

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Judiciary Committee
 2 Representative Caruso offered the following:

Amendment

Remove lines 346-2344 and insert:

6 733.707(3), after the settlor's ~~grantor's~~ death, the assets are
 7 considered received as of the date of the settlor's death. If
 8 there is a change in fiduciaries, a majority of the continuing
 9 fiduciaries may elect to adjust the carrying values to reflect
 10 the fair market value of the assets at the beginning of their
 11 administration. If such election is made, it must be reflected
 12 on the first accounting filed after the election. For assets
 13 acquired during the administration of the estate or trust, the
 14 carrying value is equal to the acquisition costs of the asset.
 15 Carrying value of assets should not be arbitrarily "written up"
 16 or "written down." In some circumstances, including, but not

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17 limited to, those described in ss. 738.410 and 738.602, carrying
18 value may be adjusted with proper disclosure to reflect changes
19 in carrying value applied in a consistent manner.

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

21 (6) "Current income beneficiary" means a beneficiary to
22 which a fiduciary may or must distribute net income, regardless
23 of whether the fiduciary also distributes principal to the
24 beneficiary.

25 (7) "Distribution" means a payment or transfer by a
26 fiduciary to a beneficiary in the beneficiary's capacity as a
27 beneficiary, without consideration other than the beneficiary's
28 right to receive the payment or transfer under the terms of the
29 trust as defined in this section, will, life estate, or term
30 interest. "Distribute," "distributed," and "distributee" have
31 corresponding meanings.

32 (8) "Estate" means a decedent's estate, including the
33 property of the decedent as the estate is originally constituted
34 and the property of the estate as it exists at any time during
35 administration.

36 (9)-(4) "Fiduciary" ~~includes~~ means a trustee, a trust
37 director as defined in s. 736.0103, or a personal
38 representative, and a person acting under a delegation from a
39 fiduciary ~~or a trustee~~. The term also includes a person that
40 holds property for a successor beneficiary whose interest may be
41 affected by an allocation of receipts and expenditures between

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42 income and principal. If there are two or more cofiduciaries,
43 the term includes all cofiduciaries acting under the terms of
44 the trust and applicable law an executor, administrator,
45 successor personal representative, special administrator, or a
46 person performing substantially the same function.

47 ~~(10)-(5)~~ "Income" means money or other property ~~that~~ a
48 fiduciary receives as current return from a principal asset. The
49 term includes a part ~~portion~~ of receipts from a sale, exchange,
50 or liquidation of a principal asset, to the extent provided in
51 ss. 738.401-738.416 ~~ss. 738.401-738.403 and s. 738.503.~~

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

54 ~~(11)-(7)~~ "Income interest" means the right of a current ~~an~~
55 income beneficiary to receive all or part of net income, whether
56 the terms of the trust require the net income to be distributed
57 or authorize the net income to be distributed in the fiduciary's
58 ~~trustee's~~ discretion. The term includes the right of a current
59 beneficiary to use property held by a fiduciary.

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

61 (a) For a trust:

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

63 2. A settlor of the trust;

64 3. An individual whose legal obligation to support a
65 beneficiary may be satisfied by a distribution from the trust;
66 or

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

69 (b) For an estate, a beneficiary;

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

72 (d) A corporation, a partnership, a limited liability
73 company, or another entity in which persons described in
74 paragraphs (a), (b), and (c), in the aggregate, have voting
75 control; or

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

78 (13) "Internal Revenue Code" means the Internal Revenue
79 Code of 1986, as amended.

80 (14)-(8) "Mandatory income interest" means the right of a
81 current ~~an~~ income beneficiary to receive net income that the
82 terms of the trust require the fiduciary to distribute.

83 (15)-(9) "Net income" means the total allocations ~~receipts~~
84 ~~allocated to income~~ during an accounting period to income under
85 the terms of a trust and this chapter minus the disbursements
86 ~~made from income~~ during the period, other than distributions,
87 allocated to income under the terms of the trust and this
88 chapter. To the extent that the trust is a unitrust under ss.
89 738.301-738.310, the term means the unitrust amount determined
90 under ss. 738.301-738.310. The term includes the amount of an
91 adjustment from principal to income under s. 738.203. The term

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92 does not include the amount of an adjustment ~~plus or minus~~
93 ~~transfers under this chapter to or from income to principal~~
94 ~~under s. 738.203 during the period.~~

95 (16) ~~(10)~~ "Person" means an individual, a business or a
96 ~~nonprofit entity, corporation, business trust, an estate, a~~
97 ~~trust, partnership, limited liability company, association,~~
98 ~~joint venture, a public corporation, or any other legal or~~
99 ~~commercial entity or a government or governmental subdivision,~~
100 agency, or instrumentality, or other legal entity.

101 (17) "Personal representative" means an executor, an
102 administrator, a successor personal representative, a special
103 administrator, or a person that performs substantially the same
104 function with respect to an estate under the law governing the
105 person's status.

106 (18) ~~(11)~~ "Principal" means property held in trust for
107 distribution to, production of income for, or use by a current
108 or successor a remainder beneficiary when the trust terminates.

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

112 (20) "Settlor" means a person, including a testator, who
113 creates or contributes property to a trust. If more than one
114 person creates or contributes property to a trust, the term
115 includes each person, to the extent of the trust property
116 attributable to that person's contribution, except to the extent

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117 that another person has the power to revoke or withdraw that
118 portion.

119 (21) "Special tax benefit" means:

120 (a) Exclusion of a transfer to a trust from gifts
121 described in s. 2503(b) of the Internal Revenue Code because of
122 the qualification of an income interest in the trust as a
123 present interest in property;

124 (b) Status as a qualified subchapter S trust described in
125 s. 1361(d)(3) of the Internal Revenue Code at a time the trust
126 holds stock of an S corporation described in s. 1361(a)(1) of
127 the Internal Revenue Code;

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

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

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

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

140 (e) An inclusion ratio as defined in s. 2642(a) of the
141 Internal Revenue Code of the trust which is less than one, if

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142 there is any possibility that:

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

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

147 (22) "Successive interest" means the interest of a
148 successor beneficiary.

149 (23)-(12) "Successor ~~Remainder~~ beneficiary" means a person
150 entitled to receive income or principal or to use property when
151 an income interest or other current interest ends.

152 (24)-(13) "Terms of a trust" means:

153 (a) Except as otherwise provided in paragraph (b), the
154 manifestation of the settlor's intent regarding a trust's
155 provisions as:

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

157 2. Established by other evidence that would be admissible
158 in a judicial proceeding.

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

161 1. A trustee or trust director in accordance with the
162 applicable law;

163 2. A court order; or

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

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

166 (d) For a life estate or term interest, the corresponding

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167 manifestation of the rights of the beneficiaries to the extent
168 provided in s. 738.508 ~~the manifestation of the intent of a~~
169 ~~grantor or decedent with respect to the trust, expressed in a~~
170 ~~manner that admits of its proof in a judicial proceeding,~~
171 ~~whether by written or spoken words or by conduct.~~

172 (25) "Trust" includes an express trust, whether private or
173 charitable, with additions to the trust, wherever and however
174 created; and a trust created or determined by a judgment or
175 decree under which the trust is to be administered in the manner
176 of an express trust. The term does not include a constructive
177 trust; a resulting trust; a conservatorship; a custodial
178 arrangement under the Florida Uniform Transfers to Minors Act; a
179 business trust providing for certificates to be issued to
180 beneficiaries; a common trust fund; a land trust under s.
181 689.071; a trust created by the form of the account or by the
182 deposit agreement at a financial institution; a voting trust; a
183 security arrangement; a liquidation trust; a trust for the
184 primary purpose of paying debts, dividends, interest, salaries,
185 wages, profits, pensions, retirement benefits, or employee
186 benefits of any kind; or an arrangement under which a person is
187 a nominee, an escrowee, or an agent for another.

188 (26)-(14) "Trustee" means a person, other than a personal
189 representative, that owns or holds property for the benefit of a
190 beneficiary. The term includes an original, additional, or
191 successor trustee, regardless of whether they are ~~or not~~

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192 appointed or confirmed by a court.

193 (27) "Will" means any testamentary instrument recognized
194 under applicable law which makes a legally effective disposition
195 of an individual's property, effective at the individual's
196 death. The term includes a codicil or other amendment to a
197 testamentary instrument.

198 Section 3. Section 738.103, Florida Statutes, is amended
199 to read:

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

202 738.103 Scope.—Except as otherwise provided in the terms
203 of a trust or this chapter, this chapter applies to all of the
204 following:

205 (1) A trust or an estate.

206 (2) A life estate or other term interest in which the
207 interest of one or more persons will be succeeded by the
208 interest of one or more other persons to the extent provided in
209 s. 738.508.

210 Section 4. Section 738.104, Florida Statutes, is amended
211 to read:

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

214 738.104 Governing law.—Except as otherwise provided in the
215 terms of a trust or this chapter, this chapter applies when this
216 state is the principal place of administration of a trust or

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217 estate or the situs of property that is not held in a trust or
218 estate and is subject to a life estate or other term interest
219 described in s. 738.103(2). By accepting the trusteeship of a
220 trust having its principal place of administration in this state
221 or by moving the principal place of administration of a trust to
222 this state, the trustee submits to the application of this
223 chapter to any matter within the scope of this chapter involving
224 the trust.

225 Section 5. Section 738.1041, Florida Statutes, is
226 repealed.

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

228 Section 7. Section 738.201, Florida Statutes, is amended
229 to read:

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

232 738.201 Fiduciary duties; general principles.-

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

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

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

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

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

244 (d) Administer the trust or estate in accordance with this
245 chapter, except to the extent that the terms of the trust
246 provide otherwise or authorize the fiduciary to determine
247 otherwise.

248 (2) A fiduciary's allocation, determination, or exercise
249 of discretion under this chapter is presumed to be fair and
250 reasonable to all beneficiaries. A fiduciary may exercise a
251 discretionary power of administration given to the fiduciary by
252 the terms of the trust, and an exercise of the power that
253 produces a result different from a result required or permitted
254 by this chapter does not create an inference that the fiduciary
255 abused the fiduciary's discretion.

256 (3) A fiduciary shall:

257 (a) Add a receipt to principal, to the extent that the
258 terms of the trust and this chapter do not allocate the receipt
259 between income and principal;

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

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

266 (4) A fiduciary may exercise the power to adjust under s.

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267 738.203(1), convert an income trust to a unitrust under ss.
268 738.301-738.310, change the percentage or method used to
269 calculate a unitrust amount under ss. 738.301-738.310, or
270 convert a unitrust to an income trust under ss. 738.301-738.310
271 if the fiduciary determines the exercise of the power will
272 assist the fiduciary to administer the trust or estate
273 impartially.

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

276 (a) The terms of the trust.

277 (b) The nature, distribution standards, and expected
278 duration of the trust.

279 (c) The effect of the allocation rules, including specific
280 adjustments between income and principal, under ss. 738.301-
281 738.416.

282 (d) The desirability of liquidity and regularity of
283 income.

284 (e) The desirability of the preservation and appreciation
285 of principal.

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

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

290 (h) Whether and to what extent the terms of the trust give
291 the fiduciary power to accumulate income or invade principal or

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292 prohibit the fiduciary from accumulating income or invading
293 principal.

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

296 (j) The effect of current and reasonably expected economic
297 conditions.

298 (k) The reasonably expected tax consequences of the
299 exercise of the power.

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

301 (6) Except as provided in ss. 738.301-738.310, this
302 chapter pertains to the administration of a trust and is
303 applicable to any trust that is administered in this state or
304 under its law. This chapter also applies to any estate that is
305 administered in this state unless the provision is limited in
306 application to a trustee, rather than a fiduciary.

307 Section 8. Section 738.202, Florida Statutes, is amended
308 to read:

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

311 738.202 Judicial review of exercise of discretionary
312 power; request for instruction.-

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

315 (a) A fiduciary's allocation between income and principal
316 or other determination regarding income and principal required

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317 or authorized by the terms of the trust or this chapter.

318 (b) The fiduciary's exercise or nonexercise of a
319 discretionary power regarding income and principal granted by
320 the terms of the trust or this chapter, including the power to
321 adjust under s. 738.203, convert an income trust to a unitrust
322 under ss. 738.301-738.310, change the percentage or method used
323 to calculate a unitrust amount under ss. 738.301-738.310,
324 convert a unitrust to an income trust under ss. 738.301-738.310,
325 or the method used to make property productive of income under
326 s. 738.413.

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

329 (2) The court may not order a fiduciary to change a
330 fiduciary decision unless the court determines that the
331 fiduciary decision was an abuse of the fiduciary's discretion. A
332 court may not determine that a fiduciary abused its discretion
333 merely because the court would have exercised the discretion in
334 a different manner or would not have exercised the discretion.

335 (3) If the court determines that a fiduciary decision was
336 an abuse of the fiduciary's discretion, the court may order a
337 remedy authorized by law, including those prescribed under ss.
338 736.1001 and 736.1002. Following such a determination by the
339 court, the remedy is to place the beneficiaries in the positions
340 the beneficiaries would have occupied if the fiduciary had not
341 abused its discretion, as follows:

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

344 (b) The court may order the fiduciary to exercise or
345 refrain from exercising the power to convert an income trust to
346 a unitrust under ss. 738.301-738.310, change the percentage or
347 method used to calculate a unitrust amount under ss. 738.301-
348 738.310, or convert a unitrust to an income trust under ss.
349 738.301-738.310;

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

352 (d) To the extent that the abuse of discretion has
353 resulted in no distribution to a beneficiary or a distribution
354 that is too small, the court shall require the fiduciary to
355 distribute from the trust to the beneficiary an amount the court
356 determines will restore the beneficiary, in whole or in part, to
357 his or her appropriate position;

358 (e) To the extent that the abuse of discretion has
359 resulted in a distribution to a beneficiary that is too large,
360 the court shall restore the beneficiaries, the trust, or both,
361 in whole or in part, to their appropriate positions by requiring
362 the fiduciary to withhold an amount from one or more future
363 distributions to the beneficiary who received the distribution
364 that was too large or requiring that beneficiary to return some
365 or all of the distribution to the trust; or

366 (f) To the extent that the court is unable, after applying

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367 paragraphs (a)-(e), to restore the beneficiaries or the trust,
368 or both, to the positions they would have occupied if the
369 fiduciary had not abused its discretion, the court may require
370 the fiduciary to pay an appropriate amount from its own funds to
371 one or more of the beneficiaries or the trust or both.

372 (4) On petition by the fiduciary for instruction, the
373 court may determine whether a proposed fiduciary decision will
374 result in an abuse of the fiduciary's discretion. If the
375 petition describes the proposed decision, contains sufficient
376 information to inform the beneficiary of the reasons for making
377 the proposed decision and the facts on which the fiduciary
378 relies, and explains how the beneficiary will be affected by the
379 proposed decision, a beneficiary who opposes the proposed
380 decision has the burden to establish that it will result in an
381 abuse of the fiduciary's discretion.

382 (5) If an action is instituted alleging an abuse of
383 discretion in the exercise or nonexercise of the fiduciary's
384 discretion under this chapter and the court determines no abuse
385 of discretion has occurred, the fiduciary's costs and attorney
386 fees incurred in defending the action shall be paid from the
387 trust assets.

388 Section 9. Section 738.203, Florida Statutes, is created
389 to read:

390 738.203 Fiduciary's power to adjust.-

391 (1) Except as otherwise provided in the terms of a trust

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392 or this section, a fiduciary, in a record without court
393 approval, may adjust between income and principal if the
394 fiduciary determines that the exercise of the power to adjust
395 will assist the fiduciary in administering the trust or estate
396 impartially.

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

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

403 (4) In deciding whether and to what extent to exercise the
404 power to adjust under subsection (1), a fiduciary shall consider
405 all factors the fiduciary considers relevant, including relevant
406 factors in s. 738.201(5) and the application of ss. 738.401(9),
407 738.408, and 738.413.

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

411 (a) The adjustment or determination would reduce the
412 amount payable to a current income beneficiary from a trust that
413 qualifies for a special tax benefit, except to the extent that
414 the adjustment is made to provide for a reasonable apportionment
415 of the total return of the trust between the current income
416 beneficiary and successor beneficiaries;

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417 (b) The adjustment or determination would change the
418 amount payable to a beneficiary, as a fixed annuity or a fixed
419 fraction of the value of the trust assets, under the terms of
420 the trust;

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

425 (d) Possessing or exercising the power would cause a
426 person to be treated as the owner of all or part of the trust
427 for federal income tax purposes and the person would not be
428 treated as the owner if the fiduciary did not possess the power
429 to adjust;

430 (e) Possessing or exercising the power would cause all or
431 part of the value of the trust assets to be included in the
432 gross estate of an individual for federal real estate tax
433 purposes and the assets would not be included in the gross
434 estate of the individual if the fiduciary did not possess the
435 power to adjust;

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

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

440 (h) The trust is irrevocable and provides for income to be
441 paid to the settlor, and possessing or exercising the power

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442 would cause the adjusted principal or income to be considered an
443 available resource or available income under a public-benefit
444 program; or

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

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

448 (a) A cofiduciary to which paragraphs (5)(d)-(g) do not
449 apply may exercise the power to adjust, unless the exercise of
450 the power by the remaining cofiduciary or cofiduciaries is not
451 permitted by the terms of the trust or law other than this
452 chapter; or

453 (b) If there is no cofiduciary to which paragraphs (5)(d)-
454 (g) do not apply, the fiduciary may appoint a cofiduciary to
455 which paragraphs (5)(d)-(g) do not apply which may be a special
456 fiduciary with limited powers, and the appointed cofiduciary may
457 exercise the power to adjust under subsection (1), unless the
458 appointment of a cofiduciary or the exercise of the power by a
459 cofiduciary is not permitted by the terms of the trust or law
460 other than this chapter.

461 (7) A fiduciary may release or delegate to a cofiduciary
462 the power to adjust under subsection (1) if the fiduciary
463 determines that the fiduciary's possession or exercise of the
464 power will or may:

465 (a) Cause a result described in paragraph (5)(a),
466 paragraph (5)(b), paragraph (5)(c), paragraph (5)(d), paragraph

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467 (5) (e), paragraph (5) (f), or paragraph (5) (h); or
468 (b) Deprive the trust of a tax benefit or impose a tax
469 burden not described in paragraph (5) (a), paragraph (5) (b),
470 paragraph (5) (c), paragraph (5) (d), paragraph (5) (e), or
471 paragraph (5) (f).
472 (8) A fiduciary's release or delegation to a cofiduciary
473 under subsection (7) of the power to adjust under subsection
474 (1):
475 (a) Must be in a record;
476 (b) Applies to the entire power, unless the release or
477 delegation provides a limitation, which may be a limitation to
478 the power to adjust:
479 1. From income to principal;
480 2. From principal to income;
481 3. For specified property; or
482 4. In specified circumstances.
483 (c) For a delegation, may be modified by a redelegation
484 under this subsection by the cofiduciary to which the delegation
485 is made; and
486 (d) Subject to paragraph (c), is permanent, unless the
487 release or delegation provides a specified period, including a
488 period measured by the life of an individual or the lives of
489 more than one individual.
490 (9) Terms of a trust that deny or limit the power to
491 adjust between income and principal do not affect the

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492 application of this section, unless the terms of the trust
493 expressly deny or limit the power to adjust under subsection
494 (1).

495 (10) The exercise of the power to adjust under subsection
496 (1) in any accounting period may apply to the current period,
497 the immediately preceding period, and one or more subsequent
498 periods.

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

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

503 (b) Communicated at least annually to the qualified
504 beneficiaries as defined in s. 736.0103 other than the Attorney
505 General.

506 (12) With respect to a trust in existence on January 1,
507 2003:

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

512 1. An objection is made if, within 60 days after the date
513 of the statement required in subsection (13), a super majority
514 of the eligible beneficiaries deliver to the fiduciary a written
515 objection to the application of this section to such trust. An
516 objection shall be deemed to be delivered to the fiduciary on

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517 the date the objection is mailed to the mailing address listed
518 in the notice provided in subsection (13).

519 2. An objection is terminated upon the earlier of the
520 receipt of consent from a super majority of eligible
521 beneficiaries of the class that made the objection, or the
522 resolution of the objection under paragraph (c).

523 (b) An objection or consent under this section may be
524 executed by a legal representative or natural guardian of a
525 beneficiary without the filing of any proceeding or approval of
526 any court.

527 (c) If an objection is delivered to the fiduciary, then
528 the fiduciary may petition the circuit court for an order
529 quashing the objection and vesting in such fiduciary the power
530 to adjust under this section. The burden will be on the
531 objecting beneficiaries to prove that the power to adjust would
532 be inequitable, illegal, or otherwise in contravention of the
533 settlor's intent. The court may award costs and attorney fees
534 relating to the fiduciary's petition in the same manner as in
535 chancery actions. When costs and attorney fees are to be paid
536 out of the trust, the court may, in its discretion, direct from
537 which part of the trust they shall be paid.

538 (d) If no timely objection is made or if the fiduciary is
539 vested with the power to adjust by court order, the fiduciary
540 may thereafter exercise the power to adjust without providing
541 notice of its intent to do so unless, in vesting the fiduciary

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542 with the power to adjust, the court determines that unusual
543 circumstances require otherwise.

544 (e)1. If a fiduciary makes a good faith effort to comply
545 with the notice provisions of subsection (13), but fails to
546 deliver notice to one or more beneficiaries entitled to such
547 notice, neither the validity of the notice required under this
548 subsection nor the fiduciary's power to adjust under this
549 section shall be affected until the fiduciary has actual notice
550 that one or more beneficiaries entitled to notice were not
551 notified. Until the fiduciary has actual notice of the notice
552 deficiency, the fiduciary shall have all of the powers and
553 protections granted a fiduciary with the power to adjust under
554 this chapter.

555 2. When the fiduciary has actual notice that one or more
556 beneficiaries entitled to notice under subsection (13) were not
557 notified, the fiduciary's power to adjust under this section
558 shall cease until all beneficiaries who are entitled to such
559 notice, including those who were previously provided with such
560 notice, are notified and given the opportunity to object as
561 provided for under this subsection.

562 (f) The objection of a super majority of eligible
563 beneficiaries under this subsection shall be valid for a period
564 of 1 year after the date of the notice set forth in subsection
565 (13). Upon expiration of the objection, the fiduciary may
566 thereafter give a new notice under subsection (13).

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567 (g) This section is not intended to create or imply a duty
568 of the fiduciary of a trust existing on January 1, 2003, to seek
569 a power to adjust under this subsection or to give the notice
570 described in subsection (13) if the fiduciary does not desire to
571 have a power to adjust under this section, and no inference of
572 impropriety shall be made as the result of a fiduciary not
573 seeking a power to adjust under this subsection.

574 (13) (a) A fiduciary of a trust in existence on January 1,
575 2003, that is not prohibited under subsection (5) from
576 exercising the power to adjust shall, any time before initially
577 exercising the power, provide to all eligible beneficiaries a
578 statement containing the following:

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

582 2. A statement that unless a super majority of the
583 eligible beneficiaries objects to the application of this
584 section to the trust within 60 days after the date the statement
585 pursuant to this subsection was served, this section shall apply
586 to the trust; and

587 3. A statement that, if this section applies to the trust,
588 the fiduciary will have the power to adjust between income and
589 principal and that such a power may have an effect on the
590 distributions to such beneficiary from the trust.

591 (b) The statement may contain information regarding a

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592 fiduciary's obligation with respect to the power to adjust
593 between income and principal under this section.

594 (c) The statement shall be served informally, in the
595 manner provided in the Florida Rules of Civil Procedure relating
596 to service of pleadings subsequent to the initial pleading. The
597 statement may be served on a legal representative or natural
598 guardian of a beneficiary without the filing of any proceeding
599 or approval of any court.

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

601 1. "Eligible beneficiaries" means:

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

605 b. If there is no beneficiary described in s.
606 736.0103(19) (c), the beneficiaries described in s.
607 736.0103(19) (a) and (b).

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

609 a. If at the time the determination is made there are one
610 or more beneficiaries described in s. 736.0103(19) (c), at least
611 two-thirds in interest of the beneficiaries described in s.

612 736.0103(19) (a) or two-thirds in interest of the beneficiaries
613 described in s. 736.0103(19) (c), if the interests of the

614 beneficiaries are reasonably ascertainable; otherwise, it means
615 two-thirds in number of either such class; or

616 b. If there is no beneficiary described in s.

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617 736.0103(19) (c), at least two-thirds in interest of the
618 beneficiaries described in s. 736.0103(19) (a) or two-thirds in
619 interest of the beneficiaries described in s. 736.0103(19) (b),
620 if the interests of the beneficiaries are reasonably
621 ascertainable, otherwise, two-thirds in number of either such
622 class.

623 (15) A trust exists on January 1, 2003, if it is not
624 revocable on January 1, 2003. A trust is revocable if revocable
625 by the settlor alone or in conjunction with any other person. A
626 trust is not revocable for purposes of this section if revocable
627 by the settlor only with the consent of all persons having a
628 beneficial interest in the property.

629 Section 10. Section 738.301, Florida Statutes, is amended
630 to read:

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

633 738.301 Definitions.—For purposes of this section and ss.
634 738.302–738.310:

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

637 (2) "Express unitrust" means a trust for which, under the
638 terms of the trust without regard to this section and ss.

639 738.302–738.310, net income must be calculated as a unitrust
640 amount.

641 (3) "Income trust" means a trust, created by an inter

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642 vivos or testamentary instrument, that directs or permits the
643 trustee to distribute the net income of the trust to one or more
644 persons, in fixed proportions or in amounts or proportions
645 determined by the trustee and regardless of whether the trust
646 directs or permits the trustee to distribute the principal of
647 the trust to one or more such persons.

648 (4) "Net fair market value of a trust" means the fair
649 market value of the assets of the trust, less the reasonably
650 known noncontingent liabilities of the trust.

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

653 (6) "Unitrust amount" means an amount computed by
654 multiplying a determined value of a trust by a determined
655 percentage. For a unitrust administered under a unitrust policy,
656 the term means the applicable value multiplied by the unitrust
657 rate.

658 (7) "Unitrust policy" means a policy described in ss.
659 738.301-738.310 and adopted under s. 738.303.

660 (8) "Unitrust rate" means the rate used to compute the
661 unitrust amount for a unitrust administered under a unitrust
662 policy.

663 Section 11. Section 738.302, Florida Statutes, is amended
664 to read:

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

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667 738.302 Applications; duties and remedies.—
668 (1) Except as otherwise provided in subsection (2), ss.
669 738.301-738.310 apply to all of the following:
670 (a) An income trust, unless the terms of the trust
671 expressly prohibit the use of ss. 738.301-738.310 by a specific
672 reference to this paragraph or corresponding provision of prior
673 law, or an explicit expression of intent that net income not be
674 calculated as a unitrust amount.
675 (b) An express unitrust, except to the extent that the
676 terms of the trust explicitly:
677 1. Prohibit the use of ss. 738.301-738.310 by a specific
678 reference to this paragraph or corresponding provision of prior
679 law;
680 2. Prohibit conversion to an income trust; or
681 3. Limit changes to the method of calculating the unitrust
682 amount.
683 (c) A unitrust that had been converted from an income
684 trust.
685 (2) The provisions of ss. 738.301-738.310 do not apply to
686 a trust described in s. 170(f)(2)(B), s. 642(c)(5), s. 664(d),
687 s. 2702(a)(3)(A)(ii) or (iii), or s. 2702(b) of the Internal
688 Revenue Code.
689 (3) An income trust to which ss. 738.301-738.310 apply
690 under paragraph (1)(a) may be converted to a unitrust under ss.
691 738.301-738.310 regardless of the terms of the trust concerning

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692 distributions. Conversion to a unitrust under ss. 738.301-
693 738.310 does not affect other terms of the trust concerning
694 distributions of income or principal.

695 (4) Sections 738.301-738.310 apply to an estate only to
696 the extent that a trust is a beneficiary of the estate. To the
697 extent of the trust's interest in the estate, the estate may be
698 administered as a unitrust, the administration of the estate as
699 a unitrust may be discontinued, or the percentage or method used
700 to calculate the unitrust amount may be changed, in the same
701 manner as for a trust under those sections.

702 (5) The provisions of ss. 738.301-738.310 do not create a
703 duty to take or consider action under ss. 738.301-738.310 or to
704 inform a beneficiary about the applicability of ss. 738.301-
705 738.310.

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

709 Section 12. Section 738.303, Florida Statutes, is amended
710 to read:

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

713 738.303 Authority of fiduciary.-

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

716 (a) Convert an income trust to a unitrust if the fiduciary

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717 adopts in a record a unitrust policy for the trust which
718 provides:

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

722 2. The percentage and method used to calculate the
723 unitrust amount.

724 (b) Change the percentage or method used to calculate a
725 unitrust amount for a unitrust if the fiduciary adopts in a
726 record a unitrust policy or an amendment or replacement of a
727 unitrust policy providing charges in the percentage or method
728 used to calculate the unitrust amount.

729 (c) Convert a unitrust to an income trust if the fiduciary
730 adopts in a record a determination that, in administering the
731 trust, the net income of the trust will be net income determined
732 without regard to ss. 738.301-738.310 rather than a unitrust
733 amount.

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

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

738 (b) The fiduciary sends a notice in a record to the
739 qualified beneficiaries determined under ss. 736.0103 and
740 736.0110 in the manner required by s. 738.304, describing and
741 proposing to take the action.

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742 (c) The fiduciary sends a copy of the notice under
743 paragraph (b) to each settlor of the trust which is:
744 1. If an individual, living; or
745 2. If not an individual, in existence.
746 (d) At least one member of each class of the qualified
747 beneficiaries determined under ss. 736.0103 and 736.0110, other
748 than the Attorney General, receiving the notice under paragraph
749 (b) is:
750 1. If an individual, legally competent;
751 2. If not an individual, in existence; or
752 3. Represented in the manner provided in s. 738.304(2).
753 (e) The fiduciary does not receive, by the date specified
754 in the notice under s. 738.304(4) (e), an objection in a record
755 to the action proposed under paragraph (b) from a person to
756 which the notice under paragraph (b) is sent.
757 (3) If a fiduciary receives, not later than the date
758 stated in the notice under s. 738.304(4) (e), an objection in a
759 record described in s. 738.304(4) (d) to a proposed action, the
760 fiduciary or a beneficiary may request the court to have the
761 action taken as proposed, taken with modifications, or
762 prevented. A person described in s. 738.304(1) may oppose the
763 proposed action in the proceeding under this subsection
764 regardless of whether the person:
765 (a) Consented under s. 738.304(3); or
766 (b) Objected under s. 738.304(4) (d).

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767 (4) If, after sending a notice under paragraph (2)(b), a
768 fiduciary decides not to take the action proposed in the notice,
769 the fiduciary must notify in a record each person described in
770 s. 738.304(1) of the decision not to take the action and the
771 reasons for the decision.

772 (5) If a beneficiary requests in a record that a fiduciary
773 take an action described in subsection (1) and the fiduciary
774 declines to act or does not act within 60 days after receiving
775 the request, the beneficiary may request the court to direct the
776 fiduciary to take the action requested.

777 (6) In deciding whether and how to take an action
778 authorized in subsection (1), or whether and how to respond to a
779 request by a beneficiary under subsection (5), a fiduciary must
780 consider all factors relevant to the trust and beneficiaries,
781 including the relevant factors listed in s. 738.201(5).

782 (7) A fiduciary may release or delegate the power to
783 convert an income trust to a unitrust under paragraph (1)(a),
784 change the percentage or method used to calculate a unitrust
785 amount under paragraph (1)(b), or convert a unitrust to an
786 income trust under paragraph (1)(c), for a reason described in
787 s. 738.203(7) and in the manner described in s. 738.203(8).

788 Section 13. Section 738.304, Florida Statutes, is created
789 to read:

790 738.304 Notice.—

791 (1) A notice required by s. 738.303(2)(b) must be sent in

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792 a manner authorized under s. 736.0109 to all of the following:

793 (a) The qualified beneficiaries determined under s.

794 736.0103, other than the Attorney General.

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

796 the terms of the trust, to the extent that the power is

797 exercisable when the person is not then serving as a trustee:

798 1. Including all of the following:

799 a. Power over the investment, management, or distribution

800 of trust property or other matters of trust administration.

801 b. Power to appoint or remove a trustee or person

802 described in this paragraph.

803 2. Excluding all of the following:

804 a. Power of appointment.

805 b. Power of a beneficiary over the trust, to the extent

806 that the exercise or nonexercise of the power affects the

807 beneficial interest of the beneficiary or another beneficiary

808 represented by the beneficiary under ss. 736.0301-736.0306 with

809 respect to the exercise or nonexercise of the power.

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

811 that the power is held in a nonfiduciary capacity and the power

812 must be held in a nonfiduciary capacity to achieve a tax

813 objective under the Internal Revenue Code.

814 (c) Each person that is granted a power by the terms of

815 the trust to appoint or remove a trustee or person described in

816 paragraph (b) to the extent the power is exercisable when the

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817 person that exercises the power is not then serving as a trustee
818 or person described in paragraph (b).

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

821 (3) A person may consent in a record at any time to action
822 proposed under s. 738.303(2) (b). A notice required by s.
823 738.303(2) (b) need not be sent to a person that consents under
824 this subsection.

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

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

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

830 (c) For a change in the percentage or method used to
831 calculate the unitrust amount, a copy of the unitrust policy or
832 amendment or replacement of the unitrust policy adopted under s.
833 738.303(1) (b) .

834 (d) A statement that the person to which the notice is
835 sent may object to the proposed action by stating in a record
836 the basis for the objection and sending or delivering the record
837 to the fiduciary.

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

841 (f) The date on which the action is proposed to be taken

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842 and the date on which the action is proposed to take effect.

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

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

846 Section 14. Section 738.305, Florida Statutes, is created
847 to read:

848 738.305 Unitrust policy.—

849 (1) In administering a unitrust under ss. 738.301-738.310,
850 a fiduciary shall follow a unitrust policy adopted under s.
851 738.303(1) (a) or (b) or amended or replaced under s.
852 738.303(1) (b).

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

854 (a) The unitrust rate or method for determining the
855 unitrust rate under s. 738.306.

856 (b) The method for determining the applicable value under
857 s. 738.307.

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

860 1. Mandatory as provided in ss. 738.307(1) and (3),
861 738.308(1), and 738.310; or

862 2. Optional as provided in ss. 738.306, 738.307(2), and
863 738.308(2), to the extent that the fiduciary elects to adopt
864 those rules.

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

866 (a) Provide methods and standards for:

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- 867 1. Determining the timing of the distributions;
868 2. Making distributions in cash or in kind or partly in
869 cash and partly in kind; or
870 3. Correcting an underpayment or overpayment to a
871 beneficiary based on the unitrust amount if there is an error in
872 calculating the unitrust amount.

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

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

878 Section 15. Section 738.306, Florida Statutes, is created
879 to read:

880 738.306 Unitrust rate.—

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

884 (a) A fixed unitrust rate; or

885 (b)1. A unitrust rate that is determined for each period
886 using:

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

888 b. A mathematical blend of market indices or other
889 published data over a stated number of preceding periods.

890 2. If the rate calculated under this paragraph would be
891 less than 3, the rate is 3; and if the rate calculated would be

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892 more than 5, the rate is 5.

893 (2) Within the limits of subsection (1), a unitrust policy
894 may provide for any of the following:

895 (a) A limit on how much the unitrust rate determined under
896 paragraph (1)(b) may increase over the unitrust rate for the
897 preceding period or a mathematical blend of unitrust rates over
898 a stated number of preceding periods.

899 (b) A limit on how much the unitrust rate determined under
900 paragraph (1)(b) may decrease below the unitrust rate for the
901 preceding period or a mathematical blend of unitrust rates over
902 a stated number of preceding periods.

903 (c) A mathematical blend of any of the unitrust rates
904 determined under paragraph (1)(b) and paragraphs (a) and (b).

905 (3) If the fiduciary is not an independent person, the
906 percentage used to calculate the unitrust amount is the rate
907 determined under s. 7520(a)(2) of the Internal Revenue Code in
908 effect for the month the conversion under this section becomes
909 effective and for each January thereafter; however, if the rate
910 determined under s. 7520(a)(2) of the Internal Revenue Code
911 exceeds 5 percent, the unitrust rate is 5 percent, and if the
912 rate determined under s. 7520(a)(2) of the Internal Revenue Code
913 is less than 3 percent, the unitrust rate is 3 percent.

914 Section 16. Section 738.307, Florida Statutes, is created
915 to read:

916 738.307 Applicable value.-

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

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

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

924 (2) Except as otherwise provided in s. 738.309, a unitrust
925 policy may provide methods for determining the amount of the net
926 fair market value of the trust to take into account in
927 determining the applicable value, including any of the
928 following:

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

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

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

935 (d) Including identification and treatment of cash or
936 property held for distribution.

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

939 (f) Determining the reasonable known liabilities of the
940 trust, including treatment of liabilities to conform with the
941 treatment of assets under paragraphs (a)-(e).

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

944 (a) Any residential property or any tangible personal
945 property that, as of the first business day of the current
946 valuation year, one or more current beneficiaries of the trust
947 have or have had the right to occupy or have or have had the
948 right to possess or control, other than in his or her capacity
949 as trustee of the trust. Instead, the right of occupancy or the
950 right to possession and control is the unitrust amount with
951 respect to such property; however, the unitrust amount must be
952 adjusted to take into account partial distributions from or
953 receipt into the trust of such property during the valuation
954 year;

955 (b) Any asset specifically given to a beneficiary and the
956 return on investment on such property, which return on
957 investment must be distributable to the beneficiary; and

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

959 Section 17. Section 738.308, Florida Statutes, is created
960 to read:

961 738.308 Period.—

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

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

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

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967 1. The trust was not in existence in a preceding period;
968 or

969 2. Market indices or other published data are not
970 available for a preceding period;

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

972 1. The trust was not in existence in a preceding period;
973 or

974 2. Fair market values are not available for a preceding
975 period; and

976 (c) Prorating a unitrust amount on a daily basis for a
977 part of a period in which the trust or the administration of the
978 trust as a unitrust or the interest of any beneficiary commences
979 or terminates.

980 Section 18. Section 738.309, Florida Statutes, is created
981 to read:

982 738.309 Express unitrust.—

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

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

989 (3) Distribution of a unitrust amount is considered a
990 distribution of all of the net income of an express unitrust and
991 is considered to be an income interest.

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

994 (5) An express unitrust that provides or allows a
995 distribution based on a unitrust rate in excess of 5 percent per
996 year of the net fair market value of the unitrust assets is
997 considered a distribution of all of the income of the unitrust
998 and a distribution of principal of the unitrust to the extent
999 that the distribution exceeds 5 percent per year.

1000 (6) An express unitrust may provide a mechanism for
1001 changing the unitrust rate, similar to the mechanism provided
1002 under s. 738.306, based upon the factors noted in that section,
1003 and may provide for a conversion from a unitrust to an income
1004 trust or a reconversion of an income trust to a unitrust under
1005 s. 738.303.

1006 (7) If an express unitrust does not specifically or by
1007 reference to s. 738.306 prohibit a power to change the unitrust
1008 rate or to convert to an income trust under s. 738.303, the
1009 trustee must have such power.

1010 (8) The governing instrument of an express unitrust may
1011 grant the trustee discretion to adopt a consistent practice of
1012 treating capital gains as part of the unitrust amount to the
1013 extent that the unitrust amount exceeds the income determined as
1014 if the trust were not an express unitrust, or the governing
1015 instrument may specify the ordering of classes of income.

1016 (9) Unless the terms of the express unitrust specifically

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1017 provide otherwise as provided in subsection (8), the
1018 distribution of a unitrust amount is considered a distribution
1019 made from the following sources, which are listed in order of
1020 priority:

1021 (a) Net accounting income determined under this chapter as
1022 if the trust were not a unitrust;

1023 (b) Ordinary income not allocable to net accounting
1024 income;

1025 (c) Net realized short-term capital gains;

1026 (d) Net realized long-term capital gains; and

1027 (e) The principal of the trust.

1028 (10) The governing instrument of an express unitrust may
1029 provide that the trustee may exclude assets used by the
1030 unitrust's beneficiary, including, but not limited to, a
1031 residence property or tangible personal property, from the net
1032 fair market value of the unitrust's assets for the purposes of
1033 computing the unitrust amount. The use of these assets may be
1034 considered equivalent to income or to the unitrust amount.

1035 Section 19. Section 738.310, Florida Statutes, is created
1036 to read:

1037 738.310 Other rules.—Following the conversion of an income
1038 trust to a unitrust, the trustee shall consider the unitrust
1039 amount as paid from the following sources, which are listed in
1040 order of priority:

1041 (1) Net accounting income determined under this chapter as

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1042 if the trust were not a unitrust;
1043 (2) Ordinary income not allocable to net accounting
1044 income;
1045 (3) Net realized short-term capital gains;
1046 (4) Net realized long-term capital gains; and
1047 (5) The principal of the trust.
1048 Section 20. Section 738.401, Florida Statutes, is amended
1049 to read:
1050 738.401 Character of receipts from entity.—
1051 (1) For purposes of this section, the term:
1052 (a) "Capital distribution" means an entity distribution of
1053 money which is a:
1054 1. Return of capital; or
1055 2. Distribution in total or partial liquidation of the
1056 entity.
1057 (b) "Entity":
1058 1. Means a corporation, partnership, limited liability
1059 company, regulated investment company, real estate investment
1060 trust, common trust fund, or any other organization or
1061 arrangement in which a fiduciary owns or holds ~~has~~ an interest,
1062 regardless of whether the entity is a taxpayer for federal
1063 income tax purposes; and
1064 2. Does not include:
1065 a. A trust or estate to which s. 738.402 applies;
1066 b. A business or other activity to which s. 738.403

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1067 applies which is not conducted by an entity described in
1068 subparagraph 1.;

1069 c. An asset-backed security; or

1070 d. An instrument or arrangement to which s. 738.416
1071 applies other than a trust or estate to which s. 738.402
1072 applies, a business or activity to which s. 738.403 applies, or
1073 an asset-backed security to which s. 738.608 applies.

1074 (c) "Entity distribution" means a payment or transfer by
1075 an entity to a person in the person's capacity as an owner or
1076 holder of an interest in the entity.

1077 (d) "Lookback period" means the accounting period and the
1078 preceding two accounting periods or, if less, the number of
1079 accounting periods, or portion of accounting periods, that the
1080 interest in the entity has been held by the fiduciary.

1081 (2) In this section, an attribute or action of an entity
1082 includes an attribute or action of any other entity in which the
1083 initial entity owns or holds an interest, including an interest
1084 owned or held indirectly through another entity.

1085 (3) Except as otherwise provided in paragraphs (4) (b),
1086 (c), and (d) this section, a fiduciary shall allocate to income:

1087 (a) Money received in an entity distribution; and

1088 (b) Tangible personal property of nominal value received
1089 from the money received from an entity.

1090 (4)-(3) Except as otherwise provided in this section, A
1091 fiduciary shall allocate the following receipts from an entity

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1092 to principal:

1093 (a) Property received in an entity distribution which is
1094 not:

1095 1. other than Money; or

1096 2. Tangible personal property of nominal value.

1097 (b) Money received in an entity ~~one~~ distribution ~~or a~~
1098 ~~series of related distributions in an~~ exchange for part or all
1099 of the fiduciary's ~~a trust's or estate's~~ interest in the entity
1100 to the extent that the entity distribution reduces the
1101 fiduciary's interest in the entity relative to the interest of
1102 other persons that own or hold interests in the entity.

1103 (c) Money received in an entity distribution that is a
1104 capital distribution, to the extent not allocated to income
1105 ~~total or partial liquidation of the entity.~~

1106 (d) Money received in an entity distribution from an
1107 entity that is a regulated investment company or a real estate
1108 investment trust if the money received represents short-term or
1109 long-term capital gain realized within the entity.

1110 ~~(e) Money received from an entity listed on a public stock~~
1111 ~~exchange during any year of the trust or estate which exceeds 10~~
1112 ~~percent of the fair market value of the trust's or estate's~~
1113 ~~interest in the entity on the first day of that year. The amount~~
1114 ~~to be allocated to principal must be reduced to the extent that~~
1115 ~~the cumulative distributions from the entity to the trust or~~
1116 ~~estate allocated to income do not exceed a cumulative annual~~

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1117 ~~return of 3 percent of the fair market value of the interest in~~
1118 ~~the entity at the beginning of each year or portion of a year~~
1119 ~~for the number of years or portion of years in the period that~~
1120 ~~the interest in the entity has been held by the trust or estate.~~
1121 ~~If a trustee has exercised a power to adjust under s. 738.104~~
1122 ~~during any period the interest in the entity has been held by~~
1123 ~~the trust, the trustee, in determining the total income~~
1124 ~~distributions from that entity, must take into account the~~
1125 ~~extent to which the exercise of that power resulted in income to~~
1126 ~~the trust from that entity for that period. If the income of the~~
1127 ~~trust for any period has been computed under s. 738.1041, the~~
1128 ~~trustee, in determining the total income distributions from that~~
1129 ~~entity for that period, must take into account the portion of~~
1130 ~~the unitrust amount paid as a result of the ownership of the~~
1131 ~~trust's interest in the entity for that period.~~

1132 ~~(5)-(4)~~ If a fiduciary elects, or continues an election
1133 made by its predecessor, to reinvest dividends in shares of
1134 stock of a distributing corporation or fund, whether evidenced
1135 by new certificates or entries on the books of the distributing
1136 entity, the new shares retain their character as income.

1137 ~~(6)-(5)~~ Except as otherwise provided in subsections (10)
1138 and (11), money received in an entity distribution is a capital
1139 distribution ~~Money is received in partial liquidation:~~

1140 (a) To the extent that the entity, at or near the time of
1141 the entity a distribution, indicates that such money is a

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1142 ~~capital distribution in partial liquidation; or~~

1143 (b) To the extent that the total amount of money and
1144 property received by the fiduciary in the entity ~~in a~~
1145 distribution or a series of related entity distributions is or
1146 will be greater than ~~from an entity that is not listed on a~~
1147 ~~public stock exchange exceeds~~ 20 percent of the fiduciary's
1148 ~~trust's or estate's~~ pro rata share of the entity's gross assets,
1149 as shown by the entity's year-end financial statements
1150 immediately preceding the initial receipt.

1151
1152 ~~This subsection does not apply to an entity to which subsection~~
1153 ~~(7) applies.~~

1154 (7)-(6) In the case of a capital distribution, the amount
1155 received in an entity distribution allocated to principal must
1156 be reduced to the extent that the cumulative distributions from
1157 the entity to the fiduciary ~~Money may not be taken into account~~
1158 ~~in determining any excess under paragraph (5) (b), to the extent~~
1159 ~~that the cumulative distributions from the entity to the trust~~
1160 ~~or the estate~~ allocated to income do not exceed the greater of:

1161 (a) A cumulative annual return of 3 percent of the
1162 entity's carrying value computed at the beginning of each
1163 accounting period, or portion of an accounting period, during
1164 the lookback period ~~for the number of years or portion of years~~
1165 ~~that the entity was held by the fiduciary.~~ If a fiduciary
1166 ~~trustee~~ has exercised a power to adjust under s. 738.203 during

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1167 ~~the lookback period, the fiduciary s. 738.104 during any period~~
1168 ~~the interest in the entity has been held by the trust, the~~
1169 ~~trustee, in determining the total income distributions from that~~
1170 ~~entity, must take into account the extent to which the exercise~~
1171 ~~of the power resulted in income to the fiduciary trust from that~~
1172 ~~entity for that period. If the income of a fiduciary during the~~
1173 ~~lookback trust for any period has been computed under ss.~~
1174 ~~738.301-738.310, the fiduciary pursuant to s. 738.1041, the~~
1175 ~~trustee, in determining the total income distributions from the~~
1176 ~~entity for that period, must take into account the portion of~~
1177 ~~the unitrust amount paid as a result of the ownership of the~~
1178 ~~trust's interest in the entity for that period; or~~

1179 (b) ~~In If~~ the case of an entity ~~is~~ treated as a
1180 partnership, subchapter S corporation, or a disregarded entity
1181 under ~~pursuant to~~ the Internal Revenue Code ~~of 1986, as amended,~~
1182 the amount of income tax attributable to the fiduciary's ~~trust's~~
1183 ~~or estate's~~ ownership share of the entity, based on its pro rata
1184 share of the taxable income of the entity that distributes the
1185 money, during the lookback period ~~for the number of years or~~
1186 ~~portion of years that the interest in the entity was held by the~~
1187 ~~fiduciary,~~ calculated as if all of the ~~that~~ tax was incurred by
1188 the fiduciary.

1189 (8) If a fiduciary receives additional information about
1190 the application of this section to an entity distribution before
1191 the fiduciary has paid part of the entity distribution to a

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1192 beneficiary, the fiduciary may consider the additional
1193 information before making the payment to the beneficiary and may
1194 change a decision to make the payment to the beneficiary.

1195 (9) If a fiduciary receives additional information about
1196 the application of this section to an entity distribution after
1197 the fiduciary has paid part of the entity distribution to a
1198 beneficiary, the fiduciary is not required to change or recover
1199 the payment to the beneficiary but may consider that information
1200 in determining whether to exercise its other powers, including
1201 but not limited to the power to adjust under s. 738.203.

1202 (10)-(7) The following applies to money or property
1203 received by a private trustee as a distribution from an
1204 investment entity described in this subsection:

1205 (a) The trustee shall first treat as income of the trust
1206 all of the money or property received from the investment entity
1207 in the current accounting period ~~year~~ which would be considered
1208 income under this chapter if the trustee had directly held the
1209 trust's pro rata share of the assets of the investment entity.
1210 For this purpose, all distributions received in the current
1211 accounting period ~~year~~ must be aggregated.

1212 (b) The trustee shall next treat as income of the trust
1213 any additional money or property received in the current
1214 accounting period ~~year~~ which would have been considered income
1215 in the prior 2 accounting periods ~~years~~ under paragraph (a) if
1216 additional money or property had been received from the

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1217 investment entity in any of those prior 2 accounting periods
1218 ~~years~~. The amount to be treated as income must ~~shall~~ be reduced
1219 by any distributions of money or property made by the investment
1220 entity to the trust during the current and the prior 2
1221 accounting periods ~~years~~ which were treated as income under this
1222 paragraph.

1223 (c) The remainder of the distribution, if any, is treated
1224 as principal.

1225 (d) As used in this subsection, the term:

1226 1. "Investment entity" means an entity, other than a
1227 business activity conducted by the trustee described in s.
1228 738.403 or an entity that is listed on a public stock exchange,
1229 which is treated as a partnership, subchapter S corporation, or
1230 disregarded entity under ~~pursuant to~~ the Internal Revenue Code
1231 ~~of 1986, as amended,~~ and which normally derives 50 percent or
1232 more of its annual cumulative net income from interest,
1233 dividends, annuities, royalties, rental activity, or other
1234 passive investments, including income from the sale or exchange
1235 of such passive investments.

1236 2. "Private trustee" means a trustee who is a natural
1237 person, but is not an independent person as set forth in s.
1238 738.102 ~~only if the trustee is unable to use the power to adjust~~
1239 ~~between income and principal with respect to receipts from~~
1240 ~~entities described in this subsection pursuant to s. 738.104. A~~
1241 ~~bank, trust company, or other commercial trustee is not~~

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1242 ~~considered a private trustee.~~

1243 (11) A fiduciary shall allocate to principal any money and
1244 property the fiduciary receives in a distribution or series of
1245 related distributions from a public entity which are greater
1246 than 10 percent of the fair market value of the fiduciary's
1247 interest in the public entity on the first day of the accounting
1248 period. The amount to be allocated to principal must be reduced
1249 to the extent that the cumulative distributions from the entity
1250 to the fiduciary allocated to income do not exceed a cumulative
1251 annual return of 3 percent of the fair market value of the
1252 interest in the entity at the beginning of each accounting
1253 period, or portion of an accounting period, during the lookback
1254 period. If a fiduciary has exercised a power to adjust under s.
1255 738.203 during the lookback period, the fiduciary, in
1256 determining the total income distributions from that entity,
1257 must take into account the extent to which the exercise of that
1258 power resulted in income to the fiduciary from that entity for
1259 that period. If the income of the fiduciary during the lookback
1260 period has been computed under ss. 738.301-738.310, the
1261 fiduciary, in determining the total income distribution from
1262 that entity for that period, must take into account the portion
1263 of the unitrust amount paid as a result of the ownership of the
1264 trust's interest in the entity for that period. As used in this
1265 subsection, the term "public entity" means an entity listed on a
1266 public stock exchange.

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1267 (12)(8) This section must ~~shall~~ be applied before ss.
1268 738.506 and 738.507 ~~ss. 738.705 and 738.706~~ and does not modify
1269 or change any of the provisions of those sections.

1270 Section 21. Section 738.402, Florida Statutes, is amended
1271 to read:

1272 738.402 Distribution from trust or estate.—A fiduciary
1273 shall allocate to income an amount received as a distribution of
1274 income, including a unitrust distribution under ss. 738.301-
1275 738.310, from a trust or an estate in which the fiduciary trust
1276 has an interest, other than an interest a purchased in a trust
1277 that is an investment entity, and shall interest and allocate to
1278 principal an amount received as a distribution of principal from
1279 the such a trust or estate. If a fiduciary purchases, or
1280 receives from a settlor, an interest in a trust that is an
1281 investment entity, ~~or a decedent or donor transfers an interest~~
1282 ~~in such a trust to a fiduciary,~~ s. 738.401, s. 738.415, or s.
1283 738.416 ~~or s. 738.608~~ applies to a receipt from the trust.

1284 Section 22. Section 738.403, Florida Statutes, is amended
1285 to read:

1286 738.403 Business and other activity ~~activities~~ conducted
1287 by fiduciary.—

1288 (1) This section applies to ~~If a fiduciary who conducts a~~
1289 ~~business or other activity~~ conducted by a fiduciary if the
1290 fiduciary determines that it is in the best interests of
1291 ~~interest of all~~ the beneficiaries to account separately for the

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1292 business or other activity instead of:

1293 (a) Accounting for the business or other activity as part
1294 of the fiduciary's trust's or estate's general accounting
1295 records; or

1296 (b) Conducting the business or other activity through an
1297 entity described in s. 738.401(1)(b)., ~~the~~

1298 (2) A fiduciary may account separately under this section
1299 ~~maintain separate accounting records~~ for the transactions of a
1300 ~~the~~ business or another other activity, regardless of whether ~~or~~
1301 ~~not the~~ assets of the such business or other activity are
1302 segregated from other ~~trust or estate~~ assets held by the
1303 fiduciary.

1304 (3)-(2) A fiduciary who accounts separately under this
1305 section for a business or other activity:

1306 (a) May determine:

1307 1. The extent to which the net cash receipts of the
1308 business or other activity must be retained for:

1309 a. Working capital;

1310 b. The acquisition or replacement of fixed assets; and

1311 c. Other reasonably foreseeable needs of the business or
1312 other activity; and working capital, the acquisition or
1313 ~~replacement of fixed assets, and other reasonably foreseeable~~
1314 ~~needs of the business or activity, and~~

1315 2. The extent to which the remaining net cash receipts are
1316 accounted for as principal or income in the fiduciary's trust's

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1317 ~~or estate's~~ general accounting records for the trust.

1318 (b) May make a determination under paragraph (a)
1319 separately and differently from the fiduciary's decisions
1320 concerning distributions of income or principal; and

1321 (c) Shall account for the net amount received from the
1322 sale of an asset of ~~If a fiduciary sells assets of~~ the business
1323 or other activity, other than a sale in the ordinary course of
1324 the business or other activity, ~~the fiduciary must account for~~
1325 ~~the net amount received~~ as principal in the fiduciary's trust's
1326 ~~or estate's~~ general accounting records for the trust, to the
1327 extent the fiduciary determines that the net amount received is
1328 no longer required in the conduct of the business or other
1329 activity.

1330 (4)(3) Activities for which a fiduciary may account
1331 separately under this section ~~maintain separate accounting~~
1332 ~~records~~ include:

1333 (a) Retail, manufacturing, service, and other traditional
1334 business activities.

1335 (b) Farming.

1336 (c) Raising and selling livestock and other animals.

1337 (d) Managing ~~Management of~~ rental properties.

1338 (e) Extracting ~~Extraction of~~ minerals and other natural
1339 resources.

1340 (f) Growing and cutting timber ~~operations.~~

1341 (g) An activity ~~Activities~~ to which s. 738.414, s.

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1342 738.415, or s. 738.416 s. 738.607 applies.

1343 (h) Any other business conducted by the fiduciary.

1344 Section 23. Section 738.404, Florida Statutes, is created
1345 to read:

1346 738.404 Principal receipts.—A fiduciary shall allocate to
1347 principal:

1348 (1) To the extent not allocated to income under this
1349 chapter, an asset received from any of the following:

1350 (a) An individual during the individual's lifetime.

1351 (b) An estate.

1352 (c) A trust on termination of an income interest.

1353 (d) A payor under a contract naming the fiduciary as
1354 beneficiary.

1355 (2) Except as otherwise provided in ss. 738.401-738.416,
1356 money or other property received from the sale, exchange,
1357 liquidation, or change in the form of a principal asset.

1358 (3) An amount recovered from a third party to reimburse
1359 the fiduciary because of a disbursement described in s.
1360 738.502(1) or for another reason to the extent not based on the
1361 loss of income.

1362 (4) Proceeds of property taken by eminent domain except
1363 that proceeds awarded for loss of income in an accounting period
1364 are income if a current income beneficiary had a mandatory
1365 income interest during the period.

1366 (5) Net income received in an accounting period during

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1367 which there is no beneficiary to which a fiduciary may or must
1368 distribute income.

1369 (6) Other receipts as provided in ss. 738.408-738.416.

1370 Section 24. Section 738.405, Florida Statutes, is created
1371 to read:

1372 738.405 Rental property.—To the extent that a fiduciary
1373 does not account for the management of rental property as a
1374 business under s. 738.403, the fiduciary shall allocate to
1375 income an amount received as rent of real or personal property,
1376 including an amount received for cancellation or renewal of a
1377 lease. An amount received as a refundable deposit, including a
1378 security deposit or a deposit that is to be applied as rent for
1379 future periods:

1380 (1) Must be added to principal and held subject to the
1381 terms of the lease, except as otherwise provided by law other
1382 than this chapter; and

1383 (2) Is not allocated to income or available for
1384 distribution to a beneficiary until the fiduciary's contractual
1385 obligations have been satisfied with respect to that amount.

1386 Section 25. Section 738.406, Florida Statutes, is created
1387 to read:

1388 738.406 Receipt on obligation to be paid in money.—

1389 (1) This section does not apply to an obligation to which
1390 s. 738.409, s. 738.410, s. 738.411, s. 738.412, s. 738.414, s.
1391 738.415, or s. 738.416 applies.

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1392 (2) A fiduciary shall allocate to income, without
1393 provision for amortization of premium, an amount received as
1394 interest on an obligation to pay money to the fiduciary,
1395 including an amount received as consideration for prepaying
1396 principal.

1397 (3) A fiduciary shall allocate to principal an amount
1398 received from the sale, redemption, or other disposition of an
1399 obligation to pay money to the fiduciary.

1400 (4) A fiduciary shall allocate to income the increment in
1401 value of a bond or other obligation for the payment of money
1402 bearing no stated interest but payable or redeemable, at
1403 maturity or another future time, in an amount that exceeds the
1404 amount in consideration of which it was issued. If the increment
1405 in value accrues and becomes payable pursuant to a fixed
1406 schedule of appreciation, it may be distributed to the
1407 beneficiary who was the income beneficiary at the time of
1408 increment from the first principal cash available or, if none is
1409 available, when the increment is realized by sale, redemption,
1410 or other disposition. If unrealized increment is distributed as
1411 income but out of principal, the principal must be reimbursed
1412 for the increment when realized. If, in the reasonable judgment
1413 of the fiduciary, exercised in good faith, the ultimate payment
1414 of the bond principal is in doubt, the fiduciary may withhold
1415 the payment of incremental interest to the income beneficiary.

1416 Section 26. Section 738.407, Florida Statutes, is created

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1417 to read:

1418 738.407 Insurance policy or contract.—

1419 (1) This section does not apply to a contract to which s.
1420 738.409 applies.

1421 (2) Except as otherwise provided in subsection (3), a
1422 fiduciary shall allocate to principal the proceeds of a life
1423 insurance policy or other contract received by the fiduciary as
1424 beneficiary, including a contract that insures against damage
1425 to, destruction of, or loss of title to an asset. The fiduciary
1426 shall allocate dividends on an insurance policy to income to the
1427 extent that premiums on the policy are paid from income and to
1428 principal to the extent premiums on the policy are paid from
1429 principal.

1430 (3) A fiduciary shall allocate to income proceeds of a
1431 contract that insures the fiduciary against loss of:

1432 (a) Occupancy or other use by a current income
1433 beneficiary;

1434 (b) Income; or

1435 (c) Subject to s. 738.403, profits from a business.

1436 Section 27. Section 738.408, Florida Statutes, is created
1437 to read:

1438 738.408 Insubstantial allocation not required.—

1439 (1) If a fiduciary determines that an allocation between
1440 income and principal required by s. 738.409, s. 738.410, s.
1441 738.411, s. 738.412, or s. 738.415 is insubstantial, the

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1442 fiduciary may allocate the entire amount to principal, unless s.
1443 738.203(5) applies to the allocation.

1444 (2) A fiduciary may presume an allocation is insubstantial
1445 under subsection (1) if:

1446 (a) The amount of the allocation would increase or
1447 decrease net income in an accounting period, as determined
1448 before the allocation, by less than 10 percent; and

1449 (b) The asset producing the receipt to be allocated has a
1450 carrying value less than 10 percent of the total carrying value
1451 of the assets owned or held by the fiduciary at the beginning of
1452 the accounting period.

1453 (3) The power to make a determination under subsection (1)
1454 may be:

1455 (a) Exercised by a cofiduciary in the manner described in
1456 s. 738.203(6); or

1457 (b) Released or delegated for a reason described in s.
1458 738.203(7) and in the manner described in s. 738.203(8).

1459 Section 28. Section 738.409, Florida Statutes, is created
1460 to read:

1461 738.409 Deferred compensation, annuity, or similar
1462 payment.—

1463 (1) As used in this section, the term:

1464 (a) "Internal income of the separate fund" means the
1465 amount determined under subsection (2).

1466 (b) "Marital trust" means a trust:

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1467 1. Of which the settlor's surviving spouse is the only
1468 current income beneficiary and is entitled to a distribution of
1469 all the current net income of the trust; and

1470 2. That qualifies for a marital deduction with respect to
1471 the settlor's estate under the Internal Revenue Code or
1472 comparable law of any state because:

1473 a. An election to qualify for a marital deduction under s.
1474 2056(b) (7) of the Internal Revenue Code has been made;

1475 b. The trust qualified for a marital deduction under s.
1476 2056(b) (5) of the Internal Revenue Code; or

1477 c. The trust otherwise qualifies for a marital deduction.

1478 (c) "Nonseparate fund" means an annuity, a deferred
1479 compensation plan, a pension plan, or other fund for which the
1480 value of the participant's or account owner's right to receive
1481 benefits can be determined only by the occurrence of a date or
1482 event as defined in the instrument governing the fund.

1483 (d) "Payment" means an amount a fiduciary may receive over
1484 a fixed number of years or during the life of one or more
1485 individuals because of services rendered or property transferred
1486 to the payor in exchange for future amounts the fiduciary may
1487 receive. The term includes an amount received in money or
1488 property from the payor's general assets or from a separate fund
1489 created by the payor.

1490 (e) "Percent calculated" means a percent equal to the rate
1491 determined under s. 7520 of the Internal Revenue Code in effect

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1492 for the month preceding the beginning of the accounting period;
1493 however, if the percent calculated exceeds 5 percent, it must be
1494 reduced to 5 percent, and if the percent calculated is less than
1495 3 percent, it must be increased to 3 percent. Notwithstanding
1496 the preceding sentence, a fiduciary who is an independent person
1497 as defined in s. 738.102 may set the percent calculated at a
1498 percentage no less than 3 percent and no greater than 5 percent.

1499 (f) "Separate fund" includes a private or commercial
1500 annuity, an individual retirement account, and a pension,
1501 profit-sharing, stock-bonus, stock ownership plan, or other
1502 deferred compensation fund holding assets exclusively for the
1503 benefit of a participant or account owner.

1504 (2) For each accounting period, the following rules apply
1505 to a separate fund:

1506 (a) The fiduciary may determine the internal income of the
1507 separate fund as if the separate fund were a trust subject to
1508 this chapter.

1509 (b) Alternatively, the fiduciary may deem the internal
1510 income of the separate fund to equal the percent calculated of
1511 the value of the separate fund according to the most recent
1512 statement of value preceding the beginning of the accounting
1513 period. The fiduciary is not liable for good faith reliance upon
1514 any valuation supplied by the person or persons in possession of
1515 the fund. If the fiduciary makes or terminates an election under
1516 this paragraph, the fiduciary must make such disclosure in a

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1517 trust disclosure document that satisfies the requirements of s.
1518 736.1008(4)(c).

1519 (c) If the fiduciary cannot determine the value of the
1520 separate fund under paragraph (b), the value of the separate
1521 fund is deemed to equal the present value of the expected future
1522 payments as determined under s. 7520 of the Internal Revenue
1523 Code for the month preceding the beginning of the accounting
1524 period for which the computation is made.

1525 (d) The fiduciary may elect the method of determining the
1526 income of the fund pursuant to this subsection and may change
1527 the method of determining income of the fund for any future
1528 accounting period.

1529 (3) A fiduciary shall allocate a payment received from a
1530 separate fund during an accounting period to income, to the
1531 extent of the internal income of the separate fund during the
1532 period, and allocate the balance to principal.

1533 (4) The fiduciary of a marital trust shall:

1534 (a) Withdraw from a separate fund the amount the current
1535 income beneficiary of the trust requests the fiduciary to
1536 withdraw, not greater than the amount by which the internal
1537 income of the separate fund during the accounting period exceeds
1538 the amount the fiduciary otherwise receives from the separate
1539 fund during the period.

1540 (b) Transfer from principal to income the amount the
1541 current income beneficiary requests the fiduciary to transfer,

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1542 but not greater than the amount by which the internal income of
1543 the separate fund during the period exceeds the amount the
1544 fiduciary receives from the separate fund during the period
1545 after the application of paragraph (a).

1546 (c) Distribute to the current income beneficiary as
1547 income:

1548 1. The amount of the internal income of the separate fund
1549 received or withdrawn during the period; and

1550 2. The amount transferred from principal to income under
1551 paragraph (b).

1552 (5) For a trust, other than a marital trust, of which one
1553 or more current income beneficiaries are entitled to a
1554 distribution of all the current net income, the fiduciary shall
1555 transfer from principal to income the amount by which the
1556 internal income of the separate fund during the accounting
1557 period exceeds the amount the fiduciary receives from the
1558 separate fund during the period.

1559 (6) The fiduciary of a nonseparate fund shall calculate
1560 internal income of the fund as the percent calculated of the
1561 present value of the right to receive the remaining payments as
1562 determined under s. 7520(a) (2) of the Internal Revenue Code for
1563 the month preceding the beginning of the accounting period.

1564 (7) If a fiduciary owns a separate fund or a nonseparate
1565 fund before January 1, 2025, the fiduciary may determine
1566 internal income, allocate payments, and account for unwithdrawn

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1567 internal income as provided in this section or in the manner
1568 used by the fiduciary before January 1, 2025. Such fiduciary is
1569 not required to consider subsection (5). If the fiduciary
1570 acquires a separate fund or a nonseparate fund on or after
1571 January 1, 2025, the fiduciary must calculate internal income,
1572 allocate payments, and account for unwithdrawn internal income
1573 as provided in this section.

1574 Section 29. Section 738.603, Florida Statutes, is
1575 transferred, renumbered as section 738.410, Florida Statutes,
1576 and amended to read:

1577 738.410 ~~738.603~~ Liquidating asset.—

1578 (1) As used in ~~For purposes of~~ this section, the term
1579 "liquidating asset" means an asset whose value ~~the value of~~
1580 ~~which~~ will diminish or terminate because the asset is expected
1581 to produce receipts for a ~~period of~~ limited time duration. The
1582 term includes a leasehold, patent, copyright, royalty right, and
1583 right to receive payments during a period of ~~for~~ more than 1
1584 year under an arrangement that does not provide for the payment
1585 of interest on the unpaid balance. ~~The term does not include a~~
1586 ~~payment subject to s. 738.602, resources subject to s. 738.604,~~
1587 ~~timber subject to s. 738.605, an activity subject to s. 738.607,~~
1588 ~~an asset subject to s. 738.608, or any asset for which the~~
1589 ~~fiduciary establishes a reserve for depreciation under s.~~
1590 ~~738.703.~~

1591 (2) This section does not apply to a receipt that is

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1592 subject to s. 738.401, s. 738.409, s. 738.411, s. 738.412, s.
1593 738.414, s. 738.415, s. 738.416, or s. 738.503.

1594 (3) A fiduciary shall allocate to income a receipt
1595 produced by a liquidating asset to the extent that the receipt
1596 does not exceed 5 percent of the receipts from the carrying
1597 value of the asset at the beginning of the accounting period and
1598 allocate a liquidating asset and the balance to principal the
1599 balance of the receipt.

1600 (4) The amount ~~Amounts~~ allocated to principal shall reduce
1601 the carrying value of the liquidating asset, but not below zero.
1602 Amounts received in excess of the remaining carrying value must
1603 be allocated to principal.

1604 Section 30. Section 738.604, Florida Statutes, is
1605 transferred, renumbered as section 738.411, Florida Statutes,
1606 and amended to read:

1607 738.411 ~~738.604~~ Minerals, water, and other natural
1608 resources.—

1609 (1) To the extent that ~~If~~ a fiduciary does not account for
1610 a receipt ~~accounts for receipts~~ from an interest in minerals,
1611 water, or other natural resources as a business under s. 738.403
1612 ~~pursuant to this section,~~ the fiduciary shall allocate the
1613 receipt ~~such receipts as follows:~~

1614 (a) To income, to the extent received:

1615 1. If received ~~As nominal~~ delay rental or ~~nominal~~ annual
1616 rent on a lease;

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1617 2. As a factor for interest or the equivalent of interest
1618 under an agreement creating a production payment; or

1619 3. On account of an interest in renewable water; ~~a~~
1620 ~~receipt shall be allocated to income.~~

1621 (b) To principal, if received from a production payment, a
1622 ~~receipt shall be allocated to income if and to the extent that~~
1623 ~~subparagraph (a)2. does not apply; or the agreement creating the~~
1624 ~~production payment provides a factor for interest or its~~
1625 ~~equivalent. The balance shall be allocated to principal.~~

1626 (c) Between income and principal equitably, to the extent
1627 received:

1628 1. On account of an interest in nonrenewable water;

1629 2. If an amount received As a royalty, shut-in-well
1630 payment, take-or-pay payment, or bonus; or, ~~or delay rental is~~
1631 ~~more than nominal, 90 percent shall be allocated to principal~~
1632 ~~and the balance to income.~~

1633 3.(d) If an amount is received From a working interest or
1634 any other interest not provided for in paragraph (a) or,
1635 paragraph (b) or subparagraph 1. or subparagraph 2., ~~or~~
1636 ~~paragraph (c), 90 percent of the net amount received shall be~~
1637 ~~allocated to principal and the balance to income.~~

1638 (2) ~~An amount received on account of an interest in water~~
1639 ~~that is renewable shall be allocated to income. If the water is~~
1640 ~~not renewable, 90 percent of the amount shall be allocated to~~
1641 ~~principal and the balance to income.~~

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1642 ~~(3) This section chapter applies to an interest owned or~~
1643 ~~held by a fiduciary regardless of whether ~~or not~~ a settlor~~
1644 ~~decedent or donor was extracting minerals, water, or other~~
1645 ~~natural resources before the fiduciary owned or held the~~
1646 ~~interest became subject to the trust or estate.~~

1647 (3) An allocation of a receipt under paragraph (1)(c) is
1648 presumed to be equitable if the amount allocated to principal is
1649 equal to the amount allowed by the Internal Revenue Code as a
1650 deduction for depletion of the interest.

1651 (4) If a fiduciary trust or estate owns or holds an
1652 interest in minerals, water, or other natural resources before
1653 January 1, 2025 ~~on January 1, 2003~~, the fiduciary may allocate
1654 receipts from the interest as provided in this section chapter
1655 or in the manner used by the fiduciary before January 1, 2025
1656 ~~January 1, 2003~~. If the fiduciary trust or estate acquires an
1657 interest in minerals, water, or other natural resources on or
1658 after January 1, 2025 ~~January 1, 2003~~, the fiduciary must shall
1659 allocate receipts from the interest as provided in this section
1660 ~~chapter~~.

1661 Section 31. Section 738.605, Florida Statutes, is
1662 transferred, renumbered as section 738.412, Florida Statutes,
1663 and amended to read:

1664 738.412 ~~738.605~~ Timber.—

1665 (1) To the extent that ~~If~~ a fiduciary does not account
1666 ~~accounts~~ for receipts from the sale of timber and related

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1667 products as a business under s. 738.403 ~~pursuant to this~~
1668 ~~section,~~ the fiduciary shall allocate the ~~such~~ net receipts as
1669 ~~follows:~~

1670 (a) To income, to the extent that the amount of timber cut
1671 ~~removed~~ from the land does not exceed the rate of growth of the
1672 timber ~~during the accounting periods in which a beneficiary has~~
1673 ~~a mandatory income interest;~~

1674 (b) To principal, to the extent that the amount of timber
1675 cut removed from the land exceeds the rate of growth of the
1676 timber or the net receipts are from the sale of standing timber;

1677 (c) ~~To or~~ Between income and principal if the net receipts
1678 are from the lease of land used for growing and cutting timber
1679 ~~timberland~~ or from a contract to cut timber from land ~~owned by a~~
1680 ~~trust or estate~~ by determining the amount of timber cut removed
1681 from the land under the lease or contract and applying the rules
1682 in paragraphs (a) and (b); or

1683 (d) To principal, to the extent that advance payments,
1684 bonuses, and other payments are not allocated under ~~pursuant to~~
1685 paragraph (a), paragraph (b), or paragraph (c).

1686 (2) In determining net receipts to be allocated under
1687 ~~pursuant to~~ subsection (1), a fiduciary shall deduct and
1688 transfer to principal a reasonable amount for depletion.

1689 (3) This section ~~chapter~~ applies to land owned or held by
1690 a fiduciary regardless of whether or not a settlor decedent or
1691 ~~donor~~ was cutting harvesting timber from the land property

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1692 before the fiduciary owned or held the property ~~became subject~~
1693 ~~to the trust or estate.~~

1694 (4) If a fiduciary ~~trust or estate~~ owns or holds an
1695 interest in land used for growing and cutting timber before
1696 January 1, 2025 ~~timberland on January 1, 2003~~, the fiduciary may
1697 allocate net receipts from the sale of timber and related
1698 products as provided in this section ~~chapter~~ or in the manner
1699 used by the fiduciary before January 1, 2025 ~~January 1, 2003~~. If
1700 the fiduciary ~~trust or estate~~ acquires an interest in land used
1701 for growing and cutting timber on or after January 1, 2025
1702 ~~timberland after January 1, 2003~~, the fiduciary must ~~shall~~
1703 allocate net receipts from the sale of timber and related
1704 products as provided in this section ~~chapter~~.

1705 Section 32. Section 738.606, Florida Statutes, is
1706 transferred, renumbered as section 738.413, Florida Statutes,
1707 and amended to read:

1708 738.413 ~~738.606~~ Marital deduction property not productive
1709 of income.—

1710 (1) If a trust received property for which a gift or
1711 estate tax marital deduction was ~~under the Internal Revenue Code~~
1712 ~~or comparable law of any state is allowed, for all or if part of~~
1713 a trust received property satisfying, ~~or if assets are~~
1714 ~~transferred to a trust that satisfies~~ the requirements of s.
1715 732.2025(2)(a) and (c), and such property has ~~assets have~~ been
1716 used in whole or in part to satisfy an election by a surviving

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1717 spouse under s. 732.2125, and the settlor's spouse holds a
1718 mandatory income interest in the trust, the spouse may require
1719 the trustee, to the extent that the trust assets otherwise do
1720 ~~consist of property that, in the aggregate, does not provide the~~
1721 ~~spouse with sufficient income from or use of the trust assets to~~
1722 qualify for the deduction, or to satisfy an election by a
1723 surviving spouse under s. 732.2125, to make the property
1724 productive of income within a reasonable time. The trustee may:

- 1725 (a) Convert property to property productive of income
1726 within a reasonable time;
- 1727 (b) Exercise the power to adjust under s. 738.203;
- 1728 (c) Exercise the power to convert to or from a unitrust
1729 under s. 738.303; or
- 1730 (d) Exercise the fiduciary's authority under the terms of
1731 the trust to otherwise provide the surviving spouse with
1732 sufficient income from the trust assets, or the use of the trust
1733 assets, to qualify for the marital deduction, or to satisfy an
1734 election by a surviving spouse under s. 732.2125.

1735 (2) The trustee may decide which action or combination of
1736 actions listed in subsection (1) to take.

1737 (3) Subsection (1) shall apply, ~~and if amounts the trustee~~
1738 ~~transfers from principal to income under s. 738.104 and~~
1739 ~~distributes to the spouse from principal pursuant to the terms~~
1740 ~~of the trust are insufficient to provide the spouse with the~~
1741 ~~beneficial enjoyment required to obtain the marital deduction,~~

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1742 even though, in the case of an elective share trust under s.
1743 732.2025(2), a marital deduction is not made or is only
1744 partially made, ~~the spouse may require the trustee of such~~
1745 ~~marital trust or elective share trust to make property~~
1746 ~~productive of income, convert property within a reasonable time,~~
1747 ~~or exercise the power conferred by ss. 738.104 and 738.1041.~~

1748 (4) The terms of a trust as defined in s. 738.102 may not
1749 supersede this section unless such terms explicitly reference
1750 this section ~~The trustee may decide which action or combination~~
1751 ~~of actions to take.~~

1752 ~~(2) In cases not governed by subsection (1), proceeds from~~
1753 ~~the sale or other disposition of an asset are principal without~~
1754 ~~regard to the amount of income the asset produces during any~~
1755 ~~accounting period.~~

1756 Section 33. Section 738.607, Florida Statutes, is
1757 transferred, renumbered as section 738.414, Florida Statutes,
1758 and amended to read:

1759 738.414 ~~738.607~~ Derivatives or ~~and~~ options.—

1760 (1) As used in ~~For purposes of~~ this section, the term
1761 "derivative" means a contract, an ~~or financial~~ instrument, or
1762 other arrangement, or ~~a~~ combination of contracts, and financial
1763 instruments, or other arrangements, of which the value, rights,
1764 and obligations are, in whole or in part, dependent on or
1765 derived from an underlying ~~which gives a trust the right or~~
1766 ~~obligation to participate in some or all changes in the price of~~

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1767 a tangible or intangible asset, ~~a or~~ a group of tangible or
1768 intangible assets, an index, or an occurrence of an event. The
1769 term includes stocks, fixed income securities, and financial
1770 instruments and arrangements based on indices, commodities,
1771 interest rates, weather-related events, and credit-default
1772 events ~~assets, or changes in a rate, an index of prices or~~
1773 ~~rates, or other market indicator for an asset or a group of~~
1774 ~~assets.~~

1775 (2) To the extent that a fiduciary does not account for a
1776 transaction in derivatives as a business under s. 738.403 ~~for~~
1777 ~~transactions in derivatives,~~ the fiduciary shall allocate 10
1778 percent of to principal receipts from the transaction and 10
1779 percent of and disbursements made in connection with the
1780 transaction to income and allocate the balance to principal
1781 ~~those transactions.~~

1782 (3) Subsection (4) applies if:

1783 (a) A fiduciary:

1784 1. If a fiduciary Grants an option to buy property from a
1785 ~~the trust,~~ regardless of or estate whether ~~or not~~ the trust ~~or~~
1786 ~~estate~~ owns the property when the option is granted; or

1787 2. Grants an option that permits another person to sell
1788 property to the trust; or

1789 3. estate, or Acquires an option to buy property for the
1790 ~~trust or estate or~~ an option to sell an asset owned by the trust
1791 ~~or estate; or~~ and

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1792 (b) The fiduciary or other owner of the asset is required
1793 to deliver the asset if the option is exercised, ~~an amount~~
1794 ~~received for granting the option shall be allocated to~~
1795 ~~principal. An amount paid to acquire the option shall be paid~~
1796 ~~from principal.~~

1797 (4) If this subsection applies, the fiduciary must
1798 allocate 10 percent to income and allocate the balance to
1799 principal of the following amounts:

1800 (a) An amount received for granting the option;

1801 (b) An amount paid to acquire the option; and

1802 (c) A Gain or loss realized on ~~upon~~ the exercise,
1803 exchange, settlement, offset, closing, or expiration of the
1804 option of an option, including an option granted to a grantor of
1805 the trust or estate for services rendered, shall be allocated to
1806 principal.

1807 Section 34. Section 738.608, Florida Statutes, is
1808 transferred, renumbered as section 738.415, Florida Statutes,
1809 and amended to read:

1810 738.415 ~~738.608~~ Asset-backed securities.—

1811 (1) Except as otherwise provided in subsection (2), a
1812 fiduciary shall allocate to income a receipt from or related to
1813 an asset-backed security, as defined in s. 738.102, to the
1814 extent that the payor identifies the payment as being from ~~For~~
1815 ~~purposes of this section, "asset-backed security" means an asset~~
1816 ~~the value of which is based upon the right given the owner to~~

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1817 ~~receive distributions from the proceeds of financial assets that~~
1818 ~~provide collateral for the security. The term includes an asset~~
1819 ~~that gives the owner the right to receive from the collateral~~
1820 ~~financial assets only the interest or other current return and~~
1821 ~~allocate to principal the balance of the receipt or only the~~
1822 ~~proceeds other than interest or current return. The term does~~
1823 ~~not include an asset to which s. 738.401 or s. 738.602 applies.~~

1824 (2) If a fiduciary receives one or more payments in
1825 exchange for part or all of the fiduciary's interest in an
1826 asset-backed security, including a liquidation or redemption of
1827 the fiduciary's interest in the security trust or estate
1828 ~~receives a payment from interest or other current return and~~
1829 ~~from other proceeds of the collateral financial assets, the~~
1830 ~~fiduciary must shall allocate to income 10 percent of receipts~~
1831 ~~from the transaction and 10 percent of disbursements made in~~
1832 ~~connection with the transaction, and allocate to principal the~~
1833 ~~portion of the payment which the payor identifies as being from~~
1834 ~~interest or other current return and allocate the balance of the~~
1835 ~~receipts and disbursements payment to principal.~~

1836 ~~(3) If a trust or estate receives one or more payments in~~
1837 ~~exchange for the trust's or estate's entire interest in an~~
1838 ~~asset-backed security during a single accounting period, the~~
1839 ~~fiduciary shall allocate the payments to principal. If a payment~~
1840 ~~is one of a series of payments that will result in the~~
1841 ~~liquidation of the trust's or estate's interest in the security~~

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1842 ~~over more than a single accounting period, the fiduciary shall~~
1843 ~~allocate 10 percent of the payment to income and the balance to~~
1844 ~~principal.~~

1845 Section 35. Section 738.416, Florida Statutes, is created
1846 to read:

1847 738.416 Other financial instrument or arrangement.—A
1848 fiduciary shall allocate receipts from or related to a financial
1849 instrument or arrangement not otherwise addressed by this
1850 chapter. The allocation must be consistent with ss. 738.414 and
1851 738.415.

1852 Section 36. Section 738.501, Florida Statutes, is amended
1853 to read:

1854 (Substantial rewording of section. See
1855 s. 738.501, F.S., for present text.)

1856 738.501 Disbursement from income.—Subject to s. 738.504,
1857 and except as otherwise provided in s. 738.601(3)(b) or (c), a
1858 fiduciary shall disburse from income:

1859 (1) One-half of:

1860 (a) The regular compensation of the fiduciary and of any
1861 person providing investment advisory, custodial, or other
1862 services to the fiduciary to the extent that income is
1863 sufficient; and

1864 (b) An expense for an accounting, judicial or nonjudicial
1865 proceeding, or other matter that involves both income and
1866 successive interests to the extent income is sufficient.

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1867 (2) The balance of the disbursements described in
1868 subsection (1), to the extent that a fiduciary who is an
1869 independent person determines that making those disbursements
1870 from income would be in the interests of the beneficiaries.

1871 (3) Any other ordinary expense incurred in connection with
1872 administration, management, or preservation of property and
1873 distribution of income, including interest, an ordinary repair,
1874 a regularly recurring tax assessed against principal, and an
1875 expense of an accounting, judicial or nonjudicial proceeding, or
1876 other matter that involves primarily an income interest, to the
1877 extent that income is sufficient.

1878 (4) A premium on insurance covering loss of a principal
1879 asset or income from or use of the asset.

1880 Section 37. Section 738.502, Florida Statutes, is amended
1881 to read:

1882 (Substantial rewording of section. See
1883 s. 738.502, F.S., for present text.)

1884 738.502 Disbursement from principal.-

1885 (1) Subject to s. 738.505, and except as otherwise
1886 provided in s. 738.601(3)(b), a fiduciary shall disburse all of
1887 the following from principal:

1888 (a) The balance of the disbursements described in s.
1889 738.501(1) and (3), after application of s. 738.501(2).

1890 (b) The fiduciary's compensation calculated on principal
1891 as a fee for acceptance, distribution, or termination.

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1892 (c) A payment of an expense to prepare for or execute a
1893 sale or other disposition of property.

1894 (d) A payment on the principal of a trust debt.

1895 (e) A payment of an expense of an accounting, judicial or
1896 nonjudicial proceeding, or other matter that involves primarily
1897 principal, including a proceeding to construe the terms of the
1898 trust or protect property.

1899 (f) A payment of a premium for insurance, including title
1900 insurance, not described in s. 738.501(4) of which the fiduciary
1901 is the owner and beneficiary.

1902 (g) A payment of estate, inheritance, and other transfer
1903 taxes, including penalties, apportioned to the trust.

1904 (h) A payment related to environmental matters including:
1905 1. Reclamation;
1906 2. Assessing environmental conditions;
1907 3. Remedying and removing environmental contamination;
1908 4. Monitoring remedial activities and the release of
1909 substances;

1910 5. Preventing future releases of substances;

1911 6. Collecting amounts from persons liable or potentially
1912 liable for the costs of the activities described in
1913 subparagraphs 1.-5.;

1914 7. Penalties imposed under environmental laws or
1915 regulations;

1916 8. Other actions to comply with environmental laws or

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1917 regulations;

1918 9. Statutory or common law claims by third parties; and

1919 10 Defending claims based on environmental matters.

1920 (i) A payment of a premium for insurance for matters

1921 described in paragraph (h).

1922 (2) If a principal asset is encumbered with an obligation

1923 that requires income from the asset to be paid directly to a

1924 creditor, the fiduciary must transfer from principal to income

1925 an amount equal to the income paid to the creditor in reduction

1926 of the principal balance of the obligation.

1927 Section 38. Section 738.503, Florida Statutes, is amended

1928 to read:

1929 (Substantial rewording of section. See

1930 s. 738.503, F.S., for present text.)

1931 738.503 Transfers from income to principal for

1932 depreciation.—

1933 (1) For purposes of this section, "depreciation" means a

1934 reduction in value due to wear, tear, decay, corrosion, or

1935 gradual obsolescence of a tangible asset having a useful life of

1936 more than 1 year.

1937 (2) A fiduciary may transfer to principal a reasonable

1938 amount of the net cash receipts from a principal asset that is

1939 subject to depreciation but may not transfer any amount for

1940 depreciation:

1941 (a) Of the part of real property used or available for use

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1942 by a beneficiary as a residence;

1943 (b) Of tangible personal property held or made available
1944 for the personal use or enjoyment of a beneficiary; or

1945 (c) Under this section, to the extent that the fiduciary
1946 accounts:

1947 1. Under s. 738.410 for the asset; or

1948 2. Under s. 738.403 for the business or other activity in
1949 which the asset is used.

1950 (3) An amount transferred to principal under this section
1951 need not be separately held.

1952 Section 39. Section 738.504, Florida Statutes, is amended
1953 to read:

1954 (Substantial rewording of section. See
1955 s. 738.504, F.S., for present text.)

1956 738.504 Reimbursement of income from principal.-

1957 (1) If a fiduciary makes or expects to make an income
1958 disbursement described in subsection (2), the fiduciary may
1959 transfer an appropriate amount from principal to income in one
1960 or more accounting periods to reimburse income.

1961 (2) To the extent that the fiduciary has not been and does
1962 not expect to be reimbursed by a third party, income
1963 disbursements to which subsection (1) applies include:

1964 (a) An amount chargeable to principal but paid from income
1965 because principal is illiquid;

1966 (b) A disbursement made to prepare property for sale,

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1967 including improvements and commissions; and

1968 (c) A disbursement described in s. 738.502(1).

1969 (3) If an asset whose ownership gives rise to an income
1970 disbursement becomes subject to a successive interest after an
1971 income interest ends, the fiduciary may continue to make
1972 transfers under subsection (1).

1973 Section 40. Section 738.704, is transferred, renumbered as
1974 section 738.505, Florida Statutes, and amended to read:

1975 738.505 738.704 Reimbursement of principal from income
1976 ~~Transfers from income to reimburse principal.-~~

1977 (1) If a fiduciary makes or expects to make a principal a
1978 ~~principal~~ disbursement described in subsection (2) ~~this section,~~
1979 the fiduciary may transfer an appropriate amount from income to
1980 principal in one or more accounting periods to reimburse
1981 principal or to provide a reserve for future principal
1982 disbursements.

1983 (2) ~~Principal disbursements to which subsection (1)~~
1984 ~~applies include the following, but only~~ To the extent that a the
1985 fiduciary has not been and does not expect to be reimbursed by a
1986 third party, principal disbursements to which subsection (1)
1987 applies include:

1988 (a) An amount chargeable to income but paid from principal
1989 because income is not sufficient; ~~the amount is unusually large.~~

1990 (b) The cost of an improvement to principal, whether a
1991 change to an existing asset or the construction of a new asset,

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1992 including a special assessment; Disbursements made to prepare
1993 property for rental, including tenant allowances, leasehold
1994 improvements, and broker's commissions.

1995 (c) A disbursement made to prepare property for rental,
1996 including tenant allowances, leasehold improvements, and
1997 commissions; Disbursements described in s. 738.702(1)(g).

1998 (d) A periodic payment on an obligation secured by a
1999 principal asset, to the extent the amount transferred from
2000 income to principal for depreciation is less than the periodic
2001 payment; and

2002 (e) A disbursement described in s. 738.502(1).

2003 (3) If an ~~the~~ asset whose ~~the~~ ownership ~~of~~ ~~which~~ gives
2004 rise to a principal disbursement ~~the disbursements~~ becomes
2005 subject to a successive ~~income~~ interest after an income interest
2006 ends, the a fiduciary may continue to make transfers under