), paragraph (5) (e), or
806 paragraph (5) (f).

807 (8) A fiduciary's release or delegation to a cofiduciary
808 under subsection (7) of the power to adjust under subsection
809 (1):

810 (a) Must be in a record;

811 (b) Applies to the entire power, unless the release or
812 delegation provides a limitation, which may be a limitation to

26-00106D-24

20241316__

813 the power to adjust:

814 1. From income to principal;

815 2. From principal to income;

816 3. For specified property; or

817 4. In specified circumstances.

818 (c) For a delegation, may be modified by a redelegation
819 under this subsection by the cofiduciary to which the delegation
820 is made; and

821 (d) Subject to paragraph (c), is permanent, unless the
822 release or delegation provides a specified period, including a
823 period measured by the life of an individual or the lives of
824 more than one individual.

825 (9) Terms of a trust that deny or limit the power to adjust
826 between income and principal do not affect the application of
827 this section, unless the terms of the trust expressly deny or
828 limit the power to adjust under subsection (1).

829 (10) The exercise of the power to adjust under subsection
830 (1) in any accounting period may apply to the current period,
831 the immediately preceding period, and one or more subsequent
832 periods.

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

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

837 (b) Communicated at least annually to the qualified
838 beneficiaries as defined in s. 736.0103 other than the Attorney
839 General.

840 (12) With respect to a trust in existence on January 1,
841 2003:

26-00106D-24

20241316__

842 (a) A fiduciary may not have the power to adjust under this
843 section until the statement required in subsection (13) is
844 provided and either no objection is made or any objection which
845 is made has been terminated.

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

853 2. An objection is terminated upon the earlier of the
854 receipt of consent from a super majority of eligible
855 beneficiaries of the class that made the objection, or the
856 resolution of the objection under paragraph (c).

857 (b) An objection or consent under this section may be
858 executed by a legal representative or natural guardian of a
859 beneficiary without the filing of any proceeding or approval of
860 any court.

861 (c) If an objection is delivered to the fiduciary, then the
862 fiduciary may petition the circuit court for an order quashing
863 the objection and vesting in such fiduciary the power to adjust
864 under this section. The burden will be on the objecting
865 beneficiaries to prove that the power to adjust would be
866 inequitable, illegal, or otherwise in contravention of the
867 grantor's intent. The court may award costs and attorney fees
868 relating to the fiduciary's petition in the same manner as in
869 chancery actions. When costs and attorney fees are to be paid
870 out of the trust, the court may, in its discretion, direct from

26-00106D-24

20241316__

871 which part of the trust they shall be paid.

872 (d) If no timely objection is made or if the fiduciary is
873 vested with the power to adjust by court order, the fiduciary
874 may thereafter exercise the power to adjust without providing
875 notice of its intent to do so unless, in vesting the fiduciary
876 with the power to adjust, the court determines that unusual
877 circumstances require otherwise.

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

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

896 (f) The objection of a super majority of eligible
897 beneficiaries under this subsection shall be valid for a period
898 of 1 year after the date of the notice set forth in subsection
899 (13). Upon expiration of the objection, the fiduciary may

26-00106D-24

20241316__

900 thereafter give a new notice under subsection (13).

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

908 (13) (a) A fiduciary of a trust in existence on January 1,
909 2003, that is not prohibited under subsection (5) from
910 exercising the power to adjust shall, any time before initially
911 exercising the power, provide to all eligible beneficiaries a
912 statement containing the following:

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

916 2. A statement that unless a super majority of the eligible
917 beneficiaries objects to the application of this section to the
918 trust within 60 days after the date the statement pursuant to
919 this subsection was served, this section shall apply to the
920 trust; and

921 3. A statement that, if this section applies to the trust,
922 the fiduciary will have the power to adjust between income and
923 principal and that such a power may have an effect on the
924 distributions to such beneficiary from the trust.

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

928 (c) The statement shall be served informally, in the manner

26-00106D-24

20241316__

929 provided in the Florida Rules of Civil Procedure relating to
930 service of pleadings subsequent to the initial pleading. The
931 statement may be served on a legal representative or natural
932 guardian of a beneficiary without the filing of any proceeding
933 or approval of any court.

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

935 1. "Eligible beneficiaries" means:

936 a. If at the time the determination is made there are one
937 or more beneficiaries described in s. 736.0103(19) (c), the
938 beneficiaries described in s. 736.0103(19) (a) and (c); or

939 b. If there is no beneficiary described in s.
940 736.0103(19) (c), the beneficiaries described in s.
941 736.0103(19) (a) and (b).

942 2. "Super majority of the eligible beneficiaries" means:

943 a. If at the time the determination is made there are one
944 or more beneficiaries described in s. 736.0103(19) (c), at least
945 two-thirds in interest of the beneficiaries described in s.
946 736.0103(19) (a) or two-thirds in interest of the beneficiaries
947 described in s. 736.0103(19) (c), if the interests of the
948 beneficiaries are reasonably ascertainable; otherwise, it means
949 two-thirds in number of either such class; or

950 b. If there is no beneficiary described in s.
951 736.0103(19) (c), at least two-thirds in interest of the
952 beneficiaries described in s. 736.0103(19) (a) or two-thirds in
953 interest of the beneficiaries described in s. 736.0103(19) (b),
954 if the interests of the beneficiaries are reasonably
955 ascertainable, otherwise, two-thirds in number of either such
956 class.

957 (15) A trust exists on January 1, 2003, if it is not

26-00106D-24

20241316__

958 revocable on January 1, 2003. A trust is revocable if revocable
959 by the grantor alone or in conjunction with any other person. A
960 trust is not revocable for purposes of this section if revocable
961 by the grantor only with the consent of all persons having a
962 beneficial interest in the property.

963 Section 10. Section 738.301, Florida Statutes, is amended
964 to read:

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

967 738.301 Definitions.—For purposes of this section and ss.
968 738.302-738.310:

969 (1) "Applicable value" means the amount of the net fair
970 market value of a trust taken into account under s. 738.307.

971 (2) "Express unitrust" means a trust for which, under the
972 terms of the trust without regard to this section and ss.
973 738.302-738.310, net income must be calculated as a unitrust
974 amount.

975 (3) "Income trust" means a trust, created by an inter vivos
976 or testamentary instrument, that directs or permits the trustee
977 to distribute the net income of the trust to one or more
978 persons, in fixed proportions or in amounts or proportions
979 determined by the trustee and regardless of whether the trust
980 directs or permits the trustee to distribute the principal of
981 the trust to one or more such persons.

982 (4) "Net fair market value of a trust" means the fair
983 market value of the assets of the trust, less the reasonably
984 known noncontingent liabilities of the trust.

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

26-00106D-24

20241316__

987 (6) "Unitrust amount" means an amount computed by
 988 multiplying a determined value of a trust by a determined
 989 percentage. For a unitrust administered under a unitrust policy,
 990 the term means the applicable value multiplied by the unitrust
 991 rate.

992 (7) "Unitrust policy" means a policy described in ss.
 993 738.301-738.310 and adopted under s. 738.303.

994 (8) "Unitrust rate" means the rate used to compute the
 995 unitrust amount for a unitrust administered under a unitrust
 996 policy.

997 Section 11. Section 738.302, Florida Statutes, is amended
 998 to read:

999 (Substantial rewording of section. See
 1000 s. 738.302, F.S., for present text.)

1001 738.302 Applications; duties and remedies.-

1002 (1) Except as otherwise provided in subsection (2), ss.
 1003 738.301-738.310 apply to all of the following:

1004 (a) An income trust, unless the terms of the trust
 1005 expressly prohibit the use of ss. 738.301-738.310 by a specific
 1006 reference to this paragraph or corresponding provision of prior
 1007 law, or an explicit expression of intent that net income not be
 1008 calculated as a unitrust amount.

1009 (b) An express unitrust, except to the extent that the
 1010 terms of the trust explicitly:

1011 1. Prohibit the use of ss. 738.301-738.310 by a specific
 1012 reference to this paragraph or corresponding provision of prior
 1013 law;

1014 2. Prohibit conversion to an income trust; or

1015 3. Limit changes to the method of calculating the unitrust

26-00106D-24

20241316__

1016 amount.

1017 (c) A unitrust that had been converted from an income
1018 trust.

1019 (2) The provisions of ss. 738.301-738.310 do not apply to a
1020 trust described in s. 170(f)(2)(B), s. 642(c)(5), s. 664(d), s.
1021 2702(a)(3)(A)(ii) or (iii), or s. 2702(b) of the Internal
1022 Revenue Code.

1023 (3) An income trust to which ss. 738.301-738.310 apply
1024 under paragraph (1)(a) may be converted to a unitrust under ss.
1025 738.301-738.310 regardless of the terms of the trust concerning
1026 distributions. Conversion to a unitrust under ss. 738.301-
1027 738.310 does not affect other terms of the trust concerning
1028 distributions of income or principal.

1029 (4) Sections 738.301-738.310 apply to an estate only to the
1030 extent that a trust is a beneficiary of the estate. To the
1031 extent of the trust's interest in the estate, the estate may be
1032 administered as a unitrust, the administration of the estate as
1033 a unitrust may be discontinued, or the percentage or method used
1034 to calculate the unitrust amount may be changed, in the same
1035 manner as for a trust under those sections.

1036 (5) The provisions of ss. 738.301-738.310 do not create a
1037 duty to take or consider action under ss. 738.301-738.310 or to
1038 inform a beneficiary about the applicability of ss. 738.301-
1039 738.310.

1040 (6) A fiduciary that in good faith takes or fails to take
1041 an action under ss. 738.301-738.310 is not liable to a person
1042 affected by the action or inaction.

1043 Section 12. Section 738.303, Florida Statutes, is amended
1044 to read:

26-00106D-24

20241316__

1045 (Substantial rewording of section. See
1046 s. 738.303, F.S., for present text.)
1047 738.303 Authority of fiduciary.—
1048 (1) By complying with subsections (2) and (6), and without
1049 court approval, a fiduciary may do any of the following:
1050 (a) Convert an income trust to a unitrust if the fiduciary
1051 adopts in a record a unitrust policy for the trust which
1052 provides:
1053 1. That in administering the trust, the net income of the
1054 trust will be a unitrust amount rather than net income
1055 determined without regard to ss. 738.301-738.310; and
1056 2. The percentage and method used to calculate the unitrust
1057 amount.
1058 (b) Change the percentage or method used to calculate a
1059 unitrust amount for a unitrust if the fiduciary adopts in a
1060 record a unitrust policy or an amendment or replacement of a
1061 unitrust policy providing charges in the percentage or method
1062 used to calculate the unitrust amount.
1063 (c) Convert a unitrust to an income trust if the fiduciary
1064 adopts in a record a determination that, in administering the
1065 trust, the net income of the trust will be net income determined
1066 without regard to ss. 738.301-738.310 rather than a unitrust
1067 amount.
1068 (2) A fiduciary may take an action under subsection (1) if
1069 all of the following apply:
1070 (a) The fiduciary determines that the action will assist
1071 the fiduciary to administer a trust impartially.
1072 (b) The fiduciary sends a notice in a record to the
1073 qualified beneficiaries determined under ss. 736.0103 and

26-00106D-24

20241316__

1074 736.0110 in the manner required by s. 738.304, describing and
1075 proposing to take the action.

1076 (c) The fiduciary sends a copy of the notice under
1077 paragraph (b) to each settlor of the trust which is:

- 1078 1. If an individual, living; or
- 1079 2. If not an individual, in existence.

1080 (d) At least one member of each class of the qualified
1081 beneficiaries determined under ss. 736.0103 and 736.0110, other
1082 than the Attorney General, receiving the notice under paragraph
1083 (b) is:

- 1084 1. If an individual, legally competent;
- 1085 2. If not an individual, in existence; or
- 1086 3. Represented in the manner provided in s. 738.304(2).

1087 (e) The fiduciary does not receive, by the date specified
1088 in the notice under s. 738.304(4) (e), an objection in a record
1089 to the action proposed under paragraph (b) from a person to
1090 which the notice under paragraph (b) is sent.

1091 (3) If a fiduciary receives, not later than the date stated
1092 in the notice under s. 738.304(4) (e), an objection in a record
1093 described in s. 738.304(4) (d) to a proposed action, the
1094 fiduciary or a beneficiary may request the court to have the
1095 action taken as proposed, taken with modifications, or
1096 prevented. A person described in s. 738.304(1) may oppose the
1097 proposed action in the proceeding under this subsection
1098 regardless of whether the person:

- 1099 (a) Consented under s. 738.304(3); or
- 1100 (b) Objected under s. 738.304(4) (d).

1101 (4) If, after sending a notice under paragraph (2) (b), a
1102 fiduciary decides not to take the action proposed in the notice,

26-00106D-24

20241316__

1103 the fiduciary must notify in a record each person described in
1104 s. 738.304(1) of the decision not to take the action and the
1105 reasons for the decision.

1106 (5) If a beneficiary requests in a record that a fiduciary
1107 take an action described in subsection (1) and the fiduciary
1108 declines to act or does not act within 60 days after receiving
1109 the request, the beneficiary may request the court to direct the
1110 fiduciary to take the action requested.

1111 (6) In deciding whether and how to take an action
1112 authorized in subsection (1), or whether and how to respond to a
1113 request by a beneficiary under subsection (5), a fiduciary must
1114 consider all factors relevant to the trust and beneficiaries,
1115 including the relevant factors listed in s. 738.201(5).

1116 (7) A fiduciary may release or delegate the power to
1117 convert an income trust to a unitrust under paragraph (1)(a),
1118 change the percentage or method used to calculate a unitrust
1119 amount under paragraph (1)(b), or convert a unitrust to an
1120 income trust under paragraph (1)(c), for a reason described in
1121 s. 738.203(7) and in the manner described in s. 738.203(8).

1122 Section 13. Section 738.304, Florida Statutes, is created
1123 to read:

1124 738.304 Notice.—

1125 (1) A notice required by s. 738.303(2)(b) must be sent in a
1126 manner authorized under s. 736.0109 to all of the following:

1127 (a) The qualified beneficiaries as defined in s. 736.0103,
1128 other than the Attorney General.

1129 (b) Each person that is granted a power over the trust by
1130 the terms of the trust, to the extent that the power is
1131 exercisable when the person is not then serving as a trustee:

26-00106D-24

20241316__

1132 1. Including all of the following:

1133 a. Power over the investment, management, or distribution
1134 of trust property or other matters of trust administration.

1135 b. Power to appoint or remove a trustee or person described
1136 in this paragraph.

1137 2. Excluding all of the following:

1138 a. Power of appointment.

1139 b. Power of a beneficiary over the trust, to the extent
1140 that the exercise or nonexercise of the power affects the
1141 beneficial interest of the beneficiary or another beneficiary
1142 represented by the beneficiary under ss. 736.0301-736.0306 with
1143 respect to the exercise or nonexercise of the power.

1144 c. Power over the trust if the terms of the trust provide
1145 that the power is held in a nonfiduciary capacity and the power
1146 must be held in a nonfiduciary capacity to achieve a tax
1147 objective under the Internal Revenue Code.

1148 (c) Each person that is granted a power by the terms of the
1149 trust to appoint or remove a trustee or person described in
1150 paragraph (b) to the extent that the power is exercisable when
1151 the person that exercises the power is not serving as a trustee
1152 or person described in paragraph (b).

1153 (2) The representation provisions of ss. 736.0301-736.0306
1154 apply to notice under this section.

1155 (3) A person may consent in a record at any time to action
1156 proposed under s. 738.303(2) (b). A notice required by s.
1157 738.303(2) (b) need not be sent to a person that consents under
1158 this subsection.

1159 (4) A notice required under s. 738.303(2) (b) must include
1160 all of the following:

26-00106D-24

20241316__

- 1161 (a) The action proposed under s. 738.303(2)(b).
- 1162 (b) For a conversion of an income trust to a unitrust, a
- 1163 copy of the unitrust policy adopted under s. 738.303(1)(a).
- 1164 (c) For a change in the percentage or method used to
- 1165 calculate the unitrust amount, a copy of the unitrust policy or
- 1166 amendment or replacement of the unitrust policy adopted under s.
- 1167 738.303(1)(b).
- 1168 (d) A statement that the person to which the notice is sent
- 1169 may object to the proposed action by stating in a record the
- 1170 basis for the objection and sending or delivering the record to
- 1171 the fiduciary.
- 1172 (e) The date by which an objection under paragraph (d) must
- 1173 be received by the fiduciary, which must be at least 30 days
- 1174 after the date the notice is sent.
- 1175 (f) The date on which the action is proposed to be taken
- 1176 and the date on which the action is proposed to take effect.
- 1177 (g) The name and contact information of the fiduciary.
- 1178 (h) The name and contact information of a person that may
- 1179 be contacted for additional information.
- 1180 Section 14. Section 738.305, Florida Statutes, is created
- 1181 to read:
- 1182 738.305 Unitrust policy.—
- 1183 (1) In administering a unitrust under ss. 738.301-738.310,
- 1184 a fiduciary shall follow a unitrust policy adopted under s.
- 1185 738.303(1)(a) or (b) or amended or replaced under s.
- 1186 738.303(1)(b).
- 1187 (2) A unitrust policy must provide all of the following:
- 1188 (a) The unitrust rate or method for determining the
- 1189 unitrust rate under s. 738.306.

26-00106D-24

20241316__

1190 (b) The method for determining the applicable value under
1191 s. 738.307.

1192 (c) The rules described in ss. 738.306-738.310 which apply
1193 in the administration of the unitrust, whether the rules are:

1194 1. Mandatory as provided in ss. 738.307(1) and (3),
1195 738.308(1), and 738.310; or

1196 2. Optional as provided in ss. 738.306, 738.307(2), and
1197 738.308(2), to the extent that the fiduciary elects to adopt
1198 those rules.

1199 (3) A unitrust policy may do any of the following:

1200 (a) Provide methods and standards for:

1201 1. Determining the timing of the distributions;

1202 2. Making distributions in cash or in kind or partly in
1203 cash and partly in kind; or

1204 3. Correcting an underpayment or overpayment to a
1205 beneficiary based on the unitrust amount if there is an error in
1206 calculating the unitrust amount.

1207 (b) Specify sources and the order of sources, including
1208 categories of income for federal income tax purposes, from which
1209 distributions of a unitrust amount are paid.

1210 (c) Provide other standards and rules that the fiduciary
1211 determines serve the interests of the beneficiaries.

1212 Section 15. Section 738.306, Florida Statutes, is created
1213 to read:

1214 738.306 Unitrust rate.—

1215 (1) A unitrust rate must be at least 3 percent and not more
1216 than 5 percent. Within those limits, the unitrust rate may be:

1217 (a) A fixed unitrust rate; or

1218 (b) 1. A unitrust rate that is determined for each period

26-00106D-24

20241316__

1219 using:

1220 a. A market index or other published data; or

1221 b. A mathematical blend of market indices or other

1222 published data over a stated number of preceding periods.

1223 2. If the rate calculated under this paragraph would be

1224 less than 3, the rate is 3; and if the rate calculated would be

1225 more than 5, the rate is 5.

1226 (2) Within the limits of subsection (1), a unitrust policy

1227 may provide for any of the following:

1228 (a) A limit on how much the unitrust rate determined under

1229 paragraph (1) (b) may increase over the unitrust rate for the

1230 preceding period or a mathematical blend of unitrust rates over

1231 a stated number of preceding periods.

1232 (b) A limit on how much the unitrust rate determined under

1233 paragraph (1) (b) may decrease below the unitrust rate for the

1234 preceding period or a mathematical blend of unitrust rates over

1235 a stated number of preceding periods.

1236 (c) A mathematical blend of any of the unitrust rates

1237 determined under paragraph (1) (b) and paragraphs (a) and (b).

1238 (3) If the fiduciary is not an independent person, the

1239 percentage used to calculate the unitrust amount is the rate

1240 determined under s. 7520(a) (2) of the Internal Revenue Code in

1241 effect for the month the conversion under this section becomes

1242 effective and for each January thereafter; however, if the rate

1243 determined under s. 7520(a) (2) of the Internal Revenue Code

1244 exceeds 5 percent, the unitrust rate is 5 percent, and if the

1245 rate determined under s. 7520(a) (2) of the Internal Revenue Code

1246 is less than 3 percent, the unitrust rate is 3 percent.

1247 Section 16. Section 738.307, Florida Statutes, is created

26-00106D-24

20241316__

1248 to read:

1249 738.307 Applicable value.-

1250 (1) A unitrust policy must provide the method for
1251 determining the fair market value of an asset for the purpose of
1252 determining the unitrust amount, including all of the following:

1253 (a) The frequency of valuing the asset, which need not
1254 require a valuation in every period.

1255 (b) The date for valuing the asset in each period in which
1256 the asset is valued.

1257 (2) Except as otherwise provided in s. 738.309, a unitrust
1258 policy may provide methods for determining the amount of the net
1259 fair market value of the trust to take into account in
1260 determining the applicable value, including any of the
1261 following:

1262 (a) Obtaining an appraisal of an asset for which fair
1263 market value is not readily available.

1264 (b) Excluding specific assets or groups or types of assets
1265 in addition to those described in subsection (3).

1266 (c) Making other exceptions or modifications of the
1267 treatment of specific assets or groups or types of assets.

1268 (d) Including identification and treatment of cash or
1269 property held for distribution.

1270 (e) Using an average of fair market values over a stated
1271 number of preceding periods, not to exceed 3 calendar years.

1272 (f) Determining the reasonable known liabilities of the
1273 trust, including treatment of liabilities to conform with the
1274 treatment of assets under paragraphs (a)-(e).

1275 (3) The following property may not be included in
1276 determining the value of the trust:

26-00106D-24

20241316__

1277 (a) Any residential property or any tangible personal
 1278 property that, as of the first business day of the current
 1279 valuation year, one or more current beneficiaries of the trust
 1280 have or have had the right to occupy or have or have had the
 1281 right to possess or control, other than in his or her capacity
 1282 as trustee of the trust. Instead, the right of occupancy or the
 1283 right to possession and control is the unitrust amount with
 1284 respect to such property; however, the unitrust amount must be
 1285 adjusted to take into account partial distributions from or
 1286 receipt into the trust of such property during the valuation
 1287 year;

1288 (b) Any asset specifically given to a beneficiary and the
 1289 return on investment on such property, which return on
 1290 investment must be distributable to the beneficiary; and

1291 (c) Any asset while held in an estate.

1292 Section 17. Section 738.308, Florida Statutes, is created
 1293 to read:

1294 738.308 Period.—

1295 (1) A unitrust policy must provide the period used under
 1296 ss. 738.306 and 738.307. The period must be the calendar year.

1297 (2) A unitrust policy may provide standards for:

1298 (a) Using fewer preceding periods under s. 738.306(1)(b)1.
 1299 or (2)(a) or (b) if:

1300 1. The trust was not in existence in a preceding period; or
 1301 2. Market indices or other published data are not available
 1302 for a preceding period;

1303 (b) Using fewer preceding periods under 738.307(2)(e) if:

1304 1. The trust was not in existence in a preceding period; or
 1305 2. Fair market values are not available for a preceding

26-00106D-24

20241316__

1306 period; and

1307 (c) Prorating a unitrust amount on a daily basis for a part
1308 of a period in which the trust or the administration of the
1309 trust as a unitrust or the interest of any beneficiary commences
1310 or terminates.

1311 Section 18. Section 738.309, Florida Statutes, is created
1312 to read:

1313 738.309 Express unitrust.—

1314 (1) This section applies to a trust that, by its governing
1315 instrument, requires or allows income or net income to be
1316 calculated as a unitrust amount.

1317 (2) The trustee of an express unitrust may determine the
1318 unitrust amount by reference to the net fair market value of the
1319 unitrust's assets in 1 or more years.

1320 (3) Distribution of a unitrust amount is considered a
1321 distribution of all of the net income of an express unitrust and
1322 is considered to be an income interest.

1323 (4) The unitrust amount is considered to be a reasonable
1324 apportionment of the total return of an express unitrust.

1325 (5) An express unitrust that provides or allows a
1326 distribution based on a unitrust rate in excess of 5 percent per
1327 year of the net fair market value of the unitrust assets is
1328 considered a distribution of all of the income of the unitrust
1329 to the extent that the distribution exceeds 5 percent per year
1330 and a distribution of principal of the unitrust.

1331 (6) An express unitrust may provide a mechanism for
1332 changing the unitrust rate, similar to the mechanism provided
1333 under s. 738.306, based upon the factors noted in that section,
1334 and may provide for a conversion from a unitrust to an income

26-00106D-24

20241316__

1335 trust or a reconversion of an income trust to a unitrust under
1336 s. 738.303.

1337 (7) If an express unitrust does not specifically or by
1338 reference to s. 738.306 prohibit a power to change the unitrust
1339 rate or to convert to an income trust under s. 738.303, the
1340 trustee must have such power.

1341 (8) The governing instrument of an express unitrust may
1342 grant the trustee discretion to adopt a consistent practice of
1343 treating capital gains as part of the unitrust amount to the
1344 extent that the unitrust amount exceeds the income determined as
1345 if the trust were not an express unitrust, or the governing
1346 instrument may specify the ordering of classes of income.

1347 (9) Unless the terms of the express unitrust specifically
1348 provide otherwise as provided in subsection (8), the
1349 distribution of a unitrust amount is considered a distribution
1350 made from the following sources, which are listed in order of
1351 priority:

1352 (a) Net accounting income determined under this chapter as
1353 if the trust were not a unitrust;

1354 (b) Ordinary income not allocable to net accounting income;

1355 (c) Net realized short-term capital gains;

1356 (d) Net realized long-term capital gains; and

1357 (e) The principal of the trust.

1358 (10) The governing instrument of an express unitrust may
1359 provide that the trustee may exclude assets used by the
1360 unitrust's beneficiary, including, but not limited to, a
1361 residence property or tangible personal property, from the net
1362 fair market value of the unitrust's assets for the purposes of
1363 computing the unitrust amount. The use of these assets may be

26-00106D-24

20241316__

1364 considered equivalent to income or to the unitrust amount.

1365 Section 19. Section 738.310, Florida Statutes, is created
1366 to read:

1367 738.310 Other rules.—Following the conversion of an income
1368 trust to a unitrust, the trustee shall consider the unitrust
1369 amount as paid from the following sources, which are listed in
1370 order of priority:

1371 (1) Net accounting income determined under this chapter as
1372 if the trust were not a unitrust;

1373 (2) Ordinary income not allocable to net accounting income;

1374 (3) Net realized short-term capital gains;

1375 (4) Net realized long-term capital gains; and

1376 (5) The principal of the trust.

1377 Section 20. Section 738.401, Florida Statutes, is amended
1378 to read:

1379 738.401 Character of receipts from entity.—

1380 (1) For purposes of this section, the term:

1381 (a) "Capital distribution" means an entity distribution of
1382 money which is a:

1383 1. Return of capital; or

1384 2. Distribution in total or partial liquidation of the
1385 entity.

1386 (b) "Entity":

1387 1. Means a corporation, partnership, limited liability
1388 company, regulated investment company, real estate investment
1389 trust, common trust fund, or any other organization or
1390 arrangement in which a fiduciary owns or holds ~~has~~ an interest,
1391 regardless of whether the entity is a taxpayer for federal
1392 income tax purposes; and

26-00106D-24

20241316__

- 1393 2. Does not include:
- 1394 a. A trust or estate to which s. 738.402 applies;
- 1395 b. A business or other activity to which s. 738.403 applies
1396 which is not conducted by an entity described in subparagraph
1397 1.;
- 1398 c. An asset-backed security; or
- 1399 d. An instrument or arrangement to which s. 738.416 applies
1400 other than a trust or estate to which s. 738.402 applies, a
1401 business or activity to which s. 738.403 applies, or an asset-
1402 backed security to which s. 738.608 applies.
- 1403 (c) "Entity distribution" means a payment or transfer by an
1404 entity to a person in the person's capacity as an owner or
1405 holder of an interest in the entity.
- 1406 (d) "Lookback period" means the accounting period and the
1407 preceding two accounting periods or, if less, the number of
1408 accounting periods, or portion of accounting periods, that the
1409 interest in the entity has been held by the fiduciary.
- 1410 (2) In this section, an attribute or action of an entity
1411 includes an attribute or action of any other entity in which the
1412 initial entity owns or holds an interest, including an interest
1413 owned or held indirectly through another entity.
- 1414 (3) Except as otherwise provided in paragraphs (4) (b), (c),
1415 and (d) ~~this section~~, a fiduciary shall allocate to income:
- 1416 (a) Money received in an entity distribution; and
- 1417 (b) Tangible personal property of nominal value received
1418 from the ~~money received from an~~ entity.
- 1419 (4) ~~(3)~~ Except as otherwise provided in this section, A
1420 fiduciary shall allocate the following ~~receipts from an~~ entity
1421 to principal:

26-00106D-24

20241316__

1422 (a) Property received in an entity distribution which is
1423 not:

1424 1. ~~other than~~ Money; or

1425 2. Tangible personal property of nominal value.

1426 (b) Money received in an entity ~~one~~ distribution ~~or a~~
1427 ~~series of related distributions~~ in an exchange for part or all
1428 of the fiduciary's a trust's or estate's interest in the entity
1429 to the extent that the entity distribution reduces the
1430 fiduciary's interest in the entity relative to the interest of
1431 other persons that own or hold interests in the entity.

1432 (c) Money received in an entity distribution that is a
1433 capital distribution, to the extent not allocated to income
1434 ~~total or partial liquidation of the entity.~~

1435 (d) Money received in an entity distribution from an entity
1436 that is a regulated investment company or a real estate
1437 investment trust if the money received represents short-term or
1438 long-term capital gain realized within the entity.

1439 ~~(e) Money received from an entity listed on a public stock~~
1440 ~~exchange during any year of the trust or estate which exceeds 10~~
1441 ~~percent of the fair market value of the trust's or estate's~~
1442 ~~interest in the entity on the first day of that year. The amount~~
1443 ~~to be allocated to principal must be reduced to the extent that~~
1444 ~~the cumulative distributions from the entity to the trust or~~
1445 ~~estate allocated to income do not exceed a cumulative annual~~
1446 ~~return of 3 percent of the fair market value of the interest in~~
1447 ~~the entity at the beginning of each year or portion of a year~~
1448 ~~for the number of years or portion of years in the period that~~
1449 ~~the interest in the entity has been held by the trust or estate.~~
1450 ~~If a trustee has exercised a power to adjust under s. 738.104~~

26-00106D-24

20241316__

1451 ~~during any period the interest in the entity has been held by~~
 1452 ~~the trust, the trustee, in determining the total income~~
 1453 ~~distributions from that entity, must take into account the~~
 1454 ~~extent to which the exercise of that power resulted in income to~~
 1455 ~~the trust from that entity for that period. If the income of the~~
 1456 ~~trust for any period has been computed under s. 738.1041, the~~
 1457 ~~trustee, in determining the total income distributions from that~~
 1458 ~~entity for that period, must take into account the portion of~~
 1459 ~~the unitrust amount paid as a result of the ownership of the~~
 1460 ~~trust's interest in the entity for that period.~~

1461 (5)~~(4)~~ If a fiduciary elects, or continues an election made
 1462 by its predecessor, to reinvest dividends in shares of stock of
 1463 a distributing corporation or fund, whether evidenced by new
 1464 certificates or entries on the books of the distributing entity,
 1465 the new shares retain their character as income.

1466 (6)~~(5)~~ Except as otherwise provided in subsections (10) and
 1467 (11), money received in an entity distribution is a capital
 1468 distribution ~~Money is received in partial liquidation:~~

1469 (a) To the extent that the entity, at or near the time of
 1470 the entity ~~a~~ distribution, indicates that such money is a
 1471 capital ~~distribution in partial liquidation;~~ or

1472 (b) To the extent that the total amount of money and
 1473 property received by the fiduciary in the entity ~~in a~~
 1474 distribution or a series of related entity distributions is or
 1475 will be greater than from an entity that is not listed on a
 1476 public stock exchange exceeds 20 percent of the fiduciary's
 1477 ~~trust's or estate's~~ pro rata share of the entity's gross assets,
 1478 as shown by the entity's year-end financial statements
 1479 immediately preceding the initial receipt.

26-00106D-24

20241316__

1480
1481
1482
1483
1484
1485
1486
1487
1488
1489
1490
1491
1492
1493
1494
1495
1496
1497
1498
1499
1500
1501
1502
1503
1504
1505
1506
1507
1508

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

(7)-(6) In the case of a capital distribution, the amount received in an entity distribution allocated to principal must be reduced to the extent that the cumulative distributions from the entity to the fiduciary ~~Money may not be taken into account in determining any excess under paragraph (5) (b), to the extent that the cumulative distributions from the entity to the trust or the estate allocated to income do not exceed the greater of:~~

(a) A cumulative annual return of 3 percent of the entity's carrying value computed at the beginning of each accounting period, or portion of an accounting period, during the lookback period ~~for the number of years or portion of years that the entity was held by the fiduciary. If a fiduciary trustee has exercised a power to adjust under s. 738.203 during the lookback period, the fiduciary s. 738.104 during any period the interest in the entity has been held by the trust, the trustee, in determining the total income distributions from that entity, must take into account the extent to which the exercise of the power resulted in income to the fiduciary trust from that entity for that period. If the income of a fiduciary during the lookback trust for any period has been computed under ss. 738.301-738.310, the fiduciary pursuant to s. 738.1041, the trustee, in determining the total income distributions from the entity for that period, must take into account the portion of the unitrust amount paid as a result of the ownership of the trust's interest in the entity for that period; or~~

(b) In ~~If~~ the case of an ~~is~~ entity ~~is~~ treated as a

26-00106D-24

20241316__

1509 partnership, subchapter S corporation, or a disregarded entity
1510 under ~~pursuant to~~ the Internal Revenue Code ~~of 1986, as amended,~~
1511 the amount of income tax attributable to the fiduciary's ~~trust's~~
1512 ~~or estate's~~ ownership share of the entity, based on its pro rata
1513 share of the taxable income of the entity that distributes the
1514 money, during the lookback period ~~for the number of years or~~
1515 ~~portion of years that the interest in the entity was held by the~~
1516 ~~fiduciary,~~ calculated as if all of the ~~that~~ tax was incurred by
1517 the fiduciary.

1518 (8) If a fiduciary receives additional information about
1519 the application of this section to an entity distribution before
1520 the fiduciary has paid part of the entity distribution to a
1521 beneficiary, the fiduciary may consider the additional
1522 information before making the payment to the beneficiary and may
1523 change a decision to make the payment to the beneficiary.

1524 (9) If a fiduciary receives additional information about
1525 the application of this section to an entity distribution after
1526 the fiduciary has paid part of the entity distribution to a
1527 beneficiary, the fiduciary is not required to change or recover
1528 the payment to the beneficiary but may consider that information
1529 in determining whether to exercise its other powers, including
1530 but not limited to the power to adjust under s. 738.203.

1531 (10) ~~(7)~~ The following applies to money or property received
1532 by a private trustee as a distribution from an investment entity
1533 described in this subsection:

1534 (a) The trustee shall first treat as income of the trust
1535 all of the money or property received from the investment entity
1536 in the current accounting period ~~year~~ which would be considered
1537 income under this chapter if the trustee had directly held the

26-00106D-24

20241316__

1538 trust's pro rata share of the assets of the investment entity.
1539 For this purpose, all distributions received in the current
1540 accounting period ~~year~~ must be aggregated.

1541 (b) The trustee shall next treat as income of the trust any
1542 additional money or property received in the current accounting
1543 period ~~year~~ which would have been considered income in the prior
1544 2 accounting periods ~~years~~ under paragraph (a) if additional
1545 money or property had been received from the investment entity
1546 in any of those prior 2 accounting periods ~~years~~. The amount to
1547 be treated as income must ~~shall~~ be reduced by any distributions
1548 of money or property made by the investment entity to the trust
1549 during the current and the prior 2 accounting periods ~~years~~
1550 which were treated as income under this paragraph.

1551 (c) The remainder of the distribution, if any, is treated
1552 as principal.

1553 (d) As used in this subsection, the term:

1554 1. "Investment entity" means an entity, other than a
1555 business activity conducted by the trustee described in s.
1556 738.403 or an entity that is listed on a public stock exchange,
1557 which is treated as a partnership, subchapter S corporation, or
1558 disregarded entity under ~~pursuant to~~ the Internal Revenue Code
1559 ~~of 1986, as amended,~~ and which normally derives 50 percent or
1560 more of its annual cumulative net income from interest,
1561 dividends, annuities, royalties, rental activity, or other
1562 passive investments, including income from the sale or exchange
1563 of such passive investments.

1564 2. "Private trustee" means a trustee who is a natural
1565 person, but is not an independent person as set forth in s.
1566 738.102 ~~only if the trustee is unable to use the power to adjust~~

26-00106D-24

20241316__

1567 ~~between income and principal with respect to receipts from~~
1568 ~~entities described in this subsection pursuant to s. 738.104. A~~
1569 ~~bank, trust company, or other commercial trustee is not~~
1570 ~~considered a private trustee.~~

1571 (11) A fiduciary shall allocate to principal any money and
1572 property the fiduciary receives in a distribution or series of
1573 related distributions from a public entity which are greater
1574 than 10 percent of the fair market value of the fiduciary's
1575 interest in the public entity on the first day of the accounting
1576 period. The amount to be allocated to principal must be reduced
1577 to the extent that the cumulative distributions from the entity
1578 to the fiduciary allocated to income do not exceed a cumulative
1579 annual return of 3 percent of the fair market value of the
1580 interest in the entity at the beginning of each accounting
1581 period, or portion of an accounting period, during the lookback
1582 period. If a fiduciary has exercised a power to adjust under s.
1583 738.203 during the lookback period, the fiduciary, in
1584 determining the total income distributions from that entity,
1585 must take into account the extent to which the exercise of that
1586 power resulted in income to the fiduciary from that entity for
1587 that period. If the income of the fiduciary during the lookback
1588 period has been computed under ss. 738.301-738.310, the
1589 fiduciary, in determining the total income distribution from
1590 that entity for that period, must take into account the portion
1591 of the unitrust amount paid as a result of the ownership of the
1592 trust's interest in the entity for that period. As used in this
1593 subsection, the term "public entity" means an entity listed on a
1594 public stock exchange.

1595 (12) ~~(8)~~ This section must ~~shall~~ be applied before ss.

26-00106D-24

20241316__

1596 738.506 and 738.507 ~~ss. 738.705 and 738.706~~ and does not modify
1597 or change any of the provisions of those sections.

1598 Section 21. Section 738.402, Florida Statutes, is amended
1599 to read:

1600 738.402 Distribution from trust or estate.—A fiduciary
1601 shall allocate to income an amount received as a distribution of
1602 income, including a unitrust distribution under ss. 738.301-
1603 738.310, from a trust or an estate in which the fiduciary trust
1604 has an interest, other than an interest a purchased in a trust
1605 that is an investment entity, and shall interest and allocate to
1606 principal an amount received as a distribution of principal from
1607 the such a trust or estate. If a fiduciary purchases, or
1608 receives from a settlor, an interest in a trust that is an
1609 investment entity, ~~or a decedent or donor transfers an interest~~
1610 ~~in such a trust to a fiduciary,~~ s. 738.401, s. 738.415, or s.
1611 738.416 ~~or s. 738.608~~ applies to a receipt from the trust.

1612 Section 22. Section 738.403, Florida Statutes, is amended
1613 to read:

1614 738.403 Business and other activity ~~activities~~ conducted by
1615 fiduciary.—

1616 (1) This section applies to ~~If a fiduciary who conducts a~~
1617 business or other activity conducted by a fiduciary if the
1618 fiduciary determines that it is in the best interests of
1619 ~~interest of all~~ the beneficiaries to account separately for the
1620 business or other activity instead of:

1621 (a) Accounting for the business or other activity as part
1622 of the fiduciary's ~~trust's or estate's~~ general accounting
1623 records; or

1624 (b) Conducting the business or other activity through an

26-00106D-24

20241316__

1625 entity described in s. 738.401(1)(b). ~~the~~

1626 (2) A fiduciary may account separately under this section
 1627 ~~maintain separate accounting records~~ for the transactions of a
 1628 ~~the~~ business or another ~~other~~ activity, regardless of whether ~~or~~
 1629 ~~not the~~ assets of the ~~such~~ business or other activity are
 1630 segregated from other ~~trust or estate~~ assets held by the
 1631 fiduciary.

1632 (3)(2) A fiduciary who accounts separately under this
 1633 section for a business or other activity:

1634 (a) May determine:

1635 1. The extent to which the net cash receipts of the
 1636 business or other activity must be retained for:

1637 a. Working capital;

1638 b. The acquisition or replacement of fixed assets; and

1639 c. Other reasonably foreseeable needs of the business or
 1640 other activity; and ~~working capital, the acquisition or~~
 1641 ~~replacement of fixed assets, and other reasonably foreseeable~~
 1642 ~~needs of the business or activity, and~~

1643 2. The extent to which the remaining net cash receipts are
 1644 accounted for as principal or income in the fiduciary's ~~trust's~~
 1645 ~~or estate's~~ general accounting records for the trust.

1646 (b) May make a determination under paragraph (a) separately
 1647 and differently from the fiduciary's decisions concerning
 1648 distributions of income or principal; and

1649 (c) Shall account for the net amount received from the sale
 1650 of an asset of ~~If a fiduciary sells assets of~~ the business or
 1651 other activity, other than a sale in the ordinary course of the
 1652 business or other activity, ~~the fiduciary must account for the~~
 1653 ~~net amount received~~ as principal in the fiduciary's ~~trust's or~~

26-00106D-24

20241316__

1654 ~~estate's~~ general accounting records for the trust, to the extent
 1655 the fiduciary determines that the net amount received is no
 1656 longer required in the conduct of the business or other
 1657 activity.

1658 (4) ~~(3)~~ Activities for which a fiduciary may account
 1659 separately under this section ~~maintain separate accounting~~
 1660 ~~records~~ include:

1661 (a) Retail, manufacturing, service, and other traditional
 1662 business activities.

1663 (b) Farming.

1664 (c) Raising and selling livestock and other animals.

1665 (d) Managing ~~Management of~~ rental properties.

1666 (e) Extracting ~~Extraction of~~ minerals and other natural
 1667 resources.

1668 (f) Growing and cutting timber ~~operations.~~

1669 (g) An activity ~~Activities~~ to which s. 738.414, s. 738.415,
 1670 or s. 738.416 ~~s. 738.607~~ applies.

1671 (h) Any other business conducted by the fiduciary.

1672 Section 23. Section 738.404, Florida Statutes, is created
 1673 to read:

1674 738.404 Principal receipts.—A fiduciary shall allocate to
 1675 principal:

1676 (1) To the extent not allocated to income under this
 1677 chapter, an asset received from any of the following:

1678 (a) An individual during the individual's lifetime.

1679 (b) An estate.

1680 (c) A trust on termination of an income interest.

1681 (d) A payor under a contract naming the fiduciary as
 1682 beneficiary.

26-00106D-24

20241316__

1683 (2) Except as otherwise provided in ss. 738.401-738.416,
1684 money or other property received from the sale, exchange,
1685 liquidation, or change in the form of a principal asset.

1686 (3) An amount recovered from a third party to reimburse the
1687 fiduciary because of a disbursement described in s. 738.502(1)
1688 or for another reason to the extent not based on the loss of
1689 income.

1690 (4) Proceeds of property taken by eminent domain except
1691 that proceeds awarded for loss of income in an accounting period
1692 are income if a current income beneficiary had a mandatory
1693 income interest during the period.

1694 (5) Net income received in an accounting period during
1695 which there is no beneficiary to which a fiduciary may or must
1696 distribute income.

1697 (6) Other receipts as provided in ss. 738.408-738.416.

1698 Section 24. Section 738.405, Florida Statutes, is created
1699 to read:

1700 738.405 Rental property.—To the extent that a fiduciary
1701 does not account for the management of rental property as a
1702 business under s. 738.403, the fiduciary shall allocate to
1703 income an amount received as rent of real or personal property,
1704 including an amount received for cancellation or renewal of a
1705 lease. An amount received as a refundable deposit, including a
1706 security deposit or a deposit that is to be applied as rent for
1707 future periods:

1708 (1) Must be added to principal and held subject to the
1709 terms of the lease, except as otherwise provided by law other
1710 than this chapter; and

1711 (2) Is not allocated to income or available for

26-00106D-24

20241316__

1712 distribution to a beneficiary until the fiduciary's contractual
1713 obligations have been satisfied with respect to that amount.

1714 Section 25. Section 738.406, Florida Statutes, is created
1715 to read:

1716 738.406 Receipt on obligation to be paid in money.—

1717 (1) This section does not apply to an obligation to which
1718 s. 738.409, s. 738.410, s. 738.411, s. 738.412, s. 738.414, s.
1719 738.415, or s. 738.416 applies.

1720 (2) A fiduciary shall allocate to income, without provision
1721 for amortization of premium, an amount received as interest on
1722 an obligation to pay money to the fiduciary, including an amount
1723 received as consideration for prepaying principal.

1724 (3) A fiduciary shall allocate to principal an amount
1725 received from the sale, redemption, or other disposition of an
1726 obligation to pay money to the fiduciary.

1727 (4) A fiduciary shall allocate to income the increment in
1728 value of a bond or other obligation for the payment of money
1729 bearing no stated interest but payable or redeemable, at
1730 maturity or another future time, in an amount that exceeds the
1731 amount in consideration of which it was issued. If the increment
1732 in value accrues and becomes payable pursuant to a fixed
1733 schedule of appreciation, it may be distributed to the
1734 beneficiary who was the income beneficiary at the time of
1735 increment from the first principal cash available or, if none is
1736 available, when the increment is realized by sale, redemption,
1737 or other disposition. If unrealized increment is distributed as
1738 income but out of principal, the principal must be reimbursed
1739 for the increment when realized. If, in the reasonable judgment
1740 of the fiduciary, exercised in good faith, the ultimate payment

26-00106D-24

20241316__

1741 of the bond principal is in doubt, the fiduciary may withhold
1742 the payment of incremental interest to the income beneficiary.

1743 Section 26. Section 738.407, Florida Statutes, is created
1744 to read:

1745 738.407 Insurance policy or contract.—

1746 (1) This section does not apply to a contract to which s.
1747 738.409 applies.

1748 (2) Except as otherwise provided in subsection (3), a
1749 fiduciary shall allocate to principal the proceeds of a life
1750 insurance policy or other contract received by the fiduciary as
1751 beneficiary, including a contract that insures against damage
1752 to, destruction of, or loss of title to an asset. The fiduciary
1753 shall allocate dividends on an insurance policy to income to the
1754 extent that premiums on the policy are paid from income and to
1755 principal to the extent premiums on the policy are paid from
1756 principal.

1757 (3) A fiduciary shall allocate to income proceeds of a
1758 contract that insures the fiduciary against loss of:

1759 (a) Occupancy or other use by a current income beneficiary;

1760 (b) Income; or

1761 (c) Subject to s. 738.403, profits from a business.

1762 Section 27. Section 738.408, Florida Statutes, is created
1763 to read:

1764 738.408 Insubstantial allocation not required.—

1765 (1) If a fiduciary determines that an allocation between
1766 income and principal required by s. 738.409, s. 738.410, s.
1767 738.411, s. 738.412, or s. 738.415 is insubstantial, the
1768 fiduciary may allocate the entire amount to principal, unless s.
1769 738.203(5) applies to the allocation.

26-00106D-24

20241316__

1770 (2) A fiduciary may presume an allocation is insubstantial
 1771 under subsection (1) if:

1772 (a) The amount of the allocation would increase or decrease
 1773 net income in an accounting period, as determined before the
 1774 allocation, by less than 10 percent; and

1775 (b) The asset producing the receipt to be allocated has a
 1776 carrying value less than 10 percent of the total carrying value
 1777 of the assets owned or held by the fiduciary at the beginning of
 1778 the accounting period.

1779 (3) The power to make a determination under subsection (1)
 1780 may be:

1781 (a) Exercised by a cofiduciary in the manner described in
 1782 s. 738.203(6); or

1783 (b) Released or delegated for a reason described in s.
 1784 738.203(7) and in the manner described in s. 738.203(8).

1785 Section 28. Section 738.409, Florida Statutes, is created
 1786 to read:

1787 738.409 Deferred compensation, annuity, or similar
 1788 payment.—

1789 (1) As used in this section, the term:

1790 (a) "Internal income of the separate fund" means the amount
 1791 determined under subsection (2).

1792 (b) "Marital trust" means a trust:

1793 1. Of which the settlor's surviving spouse is the only
 1794 current income beneficiary and is entitled to a distribution of
 1795 all the current net income of the trust; and

1796 2. That qualifies for a marital deduction with respect to
 1797 the settlor's estate under the Internal Revenue Code or
 1798 comparable law of any state because:

26-00106D-24

20241316__

1799 a. An election to qualify for a marital deduction under s.
1800 2056(b)(7) of the Internal Revenue Code has been made;

1801 b. The trust qualified for a marital deduction under s.
1802 2056(b)(5) of the Internal Revenue Code; or

1803 c. The trust otherwise qualifies for a marital deduction.

1804 (c) "Nonseparate fund" means an annuity, a deferred
1805 compensation plan, a pension plan, or other fund for which the
1806 value of the participant's or account owner's right to receive
1807 benefits can be determined only by the occurrence of a date or
1808 event as defined in the instrument governing the fund.

1809 (d) "Payment" means an amount a fiduciary may receive over
1810 a fixed number of years or during the life of one or more
1811 individuals because of services rendered or property transferred
1812 to the payor in exchange for future amounts the fiduciary may
1813 receive. The term includes an amount received in money or
1814 property from the payor's general assets or from a separate fund
1815 created by the payor.

1816 (e) "Percent calculated" means a percent equal to the rate
1817 determined under s. 7520 of the Internal Revenue Code in effect
1818 for the month preceding the beginning of the accounting period;
1819 however, if the percent calculated exceeds 5 percent, it must be
1820 reduced to 5 percent, and if the percent calculated is less than
1821 3 percent, it must be increased to 3 percent. Notwithstanding
1822 the preceding sentence, a fiduciary who is an independent person
1823 as defined in s. 738.102 may set the percent calculated at a
1824 percentage no less than 3 percent and no greater than 5 percent.

1825 (f) "Separate fund" includes a private or commercial
1826 annuity, an individual retirement account, and a pension,
1827 profit-sharing, stock-bonus, stock ownership plan, or other

26-00106D-24

20241316__

1828 deferred compensation fund holding assets exclusively for the
1829 benefit of a participant or account owner.

1830 (2) For each accounting period, the following rules apply
1831 to a separate fund:

1832 (a) The fiduciary may determine the internal income of the
1833 separate fund as if the separate fund were a trust subject to
1834 this chapter.

1835 (b) Alternatively, the fiduciary may deem the internal
1836 income of the separate fund to equal the percent calculated of
1837 the value of the separate fund according to the most recent
1838 statement of value preceding the beginning of the accounting
1839 period. The fiduciary is not liable for good faith reliance upon
1840 any valuation supplied by the person or persons in possession of
1841 the fund. If the fiduciary makes or terminates an election under
1842 this paragraph, the fiduciary must make such disclosure in a
1843 trust disclosure document that satisfies the requirements of s.
1844 736.1008(4)(c).

1845 (c) If the fiduciary cannot determine the value of the
1846 separate fund under paragraph (b), the value of the separate
1847 fund is deemed to equal the present value of s. 7520 of the
1848 Internal Revenue Code for the month preceding the beginning of
1849 the accounting period for which the computation is made.

1850 (d) The fiduciary may elect the method of determining the
1851 income of the fund pursuant to this subsection and may change
1852 the method of determining income of the fund for any future
1853 accounting period.

1854 (3) A fiduciary shall allocate a payment received from a
1855 separate fund during an accounting period to income, to the
1856 extent of the internal income of the separate fund during the

26-00106D-24

20241316__

1857 period, and allocate the balance to principal.

1858 (4) The fiduciary of a marital trust shall:

1859 (a) Withdraw from a separate fund the amount the current
1860 income beneficiary of the trust requests the fiduciary to
1861 withdraw, not greater than the amount by which the internal
1862 income of the separate fund during the accounting period exceeds
1863 the amount the fiduciary otherwise receives from the separate
1864 fund during the period.

1865 (b) Transfer from principal to income the amount the
1866 current income beneficiary requests the fiduciary to transfer,
1867 but not greater than the amount by which the internal income of
1868 the separate fund during the period exceeds the amount the
1869 fiduciary receives from the separate fund during the period
1870 after the application of paragraph (a).

1871 (c) Distribute to the current income beneficiary as income:

1872 1. The amount of the internal income of the separate fund
1873 received or withdrawn during the period; and

1874 2. The amount transferred from principal to income under
1875 paragraph (b).

1876 (5) For a trust, other than a marital trust, of which one
1877 or more current income beneficiaries are entitled to a
1878 distribution of all the current net income, the fiduciary shall
1879 transfer from principal to income the amount by which the
1880 internal income of the separate fund during the accounting
1881 period exceeds the amount the fiduciary receives from the
1882 separate fund during the period.

1883 (6) The fiduciary of a nonseparate fund shall calculate
1884 internal income of the fund as the percent calculated of the
1885 present value of the right to receive the remaining payments as

26-00106D-24

20241316__

1886 determined under s. 7520(a)(2) of the Internal Revenue Code for
 1887 the month preceding the beginning of the accounting period.

1888 (7) If a fiduciary owns a separate fund or a nonseparate
 1889 fund before January 1, 2025, the fiduciary may determine
 1890 internal income, allocate payments, and account for unwithdrawn
 1891 internal income as provided in this section or in the manner
 1892 used by the fiduciary before January 1, 2025. Such fiduciary is
 1893 not required to consider subsection (5). If the fiduciary
 1894 acquires a separate fund or a nonseparate fund on or after
 1895 January 1, 2025, the fiduciary must calculate internal income,
 1896 allocate payments, and account for unwithdrawn internal income
 1897 as provided in this section.

1898 Section 29. Section 738.603, Florida Statutes, is
 1899 transferred, renumbered as section 738.410, Florida Statutes,
 1900 and amended to read:

1901 738.410 ~~738.603~~ Liquidating asset.—

1902 (1) As used in ~~For purposes of~~ this section, the term
 1903 "liquidating asset" means an asset whose value ~~the value of~~
 1904 ~~which~~ will diminish or terminate because the asset is expected
 1905 to produce receipts for a ~~period of~~ limited time duration. The
 1906 term includes a leasehold, patent, copyright, royalty right, and
 1907 right to receive payments during a period of ~~for~~ more than 1
 1908 year under an arrangement that does not provide for the payment
 1909 of interest on the unpaid balance. ~~The term does not include a~~
 1910 ~~payment subject to s. 738.602, resources subject to s. 738.604,~~
 1911 ~~timber subject to s. 738.605, an activity subject to s. 738.607,~~
 1912 ~~an asset subject to s. 738.608, or any asset for which the~~
 1913 ~~fiduciary establishes a reserve for depreciation under s.~~
 1914 ~~738.703.~~

26-00106D-24

20241316__

1915 (2) This section does not apply to a receipt that is
 1916 subject to s. 738.401, s. 738.409, s. 738.411, s. 738.412, s.
 1917 738.414, s. 738.415, s. 738.416, or s. 738.503.

1918 (3) A fiduciary shall allocate to income a receipt produced
 1919 by a liquidating asset to the extent that the receipt does not
 1920 exceed 5 percent of the receipts from the carrying value of the
 1921 asset at the beginning of the accounting period and allocate a
 1922 liquidating asset and the balance to principal the balance of
 1923 the receipt.

1924 (4) The amount ~~Amounts~~ allocated to principal shall reduce
 1925 the carrying value of the liquidating asset, but not below zero.
 1926 Amounts received in excess of the remaining carrying value must
 1927 be allocated to principal.

1928 Section 30. Section 738.604, Florida Statutes, is
 1929 transferred, renumbered as section 738.411, Florida Statutes,
 1930 and amended to read:

1931 738.411 ~~738.604~~ Minerals, water, and other natural
 1932 resources.—

1933 (1) To the extent that ~~If~~ a fiduciary does not account for
 1934 a receipt accounts for receipts from an interest in minerals,
 1935 water, or other natural resources as a business under s. 738.403
 1936 ~~pursuant to this section,~~ the fiduciary shall allocate the
 1937 receipt such receipts as follows:

1938 (a) To income, to the extent received:

1939 1. If received As nominal delay rental or ~~nominal~~ annual
 1940 rent on a lease;

1941 2. As a factor for interest or the equivalent of interest
 1942 under an agreement creating a production payment; or

1943 3. On account of an interest in renewable water; ~~a receipt~~

26-00106D-24

20241316__

1944 ~~shall be allocated to income.~~

1945 (b) To principal, if received from a production payment, a
1946 ~~receipt shall be allocated to income if and to the extent that~~
1947 ~~subparagraph (a)2. does not apply; or the agreement creating the~~
1948 ~~production payment provides a factor for interest or its~~
1949 ~~equivalent. The balance shall be allocated to principal.~~

1950 (c) Between income and principal equitably, to the extent
1951 received:

1952 1. On account of an interest in nonrenewable water;

1953 2. If an amount received As a royalty, shut-in-well
1954 ~~payment, take-or-pay payment, or bonus; or, or delay rental is~~
1955 ~~more than nominal, 90 percent shall be allocated to principal~~
1956 ~~and the balance to income.~~

1957 3.(d) If an amount is received From a working interest or
1958 ~~any other interest not provided for in paragraph (a) or,~~
1959 ~~paragraph (b) or subparagraph 1. or subparagraph 2., or~~
1960 ~~paragraph (c), 90 percent of the net amount received shall be~~
1961 ~~allocated to principal and the balance to income.~~

1962 (2) ~~An amount received on account of an interest in water~~
1963 ~~that is renewable shall be allocated to income. If the water is~~
1964 ~~not renewable, 90 percent of the amount shall be allocated to~~
1965 ~~principal and the balance to income.~~

1966 (3) This section ~~chapter~~ applies to an interest owned or
1967 held by a fiduciary regardless of whether or not a settlor
1968 ~~decendent or donor~~ was extracting minerals, water, or other
1969 natural resources before the fiduciary owned or held the
1970 ~~interest became subject to the trust or estate.~~

1971 (3) An allocation of a receipt under paragraph (1)(c) is
1972 presumed to be equitable if the amount allocated to principal is

26-00106D-24

20241316__

1973 equal to the amount allowed by the Internal Revenue Code as a
 1974 deduction for depletion of the interest.

1975 (4) If a fiduciary ~~trust or estate~~ owns or holds an
 1976 interest in minerals, water, or other natural resources before
 1977 January 1, 2025 ~~on January 1, 2003~~, the fiduciary may allocate
 1978 receipts from the interest as provided in this section ~~chapter~~
 1979 or in the manner used by the fiduciary before January 1, 2025
 1980 ~~January 1, 2003~~. If the fiduciary ~~trust or estate~~ acquires an
 1981 interest in minerals, water, or other natural resources on or
 1982 after January 1, 2025 ~~January 1, 2003~~, the fiduciary must ~~shall~~
 1983 allocate receipts from the interest as provided in this section
 1984 ~~chapter~~.

1985 Section 31. Section 738.605, Florida Statutes, is
 1986 transferred, renumbered as section 738.412, Florida Statutes,
 1987 and amended to read:

1988 738.412 ~~738.605~~ Timber.—

1989 (1) To the extent that ~~If~~ a fiduciary does not account
 1990 ~~accounts~~ for receipts from the sale of timber and related
 1991 products as a business under s. 738.403 ~~pursuant to this~~
 1992 ~~section~~, the fiduciary shall allocate the ~~such~~ net receipts as
 1993 ~~follows~~:

1994 (a) To income, to the extent that the amount of timber cut
 1995 ~~removed~~ from the land does not exceed the rate of growth of the
 1996 timber ~~during the accounting periods in which a beneficiary has~~
 1997 ~~a mandatory income interest~~;

1998 (b) To principal, to the extent that the amount of timber
 1999 cut removed from the land exceeds the rate of growth of the
 2000 timber or the net receipts are from the sale of standing timber;

2001 (c) ~~To or~~ Between income and principal if the net receipts

26-00106D-24

20241316__

2002 are from the lease of land used for growing and cutting timber
2003 ~~timberland~~ or from a contract to cut timber from land ~~owned by a~~
2004 ~~trust or estate~~ by determining the amount of timber cut removed
2005 from the land under the lease or contract and applying the rules
2006 in paragraphs (a) and (b); or

2007 (d) To principal, to the extent that advance payments,
2008 bonuses, and other payments are not allocated under ~~pursuant to~~
2009 paragraph (a), paragraph (b), or paragraph (c).

2010 (2) In determining net receipts to be allocated under
2011 ~~pursuant to~~ subsection (1), a fiduciary shall deduct and
2012 transfer to principal a reasonable amount for depletion.

2013 (3) This section chapter applies to land owned or held by a
2014 fiduciary regardless of whether ~~or not~~ a settlor decedent or
2015 ~~donor~~ was cutting harvesting timber from the land property
2016 before the fiduciary owned or held the property ~~became subject~~
2017 ~~to the trust or estate~~.

2018 (4) If a fiduciary trust or estate owns or holds an
2019 interest in land used for growing and cutting timber before
2020 January 1, 2025 timberland on January 1, 2003, the fiduciary may
2021 allocate net receipts from the sale of timber and related
2022 products as provided in this section chapter or in the manner
2023 used by the fiduciary before January 1, 2025 January 1, 2003. If
2024 the fiduciary trust or estate acquires an interest in land used
2025 for growing and cutting timber on or after January 1, 2025
2026 ~~timberland after January 1, 2003~~, the fiduciary must shall
2027 allocate net receipts from the sale of timber and related
2028 products as provided in this section chapter.

2029 Section 32. Section 738.606, Florida Statutes, is
2030 transferred, renumbered as section 738.413, Florida Statutes,

26-00106D-24

20241316__

2031 and amended to read:

2032 738.413 ~~738.606~~ Marital deduction property not productive
2033 of income.—

2034 (1) If a trust received property for which a gift or estate
2035 tax marital deduction was under the Internal Revenue Code or
2036 comparable law of any state is allowed, for all or if part of a
2037 trust received property satisfying, or if assets are transferred
2038 to a trust that satisfies the requirements of s. 732.2025(2) (a)
2039 and (c), and such property has assets have been used in whole or
2040 in part to satisfy an election by a surviving spouse under s.
2041 732.2125, and the settlor's spouse holds a mandatory income
2042 interest in the trust, the spouse may require the trustee, to
2043 the extent that the trust assets otherwise do consist of
2044 property that, in the aggregate, does not provide the spouse
2045 with sufficient income from or use of the trust assets to
2046 qualify for the deduction, or to satisfy an election by a
2047 surviving spouse under s. 732.2125, to make the property
2048 productive of income within a reasonable time. The trustee may:

2049 (a) Convert property to property productive of income
2050 within a reasonable time;

2051 (b) Exercise the power to adjust under s. 738.203;

2052 (c) Exercise the power to convert to or from a unitrust
2053 under s. 738.303; or

2054 (d) Exercise the fiduciary's authority under the terms of
2055 the trust to otherwise provide the surviving spouse with
2056 sufficient income from the trust assets, or the use of the trust
2057 assets, to qualify for the marital deduction, or to satisfy an
2058 election by a surviving spouse under s. 732.2125.

2059 (2) The trustee may decide which action or combination of

26-00106D-24

20241316__

2060 actions listed in subsection (1) to take.

2061 (3) Subsection (1) shall apply, ~~and if amounts the trustee~~
 2062 ~~transfers from principal to income under s. 738.104 and~~
 2063 ~~distributes to the spouse from principal pursuant to the terms~~
 2064 ~~of the trust are insufficient to provide the spouse with the~~
 2065 ~~beneficial enjoyment required to obtain the marital deduction,~~
 2066 ~~even though, in the case of an elective share trust under s.~~
 2067 732.2025(2), ~~a marital deduction is not made or is only~~
 2068 ~~partially made, the spouse may require the trustee of such~~
 2069 ~~marital trust or elective share trust to make property~~
 2070 ~~productive of income, convert property within a reasonable time,~~
 2071 ~~or exercise the power conferred by ss. 738.104 and 738.1041.~~

2072 (4) The terms of a trust as defined in s. 738.102 may not
 2073 supersede this section unless such terms explicitly reference
 2074 this section ~~The trustee may decide which action or combination~~
 2075 ~~of actions to take.~~

2076 ~~(2) In cases not governed by subsection (1), proceeds from~~
 2077 ~~the sale or other disposition of an asset are principal without~~
 2078 ~~regard to the amount of income the asset produces during any~~
 2079 ~~accounting period.~~

2080 Section 33. Section 738.607, Florida Statutes, is
 2081 transferred, renumbered as section 738.414, Florida Statutes,
 2082 and amended to read:

2083 738.414 ~~738.607~~ Derivatives or ~~and~~ options.-

2084 (1) As used in ~~For purposes of~~ this section, the term
 2085 "derivative" means a contract, an ~~or~~ financial instrument, or
 2086 other arrangement, or a combination of contracts, and financial
 2087 instruments, or other arrangements, of which the value, rights,
 2088 and obligations are, in whole or in part, dependent on or

26-00106D-24

20241316__

2089 ~~derived from an underlying which gives a trust the right or~~
 2090 ~~obligation to participate in some or all changes in the price of~~
 2091 ~~a tangible or intangible asset, a ~~or~~ group of tangible or~~
 2092 ~~intangible assets, an index, or an occurrence of an event. The~~
 2093 ~~term includes stocks, fixed income securities, and financial~~
 2094 ~~instruments and arrangements based on indices, commodities,~~
 2095 ~~interest rates, weather-related events, and credit-default~~
 2096 ~~events assets, or changes in a rate, an index of prices or~~
 2097 ~~rates, or other market indicator for an asset or a group of~~
 2098 ~~assets.~~

2099 (2) To the extent that a fiduciary does not account for a
 2100 transaction in derivatives as a business under s. 738.403 ~~for~~
 2101 ~~transactions in derivatives~~, the fiduciary shall allocate 10
 2102 percent of to principal receipts from the transaction and 10
 2103 percent of and disbursements made in connection with the
 2104 transaction to income and allocate the balance to principal
 2105 ~~those transactions.~~

2106 (3) Subsection (4) applies if:

2107 (a) A fiduciary:

2108 1. If a fiduciary Grants an option to buy property from a
 2109 the trust, regardless of ~~or estate~~ whether ~~or not~~ the trust ~~or~~
 2110 estate owns the property when the option is granted;

2111 2. Grants an option that permits another person to sell
 2112 property to the trust; or

2113 3. ~~estate, or~~ Acquires an option to buy property for the
 2114 trust or ~~estate or~~ an option to sell an asset owned by the trust
 2115 ~~or estate;~~ and

2116 (b) The fiduciary or other owner of the asset is required
 2117 to deliver the asset if the option is exercised, ~~an amount~~

26-00106D-24

20241316__

2118 ~~received for granting the option shall be allocated to~~
 2119 ~~principal. An amount paid to acquire the option shall be paid~~
 2120 ~~from principal.~~

2121 (4) If this subsection applies, the fiduciary must allocate
 2122 10 percent to income and allocate the balance to principal of
 2123 the following amounts:

2124 (a) An amount received for granting the option;

2125 (b) An amount paid to acquire the option; and

2126 (c) A Gain or loss realized ~~on~~ upon the exercise, exchange,
 2127 settlement, offset, closing, or expiration of the option ~~of an~~
 2128 ~~option, including an option granted to a grantor of the trust or~~
 2129 ~~estate for services rendered, shall be allocated to principal.~~

2130 Section 34. Section 738.608, Florida Statutes, is
 2131 transferred, renumbered as section 738.415, Florida Statutes,
 2132 and amended to read:

2133 738.415 ~~738.608~~ Asset-backed securities.—

2134 (1) Except as otherwise provided in subsection (2), a
 2135 fiduciary shall allocate to income a receipt from or related to
 2136 an asset-backed security, as defined in s. 738.102, to the
 2137 extent that the payor identifies the payment as being from ~~For~~
 2138 ~~purposes of this section, "asset-backed security" means an asset~~
 2139 ~~the value of which is based upon the right given the owner to~~
 2140 ~~receive distributions from the proceeds of financial assets that~~
 2141 ~~provide collateral for the security. The term includes an asset~~
 2142 ~~that gives the owner the right to receive from the collateral~~
 2143 ~~financial assets only the interest or other current return and~~
 2144 allocate to principal the balance of the receipt ~~or only the~~
 2145 ~~proceeds other than interest or current return. The term does~~
 2146 ~~not include an asset to which s. 738.401 or s. 738.602 applies.~~

26-00106D-24

20241316__

2147 (2) If a fiduciary receives one or more payments in
2148 exchange for part or all of the fiduciary's interest in an
2149 asset-backed security, including a liquidation or redemption of
2150 the fiduciary's interest in the security ~~trust or estate~~
2151 ~~receives a payment from interest or other current return and~~
2152 ~~from other proceeds of the collateral financial assets, the~~
2153 fiduciary must shall allocate to income 10 percent of receipts
2154 from the transaction and 10 percent of disbursements made in
2155 connection with the transaction, and allocate to principal the
2156 ~~portion of the payment which the payor identifies as being from~~
2157 ~~interest or other current return and allocate the balance of the~~
2158 receipts and disbursements ~~payment to principal.~~

2159 ~~(3) If a trust or estate receives one or more payments in~~
2160 ~~exchange for the trust's or estate's entire interest in an~~
2161 ~~asset-backed security during a single accounting period, the~~
2162 ~~fiduciary shall allocate the payments to principal. If a payment~~
2163 ~~is one of a series of payments that will result in the~~
2164 ~~liquidation of the trust's or estate's interest in the security~~
2165 ~~over more than a single accounting period, the fiduciary shall~~
2166 ~~allocate 10 percent of the payment to income and the balance to~~
2167 ~~principal.~~

2168 Section 35. Section 738.416, Florida Statutes, is created
2169 to read:

2170 738.416 Other financial instrument or arrangement.—A
2171 fiduciary shall allocate receipts from or related to a financial
2172 instrument or arrangement not otherwise addressed by this
2173 chapter. The allocation must be consistent with ss. 738.414 and
2174 738.415.

2175 Section 36. Section 738.501, Florida Statutes, is amended

26-00106D-24

20241316__

2176 to read:

2177 (Substantial rewording of section. See2178 s. 738.501, F.S., for present text.)2179 738.501 Disbursement from income.—Subject to s. 738.504,
2180 and except as otherwise provided in s. 738.601(3)(b) or (c), a
2181 fiduciary shall disburse from income:2182 (1) One-half of:2183 (a) The regular compensation of the fiduciary and of any
2184 person providing investment advisory, custodial, or other
2185 services to the fiduciary to the extent that income is
2186 sufficient; and2187 (b) An expense for an accounting, judicial or nonjudicial
2188 proceeding, or other matter that involves both income and
2189 successive interests to the extent income is sufficient.2190 (2) The balance of the disbursements described in
2191 subsection (1), to the extent that a fiduciary who is an
2192 independent person determines that making those disbursements
2193 from income would be in the interests of the beneficiaries.2194 (3) Any other ordinary expense incurred in connection with
2195 administration, management, or preservation of property and
2196 distribution of income, including interest, an ordinary repair,
2197 a regularly recurring tax assessed against principal, and an
2198 expense of an accounting, judicial or nonjudicial proceeding, or
2199 other matter that involves primarily an income interest, to the
2200 extent that income is sufficient.2201 (4) A premium on insurance covering loss of a principal
2202 asset or income from or use of the asset.2203 Section 37. Section 738.502, Florida Statutes, is amended
2204 to read:

26-00106D-24

20241316__

2205 (Substantial rewording of section. See
2206 s. 738.502, F.S., for present text.)
2207 738.502 Disbursement from principal.—
2208 (1) Subject to s. 738.505, and except as otherwise provided
2209 in s. 738.601(3)(b), a fiduciary shall disburse all of the
2210 following from principal:
2211 (a) The balance of the disbursements described in s.
2212 738.501(1) and (3), after application of s. 738.501(2).
2213 (b) The fiduciary's compensation calculated on principal as
2214 a fee for acceptance, distribution, or termination.
2215 (c) A payment of an expense to prepare for or execute a
2216 sale or other disposition of property.
2217 (d) A payment on the principal of a trust debt.
2218 (e) A payment of an expense of an accounting, judicial or
2219 nonjudicial proceeding, or other matter that involves primarily
2220 principal, including a proceeding to construe the terms of the
2221 trust or protect property.
2222 (f) A payment of a premium for insurance, including title
2223 insurance, not described in s. 738.501(4) of which the fiduciary
2224 is the owner and beneficiary.
2225 (g) A payment of estate, inheritance, and other transfer
2226 taxes, including penalties, apportioned to the trust.
2227 (h) A payment related to environmental matters including:
2228 1. Reclamation;
2229 2. Assessing environmental conditions;
2230 3. Remedying and removing environmental contamination;
2231 4. Monitoring remedial activities and the release of
2232 substances;
2233 5. Preventing future releases of substances;

26-00106D-24

20241316__

2234 6. Collecting amounts from persons liable or potentially
 2235 liable for the costs of the activities described in
 2236 subparagraphs 1.-5.;

2237 7. Penalties imposed under environmental laws or
 2238 regulations;

2239 8. Other actions to comply with environmental laws or
 2240 regulations;

2241 9. Statutory or common law claims by third parties; and

2242 10. Defending claims based on environmental matters.

2243 (i) A payment of a premium for insurance for matters
 2244 described in paragraph (h).

2245 (2) If a principal asset is encumbered with an obligation
 2246 that requires income from the asset to be paid directly to a
 2247 creditor, the fiduciary must transfer from principal to income
 2248 an amount equal to the income paid to the creditor in reduction
 2249 of the principal balance of the obligation.

2250 Section 38. Section 738.503, Florida Statutes, is amended
 2251 to read:

2252 (Substantial rewording of section. See
 2253 s. 738.503, F.S., for present text.)

2254 738.503 Transfers from income to principal for
 2255 depreciation.-

2256 (1) For purposes of this section, "depreciation" means a
 2257 reduction in value due to wear, tear, decay, corrosion, or
 2258 gradual obsolescence of a tangible asset having a useful life of
 2259 more than 1 year.

2260 (2) A fiduciary may transfer to principal a reasonable
 2261 amount of the net cash receipts from a principal asset that is
 2262 subject to depreciation but may not transfer any amount for

26-00106D-24

20241316__

2263 depreciation:

2264 (a) Of the part of real property used or available for use
2265 by a beneficiary as a residence;

2266 (b) Of tangible personal property held or made available
2267 for the personal use or enjoyment of a beneficiary; or

2268 (c) Under this section, to the extent that the fiduciary
2269 accounts:

2270 1. Under s. 738.410 for the asset; or

2271 2. Under s. 738.403 for the business or other activity in
2272 which the asset is used.

2273 (3) An amount transferred to principal under this section
2274 need not be separately held.

2275 Section 39. Section 738.504, Florida Statutes, is amended
2276 to read:

2277 (Substantial rewording of section. See

2278 s. 738.504, F.S., for present text.)

2279 738.504 Reimbursement of income from principal.-

2280 (1) If a fiduciary makes or expects to make an income
2281 disbursement described in subsection (2), the fiduciary may
2282 transfer an appropriate amount from principal to income in one
2283 or more accounting periods to reimburse income.

2284 (2) To the extent that the fiduciary has not been and does
2285 not expect to be reimbursed by a third party, income
2286 disbursements to which subsection (1) applies include:

2287 (a) An amount chargeable to principal but paid from income
2288 because principal is illiquid;

2289 (b) A disbursement made to prepare property for sale,
2290 including improvements and commissions; and

2291 (c) A disbursement described in s. 738.502(1).

26-00106D-24

20241316__

2292 (3) If an asset whose ownership gives rise to an income
2293 disbursement becomes subject to a successive interest after an
2294 income interest ends, the fiduciary may continue to make
2295 transfers under subsection (1).

2296 Section 40. Section 738.704, is transferred, renumbered as
2297 section 738.505, Florida Statutes, and amended to read:

2298 738.505 738.704 Reimbursement of principal from income
2299 ~~Transfers from income to reimburse principal.-~~

2300 (1) If a fiduciary makes or expects to make a principal
2301 disbursement described in subsection (2) this section, the
2302 fiduciary may transfer an appropriate amount from income to
2303 principal in one or more accounting periods to reimburse
2304 principal or to provide a reserve for future principal
2305 disbursements.

2306 ~~(2) Principal disbursements to which subsection (1) applies~~
2307 ~~include the following, but only~~ To the extent that a the
2308 fiduciary has not been and does not expect to be reimbursed by a
2309 third party, principal disbursements to which subsection (1)
2310 applies include:

2311 (a) An amount chargeable to income but paid from principal
2312 because income is not sufficient; the amount is unusually large.

2313 (b) The cost of an improvement to principal, whether a
2314 change to an existing asset or the construction of a new asset,
2315 including a special assessment; Disbursements made to prepare
2316 property for rental, including tenant allowances, leasehold
2317 improvements, and broker's commissions.

2318 (c) A disbursement made to prepare property for rental,
2319 including tenant allowances, leasehold improvements, and
2320 commissions; Disbursements described in s. 738.702(1)(g).

26-00106D-24

20241316__

2321 (d) A periodic payment on an obligation secured by a
 2322 principal asset, to the extent the amount transferred from
 2323 income to principal for depreciation is less than the periodic
 2324 payment; and

2325 (e) A disbursement described in s. 738.502(1).

2326 (3) If an ~~the~~ asset whose ~~the~~ ownership ~~of which~~ gives rise
 2327 to a principal disbursement ~~the disbursements~~ becomes subject to
 2328 a successive ~~income~~ interest after an income interest ends, the
 2329 a fiduciary may ~~continue to~~ make transfers under ~~transfer~~
 2330 ~~amounts from income to principal as provided in~~ subsection (1).

2331 ~~(4) To the extent principal cash is not sufficient to pay~~
 2332 ~~the principal balance of payments due on mortgaged property,~~
 2333 ~~income may be applied to such payment in order to avoid a~~
 2334 ~~default on any mortgage or security interest securing the~~
 2335 ~~property. Income shall be reimbursed for such payments out of~~
 2336 ~~the first available principal cash. If the asset the ownership~~
 2337 ~~of which gives rise to the disbursements described in this~~
 2338 ~~subsection becomes subject to a successive income interest after~~
 2339 ~~an income interest ends, all rights of the initial income~~
 2340 ~~interest shall lapse, and amounts remaining due from principal~~
 2341 ~~shall not be a lien on the assets of the trust.~~

2342 Section 41. Section 738.705, Florida Statutes, is
 2343 transferred, renumbered as section 738.506, Florida Statutes,
 2344 and amended to read:

2345 738.506 ~~738.705~~ Income taxes.—

2346 (1) A tax required to be paid by a fiduciary which is based
 2347 on receipts allocated to income must ~~shall~~ be paid from income.

2348 (2) A tax required to be paid by a fiduciary which is based
 2349 on receipts allocated to principal must ~~shall~~ be paid from

26-00106D-24

20241316__

2350 principal, even if the tax is called an income tax by the taxing
2351 authority.

2352 (3) Subject to subsection (4) and ss. 738.504, 738.505, and
2353 738.507, a tax required to be paid by a fiduciary on a the
2354 trust's or estate's share of an entity's taxable income in an
2355 accounting period must shall be paid from proportionately:

2356 (a) ~~From~~ Income and principal proportionately to the
2357 allocation between income and principal of to the extent
2358 receipts from the entity in the period are allocated to income.

2359 (b) ~~From principal to the extent receipts from the entity~~
2360 ~~are allocated to principal.~~

2361 (c) ~~From~~ Principal to the extent that the tax exceeds the
2362 income taxes payable by the trust or estate exceed the total
2363 receipts from the entity in the period.

2364 (4) After applying subsections (1), (2), and (3), a
2365 fiduciary shall adjust income or principal receipts, to the
2366 extent the taxes that the fiduciary pays are reduced because of
2367 a deduction for a payment made to a beneficiary.

2368 (5) Subject to the limitations and excluded assets provided
2369 under s. 736.08145, a reimbursement of state or federal income
2370 tax elected to be made by a fiduciary pursuant to s. 736.08145
2371 must be allocated and paid under paragraphs (3) (a) and (b) After
2372 applying subsections (1) (3), the fiduciary shall adjust income
2373 or principal receipts to the extent that the trust's or estate's
2374 income taxes are reduced, but not eliminated, because the trust
2375 or estate receives a deduction for payments made to a
2376 beneficiary. The amount distributable to that beneficiary as
2377 income as a result of this adjustment shall be equal to the cash
2378 received by the trust or estate, reduced, but not below zero, by

26-00106D-24

20241316__

2379 ~~the entity's taxable income allocable to the trust or estate~~
 2380 ~~multiplied by the trust's or estate's income tax rate. The~~
 2381 ~~reduced amount shall be divided by the difference between 1 and~~
 2382 ~~the trust's or estate's income tax rate in order to determine~~
 2383 ~~the amount distributable to that beneficiary as income before~~
 2384 ~~giving effect to other receipts or disbursements allocable to~~
 2385 ~~that beneficiary's interest.~~

2386 Section 42. Section 738.706, Florida Statutes, is
 2387 transferred, renumbered as section 738.507, Florida Statutes,
 2388 and amended to read:

2389 738.507 ~~738.706~~ Adjustment ~~Adjustments~~ between principal
 2390 and income because of taxes.—

2391 (1) A fiduciary may make an adjustment ~~adjustments~~ between
 2392 ~~principal and income~~ and principal to offset the shifting of
 2393 economic interests or tax benefits between current income
 2394 beneficiaries and successor ~~remainder~~ beneficiaries which arises
 2395 arise from:

2396 (a) An election or decision ~~Elections and decisions, other~~
 2397 ~~than those described in paragraph (b), that the fiduciary makes~~
 2398 ~~from time to time regarding a tax matter, other than a decision~~
 2399 to claim an income tax deduction to which subsection (2) applies
 2400 ~~matters;~~

2401 (b) An income tax or ~~any~~ other tax ~~that is~~ imposed on ~~upon~~
 2402 the fiduciary or a beneficiary as a result of a transaction
 2403 involving the fiduciary or a distribution by ~~from~~ the fiduciary
 2404 ~~estate or trust; or~~

2405 (c) ~~The~~ Ownership by the fiduciary ~~an estate or trust~~ of an
 2406 interest in an entity a part of whose taxable income, regardless
 2407 of whether ~~or not~~ distributed, is includable in the taxable

26-00106D-24

20241316__

2408 income of the fiduciary estate, trust, or a beneficiary; or

2409 (d) An election or decision a fiduciary makes to reimburse
 2410 any tax under s. 736.08145.

2411 (2) If the amount of an estate tax marital ~~deduction~~ or
 2412 charitable ~~contribution~~ deduction is reduced because a fiduciary
 2413 deducts an amount paid from principal for income tax purposes
 2414 instead of deducting it ~~such amount~~ for estate tax purposes,
 2415 and, as a result, estate taxes paid from principal are increased
 2416 and income taxes paid by a fiduciary or a ~~an estate, trust, or~~
 2417 beneficiary are decreased, the fiduciary shall charge each
 2418 ~~estate, trust, or~~ beneficiary that benefits from the decrease in
 2419 income tax to shall reimburse the principal from which the
 2420 increase in estate tax is paid. The total reimbursement must
 2421 ~~shall~~ equal the increase in the estate tax, to the extent that
 2422 the principal used to pay the increase would have qualified for
 2423 a marital ~~deduction~~ or charitable ~~contribution~~ deduction but for
 2424 the payment. The ~~proportionate~~ share of the reimbursement for
 2425 each fiduciary estate, trust, or beneficiary whose income taxes
 2426 are reduced must shall be the same as its ~~such estate's,~~
 2427 ~~trust's, or beneficiary's~~ proportionate share of the total
 2428 decrease in income tax. ~~An estate or trust shall reimburse~~
 2429 ~~principal from income.~~

2430 (3) A fiduciary that charges a beneficiary under subsection
 2431 (2) may offset the charge by obtaining payment from the
 2432 beneficiary, withholding an amount from future distributions to
 2433 the beneficiary, or adopting another method or combination of
 2434 methods.

2435 Section 43. Section 738.508, Florida Statutes, is created
 2436 to read:

26-00106D-24

20241316__

2437 738.508 Apportionment of property expenses between tenant
2438 and remainderman.-

2439 (1) For purposes of this section, the term:

2440 (a) "Remainderman" means the holder of the remainder
2441 interests after the expiration of a tenant's estate in property.

2442 (b) "Tenant" means the holder of an estate for life or term
2443 of years in real property or personal property, or both.

2444 (2) If a trust has not been created, expenses shall be
2445 apportioned between the tenant and remainderman as follows:

2446 (a) The following expenses are allocated to and shall be
2447 paid by the tenant:

2448 1. All ordinary expenses incurred in connection with the
2449 administration, management, or preservation of the property,
2450 including interest, ordinary repairs, regularly recurring taxes
2451 assessed against the property, and expenses of a proceeding or
2452 other matter that concerns primarily the tenant's estate or use
2453 of the property.

2454 2. Recurring premiums on insurance covering the loss of the
2455 property or the loss of income from or use of the property.

2456 3. Any of the expenses described in subparagraph (b)3.
2457 which are attributable to the use of the property by the tenant.

2458 (b) The following expenses are allocated to and shall be
2459 paid by the remainderman:

2460 1. Payments on the principal of a debt secured by the
2461 property, except to the extent that the debt is for expenses
2462 allocated to the tenant.

2463 2. Expenses of a proceeding or other matter that concerns
2464 primarily the title to the property, other than title to the
2465 tenant's estate.

26-00106D-24

20241316__

2466 3. Except as provided in subparagraph (a)3., expenses
2467 related to environmental matters, including reclamation,
2468 assessing environmental conditions, remedying and removing
2469 environmental contamination, monitoring remedial activities and
2470 the release of substances, preventing future releases of
2471 substances, collecting amounts from persons liable or
2472 potentially liable for the costs of such activities, penalties
2473 imposed under environmental laws or regulations and other
2474 payments made to comply with those laws or regulations,
2475 statutory or common law claims by third parties, and defending
2476 claims based on environmental matters.

2477 4. Extraordinary repairs.

2478 (c) If the tenant or remainderman incurred an expense for
2479 the benefit of his or her own estate without consent or
2480 agreement of the other, he or she must pay such expense in full.

2481 (d) Except as provided in paragraph (c), the cost of, or
2482 special taxes or assessments for, an improvement representing an
2483 addition of value to property forming part of the principal
2484 shall be paid by the tenant if the improvement is not reasonably
2485 expected to outlast the estate of the tenant. In all other
2486 cases, only a part shall be paid by the tenant while the
2487 remainder shall be paid by the remainderman. The part payable by
2488 the tenant is ascertainable by taking that percentage of the
2489 total that is found by dividing the present value of the
2490 tenant's estate by the present value of an estate of the same
2491 form as that of the tenant, except that it is limited for a
2492 period corresponding to the reasonably expected duration of the
2493 improvement. The computation of present values of the estates
2494 shall be made by using the rate determined under s. 7520(a)(2)

26-00106D-24

20241316__

2495 of the Internal Revenue Code then in effect and, in the case of
 2496 an estate for life, the official mortality tables then in effect
 2497 under s. 7520 of the Internal Revenue Code. Other evidence of
 2498 duration or expectancy may not be considered.

2499 (3) This section does not apply to the extent that it is
 2500 inconsistent with the instrument creating the estates, the
 2501 agreement of the parties, or the specific direction of the
 2502 Internal Revenue Code taxing or other applicable law.

2503 (4) The common law applicable to tenants and remaindermen
 2504 supplements this section, except as modified by this section or
 2505 other laws.

2506 Section 44. Section 738.601, Florida Statutes, is amended
 2507 to read:

2508 (Substantial rewording of section. See
 2509 s. 738.601, F.S., for present text.)

2510 738.601 Determination and distribution of net income.—

2511 (1) This section applies when:

2512 (a) The death of an individual results in the creation of
 2513 an estate or trust; or

2514 (b) An income interest in a trust terminates, whether the
 2515 trust continues or is distributed.

2516 (2) A fiduciary of an estate or trust with an income
 2517 interest that terminates shall determine, under subsection (6)
 2518 and ss. 738.401-738.508 and 738.701-738.703, the amount of net
 2519 income and net principal receipts received from property
 2520 specifically given to a beneficiary. The fiduciary shall
 2521 distribute the net income and net principal receipts to the
 2522 beneficiary who is to receive the specific property.

2523 (3) A fiduciary shall determine the income and net income

26-00106D-24

20241316__

2524 of an estate or income interest in a trust which terminates,
2525 other than the amount of net income determined under subsection
2526 (2), under ss. 738.401-738.508 and 738.701-738.703, and by:

2527 (a) Including in net income all income from property used
2528 or sold to discharge liabilities.

2529 (b) Paying from income or principal, in the fiduciary's
2530 discretion, fees of attorneys, accountants, and fiduciaries;
2531 court costs and other expenses of administration; and interest
2532 on estate and inheritance taxes and other taxes imposed because
2533 of the decedent's death, but the fiduciary may pay the expenses
2534 from income of property passing to a trust for which the
2535 fiduciary claims an estate tax marital or charitable deduction
2536 under the Internal Revenue Code or comparable law of any state
2537 only to the extent that:

2538 1. The payment of the those expenses from income will not
2539 cause the reduction or loss of the deduction; or

2540 2. The fiduciary makes an adjustment under s. 738.507(2).

2541 (c) Paying from principal other disbursements made or
2542 incurred in connection with the settlement of the estate or the
2543 winding up of an income interest that terminates, including:

2544 1. To the extent authorized by the decedent's will, the
2545 terms of the trust, or applicable law, debts, funeral expenses,
2546 disposition of remains, family allowances, estate and
2547 inheritance taxes, and other taxes imposed because of the
2548 decedent's death; and

2549 2. Related penalties apportioned by the decedent's will,
2550 the terms of the trust, or applicable law to the estate or
2551 income interest that terminates.

2552 (4) If a decedent's will or the terms of a trust provide

26-00106D-24

20241316__

2553 for the payment of interest or the equivalent of interest to a
2554 beneficiary who receives a pecuniary amount outright, the
2555 fiduciary shall make the payment from net income determined
2556 under subsection (3) or from principal to the extent that net
2557 income is insufficient.

2558 (5) A fiduciary shall distribute net income remaining after
2559 payments required by subsection (4) in the manner described in
2560 s. 738.602 to all other beneficiaries, including a beneficiary
2561 who receives a pecuniary amount in trust, even if the
2562 beneficiary holds an unqualified power to withdraw assets from
2563 the trust or other presently exercisable general power of
2564 appointment over the trust.

2565 (6) A fiduciary may not reduce principal or income receipts
2566 from property described in subsection (2) because of a payment
2567 described in s. 738.501 or s. 738.502 to the extent that the
2568 decedent's will, the terms of the trust, or applicable law
2569 requires the fiduciary to make the payment from assets other
2570 than the property or that the fiduciary recovers or expects to
2571 recover the payment from a third party. The net income and
2572 principal receipts from the property must be determined by
2573 including the amount the fiduciary receives or pays regarding
2574 the property, whether the amount accrued or became due before,
2575 on, or after the date of the decedent's death or an income
2576 interest's terminating event, and making a reasonable provision
2577 for an amount the estate or income interest may become obligated
2578 to pay after the property is distributed.

2579 Section 45. Section 738.602, Florida Statutes, is amended
2580 to read:

2581 (Substantial rewording of section. See

26-00106D-24

20241316__

2582 s. 738.602, F.S., for present text.)
2583 738.602 Distribution to successor beneficiary.-
2584 (1) Except to the extent that ss. 738.301-738.310 apply for
2585 a beneficiary that is a trust, each beneficiary described in s.
2586 738.601(5) is entitled to receive a share of the net income
2587 equal to the beneficiary's fractional interest in undistributed
2588 principal assets, using carrying values as of the distribution
2589 date. If a fiduciary makes more than one distribution of assets
2590 to beneficiaries to which this section applies, each
2591 beneficiary, including a beneficiary who does not receive part
2592 of the distribution, is entitled, as of each distribution date,
2593 to a share of the net income the fiduciary received after the
2594 decedent's death, an income interest's other terminating event,
2595 or the preceding distribution by the fiduciary.
2596 (2) In determining a beneficiary's share of net income
2597 under subsection (1), the following rules apply:
2598 (a) The beneficiary is entitled to receive a share of the
2599 net income equal to the beneficiary's fractional interest in the
2600 undistributed principal assets immediately before the
2601 distribution date.
2602 (b) The beneficiary's fractional interest under paragraph
2603 (a) must be calculated:
2604 1. On the aggregate carrying value of the assets as of the
2605 distribution date; and
2606 2. Reduced by:
2607 a. Any liabilities of the estate or trust;
2608 b. Property specifically given to a beneficiary under the
2609 decedent's will or the terms of the trust; and
2610 c. Property required to pay pecuniary amounts not in trust.

26-00106D-24

20241316__

2611 (c) If a disproportionate distribution of principal is made
2612 to any beneficiary, the respective fractional interests of all
2613 beneficiaries in the undistributed principal assets must be
2614 recomputed by:

2615 1. Adjusting the carrying value of the principal assets to
2616 their fair market value before the distribution;

2617 2. Reducing the fractional interest of the recipient of the
2618 disproportionate distribution in the remaining principal assets
2619 by the fair market value of the principal distribution; and

2620 3. Recomputing the fractional interests of all
2621 beneficiaries in the remaining principal assets based upon the
2622 now restated carrying values.

2623 (d) The distribution date under paragraph (a) may be the
2624 date as of which the fiduciary calculates the value of the
2625 assets if that date is reasonably near the date on which the
2626 assets are distributed. All distributions to a beneficiary must
2627 be valued based on the assets' fair market value on the date of
2628 the distribution.

2629 (3) To the extent that a fiduciary does not distribute
2630 under this section all the collected but undistributed net
2631 income to each beneficiary as of a distribution date, the
2632 fiduciary shall maintain records showing the interest of each
2633 beneficiary in the net income.

2634 (4) If this section applies to income from an asset, a
2635 fiduciary may apply the requirements in this section to net gain
2636 or loss realized from the disposition of the asset after the
2637 decedent's date of death, an income interest's terminating
2638 event, or the preceding distribution by the fiduciary.

2639 (5) The carrying value or fair market value of trust assets

26-00106D-24

20241316__

2640 shall be determined on an asset-by-asset basis and is conclusive
2641 if reasonable and determined in good faith. Determinations of
2642 fair market value based on appraisals performed within 2 years
2643 before or after the valuation date are presumed reasonable. The
2644 values of trust assets are conclusively presumed to be
2645 reasonable and determined in good faith unless proven otherwise
2646 in a proceeding commenced by or on behalf of a person interested
2647 in the trust within the time provided in s. 736.1008.

2648 Section 46. Section 738.701, Florida Statutes, is amended
2649 to read:

2650 (Substantial rewording of section. See
2651 s. 738.701, F.S., for present text.)

2652 738.701 When right to income begins and ends.—

2653 (1) An income beneficiary is entitled to net income in
2654 accordance with the terms of the trust from the date an income
2655 interest begins. The income interest begins on the date
2656 specified in the terms of the trust or, if no date is specified,
2657 on the date an asset becomes subject to:

2658 (a) The trust for the current income beneficiary; or

2659 (b) A successive interest for a successor beneficiary.

2660 (2) An asset becomes subject to a trust under paragraph

2661 (1) (a):

2662 (a) For an asset that is transferred to the trust during
2663 the settlor's life, on the date the asset is transferred;

2664 (b) For an asset that becomes subject to the trust because
2665 of a decedent's death, on the date of the decedent's death, even
2666 if there is an intervening period of administration of the
2667 decedent's estate; or

2668 (c) For an asset that is transferred to a fiduciary by a

26-00106D-24

20241316__

2669 third party because of a decedent's death, on the date of the
2670 decedent's death.

2671 (3) An asset becomes subject to a successive interest under
2672 paragraph (1)(b) on the day after the preceding income interest
2673 ends, as determined under subsection (4), even if there is an
2674 intervening period of administration to wind up the preceding
2675 income interest.

2676 (4) An income interest ends on the day before an income
2677 beneficiary dies or another terminating event occurs, or on the
2678 last day of a period during which there is no beneficiary to
2679 which a fiduciary may or must distribute income.

2680 Section 47. Section 738.702, Florida Statutes, is amended
2681 to read:

2682 (Substantial rewording of section. See
2683 s. 738.702, F.S., for present text.)

2684 738.702 Apportionment of receipts and disbursements when
2685 decedent dies or income interest begins.-

2686 (1) A fiduciary shall allocate an income receipt or
2687 disbursement, other than a receipt to which s. 738.601(2)
2688 applies, to principal if its due date occurs before the date on
2689 which:

2690 (a) For an estate, the decedent died; or

2691 (b) For a trust or successive interest, an income interest
2692 begins.

2693 (2) If the due date of a periodic income receipt or
2694 disbursement occurs on or after the date on which a decedent
2695 died or an income interest begins, a fiduciary must allocate the
2696 receipt or disbursement to income.

2697 (3) If an income receipt or disbursement is not periodic or

26-00106D-24

20241316__

2698 has no due date, a fiduciary must treat the receipt or
2699 disbursement under this section as accruing from day to day. The
2700 fiduciary shall allocate to principal the portion of the receipt
2701 or disbursement accruing before the date on which a decedent
2702 died or an income interest begins, and shall allocate to income
2703 the balance.

2704 (4) A receipt or disbursement is periodic under subsections
2705 (2) and (3) if:

2706 (a) The receipt or disbursement must be paid at regular
2707 intervals under an obligation to make payments; or

2708 (b) The payor customarily makes payments at regular
2709 intervals.

2710 (5) An item of income or an obligation is due under this
2711 section on the date the payor is required to make a payment. If
2712 a payment date is not stated, there is no due date.

2713 (6) Distributions to shareholders or other owners from an
2714 entity to which s. 738.401 applies are due:

2715 (a) On the date fixed by or on behalf of the entity for
2716 determining the persons entitled to receive the distribution;

2717 (b) If no date is fixed, on the date of the decision by or
2718 on behalf of the entity to make the distribution; or

2719 (c) If no date is fixed and the fiduciary does not know the
2720 date of the decision by or on behalf of the entity to make the
2721 distribution, on the date the fiduciary learns of the decision.

2722 (7) Section 733.817 controls over any provision of this
2723 chapter to the contrary.

2724 Section 48. Section 738.703, Florida Statutes, is amended
2725 to read:

2726 (Substantial rewording of section. See

26-00106D-24

20241316__

2727 s. 738.703, F.S., for present text.)
2728 738.703 Apportionment when income interest ends.-
2729 (1) As used in this section, the term "undistributed
2730 income" means net income received on or before the date on which
2731 an income interest ends. The term does not include an item of
2732 income or expense which is due or accrued or net income that has
2733 been added or is required to be added to principal under the
2734 terms of the trust.
2735 (2) Except as otherwise provided in subsection (3), when a
2736 mandatory income interest of a beneficiary ends, the fiduciary
2737 shall pay the beneficiary's share of the undistributed income
2738 that is not disposed of under the terms of the trust to the
2739 beneficiary or, if the beneficiary does not survive the date the
2740 interest ends, to the beneficiary's estate.
2741 (3) If a beneficiary has an unqualified power to withdraw
2742 more than 5 percent of the value of a trust immediately before
2743 an income interest ends:
2744 (a) The fiduciary shall allocate to principal the
2745 undistributed income from the portion of the trust which may be
2746 withdrawn; and
2747 (b) Subsection (2) applies only to the balance of the
2748 undistributed income.
2749 (4) When a fiduciary's obligation to pay a fixed annuity or
2750 a fixed fraction of the value of assets ends, the fiduciary
2751 shall prorate the final payment as required to preserve income
2752 tax, gift tax, estate tax, or other tax benefits.
2753 Section 49. Section 738.801, Florida Statutes, is amended
2754 to read:
2755 (Substantial rewording of section. See

26-00106D-24

20241316__

2756 s. 738.801, F.S., for present text.)
 2757 738.801 Uniformity of application and construction.—In
 2758 applying and construing this act, consideration shall be given
 2759 to the need to promote uniformity of the law with respect to its
 2760 subject matter among states that enact it.

2761 Section 50. Section 738.802, Florida Statutes, is amended
 2762 to read:

2763 (Substantial rewording of section. See
 2764 s. 738.802, F.S., for present text.)

2765 738.802 Relation to Electronic Signatures in Global and
 2766 National Commerce Act.—This chapter modifies, limits, or
 2767 supersedes the Electronic Signatures in Global and National
 2768 Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not modify,
 2769 limit, or supersede section 101(c) of that act, 15 U.S.C. s.
 2770 7001(c), or authorize electronic delivery of any of the notices
 2771 described in s. 103(b) of that act, 15 U.S.C. s. 7003(b). This
 2772 chapter does not modify, limit, or supersede s. 117.285.

2773 Section 51. Section 738.803, Florida Statutes, is amended
 2774 to read:

2775 738.803 Severability.—If any provision of this chapter or
 2776 its application to any person or circumstance is held invalid,
 2777 the invalidity does ~~shall~~ not affect other provisions or
 2778 applications of this chapter which can be given effect without
 2779 the invalid provision or application, and to this end the
 2780 provisions of this chapter are severable.

2781 Section 52. Section 738.804, Florida Statutes, is amended
 2782 to read:

2783 738.804 Application.—Except as provided in the terms of the
 2784 trust instrument, the will, or this chapter, this chapter shall

26-00106D-24

20241316__

2785 apply to any receipt or expense received or incurred and any
2786 disbursement made after January 1, 2025 ~~January 1, 2003~~, by any
2787 trust or ~~decedent's~~ estate, whether established before or after
2788 January 1, 2025 ~~January 1, 2003~~, and whether the asset involved
2789 was acquired by the trustee or personal representative before or
2790 after January 1, 2025 ~~January 1, 2003~~. Receipts or expenses
2791 received or incurred and disbursements made before January 1,
2792 2025, must ~~January 1, 2003, shall~~ be governed by the law of this
2793 state in effect at the time of the event, except as otherwise
2794 expressly provided in the ~~will or~~ terms of the trust or in this
2795 chapter.

2796 Section 53. This act shall take effect January 1, 2025.