

By the Committees on Rules; and Judiciary; and Senator Berman

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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 applicability; amending s. 738.202,  
22      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 his or her  
27      discretion under specified conditions; authorizing a  
28      court to order a specified remedy; authorizing a court  
29      to determine whether a proposed fiduciary decision

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30 will result in an abuse of discretion; providing that  
31 a 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;

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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;

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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

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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

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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.

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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

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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



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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

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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

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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 the application of ch. 738, F.S., to conform  
305 to changes made by the act; providing an effective  
306 date.

307

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

309

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

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

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

316 738.102 Definitions.—As used in this chapter, the term:

317 (1) "Accounting period" means a calendar year unless  
318 ~~another 12-month period is selected by a fiduciary~~ selects  
319 another period of 12 calendar months or approximately 12

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320 calendar months. The term includes a part ~~portion~~ of a calendar  
321 year or another period of 12 calendar months or approximately 12  
322 calendar months which ~~other 12-month period that begins when an~~  
323 ~~income interest~~ begins or ends when an income interest ends.

324 (2) "Asset-backed security," as provided in s. 738.415,  
325 means a security that is serviced primarily by the cash flows of  
326 a discrete pool of fixed or revolving receivables or other  
327 financial assets that by their terms convert to cash within a  
328 finite time. The term includes rights or other assets that  
329 ensure the servicing or timely distribution of proceeds to the  
330 holder of the asset-backed security. The term does not include  
331 an asset to which s. 738.401, s. 738.409, or s. 738.414 applies.

332 (3) "Beneficiary" includes:

333 (a) For a trust:

- 334 1. A current beneficiary, including a current income  
335 beneficiary and a beneficiary that may receive only principal;  
336 2. A remainder beneficiary; and  
337 3. Any other successor beneficiary;

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

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

344 (4) ~~(3)~~ "Carrying value" means the fair market value at the  
345 time the assets are received by the fiduciary. For an estate and  
346 for a trust ~~the estates of decedents and trusts~~ described in s.  
347 733.707(3), after the settlor's ~~grantor's~~ death, the assets are  
348 considered received as of the date of the settlor's death. If

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

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

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

366 (7) "Distribution" means a payment or transfer by a  
367 fiduciary to a beneficiary in the beneficiary's capacity as a  
368 beneficiary, without consideration other than the beneficiary's  
369 right to receive the payment or transfer under the terms of the  
370 trust as defined in subsection (24), or in a will, life estate,  
371 or term interest. "Distribute," "distributed," and "distributee"  
372 have corresponding meanings.

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

377 (9) ~~(4)~~ "Fiduciary" includes ~~means~~ a trustee, a trust

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

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

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

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

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

402 (a) For a trust:

403 1. A qualified beneficiary as defined in s. 736.0103;

404 2. A settlor of the trust;

405 3. An individual whose legal obligation to support a

406 beneficiary may be satisfied by a distribution from the trust;

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407 or

408 4. Any trustee whom an interested distributee has the power  
409 to remove and replace with a related or subordinate party.

410 (b) For an estate, a beneficiary;

411 (c) A spouse, a parent, a brother, a sister, or an issue of  
412 an individual described in paragraph (a) or paragraph (b);

413 (d) A corporation, a partnership, a limited liability  
414 company, or another entity in which persons described in  
415 paragraphs (a), (b), and (c), in the aggregate, have voting  
416 control; or

417 (e) An employee of a person described in paragraph (a),  
418 paragraph (b), paragraph (c), or paragraph (d).

419 (13) "Internal Revenue Code" means the Internal Revenue  
420 Code of 1986, as amended.

421 (14)-(8) "Mandatory income interest" means the right of a  
422 current ~~an~~ income beneficiary to receive net income that the  
423 terms of the trust require the fiduciary to distribute.

424 (15)-(9) "Net income" means the total allocations ~~receipts~~  
425 ~~allocated to income~~ during an accounting period to income under  
426 the terms of a trust and this chapter minus the disbursements  
427 ~~made from income~~ during the period, other than distributions,  
428 allocated to income under the terms of the trust and this  
429 chapter. To the extent that the trust is a unitrust under ss.  
430 738.301-738.310, the term means the unitrust amount determined  
431 under ss. 738.301-738.310. The term includes the amount of an  
432 adjustment from principal to income under s. 738.203. The term  
433 does not include the amount of an adjustment ~~plus or minus~~  
434 ~~transfers under this chapter to or~~ from income to principal  
435 under s. 738.203 ~~during the period.~~

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

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

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

450 (19) "Record" means information inscribed on a tangible  
451 medium or stored in an electronic or other medium and is  
452 retrievable in perceivable form.

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

460 (21) "Special tax benefit" means:

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



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

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

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

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

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

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

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

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

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

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

493 (24)-(13) "Terms of a trust" means:

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

497 1. Expressed in the will or trust instrument; or  
498 2. Established by other evidence that would be admissible  
499 in a judicial proceeding.

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

502 1. A trustee or trust director in accordance with the  
503 applicable law;

504 2. A court order; or

505 3. A nonjudicial settlement agreement under s. 736.0111.

506 (c) For an estate, a will; or

507 (d) For a life estate or term interest, the corresponding  
508 manifestation of the rights of the beneficiaries to the extent  
509 provided in s. 738.508 ~~the manifestation of the intent of a~~  
510 ~~grantor or decedent with respect to the trust, expressed in a~~  
511 ~~manner that admits of its proof in a judicial proceeding,~~  
512 ~~whether by written or spoken words or by conduct.~~

513 (25) "Trust" includes an express trust, whether private or  
514 charitable, with additions to the trust, wherever and however  
515 created; and a trust created or determined by a judgment or  
516 decree under which the trust is to be administered in the manner  
517 of an express trust. The term does not include a constructive  
518 trust; a resulting trust; a conservatorship; a custodial  
519 arrangement under the Florida Uniform Transfers to Minors Act; a  
520 business trust providing for certificates to be issued to  
521 beneficiaries; a common trust fund; a land trust under s.  
522 689.071; a trust created by the form of the account or by the

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523 deposit agreement at a financial institution; a voting trust; a  
524 security arrangement; a liquidation trust; a trust for the  
525 primary purpose of paying debts, dividends, interest, salaries,  
526 wages, profits, pensions, retirement benefits, or employee  
527 benefits of any kind; or an arrangement under which a person is  
528 a nominee, an escrowee, or an agent for another.

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

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

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

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

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

546 (1) A trust or an estate.

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

551 Section 4. Section 738.104, Florida Statutes, is amended to

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552 read:

553 (Substantial rewording of section. See554 s. 738.104, F.S., for present text.)

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

566 Section 5. Section 738.1041, Florida Statutes, is repealed.567 Section 6. Section 738.105, Florida Statutes, is repealed.568 Section 7. Section 738.201, Florida Statutes, is amended to

569 read:

570 (Substantial rewording of section. See571 s. 738.201, F.S., for present text.)572 738.201 Fiduciary duties; general principles.—

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

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

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

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

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

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

596 (3) A fiduciary shall:

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

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

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

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

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610 convert a unitrust to an income trust under ss. 738.301-738.310  
611 if the fiduciary determines the exercise of the power will  
612 assist the fiduciary to administer the trust or estate  
613 impartially.

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

616 (a) The terms of the trust.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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726 trust assets.

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

729 738.203 Fiduciary's power to adjust.-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

783        (6) If paragraph (5) (d), paragraph (5) (e), paragraph

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784 (5) (f), or paragraph (5) (g) applies to a fiduciary:

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

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

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

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

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

809 (8) A fiduciary's release or delegation to a cofiduciary  
810 under subsection (7) of the power to adjust under subsection  
811 (1):

812 (a) Must be in a record;

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813 (b) Applies to the entire power, unless the release or  
814 delegation provides a limitation, which may be a limitation to  
815 the power to adjust:

- 816 1. From income to principal;  
817 2. From principal to income;  
818 3. For specified property; or  
819 4. In specified circumstances;

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

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

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

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

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

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

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

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842 (12) With respect to a trust in existence on January 1,  
843 2003:

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

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

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

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

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

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871 chancery actions. When costs and attorney fees are to be paid  
872 out of the trust, the court may, in its discretion, direct from  
873 which part of the trust they shall be paid.

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

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

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

898 (f) The objection of a super majority of eligible  
899 beneficiaries under this subsection shall be valid for a period

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900 of 1 year after the date of the notice set forth in subsection  
901 (13). Upon expiration of the objection, the fiduciary may  
902 thereafter give a new notice under subsection (13).

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

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

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

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

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

927 (b) The statement may contain information regarding a  
928 fiduciary's obligation with respect to the power to adjust



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929 between income and principal under this section.

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

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

937 (a) "Eligible beneficiaries" means:

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

941 2. If there is no beneficiary described in s.  
942 736.0103(19) (c), the beneficiaries described in s.  
943 736.0103(19) (a) and (b).

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

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

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

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958 class.

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

965 Section 10. Section 738.301, Florida Statutes, is amended  
966 to read:

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

969 738.301 Definitions.—For purposes of this section and ss.  
970 738.302-738.310:

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

973 (2) "Express unitrust" means a trust for which, under the  
974 terms of the trust without regard to this section and ss.  
975 738.302-738.310, net income must be calculated as a unitrust  
976 amount.

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

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

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

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

994 (7) "Unitrust policy" means a policy described in ss.  
995 738.301-738.310 and adopted under s. 738.303.

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

999 Section 11. Section 738.302, Florida Statutes, is amended  
1000 to read:

1001 (Substantial rewording of section. See  
1002 s. 738.302, F.S., for present text.)  
1003 738.302 Applications; duties and remedies.-

1004 (1) Except as otherwise provided in subsection (2), ss.  
1005 738.301-738.310 apply to all of the following:

1006 (a) An income trust, unless the terms of the trust  
1007 expressly prohibit the use of ss. 738.301-738.310 by a specific  
1008 reference to this paragraph or corresponding provision of prior  
1009 law, or an explicit expression of intent that net income not be  
1010 calculated as a unitrust amount.

1011 (b) An express unitrust, except to the extent that the  
1012 terms of the trust explicitly:

1013 1. Prohibit the use of ss. 738.301-738.310 by a specific  
1014 reference to this paragraph or corresponding provision of prior  
1015 law;

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- 1016       2. Prohibit conversion to an income trust; or  
1017       3. Limit changes to the method of calculating the unitrust  
1018 amount.
- 1019       (c) A unitrust that had been converted from an income  
1020 trust.
- 1021       (2) The provisions of ss. 738.301-738.310 do not apply to a  
1022 trust described in s. 170(f)(2)(B), s. 642(c)(5), s. 664(d), s.  
1023 2702(a)(3)(A)(ii) or (iii), or s. 2702(b) of the Internal  
1024 Revenue Code.
- 1025       (3) An income trust to which ss. 738.301-738.310 apply  
1026 under paragraph (1)(a) may be converted to a unitrust under ss.  
1027 738.301-738.310 regardless of the terms of the trust concerning  
1028 distributions. Conversion to a unitrust under ss. 738.301-  
1029 738.310 does not affect other terms of the trust concerning  
1030 distributions of income or principal.
- 1031       (4) Sections 738.301-738.310 apply to an estate only to the  
1032 extent that a trust is a beneficiary of the estate. To the  
1033 extent of the trust's interest in the estate, the estate may be  
1034 administered as a unitrust, the administration of the estate as  
1035 a unitrust may be discontinued, or the percentage or method used  
1036 to calculate the unitrust amount may be changed, in the same  
1037 manner as for a trust under those sections.
- 1038       (5) The provisions of ss. 738.301-738.310 do not create a  
1039 duty to take or consider action under ss. 738.301-738.310 or to  
1040 inform a beneficiary about the applicability of ss. 738.301-  
1041 738.310.
- 1042       (6) A fiduciary that in good faith takes or fails to take  
1043 an action under ss. 738.301-738.310 is not liable to a person  
1044 affected by the action or inaction.

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1045 Section 12. Section 738.303, Florida Statutes, is amended  
1046 to read:

1047 (Substantial rewording of section. See  
1048 s. 738.303, F.S., for present text.)

1049 738.303 Authority of fiduciary.—

1050 (1) By complying with subsections (2) and (6), and without  
1051 court approval, a fiduciary may do any of the following:

1052 (a) Convert an income trust to a unitrust if the fiduciary  
1053 adopts in a record a unitrust policy for the trust which  
1054 provides:

1055 1. That in administering the trust, the net income of the  
1056 trust will be a unitrust amount rather than net income  
1057 determined without regard to ss. 738.301-738.310; and

1058 2. The percentage and method used to calculate the unitrust  
1059 amount.

1060 (b) Change the percentage or method used to calculate a  
1061 unitrust amount for a unitrust if the fiduciary adopts in a  
1062 record a unitrust policy or an amendment or replacement of a  
1063 unitrust policy providing charges in the percentage or method  
1064 used to calculate the unitrust amount.

1065 (c) Convert a unitrust to an income trust if the fiduciary  
1066 adopts in a record a determination that, in administering the  
1067 trust, the net income of the trust will be net income determined  
1068 without regard to ss. 738.301-738.310 rather than a unitrust  
1069 amount.

1070 (2) A fiduciary may take an action under subsection (1) if  
1071 all of the following apply:

1072 (a) The fiduciary determines that the action will assist  
1073 the fiduciary to administer a trust impartially.

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1074 (b) The fiduciary sends a notice in a record to the  
1075 qualified beneficiaries determined under ss. 736.0103 and  
1076 736.0110 in the manner required by s. 738.304, describing and  
1077 proposing to take the action.

1078 (c) The fiduciary sends a copy of the notice under  
1079 paragraph (b) to each settlor of the trust which is:

- 1080 1. If an individual, living; or
- 1081 2. If not an individual, in existence.

1082 (d) At least one member of each class of the qualified  
1083 beneficiaries determined under ss. 736.0103 and 736.0110, other  
1084 than the Attorney General, receiving the notice under paragraph  
1085 (b) is:

- 1086 1. If an individual, legally competent;
- 1087 2. If not an individual, in existence; or
- 1088 3. Represented in the manner provided in s. 738.304(2).

1089 (e) The fiduciary does not receive, by the date specified  
1090 in the notice under s. 738.304(4) (e), an objection in a record  
1091 to the action proposed under paragraph (b) from a person to  
1092 which the notice under paragraph (b) is sent.

1093 (3) If a fiduciary receives, not later than the date stated  
1094 in the notice under s. 738.304(4) (e), an objection in a record  
1095 described in s. 738.304(4) (d) to a proposed action, the  
1096 fiduciary or a beneficiary may request the court to have the  
1097 action taken as proposed, taken with modifications, or  
1098 prevented. A person described in s. 738.304(1) may oppose the  
1099 proposed action in the proceeding under this subsection  
1100 regardless of whether the person:

- 1101 (a) Consented under s. 738.304(3); or
- 1102 (b) Objected under s. 738.304(4) (d).

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1103 (4) If, after sending a notice under paragraph (2) (b), a  
1104 fiduciary decides not to take the action proposed in the notice,  
1105 the fiduciary must notify in a record each person described in  
1106 s. 738.304(1) of the decision not to take the action and the  
1107 reasons for the decision.

1108 (5) If a beneficiary requests in a record that a fiduciary  
1109 take an action described in subsection (1) and the fiduciary  
1110 declines to act or does not act within 60 days after receiving  
1111 the request, the beneficiary may request the court to direct the  
1112 fiduciary to take the action requested.

1113 (6) In deciding whether and how to take an action  
1114 authorized in subsection (1), or whether and how to respond to a  
1115 request by a beneficiary under subsection (5), a fiduciary must  
1116 consider all factors relevant to the trust and beneficiaries,  
1117 including the relevant factors listed in s. 738.201(5).

1118 (7) A fiduciary may release or delegate the power to  
1119 convert an income trust to a unitrust under paragraph (1) (a),  
1120 change the percentage or method used to calculate a unitrust  
1121 amount under paragraph (1) (b), or convert a unitrust to an  
1122 income trust under paragraph (1) (c), for a reason described in  
1123 s. 738.203(7) and in the manner described in s. 738.203(8).

1124 Section 13. Section 738.304, Florida Statutes, is created  
1125 to read:

1126 738.304 Notice.—

1127 (1) A notice required by s. 738.303(2) (b) must be sent in a  
1128 manner authorized under s. 736.0109 to all of the following:

1129 (a) The qualified beneficiaries determined under s.  
1130 736.0103, other than the Attorney General.

1131 (b) Each person that is granted a power over the trust by

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1132 the terms of the trust, to the extent that the power is  
1133 exercisable when the person is not then serving as a trustee:

1134 1. Including all of the following:

1135 a. Power over the investment, management, or distribution  
1136 of trust property or other matters of trust administration.

1137 b. Power to appoint or remove a trustee or person described  
1138 in this paragraph.

1139 2. Excluding all of the following:

1140 a. Power of appointment.

1141 b. Power of a beneficiary over the trust, to the extent  
1142 that the exercise or nonexercise of the power affects the  
1143 beneficial interest of the beneficiary or another beneficiary  
1144 represented by the beneficiary under ss. 736.0301-736.0306 with  
1145 respect to the exercise or nonexercise of the power.

1146 c. Power over the trust if the terms of the trust provide  
1147 that the power is held in a nonfiduciary capacity and the power  
1148 must be held in a nonfiduciary capacity to achieve a tax  
1149 objective under the Internal Revenue Code.

1150 (c) Each person that is granted a power by the terms of the  
1151 trust to appoint or remove a trustee or person described in  
1152 paragraph (b) to the extent that the power is exercisable when  
1153 the person that exercises the power is not serving as a trustee  
1154 or person described in paragraph (b).

1155 (2) The representation provisions of ss. 736.0301-736.0306  
1156 apply to notice under this section.

1157 (3) A person may consent in a record at any time to action  
1158 proposed under s. 738.303(2)(b). A notice required by s.  
1159 738.303(2)(b) need not be sent to a person that consents under  
1160 this subsection.



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1161 (4) A notice required under s. 738.303(2)(b) must include  
1162 all of the following:

1163 (a) The action proposed under s. 738.303(2)(b).

1164 (b) For a conversion of an income trust to a unitrust, a  
1165 copy of the unitrust policy adopted under s. 738.303(1)(a).

1166 (c) For a change in the percentage or method used to  
1167 calculate the unitrust amount, a copy of the unitrust policy or  
1168 amendment or replacement of the unitrust policy adopted under s.  
1169 738.303(1)(b).

1170 (d) A statement that the person to which the notice is sent  
1171 may object to the proposed action by stating in a record the  
1172 basis for the objection and sending or delivering the record to  
1173 the fiduciary.

1174 (e) The date by which an objection under paragraph (d) must  
1175 be received by the fiduciary, which must be at least 30 days  
1176 after the date the notice is sent.

1177 (f) The date on which the action is proposed to be taken  
1178 and the date on which the action is proposed to take effect.

1179 (g) The name and contact information of the fiduciary.

1180 (h) The name and contact information of a person that may  
1181 be contacted for additional information.

1182 Section 14. Section 738.305, Florida Statutes, is created  
1183 to read:

1184 738.305 Unitrust policy.—

1185 (1) In administering a unitrust under ss. 738.301-738.310,  
1186 a fiduciary shall follow a unitrust policy adopted under s.  
1187 738.303(1)(a) or (b) or amended or replaced under s.  
1188 738.303(1)(b).

1189 (2) A unitrust policy must provide all of the following:

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1190 (a) The unitrust rate or method for determining the  
1191 unitrust rate under s. 738.306.

1192 (b) The method for determining the applicable value under  
1193 s. 738.307.

1194 (c) The rules described in ss. 738.306-738.310 which apply  
1195 in the administration of the unitrust, whether the rules are:

1196 1. Mandatory as provided in ss. 738.307(1) and (3),  
1197 738.308(1), and 738.310; or

1198 2. Optional as provided in ss. 738.306, 738.307(2), and  
1199 738.308(2), to the extent that the fiduciary elects to adopt  
1200 those rules.

1201 (3) A unitrust policy may do any of the following:

1202 (a) Provide methods and standards for:

1203 1. Determining the timing of the distributions;

1204 2. Making distributions in cash or in kind or partly in  
1205 cash and partly in kind; or

1206 3. Correcting an underpayment or overpayment to a  
1207 beneficiary based on the unitrust amount if there is an error in  
1208 calculating the unitrust amount.

1209 (b) Specify sources and the order of sources, including  
1210 categories of income for federal income tax purposes, from which  
1211 distributions of a unitrust amount are paid.

1212 (c) Provide other standards and rules that the fiduciary  
1213 determines serve the interests of the beneficiaries.

1214 Section 15. Section 738.306, Florida Statutes, is created  
1215 to read:

1216 738.306 Unitrust rate.-

1217 (1) A unitrust rate must be at least 3 percent and not more  
1218 than 5 percent. Within those limits, the unitrust rate may be:

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1219       (a) A fixed unitrust rate; or  
1220       (b)1. A unitrust rate that is determined for each period  
1221 using:  
1222       a. A market index or other published data; or  
1223       b. A mathematical blend of market indices or other  
1224 published data over a stated number of preceding periods.  
1225       2. If the rate calculated under this paragraph would be  
1226 less than 3, the rate is 3; and if the rate calculated would be  
1227 more than 5, the rate is 5.  
1228       (2) Within the limits of subsection (1), a unitrust policy  
1229 may provide for any of the following:  
1230       (a) A limit on how much the unitrust rate determined under  
1231 paragraph (1)(b) may increase over the unitrust rate for the  
1232 preceding period or a mathematical blend of unitrust rates over  
1233 a stated number of preceding periods.  
1234       (b) A limit on how much the unitrust rate determined under  
1235 paragraph (1)(b) may decrease below the unitrust rate for the  
1236 preceding period or a mathematical blend of unitrust rates over  
1237 a stated number of preceding periods.  
1238       (c) A mathematical blend of any of the unitrust rates  
1239 determined under paragraph (1)(b) and paragraphs (a) and (b).  
1240       (3) If the fiduciary is not an independent person, the  
1241 percentage used to calculate the unitrust amount is the rate  
1242 determined under s. 7520(a)(2) of the Internal Revenue Code in  
1243 effect for the month the conversion under this section becomes  
1244 effective and for each January thereafter; however, if the rate  
1245 determined under s. 7520(a)(2) of the Internal Revenue Code  
1246 exceeds 5 percent, the unitrust rate is 5 percent, and if the  
1247 rate determined under s. 7520(a)(2) of the Internal Revenue Code

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1248 is less than 3 percent, the unitrust rate is 3 percent.

1249 Section 16. Section 738.307, Florida Statutes, is created  
1250 to read:

1251 738.307 Applicable value.—

1252 (1) A unitrust policy must provide the method for  
1253 determining the fair market value of an asset for the purpose of  
1254 determining the unitrust amount, including all of the following:

1255 (a) The frequency of valuing the asset, which need not  
1256 require a valuation in every period.

1257 (b) The date for valuing the asset in each period in which  
1258 the asset is valued.

1259 (2) Except as otherwise provided in s. 738.309, a unitrust  
1260 policy may provide methods for determining the amount of the net  
1261 fair market value of the trust to take into account in  
1262 determining the applicable value, including any of the  
1263 following:

1264 (a) Obtaining an appraisal of an asset for which fair  
1265 market value is not readily available.

1266 (b) Excluding specific assets or groups or types of assets  
1267 in addition to those described in subsection (3).

1268 (c) Making other exceptions or modifications of the  
1269 treatment of specific assets or groups or types of assets.

1270 (d) Including identification and treatment of cash or  
1271 property held for distribution.

1272 (e) Using an average of fair market values over a stated  
1273 number of preceding periods, not to exceed 3 calendar years.

1274 (f) Determining the reasonable known liabilities of the  
1275 trust, including treatment of liabilities to conform with the  
1276 treatment of assets under paragraphs (a)-(e).

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1277 (3) The following property may not be included in  
1278 determining the value of the trust:

1279 (a) Any residential property or any tangible personal  
1280 property that, as of the first business day of the current  
1281 valuation year, one or more current beneficiaries of the trust  
1282 have or have had the right to occupy or have or have had the  
1283 right to possess or control, other than in his or her capacity  
1284 as trustee of the trust. Instead, the right of occupancy or the  
1285 right to possession and control is the unitrust amount with  
1286 respect to such property; however, the unitrust amount must be  
1287 adjusted to take into account partial distributions from or  
1288 receipt into the trust of such property during the valuation  
1289 year;

1290 (b) Any asset specifically given to a beneficiary and the  
1291 return on investment on such property, which return on  
1292 investment must be distributable to the beneficiary; and

1293 (c) Any asset while held in an estate.

1294 Section 17. Section 738.308, Florida Statutes, is created  
1295 to read:

1296 738.308 Period.—

1297 (1) A unitrust policy must provide the period used under  
1298 ss. 738.306 and 738.307. The period must be the calendar year.

1299 (2) A unitrust policy may provide standards for:

1300 (a) Using fewer preceding periods under s. 738.306(1)(b)1.  
1301 or (2)(a) or (b) if:

1302 1. The trust was not in existence in a preceding period; or  
1303 2. Market indices or other published data are not available  
1304 for a preceding period;

1305 (b) Using fewer preceding periods under 738.307(2)(e) if:

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1306 1. The trust was not in existence in a preceding period; or  
1307 2. Fair market values are not available for a preceding  
1308 period; and

1309 (c) Prorating a unitrust amount on a daily basis for a part  
1310 of a period in which the trust or the administration of the  
1311 trust as a unitrust or the interest of any beneficiary commences  
1312 or terminates.

1313 Section 18. Section 738.309, Florida Statutes, is created  
1314 to read:

1315 738.309 Express unitrust.—

1316 (1) This section applies to a trust that, by its governing  
1317 instrument, requires or allows income or net income to be  
1318 calculated as a unitrust amount.

1319 (2) The trustee of an express unitrust may determine the  
1320 unitrust amount by reference to the net fair market value of the  
1321 unitrust's assets in 1 or more years.

1322 (3) Distribution of a unitrust amount is considered a  
1323 distribution of all of the net income of an express unitrust and  
1324 is considered to be an income interest.

1325 (4) The unitrust amount is considered to be a reasonable  
1326 apportionment of the total return of an express unitrust.

1327 (5) An express unitrust that provides or allows a  
1328 distribution based on a unitrust rate in excess of 5 percent per  
1329 year of the net fair market value of the unitrust assets is  
1330 considered a distribution of all of the income of the unitrust  
1331 and a distribution of principal of the unitrust to the extent  
1332 that the distribution exceeds 5 percent per year.

1333 (6) An express unitrust may provide a mechanism for  
1334 changing the unitrust rate, similar to the mechanism provided

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1335 under s. 738.306, based upon the factors noted in that section,  
1336 and may provide for a conversion from a unitrust to an income  
1337 trust or a reconversion of an income trust to a unitrust under  
1338 s. 738.303.

1339 (7) If an express unitrust does not specifically or by  
1340 reference to s. 738.306 prohibit a power to change the unitrust  
1341 rate or to convert to an income trust under s. 738.303, the  
1342 trustee must have such power.

1343 (8) The governing instrument of an express unitrust may  
1344 grant the trustee discretion to adopt a consistent practice of  
1345 treating capital gains as part of the unitrust amount to the  
1346 extent that the unitrust amount exceeds the income determined as  
1347 if the trust were not an express unitrust, or the governing  
1348 instrument may specify the ordering of classes of income.

1349 (9) Unless the terms of the express unitrust specifically  
1350 provide otherwise as provided in subsection (8), the  
1351 distribution of a unitrust amount is considered a distribution  
1352 made from the following sources, which are listed in order of  
1353 priority:

1354 (a) Net accounting income determined under this chapter as  
1355 if the trust were not a unitrust;

1356 (b) Ordinary income not allocable to net accounting income;

1357 (c) Net realized short-term capital gains;

1358 (d) Net realized long-term capital gains; and

1359 (e) The principal of the trust.

1360 (10) The governing instrument of an express unitrust may  
1361 provide that the trustee may exclude assets used by the  
1362 unitrust's beneficiary, including, but not limited to, a  
1363 residence property or tangible personal property, from the net

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1364 fair market value of the unitrust's assets for the purposes of  
1365 computing the unitrust amount. The use of these assets may be  
1366 considered equivalent to income or to the unitrust amount.

1367 Section 19. Section 738.310, Florida Statutes, is created  
1368 to read:

1369 738.310 Other rules.—Following the conversion of an income  
1370 trust to a unitrust, the trustee shall consider the unitrust  
1371 amount as paid from the following sources, which are listed in  
1372 order of priority:

1373 (1) Net accounting income determined under this chapter as  
1374 if the trust were not a unitrust;

1375 (2) Ordinary income not allocable to net accounting income;

1376 (3) Net realized short-term capital gains;

1377 (4) Net realized long-term capital gains; and

1378 (5) The principal of the trust.

1379 Section 20. Section 738.401, Florida Statutes, is amended  
1380 to read:

1381 738.401 Character of receipts from entity.—

1382 (1) For purposes of this section, the term:

1383 (a) "Capital distribution" means an entity distribution of  
1384 money which is a:

1385 1. Return of capital; or

1386 2. Distribution in total or partial liquidation of the  
1387 entity.

1388 (b) "Entity":

1389 1. Means a corporation, partnership, limited liability  
1390 company, regulated investment company, real estate investment

1391 trust, common trust fund, or any other organization or

1392 arrangement in which a fiduciary owns or holds ~~has~~ an interest,



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1393 regardless of whether the entity is a taxpayer for federal  
1394 income tax purposes; and

1395 2. Does not include:

1396 a. A trust or estate to which s. 738.402 applies;

1397 b. A business or other activity to which s. 738.403 applies  
1398 which is not conducted by an entity described in subparagraph  
1399 1.;

1400 c. An asset-backed security; or

1401 d. An instrument or arrangement to which s. 738.416 applies  
1402 ~~other than a trust or estate to which s. 738.402 applies, a~~  
1403 ~~business or activity to which s. 738.403 applies, or an asset-~~  
1404 ~~backed security to which s. 738.608 applies.~~

1405 (c) "Entity distribution" means a payment or transfer by an  
1406 entity to a person in the person's capacity as an owner or  
1407 holder of an interest in the entity.

1408 (d) "Lookback period" means the accounting period and the  
1409 preceding two accounting periods or, if less, the number of  
1410 accounting periods, or portion of accounting periods, that the  
1411 interest in the entity has been held by the fiduciary.

1412 (2) In this section, an attribute or action of an entity  
1413 includes an attribute or action of any other entity in which the  
1414 initial entity owns or holds an interest, including an interest  
1415 owned or held indirectly through another entity.

1416 (3) Except as otherwise provided in paragraphs (4) (b), (c),  
1417 and (d) this section, a fiduciary shall allocate to income:

1418 (a) Money received in an entity distribution; and

1419 (b) Tangible personal property of nominal value received  
1420 from the money received from an entity.

1421 ~~(4) (3) Except as otherwise provided in this section, A~~

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1422 fiduciary shall allocate the following ~~receipts from an entity~~  
1423 to principal:

1424 (a) Property received in an entity distribution which is  
1425 not:

1426 1. other than Money; or

1427 2. Tangible personal property of nominal value.

1428 (b) Money received in an entity ~~one~~ distribution ~~or a~~  
1429 ~~series of related distributions~~ in an exchange for part or all  
1430 of the fiduciary's ~~a trust's or estate's~~ interest in the entity  
1431 to the extent that the entity distribution reduces the  
1432 fiduciary's interest in the entity relative to the interest of  
1433 other persons that own or hold interests in the entity.

1434 (c) Money received in an entity distribution that is a  
1435 capital distribution, to the extent not allocated to income  
1436 ~~total or partial liquidation of the entity.~~

1437 (d) Money received in an entity distribution from an entity  
1438 that is a regulated investment company or a real estate  
1439 investment trust if the money received represents short-term or  
1440 long-term capital gain realized within the entity.

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

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1451 ~~the interest in the entity has been held by the trust or estate.~~  
1452 ~~If a trustee has exercised a power to adjust under s. 738.104~~  
1453 ~~during any period the interest in the entity has been held by~~  
1454 ~~the trust, the trustee, in determining the total income~~  
1455 ~~distributions from that entity, must take into account the~~  
1456 ~~extent to which the exercise of that power resulted in income to~~  
1457 ~~the trust from that entity for that period. If the income of the~~  
1458 ~~trust for any period has been computed under s. 738.1041, the~~  
1459 ~~trustee, in determining the total income distributions from that~~  
1460 ~~entity for that period, must take into account the portion of~~  
1461 ~~the unitrust amount paid as a result of the ownership of the~~  
1462 ~~trust's interest in the entity for that period.~~

1463 (5)~~(4)~~ If a fiduciary elects, or continues an election made  
1464 by its predecessor, to reinvest dividends in shares of stock of  
1465 a distributing corporation or fund, whether evidenced by new  
1466 certificates or entries on the books of the distributing entity,  
1467 the new shares retain their character as income.

1468 (6)~~(5)~~ Except as otherwise provided in subsections (10) and  
1469 (11), money received in an entity distribution is a capital  
1470 distribution ~~Money is received in partial liquidation:~~

1471 (a) To the extent that the entity, at or near the time of  
1472 the entity a distribution, indicates that such money is a  
1473 capital distribution in partial liquidation; or

1474 (b) To the extent that the total amount of money and  
1475 property received by the fiduciary in the entity in a  
1476 distribution or a series of related entity distributions is or  
1477 will be greater than from an entity that is not listed on a  
1478 public stock exchange exceeds 20 percent of the fiduciary's  
1479 trust's or estate's pro rata share of the entity's gross assets,

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1480 as shown by the entity's year-end financial statements  
1481 immediately preceding the initial receipt.

1482

1483 ~~This subsection does not apply to an entity to which subsection~~  
1484 ~~(7) applies.~~

1485 (7)(6) In the case of a capital distribution, the amount  
1486 received in an entity distribution allocated to principal must  
1487 be reduced to the extent that the cumulative distributions from  
1488 the entity to the fiduciary ~~Money may not be taken into account~~  
1489 ~~in determining any excess under paragraph (5) (b), to the extent~~  
1490 ~~that the cumulative distributions from the entity to the trust~~  
1491 ~~or the estate allocated to income do not exceed the greater of:~~

1492 (a) A cumulative annual return of 3 percent of the entity's  
1493 carrying value computed at the beginning of each accounting  
1494 period, or portion of an accounting period, during the lookback  
1495 period ~~for the number of years or portion of years that the~~  
1496 ~~entity was held by the fiduciary.~~ If a fiduciary trustee has  
1497 exercised a power to adjust under s. 738.203 during the lookback  
1498 period, the fiduciary ~~s. 738.104~~ ~~during any period the interest~~  
1499 ~~in the entity has been held by the trust, the trustee, in~~  
1500 determining the total income distributions from that entity,  
1501 must take into account the extent to which the exercise of the  
1502 power resulted in income to the fiduciary trust ~~trust~~ from that entity  
1503 for that period. If the income of a fiduciary during the  
1504 lookback trust ~~for any period has been computed under ss.~~  
1505 738.301-738.310, the fiduciary ~~pursuant to s. 738.1041, the~~  
1506 ~~trustee, in determining the total income distributions from the~~  
1507 entity for that period, must take into account the portion of  
1508 the unitrust amount paid as a result of the ownership of the

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1509 trust's interest in the entity for that period; or

1510 (b) In If the case of an entity is treated as a  
1511 partnership, subchapter S corporation, or a disregarded entity  
1512 under pursuant to the Internal Revenue Code of 1986, as amended,  
1513 the amount of income tax attributable to the fiduciary's trust's  
1514 or estate's ownership share of the entity, based on its pro rata  
1515 share of the taxable income of the entity that distributes the  
1516 money, during the lookback period for the number of years or  
1517 portion of years that the interest in the entity was held by the  
1518 fiduciary, calculated as if all of the that tax was incurred by  
1519 the fiduciary.

1520 (8) If a fiduciary receives additional information about  
1521 the application of this section to an entity distribution before  
1522 the fiduciary has paid part of the entity distribution to a  
1523 beneficiary, the fiduciary may consider the additional  
1524 information before making the payment to the beneficiary and may  
1525 change a decision to make the payment to the beneficiary.

1526 (9) If a fiduciary receives additional information about  
1527 the application of this section to an entity distribution after  
1528 the fiduciary has paid part of the entity distribution to a  
1529 beneficiary, the fiduciary is not required to change or recover  
1530 the payment to the beneficiary but may consider that information  
1531 in determining whether to exercise its other powers, including  
1532 but not limited to the power to adjust under s. 738.203.

1533 (10) ~~(7)~~ The following applies to money or property received  
1534 by a private trustee as a distribution from an investment entity  
1535 described in this subsection:

1536 (a) The trustee shall first treat as income of the trust  
1537 all of the money or property received from the investment entity

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1538 in the current accounting period ~~year~~ which would be considered  
1539 income under this chapter if the trustee had directly held the  
1540 trust's pro rata share of the assets of the investment entity.  
1541 For this purpose, all distributions received in the current  
1542 accounting period ~~year~~ must be aggregated.

1543 (b) The trustee shall next treat as income of the trust any  
1544 additional money or property received in the current accounting  
1545 period ~~year~~ which would have been considered income in the prior  
1546 2 accounting periods ~~years~~ under paragraph (a) if additional  
1547 money or property had been received from the investment entity  
1548 in any of those prior 2 accounting periods ~~years~~. The amount to  
1549 be treated as income must ~~shall~~ be reduced by any distributions  
1550 of money or property made by the investment entity to the trust  
1551 during the current and the prior 2 accounting periods ~~years~~  
1552 which were treated as income under this paragraph.

1553 (c) The remainder of the distribution, if any, is treated  
1554 as principal.

1555 (d) As used in this subsection, the term:

1556 1. "Investment entity" means an entity, other than a  
1557 business activity conducted by the trustee described in s.  
1558 738.403 or an entity that is listed on a public stock exchange,  
1559 which is treated as a partnership, subchapter S corporation, or  
1560 disregarded entity under ~~pursuant to~~ the Internal Revenue Code  
1561 ~~of 1986, as amended,~~ and which normally derives 50 percent or  
1562 more of its annual cumulative net income from interest,  
1563 dividends, annuities, royalties, rental activity, or other  
1564 passive investments, including income from the sale or exchange  
1565 of such passive investments.

1566 2. "Private trustee" means a trustee who is a natural

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1567 person, but is not an independent person as set forth in s.  
1568 738.102 ~~only if the trustee is unable to use the power to adjust~~  
1569 ~~between income and principal with respect to receipts from~~  
1570 ~~entities described in this subsection pursuant to s. 738.104. A~~  
1571 ~~bank, trust company, or other commercial trustee is not~~  
1572 ~~considered a private trustee.~~

1573 (11) A fiduciary shall allocate to principal any money and  
1574 property the fiduciary receives in a distribution or series of  
1575 related distributions from a public entity which are greater  
1576 than 10 percent of the fair market value of the fiduciary's  
1577 interest in the public entity on the first day of the accounting  
1578 period. The amount to be allocated to principal must be reduced  
1579 to the extent that the cumulative distributions from the entity  
1580 to the fiduciary allocated to income do not exceed a cumulative  
1581 annual return of 3 percent of the fair market value of the  
1582 interest in the entity at the beginning of each accounting  
1583 period, or portion of an accounting period, during the lookback  
1584 period. If a fiduciary has exercised a power to adjust under s.  
1585 738.203 during the lookback period, the fiduciary, in  
1586 determining the total income distributions from that entity,  
1587 must take into account the extent to which the exercise of that  
1588 power resulted in income to the fiduciary from that entity for  
1589 that period. If the income of the fiduciary during the lookback  
1590 period has been computed under ss. 738.301-738.310, the  
1591 fiduciary, in determining the total income distribution from  
1592 that entity for that period, must take into account the portion  
1593 of the unitrust amount paid as a result of the ownership of the  
1594 trust's interest in the entity for that period. As used in this  
1595 subsection, the term "public entity" means an entity listed on a

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1596 public stock exchange.

1597 ~~(12)(8)~~ This section must ~~shall~~ be applied before ss.  
1598 738.506 and 738.507 ~~ss. 738.705 and 738.706~~ and does not modify  
1599 or change any of the provisions of those sections.

1600 Section 21. Section 738.402, Florida Statutes, is amended  
1601 to read:

1602 738.402 Distribution from trust or estate.—A fiduciary  
1603 shall allocate to income an amount received as a distribution of  
1604 income, including a unitrust distribution under ss. 738.301-  
1605 738.310, from a trust or an estate in which the fiduciary ~~trust~~  
1606 has an interest, other than an interest a purchased in a trust  
1607 that is an investment entity, and shall ~~interest and~~ allocate to  
1608 principal an amount received as a distribution of principal from  
1609 the ~~such a~~ trust or estate. If a fiduciary purchases, or  
1610 receives from a settlor, an interest in a trust that is an  
1611 investment entity, ~~or a decedent or donor transfers an interest~~  
1612 ~~in such a trust to a fiduciary,~~ s. 738.401, s. 738.415, or s.  
1613 738.416 ~~or s. 738.608~~ applies to a receipt from the trust.

1614 Section 22. Section 738.403, Florida Statutes, is amended  
1615 to read:

1616 738.403 Business and other activity ~~activities~~ conducted by  
1617 fiduciary.—

1618 (1) This section applies to ~~If a fiduciary who conducts a~~  
1619 business or other activity conducted by a fiduciary if the  
1620 fiduciary determines that it is in the best interests of  
1621 ~~interest of all~~ the beneficiaries to account separately for the  
1622 business or other activity instead of:

1623 (a) Accounting for the business or other activity as part  
1624 of the fiduciary's ~~trust's or estate's~~ general accounting



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1625 records; or

1626 (b) Conducting the business or other activity through an  
1627 entity described in s. 738.401(1)(b). ~~the~~

1628 (2) A fiduciary may account separately under this section  
1629 ~~maintain separate accounting records~~ for the transactions of a  
1630 ~~the~~ business or another ~~other~~ activity, regardless of whether ~~or~~  
1631 ~~not the~~ assets of the ~~such~~ business or other activity are  
1632 segregated from other ~~trust or estate~~ assets held by the  
1633 fiduciary.

1634 (3)(2) A fiduciary who accounts separately under this  
1635 section for a business or other activity:

1636 (a) May determine:

1637 1. The extent to which the net cash receipts of the  
1638 business or other activity must be retained for:

1639 a. Working capital;

1640 b. The acquisition or replacement of fixed assets; and

1641 c. Other reasonably foreseeable needs of the business or  
1642 other activity; and ~~working capital, the acquisition or~~  
1643 ~~replacement of fixed assets, and other reasonably foreseeable~~  
1644 ~~needs of the business or activity, and~~

1645 2. The extent to which the remaining net cash receipts are  
1646 accounted for as principal or income in the fiduciary's ~~trust's~~  
1647 ~~or estate's~~ general accounting records for the trust.

1648 (b) May make a determination under paragraph (a) separately  
1649 and differently from the fiduciary's decisions concerning  
1650 distributions of income or principal; and

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

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1654 business or other activity, ~~the fiduciary must account for the~~  
 1655 ~~net amount received~~ as principal in the fiduciary's trust's or  
 1656 ~~estate's~~ general accounting records for the trust, to the extent  
 1657 the fiduciary determines that the net amount received is no  
 1658 longer required in the conduct of the business or other  
 1659 activity.

1660 (4)(3) Activities for which a fiduciary may account  
 1661 separately under this section maintain separate accounting  
 1662 ~~records~~ include:

1663 (a) Retail, manufacturing, service, and other traditional  
 1664 business activities.

1665 (b) Farming.

1666 (c) Raising and selling livestock and other animals.

1667 (d) Managing ~~Management of~~ rental properties.

1668 (e) Extracting ~~Extraction of~~ minerals and other natural  
 1669 resources.

1670 (f) Growing and cutting timber ~~operations.~~

1671 (g) An activity ~~Activities~~ to which s. 738.414, s. 738.415,  
 1672 or s. 738.416 ~~s. 738.607~~ applies.

1673 (h) Any other business conducted by the fiduciary.

1674 Section 23. Section 738.404, Florida Statutes, is created  
 1675 to read:

1676 738.404 Principal receipts.—A fiduciary shall allocate to  
 1677 principal:

1678 (1) To the extent not allocated to income under this  
 1679 chapter, an asset received from any of the following:

1680 (a) An individual during the individual's lifetime.

1681 (b) An estate.

1682 (c) A trust on termination of an income interest.

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1683 (d) A payor under a contract naming the fiduciary as  
1684 beneficiary.

1685 (2) Except as otherwise provided in ss. 738.401-738.416,  
1686 money or other property received from the sale, exchange,  
1687 liquidation, or change in the form of a principal asset.

1688 (3) An amount recovered from a third party to reimburse the  
1689 fiduciary because of a disbursement described in s. 738.502(1)  
1690 or for another reason to the extent not based on the loss of  
1691 income.

1692 (4) Proceeds of property taken by eminent domain except  
1693 that proceeds awarded for loss of income in an accounting period  
1694 are income if a current income beneficiary had a mandatory  
1695 income interest during the period.

1696 (5) Net income received in an accounting period during  
1697 which there is no beneficiary to which a fiduciary may or must  
1698 distribute income.

1699 (6) Other receipts as provided in ss. 738.408-738.416.

1700 Section 24. Section 738.405, Florida Statutes, is created  
1701 to read:

1702 738.405 Rental property.—To the extent that a fiduciary  
1703 does not account for the management of rental property as a  
1704 business under s. 738.403, the fiduciary shall allocate to  
1705 income an amount received as rent of real or personal property,  
1706 including an amount received for cancellation or renewal of a  
1707 lease. An amount received as a refundable deposit, including a  
1708 security deposit or a deposit that is to be applied as rent for  
1709 future periods:

1710 (1) Must be added to principal and held subject to the  
1711 terms of the lease, except as otherwise provided by law other

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1712 than this chapter; and

1713 (2) Is not allocated to income or available for  
1714 distribution to a beneficiary until the fiduciary's contractual  
1715 obligations have been satisfied with respect to that amount.

1716 Section 25. Section 738.406, Florida Statutes, is created  
1717 to read:

1718 738.406 Receipt on obligation to be paid in money.—

1719 (1) This section does not apply to an obligation to which  
1720 s. 738.409, s. 738.410, s. 738.411, s. 738.412, s. 738.414, s.  
1721 738.415, or s. 738.416 applies.

1722 (2) A fiduciary shall allocate to income, without provision  
1723 for amortization of premium, an amount received as interest on  
1724 an obligation to pay money to the fiduciary, including an amount  
1725 received as consideration for prepaying principal.

1726 (3) A fiduciary shall allocate to principal an amount  
1727 received from the sale, redemption, or other disposition of an  
1728 obligation to pay money to the fiduciary.

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

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1741 for the increment when realized. If, in the reasonable judgment  
1742 of the fiduciary, exercised in good faith, the ultimate payment  
1743 of the bond principal is in doubt, the fiduciary may withhold  
1744 the payment of incremental interest to the income beneficiary.

1745 Section 26. Section 738.407, Florida Statutes, is created  
1746 to read:

1747 738.407 Insurance policy or contract.-

1748 (1) This section does not apply to a contract to which s.  
1749 738.409 applies.

1750 (2) Except as otherwise provided in subsection (3), a  
1751 fiduciary shall allocate to principal the proceeds of a life  
1752 insurance policy or other contract received by the fiduciary as  
1753 beneficiary, including a contract that insures against damage  
1754 to, destruction of, or loss of title to an asset. The fiduciary  
1755 shall allocate dividends on an insurance policy to income to the  
1756 extent that premiums on the policy are paid from income and to  
1757 principal to the extent premiums on the policy are paid from  
1758 principal.

1759 (3) A fiduciary shall allocate to income proceeds of a  
1760 contract that insures the fiduciary against loss of:

1761 (a) Occupancy or other use by a current income beneficiary;

1762 (b) Income; or

1763 (c) Subject to s. 738.403, profits from a business.

1764 Section 27. Section 738.408, Florida Statutes, is created  
1765 to read:

1766 738.408 Insubstantial allocation not required.-

1767 (1) If a fiduciary determines that an allocation between  
1768 income and principal required by s. 738.409, s. 738.410, s.  
1769 738.411, s. 738.412, or s. 738.415 is insubstantial, the

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1770 fiduciary may allocate the entire amount to principal, unless s.  
1771 738.203(5) applies to the allocation.

1772 (2) A fiduciary may presume an allocation is insubstantial  
1773 under subsection (1) if:

1774 (a) The amount of the allocation would increase or decrease  
1775 net income in an accounting period, as determined before the  
1776 allocation, by less than 10 percent; and

1777 (b) The asset producing the receipt to be allocated has a  
1778 carrying value less than 10 percent of the total carrying value  
1779 of the assets owned or held by the fiduciary at the beginning of  
1780 the accounting period.

1781 (3) The power to make a determination under subsection (1)  
1782 may be:

1783 (a) Exercised by a cofiduciary in the manner described in  
1784 s. 738.203(6); or

1785 (b) Released or delegated for a reason described in s.  
1786 738.203(7) and in the manner described in s. 738.203(8).

1787 Section 28. Section 738.409, Florida Statutes, is created  
1788 to read:

1789 738.409 Deferred compensation, annuity, or similar  
1790 payment.—

1791 (1) As used in this section, the term:

1792 (a) "Internal income of the separate fund" means the amount  
1793 determined under subsection (2).

1794 (b) "Marital trust" means a trust:

1795 1. Of which the settlor's surviving spouse is the only  
1796 current income beneficiary and is entitled to a distribution of  
1797 all the current net income of the trust; and

1798 2. That qualifies for a marital deduction with respect to

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1799 the settlor's estate under the Internal Revenue Code or  
1800 comparable law of any state because:

1801 a. An election to qualify for a marital deduction under s.  
1802 2056(b)(7) of the Internal Revenue Code has been made;

1803 b. The trust qualified for a marital deduction under s.  
1804 2056(b)(5) of the Internal Revenue Code; or

1805 c. The trust otherwise qualifies for a marital deduction.

1806 (c) "Nonseparate fund" means an annuity, a deferred  
1807 compensation plan, a pension plan, or other fund for which the  
1808 value of the participant's or account owner's right to receive  
1809 benefits can be determined only by the occurrence of a date or  
1810 event as defined in the instrument governing the fund.

1811 (d) "Payment" means an amount a fiduciary may receive over  
1812 a fixed number of years or during the life of one or more  
1813 individuals because of services rendered or property transferred  
1814 to the payor in exchange for future amounts the fiduciary may  
1815 receive. The term includes an amount received in money or  
1816 property from the payor's general assets or from a separate fund  
1817 created by the payor.

1818 (e) "Percent calculated" means a percent equal to the rate  
1819 determined under s. 7520 of the Internal Revenue Code in effect  
1820 for the month preceding the beginning of the accounting period;  
1821 however, if the percent calculated exceeds 5 percent, it must be  
1822 reduced to 5 percent, and if the percent calculated is less than  
1823 3 percent, it must be increased to 3 percent. Notwithstanding  
1824 the preceding sentence, a fiduciary who is an independent person  
1825 as defined in s. 738.102 may set the percent calculated at a  
1826 percentage no less than 3 percent and no greater than 5 percent.

1827 (f) "Separate fund" includes a private or commercial

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1828 annuity, an individual retirement account, and a pension,  
1829 profit-sharing, stock-bonus, stock ownership plan, or other  
1830 deferred compensation fund holding assets exclusively for the  
1831 benefit of a participant or account owner.

1832 (2) For each accounting period, the following rules apply  
1833 to a separate fund:

1834 (a) The fiduciary may determine the internal income of the  
1835 separate fund as if the separate fund were a trust subject to  
1836 this chapter.

1837 (b) Alternatively, the fiduciary may deem the internal  
1838 income of the separate fund to equal the percent calculated of  
1839 the value of the separate fund according to the most recent  
1840 statement of value preceding the beginning of the accounting  
1841 period. The fiduciary is not liable for good faith reliance upon  
1842 any valuation supplied by the person or persons in possession of  
1843 the fund. If the fiduciary makes or terminates an election under  
1844 this paragraph, the fiduciary must make such disclosure in a  
1845 trust disclosure document that satisfies the requirements of s.  
1846 736.1008(4)(c).

1847 (c) If the fiduciary cannot determine the value of the  
1848 separate fund under paragraph (b), the value of the separate  
1849 fund is deemed to equal the present value of the expected future  
1850 payments, as determined under s. 7520 of the Internal Revenue  
1851 Code for the month preceding the beginning of the accounting  
1852 period for which the computation is made.

1853 (d) The fiduciary may elect the method of determining the  
1854 income of the fund pursuant to this subsection and may change  
1855 the method of determining income of the fund for any future  
1856 accounting period.



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1857       (3) A fiduciary shall allocate a payment received from a  
1858 separate fund during an accounting period to income, to the  
1859 extent of the internal income of the separate fund during the  
1860 period, and allocate the balance to principal.

1861       (4) The fiduciary of a marital trust shall:

1862       (a) Withdraw from a separate fund the amount the current  
1863 income beneficiary of the trust requests the fiduciary to  
1864 withdraw, not greater than the amount by which the internal  
1865 income of the separate fund during the accounting period exceeds  
1866 the amount the fiduciary otherwise receives from the separate  
1867 fund during the period.

1868       (b) Transfer from principal to income the amount the  
1869 current income beneficiary requests the fiduciary to transfer,  
1870 but not greater than the amount by which the internal income of  
1871 the separate fund during the period exceeds the amount the  
1872 fiduciary receives from the separate fund during the period  
1873 after the application of paragraph (a).

1874       (c) Distribute to the current income beneficiary as income:

1875       1. The amount of the internal income of the separate fund  
1876 received or withdrawn during the period; and

1877       2. The amount transferred from principal to income under  
1878 paragraph (b).

1879       (5) For a trust, other than a marital trust, of which one  
1880 or more current income beneficiaries are entitled to a  
1881 distribution of all the current net income, the fiduciary shall  
1882 transfer from principal to income the amount by which the  
1883 internal income of the separate fund during the accounting  
1884 period exceeds the amount the fiduciary receives from the  
1885 separate fund during the period.

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1886       (6) The fiduciary of a nonseparate fund shall calculate  
 1887 internal income of the fund as the percent calculated of the  
 1888 present value of the right to receive the remaining payments as  
 1889 determined under s. 7520(a)(2) of the Internal Revenue Code for  
 1890 the month preceding the beginning of the accounting period.

1891       (7) If a fiduciary owns a separate fund or a nonseparate  
 1892 fund before January 1, 2025, the fiduciary may determine  
 1893 internal income, allocate payments, and account for unwithdrawn  
 1894 internal income as provided in this section or in the manner  
 1895 used by the fiduciary before January 1, 2025. Such fiduciary is  
 1896 not required to consider subsection (5). If the fiduciary  
 1897 acquires a separate fund or a nonseparate fund on or after  
 1898 January 1, 2025, the fiduciary must calculate internal income,  
 1899 allocate payments, and account for unwithdrawn internal income  
 1900 as provided in this section.

1901       Section 29. Section 738.603, Florida Statutes, is  
 1902 transferred, renumbered as section 738.410, Florida Statutes,  
 1903 and amended to read:

1904       738.410 ~~738.603~~ Liquidating asset.—

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

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1915 ~~an asset subject to s. 738.608, or any asset for which the~~  
1916 ~~fiduciary establishes a reserve for depreciation under s.~~  
1917 ~~738.703.~~

1918 (2) This section does not apply to a receipt that is  
1919 subject to s. 738.401, s. 738.409, s. 738.411, s. 738.412, s.  
1920 738.414, s. 738.415, s. 738.416, or s. 738.503.

1921 (3) A fiduciary shall allocate to income a receipt produced  
1922 by a liquidating asset to the extent that the receipt does not  
1923 exceed 5 percent of the receipts from the carrying value of the  
1924 asset at the beginning of the accounting period and allocate a  
1925 liquidating asset and the balance to principal the balance of  
1926 the receipt.

1927 (4) The amount ~~Amounts~~ allocated to principal shall reduce  
1928 the carrying value of the liquidating asset, but not below zero.  
1929 Amounts received in excess of the remaining carrying value must  
1930 be allocated to principal.

1931 Section 30. Section 738.604, Florida Statutes, is  
1932 transferred, renumbered as section 738.411, Florida Statutes,  
1933 and amended to read:

1934 738.411 ~~738.604~~ Minerals, water, and other natural  
1935 resources.—

1936 (1) To the extent that ~~If~~ a fiduciary does not account for  
1937 a receipt ~~accounts for receipts~~ from an interest in minerals,  
1938 water, or other natural resources as a business under s. 738.403  
1939 pursuant to this section, the fiduciary shall allocate the  
1940 receipt ~~such receipts~~ as follows:

1941 (a) To income, to the extent received:

1942 1. If received ~~As nominal~~ delay rental or nominal ~~annual~~  
1943 rent on a lease;

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1944 2. As a factor for interest or the equivalent of interest  
 1945 under an agreement creating a production payment; or

1946 3. On account of an interest in renewable water;~~a receipt~~  
 1947 ~~shall be allocated to income.~~

1948 (b) To principal, if received from a production payment, a  
 1949 ~~receipt shall be allocated to income if and to the extent that~~  
 1950 ~~subparagraph (a)2. does not apply; or the agreement creating the~~  
 1951 ~~production payment provides a factor for interest or its~~  
 1952 ~~equivalent. The balance shall be allocated to principal.~~

1953 (c) Between income and principal equitably, to the extent  
 1954 received:

1955 1. On account of an interest in nonrenewable water;

1956 2. If an amount received As a royalty, shut-in-well  
 1957 payment, take-or-pay payment, or bonus; or, ~~or delay rental is~~  
 1958 ~~more than nominal, 90 percent shall be allocated to principal~~  
 1959 ~~and the balance to income.~~

1960 3. (d) If an amount is received From a working interest or  
 1961 any other interest not provided for in paragraph (a) or,  
 1962 paragraph (b) or subparagraph 1. or subparagraph 2., ~~or~~  
 1963 ~~paragraph (c), 90 percent of the net amount received shall be~~  
 1964 ~~allocated to principal and the balance to income.~~

1965 (2) ~~An amount received on account of an interest in water~~  
 1966 ~~that is renewable shall be allocated to income. If the water is~~  
 1967 ~~not renewable, 90 percent of the amount shall be allocated to~~  
 1968 ~~principal and the balance to income.~~

1969 ~~(3) This section~~ chapter applies to an interest owned or  
 1970 held by a fiduciary regardless of whether ~~or not~~ a settlor  
 1971 ~~decedent or donor~~ was extracting minerals, water, or other  
 1972 natural resources before the fiduciary owned or held the

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1973 interest ~~became subject to the trust or estate.~~

1974 (3) An allocation of a receipt under paragraph (1) (c) is  
 1975 presumed to be equitable if the amount allocated to principal is  
 1976 equal to the amount allowed by the Internal Revenue Code as a  
 1977 deduction for depletion of the interest.

1978 (4) If a fiduciary ~~trust or estate~~ owns or holds an  
 1979 interest in minerals, water, or other natural resources before  
 1980 January 1, 2025 ~~on January 1, 2003~~, the fiduciary may allocate  
 1981 receipts from the interest as provided in this section ~~chapter~~  
 1982 or in the manner used by the fiduciary before January 1, 2025  
 1983 ~~January 1, 2003~~. If the fiduciary ~~trust or estate~~ acquires an  
 1984 interest in minerals, water, or other natural resources on or  
 1985 after January 1, 2025 ~~January 1, 2003~~, the fiduciary must ~~shall~~  
 1986 allocate receipts from the interest as provided in this section  
 1987 ~~chapter~~.

1988 Section 31. Section 738.605, Florida Statutes, is  
 1989 transferred, renumbered as section 738.412, Florida Statutes,  
 1990 and amended to read:

1991 738.412 ~~738.605~~ Timber.—

1992 (1) To the extent that ~~If~~ a fiduciary does not account  
 1993 ~~accounts~~ for receipts from the sale of timber and related  
 1994 products as a business under s. 738.403 ~~pursuant to this~~  
 1995 ~~section~~, the fiduciary shall allocate the ~~such~~ net receipts ~~as~~  
 1996 ~~follows~~:

1997 (a) To income, to the extent that the amount of timber cut  
 1998 ~~removed~~ from the land does not exceed the rate of growth of the  
 1999 timber ~~during the accounting periods in which a beneficiary has~~  
 2000 ~~a mandatory income interest~~;

2001 (b) To principal, to the extent that the amount of timber

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2002 ~~cut removed~~ from the land exceeds the rate of growth of the  
2003 timber or the net receipts are from the sale of standing timber;

2004 (c) ~~To or~~ Between income and principal if the net receipts  
2005 are from the lease of land used for growing and cutting timber  
2006 ~~timberland~~ or from a contract to cut timber from land ~~owned by a~~  
2007 ~~trust or estate~~ by determining the amount of timber ~~cut removed~~  
2008 from the land under the lease or contract and applying the rules  
2009 in paragraphs (a) and (b); or

2010 (d) To principal, to the extent that advance payments,  
2011 bonuses, and other payments are not allocated under ~~pursuant to~~  
2012 paragraph (a), paragraph (b), or paragraph (c).

2013 (2) In determining net receipts to be allocated under  
2014 ~~pursuant to~~ subsection (1), a fiduciary shall deduct and  
2015 transfer to principal a reasonable amount for depletion.

2016 (3) This section ~~chapter~~ applies to land owned or held by a  
2017 fiduciary regardless of whether or not a settlor decedent or  
2018 ~~donor~~ was cutting harvesting timber from the land property  
2019 before the fiduciary owned or held the property became subject  
2020 ~~to the trust or estate.~~

2021 (4) If a fiduciary ~~trust or estate~~ owns or holds an  
2022 interest in land used for growing and cutting timber before  
2023 January 1, 2025 ~~timberland on January 1, 2003~~, the fiduciary may  
2024 allocate net receipts from the sale of timber and related  
2025 products as provided in this section ~~chapter~~ or in the manner  
2026 used by the fiduciary before January 1, 2025 ~~January 1, 2003~~. If  
2027 the fiduciary ~~trust or estate~~ acquires an interest in land used  
2028 for growing and cutting timber on or after January 1, 2025  
2029 ~~timberland after January 1, 2003~~, the fiduciary must ~~shall~~  
2030 allocate net receipts from the sale of timber and related

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2031 products as provided in this section ~~chapter~~.

2032 Section 32. Section 738.606, Florida Statutes, is  
2033 transferred, renumbered as section 738.413, Florida Statutes,  
2034 and amended to read:

2035 738.413 ~~738.606~~ Marital deduction property not productive  
2036 of income.—

2037 (1) If a trust received property for which a gift or estate  
2038 tax marital deduction was under the Internal Revenue Code or  
2039 comparable law of any state is allowed, for all or if part of a  
2040 trust received property satisfying, or if assets are transferred  
2041 to a trust that satisfies the requirements of s. 732.2025(2) (a)  
2042 and (c), and such property has assets have been used in whole or  
2043 in part to satisfy an election by a surviving spouse under s.  
2044 732.2125, and the settlor's spouse holds a mandatory income  
2045 interest in the trust, the spouse may require the trustee, to  
2046 the extent that the trust assets otherwise do consist of  
2047 property that, in the aggregate, does not provide the spouse  
2048 with sufficient income from or use of the trust assets to  
2049 qualify for the deduction, or to satisfy an election by a  
2050 surviving spouse under s. 732.2125, to make the property  
2051 productive of income within a reasonable time. The trustee may:

2052 (a) Convert property to property productive of income  
2053 within a reasonable time;

2054 (b) Exercise the power to adjust under s. 738.203;

2055 (c) Exercise the power to convert to or from a unitrust  
2056 under s. 738.303; or

2057 (d) Exercise the fiduciary's authority under the terms of  
2058 the trust to otherwise provide the surviving spouse with  
2059 sufficient income from the trust assets, or the use of the trust

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2060 assets, to qualify for the marital deduction, or to satisfy an  
2061 election by a surviving spouse under s. 732.2125.

2062 (2) The trustee may decide which action or combination of  
2063 actions listed in subsection (1) to take.

2064 (3) Subsection (1) shall apply, ~~and if amounts the trustee~~  
2065 ~~transfers from principal to income under s. 738.104 and~~  
2066 ~~distributes to the spouse from principal pursuant to the terms~~  
2067 ~~of the trust are insufficient to provide the spouse with the~~  
2068 ~~beneficial enjoyment required to obtain the marital deduction,~~  
2069 ~~even though, in the case of an elective share trust under s.~~  
2070 732.2025(2), a marital deduction is not made or is only  
2071 ~~partially made, the spouse may require the trustee of such~~  
2072 ~~marital trust or elective share trust to make property~~  
2073 ~~productive of income, convert property within a reasonable time,~~  
2074 ~~or exercise the power conferred by ss. 738.104 and 738.1041.~~

2075 (4) The terms of a trust as defined in s. 738.102 may not  
2076 supersede this section unless such terms explicitly reference  
2077 this section ~~The trustee may decide which action or combination~~  
2078 ~~of actions to take.~~

2079 ~~(2) In cases not governed by subsection (1), proceeds from~~  
2080 ~~the sale or other disposition of an asset are principal without~~  
2081 ~~regard to the amount of income the asset produces during any~~  
2082 ~~accounting period.~~

2083 Section 33. Section 738.607, Florida Statutes, is  
2084 transferred, renumbered as section 738.414, Florida Statutes,  
2085 and amended to read:

2086 738.414 ~~738.607~~ Derivatives or ~~and~~ options.-

2087 (1) As used in ~~For purposes of~~ this section, the term  
2088 "derivative" means a contract, an ~~or financial~~ instrument, or



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2089 other arrangement, or a combination of contracts, and financial  
2090 instruments, or other arrangements, of which the value, rights,  
2091 and obligations are, in whole or in part, dependent on or  
2092 derived from an underlying which gives a trust the right or  
2093 obligation to participate in some or all changes in the price of  
2094 a tangible or intangible asset, a ~~or~~ group of tangible or  
2095 intangible assets, an index, or an occurrence of an event. The  
2096 term includes stocks, fixed income securities, and financial  
2097 instruments and arrangements based on indices, commodities,  
2098 interest rates, weather-related events, and credit-default  
2099 events assets, or changes in a rate, an index of prices or  
2100 rates, or other market indicator for an asset or a group of  
2101 assets.

2102 (2) To the extent that a fiduciary does not account for a  
2103 transaction in derivatives as a business under s. 738.403 ~~for~~  
2104 ~~transactions in derivatives~~, the fiduciary shall allocate 10  
2105 percent of to principal receipts from the transaction and 10  
2106 percent of and disbursements made in connection with the  
2107 transaction to income and allocate the balance to principal  
2108 those transactions.

2109 (3) Subsection (4) applies if:

2110 (a) A fiduciary:

2111 1. If a fiduciary Grants an option to buy property from a  
2112 the trust, regardless of ~~or estate~~ whether ~~or not~~ the trust ~~or~~  
2113 estate owns the property when the option is granted;

2114 2. Grants an option that permits another person to sell  
2115 property to the trust; or

2116 3. ~~estate, or~~ Acquires an option to buy property for the  
2117 trust or ~~estate or~~ an option to sell an asset owned by the trust

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2118 ~~or estate;~~ and

2119 (b) The fiduciary or other owner of the asset is required  
2120 to deliver the asset if the option is exercised, ~~an amount~~  
2121 ~~received for granting the option shall be allocated to~~  
2122 ~~principal. An amount paid to acquire the option shall be paid~~  
2123 ~~from principal.~~

2124 (4) If this subsection applies, the fiduciary must allocate  
2125 10 percent to income and allocate the balance to principal of  
2126 the following amounts:

2127 (a) An amount received for granting the option;

2128 (b) An amount paid to acquire the option; and

2129 (c) A Gain or loss realized on ~~upon~~ the exercise, exchange,  
2130 settlement, offset, closing, or expiration of the option of an  
2131 option, including an option granted to a grantor of the trust or  
2132 estate for services rendered, shall be allocated to principal.

2133 Section 34. Section 738.608, Florida Statutes, is  
2134 transferred, renumbered as section 738.415, Florida Statutes,  
2135 and amended to read:

2136 738.415 ~~738.608~~ Asset-backed securities.—

2137 (1) Except as otherwise provided in subsection (2), a  
2138 fiduciary shall allocate to income a receipt from or related to  
2139 an asset-backed security, as defined in s. 738.102, to the  
2140 extent that the payor identifies the payment as being from ~~For~~  
2141 ~~purposes of this section, "asset-backed security" means an asset~~  
2142 ~~the value of which is based upon the right given the owner to~~  
2143 ~~receive distributions from the proceeds of financial assets that~~  
2144 ~~provide collateral for the security. The term includes an asset~~  
2145 ~~that gives the owner the right to receive from the collateral~~  
2146 ~~financial assets only the interest or other current return and~~

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2147 ~~allocate to principal the balance of the receipt or only the~~  
2148 ~~proceeds other than interest or current return. The term does~~  
2149 ~~not include an asset to which s. 738.401 or s. 738.602 applies.~~

2150 (2) If a fiduciary receives one or more payments in  
2151 exchange for part or all of the fiduciary's interest in an  
2152 asset-backed security, including a liquidation or redemption of  
2153 the fiduciary's interest in the security trust or estate  
2154 ~~receives a payment from interest or other current return and~~  
2155 ~~from other proceeds of the collateral financial assets, the~~  
2156 ~~fiduciary must shall allocate to income 10 percent of receipts~~  
2157 ~~from the transaction and 10 percent of disbursements made in~~  
2158 ~~connection with the transaction, and allocate to principal the~~  
2159 ~~portion of the payment which the payor identifies as being from~~  
2160 ~~interest or other current return and allocate the balance of the~~  
2161 ~~receipts and disbursements payment to principal.~~

2162 ~~(3) If a trust or estate receives one or more payments in~~  
2163 ~~exchange for the trust's or estate's entire interest in an~~  
2164 ~~asset-backed security during a single accounting period, the~~  
2165 ~~fiduciary shall allocate the payments to principal. If a payment~~  
2166 ~~is one of a series of payments that will result in the~~  
2167 ~~liquidation of the trust's or estate's interest in the security~~  
2168 ~~over more than a single accounting period, the fiduciary shall~~  
2169 ~~allocate 10 percent of the payment to income and the balance to~~  
2170 ~~principal.~~

2171 Section 35. Section 738.416, Florida Statutes, is created  
2172 to read:

2173 738.416 Other financial instrument or arrangement.—A  
2174 fiduciary shall allocate receipts from or related to a financial  
2175 instrument or arrangement not otherwise addressed by this

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2176 chapter. The allocation must be consistent with ss. 738.414 and  
2177 738.415.

2178 Section 36. Section 738.501, Florida Statutes, is amended  
2179 to read:

2180 (Substantial rewording of section. See  
2181 s. 738.501, F.S., for present text.)

2182 738.501 Disbursement from income.—Subject to s. 738.504,  
2183 and except as otherwise provided in s. 738.601(3)(b) or (c), a  
2184 fiduciary shall disburse from income:

2185 (1) One-half of:

2186 (a) The regular compensation of the fiduciary and of any  
2187 person providing investment advisory, custodial, or other  
2188 services to the fiduciary to the extent that income is  
2189 sufficient; and

2190 (b) An expense for an accounting, judicial or nonjudicial  
2191 proceeding, or other matter that involves both income and  
2192 successive interests to the extent income is sufficient.

2193 (2) The balance of the disbursements described in  
2194 subsection (1), to the extent that a fiduciary who is an  
2195 independent person determines that making those disbursements  
2196 from income would be in the interests of the beneficiaries.

2197 (3) Any other ordinary expense incurred in connection with  
2198 administration, management, or preservation of property and  
2199 distribution of income, including interest, an ordinary repair,  
2200 a regularly recurring tax assessed against principal, and an  
2201 expense of an accounting, judicial or nonjudicial proceeding, or  
2202 other matter that involves primarily an income interest, to the  
2203 extent that income is sufficient.

2204 (4) A premium on insurance covering loss of a principal

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2205 asset or income from or use of the asset.

2206 Section 37. Section 738.502, Florida Statutes, is amended  
2207 to read:

2208 (Substantial rewording of section. See  
2209 s. 738.502, F.S., for present text.)

2210 738.502 Disbursement from principal.—

2211 (1) Subject to s. 738.505, and except as otherwise provided  
2212 in s. 738.601(3)(b), a fiduciary shall disburse all of the  
2213 following from principal:

2214 (a) The balance of the disbursements described in s.  
2215 738.501(1) and (3), after application of s. 738.501(2).

2216 (b) The fiduciary's compensation calculated on principal as  
2217 a fee for acceptance, distribution, or termination.

2218 (c) A payment of an expense to prepare for or execute a  
2219 sale or other disposition of property.

2220 (d) A payment on the principal of a trust debt.

2221 (e) A payment of an expense of an accounting, judicial or  
2222 nonjudicial proceeding, or other matter that involves primarily  
2223 principal, including a proceeding to construe the terms of the  
2224 trust or protect property.

2225 (f) A payment of a premium for insurance, including title  
2226 insurance, not described in s. 738.501(4) of which the fiduciary  
2227 is the owner and beneficiary.

2228 (g) A payment of estate, inheritance, and other transfer  
2229 taxes, including penalties, apportioned to the trust.

2230 (h) A payment related to environmental matters including:

2231 1. Reclamation;

2232 2. Assessing environmental conditions;

2233 3. Remedying and removing environmental contamination;

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- 2234       4. Monitoring remedial activities and the release of  
2235 substances;
- 2236       5. Preventing future releases of substances;
- 2237       6. Collecting amounts from persons liable or potentially  
2238 liable for the costs of the activities described in  
2239 subparagraphs 1.-5.;
- 2240       7. Penalties imposed under environmental laws or  
2241 regulations;
- 2242       8. Other actions to comply with environmental laws or  
2243 regulations;
- 2244       9. Statutory or common law claims by third parties; and  
2245 10. Defending claims based on environmental matters.
- 2246       (i) A payment of a premium for insurance for matters  
2247 described in paragraph (h).
- 2248       (2) If a principal asset is encumbered with an obligation  
2249 that requires income from the asset to be paid directly to a  
2250 creditor, the fiduciary must transfer from principal to income  
2251 an amount equal to the income paid to the creditor in reduction  
2252 of the principal balance of the obligation.
- 2253       Section 38. Section 738.503, Florida Statutes, is amended  
2254 to read:
- 2255       (Substantial rewording of section. See  
2256 s. 738.503, F.S., for present text.)
- 2257       738.503 Transfers from income to principal for  
2258 depreciation.—
- 2259       (1) For purposes of this section, "depreciation" means a  
2260 reduction in value due to wear, tear, decay, corrosion, or  
2261 gradual obsolescence of a tangible asset having a useful life of  
2262 more than 1 year.

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2263 (2) A fiduciary may transfer to principal a reasonable  
2264 amount of the net cash receipts from a principal asset that is  
2265 subject to depreciation but may not transfer any amount for  
2266 depreciation:

2267 (a) Of the part of real property used or available for use  
2268 by a beneficiary as a residence;

2269 (b) Of tangible personal property held or made available  
2270 for the personal use or enjoyment of a beneficiary; or

2271 (c) Under this section, to the extent that the fiduciary  
2272 accounts:

2273 1. Under s. 738.410 for the asset; or

2274 2. Under s. 738.403 for the business or other activity in  
2275 which the asset is used.

2276 (3) An amount transferred to principal under this section  
2277 need not be separately held.

2278 Section 39. Section 738.504, Florida Statutes, is amended  
2279 to read:

2280 (Substantial rewording of section. See

2281 s. 738.504, F.S., for present text.)

2282 738.504 Reimbursement of income from principal.-

2283 (1) If a fiduciary makes or expects to make an income  
2284 disbursement described in subsection (2), the fiduciary may  
2285 transfer an appropriate amount from principal to income in one  
2286 or more accounting periods to reimburse income.

2287 (2) To the extent that the fiduciary has not been and does  
2288 not expect to be reimbursed by a third party, income  
2289 disbursements to which subsection (1) applies include:

2290 (a) An amount chargeable to principal but paid from income  
2291 because principal is illiquid;

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2292 (b) A disbursement made to prepare property for sale,  
 2293 including improvements and commissions; and

2294 (c) A disbursement described in s. 738.502(1).

2295 (3) If an asset whose ownership gives rise to an income  
 2296 disbursement becomes subject to a successive interest after an  
 2297 income interest ends, the fiduciary may continue to make  
 2298 transfers under subsection (1).

2299 Section 40. Section 738.704, is transferred, renumbered as  
 2300 section 738.505, Florida Statutes, and amended to read:

2301 738.505 ~~738.704~~ Reimbursement of principal from income  
 2302 ~~Transfers from income to reimburse principal.~~

2303 (1) If a fiduciary makes or expects to make a principal  
 2304 disbursement described in subsection (2) ~~this section~~, the  
 2305 fiduciary may transfer an appropriate amount from income to  
 2306 principal in one or more accounting periods to reimburse  
 2307 principal or to provide a reserve for future principal  
 2308 disbursements.

2309 ~~(2) Principal disbursements to which subsection (1) applies~~  
 2310 ~~include the following, but only~~ To the extent that a ~~the~~  
 2311 fiduciary has not been and does not expect to be reimbursed by a  
 2312 third party, principal disbursements to which subsection (1)  
 2313 applies include:

2314 (a) An amount chargeable to income but paid from principal  
 2315 because income is not sufficient; ~~the amount is unusually large.~~

2316 (b) The cost of an improvement to principal, whether a  
 2317 change to an existing asset or the construction of a new asset,  
 2318 including a special assessment; ~~Disbursements made to prepare~~  
 2319 ~~property for rental, including tenant allowances, leasehold~~  
 2320 ~~improvements, and broker's commissions.~~



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2321 (c) A disbursement made to prepare property for rental,  
2322 including tenant allowances, leasehold improvements, and  
2323 commissions; Disbursements described in s. 738.702(1)(g).

2324 (d) A periodic payment on an obligation secured by a  
2325 principal asset, to the extent the amount transferred from  
2326 income to principal for depreciation is less than the periodic  
2327 payment; and

2328 (e) A disbursement described in s. 738.502(1).

2329 (3) If an ~~the~~ asset whose ~~the~~ ownership ~~of which~~ gives rise  
2330 to a principal disbursement ~~the disbursements~~ becomes subject to  
2331 a successive ~~income~~ interest after an income interest ends, the  
2332 a fiduciary may continue to make transfers under transfer  
2333 ~~amounts from income to principal as provided in subsection (1).~~

2334 (4) ~~To the extent principal cash is not sufficient to pay~~  
2335 ~~the principal balance of payments due on mortgaged property,~~  
2336 ~~income may be applied to such payment in order to avoid a~~  
2337 ~~default on any mortgage or security interest securing the~~  
2338 ~~property. Income shall be reimbursed for such payments out of~~  
2339 ~~the first available principal cash. If the asset the ownership~~  
2340 ~~of which gives rise to the disbursements described in this~~  
2341 ~~subsection becomes subject to a successive income interest after~~  
2342 ~~an income interest ends, all rights of the initial income~~  
2343 ~~interest shall lapse, and amounts remaining due from principal~~  
2344 ~~shall not be a lien on the assets of the trust.~~

2345 Section 41. Section 738.705, Florida Statutes, is  
2346 transferred, renumbered as section 738.506, Florida Statutes,  
2347 and amended to read:

2348 738.506 ~~738.705~~ Income taxes.—

2349 (1) A tax required to be paid by a fiduciary which is based

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2350 on receipts allocated to income must ~~shall~~ be paid from income.

2351 (2) A tax required to be paid by a fiduciary which is based  
2352 on receipts allocated to principal must ~~shall~~ be paid from  
2353 principal, even if the tax is called an income tax by the taxing  
2354 authority.

2355 (3) Subject to subsection (4) and ss. 738.504, 738.505, and  
2356 738.507, a tax required to be paid by a fiduciary on a the  
2357 ~~trust's or estate's~~ share of an entity's taxable income in an  
2358 accounting period must ~~shall~~ be paid from ~~proportionately~~:

2359 (a) ~~From~~ Income and principal proportionately to the  
2360 allocation between income and principal of ~~to the extent~~  
2361 receipts from the entity in the period ~~are allocated to income.~~

2362 (b) ~~From principal to the extent~~ receipts from the entity  
2363 ~~are allocated to principal.~~

2364 (c) ~~From~~ Principal to the extent that the tax exceeds the  
2365 ~~income taxes payable by the trust or estate exceed the total~~  
2366 receipts from the entity in the period.

2367 (4) After applying subsections (1), (2), and (3), a  
2368 fiduciary shall adjust income or principal receipts, to the  
2369 extent the taxes that the fiduciary pays are reduced because of  
2370 a deduction for a payment made to a beneficiary.

2371 (5) Subject to the limitations and excluded assets provided  
2372 under s. 736.08145, a reimbursement of state or federal income  
2373 tax elected to be made by a fiduciary pursuant to s. 736.08145  
2374 must be allocated and paid under paragraphs (3)(a) and (b) ~~After~~  
2375 ~~applying subsections (1)–(3), the fiduciary shall adjust income~~  
2376 ~~or principal receipts to the extent that the trust's or estate's~~  
2377 ~~income taxes are reduced, but not eliminated, because the trust~~  
2378 ~~or estate receives a deduction for payments made to a~~

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2379 beneficiary. ~~The amount distributable to that beneficiary as~~  
2380 ~~income as a result of this adjustment shall be equal to the cash~~  
2381 ~~received by the trust or estate, reduced, but not below zero, by~~  
2382 ~~the entity's taxable income allocable to the trust or estate~~  
2383 ~~multiplied by the trust's or estate's income tax rate. The~~  
2384 ~~reduced amount shall be divided by the difference between 1 and~~  
2385 ~~the trust's or estate's income tax rate in order to determine~~  
2386 ~~the amount distributable to that beneficiary as income before~~  
2387 ~~giving effect to other receipts or disbursements allocable to~~  
2388 ~~that beneficiary's interest.~~

2389 Section 42. Section 738.706, Florida Statutes, is  
2390 transferred, renumbered as section 738.507, Florida Statutes,  
2391 and amended to read:

2392 738.507 ~~738.706~~ Adjustment ~~Adjustments~~ between principal  
2393 and income because of taxes.—

2394 (1) A fiduciary may make an adjustment ~~adjustments~~ between  
2395 ~~principal and income~~ and principal to offset the shifting of  
2396 economic interests or tax benefits between current income  
2397 beneficiaries and successor ~~remainder~~ beneficiaries which arises  
2398 ~~arise~~ from:

2399 (a) An election or decision ~~Elections and decisions, other~~  
2400 ~~than those described in paragraph (b),~~ that the fiduciary makes  
2401 ~~from time to time~~ regarding a tax matter, other than a decision  
2402 to claim an income tax deduction to which subsection (2) applies  
2403 ~~matters;~~

2404 (b) An income tax or ~~any~~ other tax ~~that is~~ imposed on ~~upon~~  
2405 the fiduciary or a beneficiary as a result of a transaction  
2406 involving the fiduciary or a distribution by ~~from~~ the fiduciary  
2407 ~~estate or trust; or~~

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2408 (c) ~~The~~ Ownership by the fiduciary ~~an estate or trust~~ of an  
2409 interest in an entity a part of whose taxable income, regardless  
2410 of whether ~~or not~~ distributed, is includable in the taxable  
2411 income of the fiduciary estate, trust, or a beneficiary; or

2412 (d) An election or decision a fiduciary makes to reimburse  
2413 any tax under s. 736.08145.

2414 (2) If the amount of an estate tax marital ~~deduction~~ or  
2415 charitable ~~contribution~~ deduction is reduced because a fiduciary  
2416 deducts an amount paid from principal for income tax purposes  
2417 instead of deducting it ~~such amount~~ for estate tax purposes,  
2418 and, as a result, estate taxes paid from principal are increased  
2419 and income taxes paid by a fiduciary or a ~~an estate, trust, or~~  
2420 beneficiary are decreased, the fiduciary shall charge each  
2421 ~~estate, trust, or~~ beneficiary that benefits from the decrease in  
2422 income tax to shall reimburse the principal from which the  
2423 increase in estate tax is paid. The total reimbursement must  
2424 ~~shall~~ equal the increase in the estate tax, to the extent that  
2425 the principal used to pay the increase would have qualified for  
2426 a marital ~~deduction~~ or charitable ~~contribution~~ deduction but for  
2427 the payment. The ~~proportionate~~ share of the reimbursement for  
2428 each fiduciary estate, trust, or beneficiary whose income taxes  
2429 are reduced must shall be the same as its ~~such estate's,~~  
2430 ~~trust's, or beneficiary's~~ ~~proportionate~~ share of the total  
2431 decrease in income tax. ~~An estate or trust shall reimburse~~  
2432 ~~principal from income.~~

2433 (3) A fiduciary that charges a beneficiary under subsection  
2434 (2) may offset the charge by obtaining payment from the  
2435 beneficiary, withholding an amount from future distributions to  
2436 the beneficiary, or adopting another method or combination of

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2437 methods.

2438 Section 43. Section 738.508, Florida Statutes, is created  
2439 to read:

2440 738.508 Apportionment of property expenses between tenant  
2441 and remainderman.—

2442 (1) For purposes of this section, the term:

2443 (a) "Remainderman" means the holder of the remainder  
2444 interests after the expiration of a tenant's estate in property.

2445 (b) "Tenant" means the holder of an estate for life or term  
2446 of years in real property or personal property, or both.

2447 (2) If a trust has not been created, expenses shall be  
2448 apportioned between the tenant and remainderman as follows:

2449 (a) The following expenses are allocated to and shall be  
2450 paid by the tenant:

2451 1. All ordinary expenses incurred in connection with the  
2452 administration, management, or preservation of the property,  
2453 including interest, ordinary repairs, regularly recurring taxes  
2454 assessed against the property, and expenses of a proceeding or  
2455 other matter that concerns primarily the tenant's estate or use  
2456 of the property.

2457 2. Recurring premiums on insurance covering the loss of the  
2458 property or the loss of income from or use of the property.

2459 3. Any of the expenses described in subparagraph (b)3.  
2460 which are attributable to the use of the property by the tenant.

2461 (b) The following expenses are allocated to and shall be  
2462 paid by the remainderman:

2463 1. Payments on the principal of a debt secured by the  
2464 property, except to the extent that the debt is for expenses  
2465 allocated to the tenant.

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2466       2. Expenses of a proceeding or other matter that concerns  
2467 primarily the title to the property, other than title to the  
2468 tenant's estate.

2469       3. Except as provided in subparagraph (a)3., expenses  
2470 related to environmental matters, including reclamation,  
2471 assessing environmental conditions, remedying and removing  
2472 environmental contamination, monitoring remedial activities and  
2473 the release of substances, preventing future releases of  
2474 substances, collecting amounts from persons liable or  
2475 potentially liable for the costs of such activities, penalties  
2476 imposed under environmental laws or regulations and other  
2477 payments made to comply with those laws or regulations,  
2478 statutory or common law claims by third parties, and defending  
2479 claims based on environmental matters.

2480       4. Extraordinary repairs.

2481       (c) If the tenant or remainderman incurred an expense for  
2482 the benefit of his or her own estate without consent or  
2483 agreement of the other, he or she must pay such expense in full.

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

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2495 period corresponding to the reasonably expected duration of the  
2496 improvement. The computation of present values of the estates  
2497 shall be made by using the rate determined under s. 7520(a)(2)  
2498 of the Internal Revenue Code then in effect and, in the case of  
2499 an estate for life, the official mortality tables then in effect  
2500 under s. 7520 of the Internal Revenue Code. Other evidence of  
2501 duration or expectancy may not be considered.

2502 (3) This section does not apply to the extent that it is  
2503 inconsistent with the instrument creating the estates, the  
2504 agreement of the parties, or the specific direction of the  
2505 Internal Revenue Code taxing or other applicable law.

2506 (4) The common law applicable to tenants and remaindermen  
2507 supplements this section, except as modified by this section or  
2508 other laws.

2509 Section 44. Section 738.601, Florida Statutes, is amended  
2510 to read:

2511 (Substantial rewording of section. See  
2512 s. 738.601, F.S., for present text.)

2513 738.601 Determination and distribution of net income.—

2514 (1) This section applies when:

2515 (a) The death of an individual results in the creation of  
2516 an estate or trust; or

2517 (b) An income interest in a trust terminates, whether the  
2518 trust continues or is distributed.

2519 (2) A fiduciary of an estate or trust with an income  
2520 interest that terminates shall determine, under subsection (6)  
2521 and ss. 738.401-738.508 and 738.701-738.703, the amount of net  
2522 income and net principal receipts received from property  
2523 specifically given to a beneficiary. The fiduciary shall

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2524 distribute the net income and net principal receipts to the  
2525 beneficiary who is to receive the specific property.

2526 (3) A fiduciary shall determine the income and net income  
2527 of an estate or income interest in a trust which terminates,  
2528 other than the amount of net income determined under subsection  
2529 (2), under ss. 738.401-738.508 and 738.701-738.703, and by:

2530 (a) Including in net income all income from property used  
2531 or sold to discharge liabilities.

2532 (b) Paying from income or principal, in the fiduciary's  
2533 discretion, fees of attorneys, accountants, and fiduciaries;  
2534 court costs and other expenses of administration; and interest  
2535 on estate and inheritance taxes and other taxes imposed because  
2536 of the decedent's death, but the fiduciary may pay the expenses  
2537 from income of property passing to a trust for which the  
2538 fiduciary claims an estate tax marital or charitable deduction  
2539 under the Internal Revenue Code or comparable law of any state  
2540 only to the extent that:

2541 1. The payment of the those expenses from income will not  
2542 cause the reduction or loss of the deduction; or

2543 2. The fiduciary makes an adjustment under s. 738.507(2).

2544 (c) Paying from principal other disbursements made or  
2545 incurred in connection with the settlement of the estate or the  
2546 winding up of an income interest that terminates, including:

2547 1. To the extent authorized by the decedent's will, the  
2548 terms of the trust, or applicable law, debts, funeral expenses,  
2549 disposition of remains, family allowances, estate and  
2550 inheritance taxes, and other taxes imposed because of the  
2551 decedent's death; and

2552 2. Related penalties apportioned by the decedent's will,



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2553 the terms of the trust, or applicable law to the estate or  
2554 income interest that terminates.

2555 (4) If a decedent's will or the terms of a trust provide  
2556 for the payment of interest or the equivalent of interest to a  
2557 beneficiary who receives a pecuniary amount outright, the  
2558 fiduciary shall make the payment from net income determined  
2559 under subsection (3) or from principal to the extent that net  
2560 income is insufficient.

2561 (5) A fiduciary shall distribute net income remaining after  
2562 payments required by subsection (4) in the manner described in  
2563 s. 738.602 to all other beneficiaries, including a beneficiary  
2564 who receives a pecuniary amount in trust, even if the  
2565 beneficiary holds an unqualified power to withdraw assets from  
2566 the trust or other presently exercisable general power of  
2567 appointment over the trust.

2568 (6) A fiduciary may not reduce principal or income receipts  
2569 from property described in subsection (2) because of a payment  
2570 described in s. 738.501 or s. 738.502 to the extent that the  
2571 decedent's will, the terms of the trust, or applicable law  
2572 requires the fiduciary to make the payment from assets other  
2573 than the property or that the fiduciary recovers or expects to  
2574 recover the payment from a third party. The net income and  
2575 principal receipts from the property must be determined by  
2576 including the amount the fiduciary receives or pays regarding  
2577 the property, whether the amount accrued or became due before,  
2578 on, or after the date of the decedent's death or an income  
2579 interest's terminating event, and making a reasonable provision  
2580 for an amount the estate or income interest may become obligated  
2581 to pay after the property is distributed.

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2582 Section 45. Section 738.602, Florida Statutes, is amended  
2583 to read:

2584 (Substantial rewording of section. See  
2585 s. 738.602, F.S., for present text.)

2586 738.602 Distribution to successor beneficiary.—

2587 (1) Except to the extent that ss. 738.301-738.310 apply for  
2588 a beneficiary that is a trust, each beneficiary described in s.  
2589 738.601(5) is entitled to receive a share of the net income  
2590 equal to the beneficiary's fractional interest in undistributed  
2591 principal assets, using carrying values as of the distribution  
2592 date. If a fiduciary makes more than one distribution of assets  
2593 to beneficiaries to which this section applies, each  
2594 beneficiary, including a beneficiary who does not receive part  
2595 of the distribution, is entitled, as of each distribution date,  
2596 to a share of the net income the fiduciary received after the  
2597 decedent's death, an income interest's other terminating event,  
2598 or the preceding distribution by the fiduciary.

2599 (2) In determining a beneficiary's share of net income  
2600 under subsection (1), the following rules apply:

2601 (a) The beneficiary is entitled to receive a share of the  
2602 net income equal to the beneficiary's fractional interest in the  
2603 undistributed principal assets immediately before the  
2604 distribution date.

2605 (b) The beneficiary's fractional interest under paragraph  
2606 (a) must be calculated:

2607 1. On the aggregate carrying value of the assets as of the  
2608 distribution date; and

2609 2. Reduced by:

2610 a. Any liabilities of the estate or trust;

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2611 b. Property specifically given to a beneficiary under the  
2612 decedent's will or the terms of the trust; and

2613 c. Property required to pay pecuniary amounts not in trust.

2614 (c) If a disproportionate distribution of principal is made  
2615 to any beneficiary, the respective fractional interests of all  
2616 beneficiaries in the undistributed principal assets must be  
2617 recomputed by:

2618 1. Adjusting the carrying value of the principal assets to  
2619 their fair market value before the distribution;

2620 2. Reducing the fractional interest of the recipient of the  
2621 disproportionate distribution in the remaining principal assets  
2622 by the fair market value of the principal distribution; and

2623 3. Recomputing the fractional interests of all  
2624 beneficiaries in the remaining principal assets based upon the  
2625 now restated carrying values.

2626 (d) The distribution date under paragraph (a) may be the  
2627 date as of which the fiduciary calculates the value of the  
2628 assets if that date is reasonably near the date on which the  
2629 assets are distributed. All distributions to a beneficiary must  
2630 be valued based on the assets' fair market value on the date of  
2631 the distribution.

2632 (3) To the extent that a fiduciary does not distribute  
2633 under this section all the collected but undistributed net  
2634 income to each beneficiary as of a distribution date, the  
2635 fiduciary shall maintain records showing the interest of each  
2636 beneficiary in the net income.

2637 (4) If this section applies to income from an asset, a  
2638 fiduciary may apply the requirements in this section to net gain  
2639 or loss realized from the disposition of the asset after the

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2640 decedent's date of death, an income interest's terminating  
2641 event, or the preceding distribution by the fiduciary.

2642 (5) The carrying value or fair market value of trust assets  
2643 shall be determined on an asset-by-asset basis and is conclusive  
2644 if reasonable and determined in good faith. Determinations of  
2645 fair market value based on appraisals performed within 2 years  
2646 before or after the valuation date are presumed reasonable. The  
2647 values of trust assets are conclusively presumed to be  
2648 reasonable and determined in good faith unless proven otherwise  
2649 in a proceeding commenced by or on behalf of a person interested  
2650 in the trust within the time provided in s. 736.1008.

2651 Section 46. Section 738.701, Florida Statutes, is amended  
2652 to read:

2653 (Substantial rewording of section. See  
2654 s. 738.701, F.S., for present text.)

2655 738.701 When right to income begins and ends.—

2656 (1) An income beneficiary is entitled to net income in  
2657 accordance with the terms of the trust from the date an income  
2658 interest begins. The income interest begins on the date  
2659 specified in the terms of the trust or, if no date is specified,  
2660 on the date an asset becomes subject to:

2661 (a) The trust for the current income beneficiary; or

2662 (b) A successive interest for a successor beneficiary.

2663 (2) An asset becomes subject to a trust under paragraph  
2664 (1) (a):

2665 (a) For an asset that is transferred to the trust during  
2666 the settlor's life, on the date the asset is transferred;

2667 (b) For an asset that becomes subject to the trust because  
2668 of a decedent's death, on the date of the decedent's death, even

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2669 if there is an intervening period of administration of the  
2670 decedent's estate; or

2671 (c) For an asset that is transferred to a fiduciary by a  
2672 third party because of a decedent's death, on the date of the  
2673 decedent's death.

2674 (3) An asset becomes subject to a successive interest under  
2675 paragraph (1)(b) on the day after the preceding income interest  
2676 ends, as determined under subsection (4), even if there is an  
2677 intervening period of administration to wind up the preceding  
2678 income interest.

2679 (4) An income interest ends on the day before an income  
2680 beneficiary dies or another terminating event occurs, or on the  
2681 last day of a period during which there is no beneficiary to  
2682 which a fiduciary may or must distribute income.

2683 Section 47. Section 738.702, Florida Statutes, is amended  
2684 to read:

2685 (Substantial rewording of section. See  
2686 s. 738.702, F.S., for present text.)

2687 738.702 Apportionment of receipts and disbursements when  
2688 decedent dies or income interest begins.—

2689 (1) A fiduciary shall allocate an income receipt or  
2690 disbursement, other than a receipt to which s. 738.601(2)  
2691 applies, to principal if its due date occurs before the date on  
2692 which:

2693 (a) For an estate, the decedent died; or

2694 (b) For a trust or successive interest, an income interest  
2695 begins.

2696 (2) If the due date of a periodic income receipt or  
2697 disbursement occurs on or after the date on which a decedent

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2698 died or an income interest begins, a fiduciary must allocate the  
2699 receipt or disbursement to income.

2700 (3) If an income receipt or disbursement is not periodic or  
2701 has no due date, a fiduciary must treat the receipt or  
2702 disbursement under this section as accruing from day to day. The  
2703 fiduciary shall allocate to principal the portion of the receipt  
2704 or disbursement accruing before the date on which a decedent  
2705 died or an income interest begins, and shall allocate to income  
2706 the balance.

2707 (4) A receipt or disbursement is periodic under subsections  
2708 (2) and (3) if:

2709 (a) The receipt or disbursement must be paid at regular  
2710 intervals under an obligation to make payments; or

2711 (b) The payor customarily makes payments at regular  
2712 intervals.

2713 (5) An item of income or an obligation is due under this  
2714 section on the date the payor is required to make a payment. If  
2715 a payment date is not stated, there is no due date.

2716 (6) Distributions to shareholders or other owners from an  
2717 entity to which s. 738.401 applies are due:

2718 (a) On the date fixed by or on behalf of the entity for  
2719 determining the persons entitled to receive the distribution;

2720 (b) If no date is fixed, on the date of the decision by or  
2721 on behalf of the entity to make the distribution; or

2722 (c) If no date is fixed and the fiduciary does not know the  
2723 date of the decision by or on behalf of the entity to make the  
2724 distribution, on the date the fiduciary learns of the decision.

2725 (7) Section 733.817 controls over any provision of this  
2726 chapter to the contrary.

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2727 Section 48. Section 738.703, Florida Statutes, is amended  
2728 to read:

2729 (Substantial rewording of section. See  
2730 s. 738.703, F.S., for present text.)

2731 738.703 Apportionment when income interest ends.—

2732 (1) As used in this section, the term “undistributed  
2733 income” means net income received on or before the date on which  
2734 an income interest ends. The term does not include an item of  
2735 income or expense which is due or accrued or net income that has  
2736 been added or is required to be added to principal under the  
2737 terms of the trust.

2738 (2) Except as otherwise provided in subsection (3), when a  
2739 mandatory income interest of a beneficiary ends, the fiduciary  
2740 shall pay the beneficiary’s share of the undistributed income  
2741 that is not disposed of under the terms of the trust to the  
2742 beneficiary or, if the beneficiary does not survive the date the  
2743 interest ends, to the beneficiary’s estate.

2744 (3) If a beneficiary has an unqualified power to withdraw  
2745 more than 5 percent of the value of a trust immediately before  
2746 an income interest ends:

2747 (a) The fiduciary shall allocate to principal the  
2748 undistributed income from the portion of the trust which may be  
2749 withdrawn; and

2750 (b) Subsection (2) applies only to the balance of the  
2751 undistributed income.

2752 (4) When a fiduciary’s obligation to pay a fixed annuity or  
2753 a fixed fraction of the value of assets ends, the fiduciary  
2754 shall prorate the final payment as required to preserve income  
2755 tax, gift tax, estate tax, or other tax benefits.

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2756 Section 49. Section 738.801, Florida Statutes, is amended  
2757 to read:

2758 (Substantial rewording of section. See  
2759 s. 738.801, F.S., for present text.)

2760 738.801 Uniformity of application and construction.—In  
2761 applying and construing this act, consideration shall be given  
2762 to the need to promote uniformity of the law with respect to its  
2763 subject matter among states that enact it.

2764 Section 50. Section 738.802, Florida Statutes, is amended  
2765 to read:

2766 (Substantial rewording of section. See  
2767 s. 738.802, F.S., for present text.)

2768 738.802 Relation to Electronic Signatures in Global and  
2769 National Commerce Act.—This chapter modifies, limits, or  
2770 supersedes the Electronic Signatures in Global and National  
2771 Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not modify,  
2772 limit, or supersede section 101(c) of that act, 15 U.S.C. s.  
2773 7001(c), or authorize electronic delivery of any of the notices  
2774 described in s. 103(b) of that act, 15 U.S.C. s. 7003(b). This  
2775 chapter does not modify, limit, or supersede s. 117.285.

2776 Section 51. Section 738.803, Florida Statutes, is amended  
2777 to read:

2778 738.803 Severability.—If any provision of this chapter or  
2779 its application to any person or circumstance is held invalid,  
2780 the invalidity does ~~shall~~ not affect other provisions or  
2781 applications of this chapter which can be given effect without  
2782 the invalid provision or application, and to this end the  
2783 provisions of this chapter are severable.

2784 Section 52. Section 738.804, Florida Statutes, is amended



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2785 to read:

2786           738.804 Application.—Except as provided in the terms of the  
2787 trust ~~instrument, the will,~~ or this chapter, this chapter shall  
2788 apply to any receipt or expense received or incurred and any  
2789 disbursement made after January 1, 2025 ~~January 1, 2003~~, by any  
2790 trust or ~~decedent's~~ estate, whether established before or after  
2791 January 1, 2025 ~~January 1, 2003~~, and whether the asset involved  
2792 was acquired by the trustee or personal representative before or  
2793 after January 1, 2025 ~~January 1, 2003~~. Receipts or expenses  
2794 received or incurred and disbursements made before January 1,  
2795 2025, must ~~January 1, 2003, shall~~ be governed by the law of this  
2796 state in effect at the time of the event, except as otherwise  
2797 expressly provided in the ~~will or~~ terms of the trust or in this  
2798 chapter.

2799           Section 53. This act shall take effect January 1, 2025.