



172844

LEGISLATIVE ACTION

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| Senate     | . | House |
| Comm: RCS  | . |       |
| 02/05/2024 | . |       |
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The Committee on Judiciary (Berman) recommended the following:

**Senate Amendment**

Delete lines 362 - 2329  
and insert:  
which a fiduciary may or must distribute net income, regardless  
of whether the fiduciary also distributes principal to the  
beneficiary.

(7) "Distribution" means a payment or transfer by a  
fiduciary to a beneficiary in the beneficiary's capacity as a  
beneficiary, without consideration other than the beneficiary's  
right to receive the payment or transfer under the terms of the



172844

12 trust as defined in subsection (24), or in a will, life estate,  
13 or term interest. "Distribute," "distributed," and "distributee"  
14 have corresponding meanings.

15 (8) "Estate" means a decedent's estate, including the  
16 property of the decedent as the estate is originally constituted  
17 and the property of the estate as it exists at any time during  
18 administration.

19 (9)~~(4)~~ "Fiduciary" includes ~~means~~ a trustee, a trust  
20 director as defined in s. 736.0103, or a personal  
21 representative, and a person acting under a delegation from a  
22 fiduciary ~~or a trustee~~. The term also includes a person that  
23 holds property for a successor beneficiary whose interest may be  
24 affected by an allocation of receipts and expenditures between  
25 income and principal. If there are two or more cofiduciaries,  
26 the term includes all cofiduciaries acting under the terms of  
27 the trust and applicable law ~~an executor, administrator,~~  
28 ~~successor personal representative, special administrator, or a~~  
29 ~~person performing substantially the same function.~~

30 (10)~~(5)~~ "Income" means money or other property that a  
31 fiduciary receives as current return from a principal asset. The  
32 term includes a part ~~portion~~ of receipts from a sale, exchange,  
33 or liquidation of a principal asset, to the extent provided in  
34 ss. 738.401-738.416 ~~ss. 738.401-738.403 and s. 738.503.~~

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

37 (11)~~(7)~~ "Income interest" means the right of a current ~~an~~  
38 income beneficiary to receive all or part of net income, whether  
39 the terms of the trust require the net income to be distributed  
40 or authorize the net income to be distributed in the fiduciary's



172844

41 ~~trustee's~~ discretion. The term includes the right of a current  
42 beneficiary to use property held by a fiduciary.

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

44 (a) For a trust:

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

46 2. A settlor of the trust;

47 3. An individual whose legal obligation to support a  
48 beneficiary may be satisfied by a distribution from the trust;

49 or

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

52 (b) For an estate, a beneficiary;

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

55 (d) A corporation, a partnership, a limited liability  
56 company, or another entity in which persons described in  
57 paragraphs (a), (b), and (c), in the aggregate, have voting  
58 control; or

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

61 (13) "Internal Revenue Code" means the Internal Revenue  
62 Code of 1986, as amended.

63 (14)-(8) "Mandatory income interest" means the right of a  
64 current ~~an~~ income beneficiary to receive net income that the  
65 terms of the trust require the fiduciary to distribute.

66 (15)-(9) "Net income" means the total allocations ~~receipts~~  
67 ~~allocated to income~~ during an accounting period to income under  
68 the terms of a trust and this chapter minus the disbursements  
69 ~~made from income~~ during the period, other than distributions,



172844

70 allocated to income under the terms of the trust and this  
71 chapter. To the extent that the trust is a unitrust under ss.  
72 738.301-738.310, the term means the unitrust amount determined  
73 under ss. 738.301-738.310. The term includes the amount of an  
74 adjustment from principal to income under s. 738.203. The term  
75 does not include the amount of an adjustment ~~plus or minus~~  
76 ~~transfers under this chapter to or~~ from income to principal  
77 under s. 738.203 ~~during the period.~~

78 (16)~~(10)~~ "Person" means an individual, a business or a  
79 nonprofit entity, corporation, business trust, an estate, a  
80 trust, partnership, limited liability company, association,  
81 joint venture, a public corporation, or any other legal or  
82 commercial entity or a government or governmental subdivision,  
83 agency, or instrumentality, or other legal entity.

84 (17) "Personal representative" means an executor, an  
85 administrator, a successor personal representative, a special  
86 administrator, or a person that performs substantially the same  
87 function with respect to an estate under the law governing the  
88 person's status.

89 (18)~~(11)~~ "Principal" means property held in trust for  
90 distribution to, production of income for, or use by a current  
91 or successor a remainder beneficiary when the trust terminates.

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

95 (20) "Settlor" means a person, including a testator, who  
96 creates or contributes property to a trust. If more than one  
97 person creates or contributes property to a trust, the term  
98 includes each person, to the extent of the trust property



172844

99 attributable to that person's contribution, except to the extent  
100 that another person has the power to revoke or withdraw that  
101 portion.

102 (21) "Special tax benefit" means:

103 (a) Exclusion of a transfer to a trust from gifts described  
104 in s. 2503(b) of the Internal Revenue Code because of the  
105 qualification of an income interest in the trust as a present  
106 interest in property;

107 (b) Status as a qualified subchapter S trust described in  
108 s. 1361(d) (3) of the Internal Revenue Code at a time the trust  
109 holds stock of an S corporation described in s. 1361(a) (1) of  
110 the Internal Revenue Code;

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

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

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

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

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

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



172844

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

130 (22) "Successive interest" means the interest of a  
131 successor beneficiary.

132 (23)-(12) "Successor Remainder beneficiary" means a person  
133 entitled to receive income or principal or to use property when  
134 an income interest or other current interest ends.

135 (24)-(13) "Terms of a trust" means:

136 (a) Except as otherwise provided in paragraph (b), the  
137 manifestation of the settlor's intent regarding a trust's  
138 provisions as:

- 139 1. Expressed in the will or trust instrument; or  
140 2. Established by other evidence that would be admissible  
141 in a judicial proceeding.

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

- 144 1. A trustee or trust director in accordance with the  
145 applicable law;  
146 2. A court order; or  
147 3. A nonjudicial settlement agreement under s. 736.0111.

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

149 (d) For a life estate or term interest, the corresponding  
150 manifestation of the rights of the beneficiaries to the extent  
151 provided in s. 738.508 ~~the manifestation of the intent of a~~  
152 ~~grantor or decedent with respect to the trust, expressed in a~~  
153 ~~manner that admits of its proof in a judicial proceeding,~~  
154 ~~whether by written or spoken words or by conduct.~~

155 (25) "Trust" includes an express trust, whether private or  
156 charitable, with additions to the trust, wherever and however



172844

157 created; and a trust created or determined by a judgment or  
158 decree under which the trust is to be administered in the manner  
159 of an express trust. The term does not include a constructive  
160 trust; a resulting trust; a conservatorship; a custodial  
161 arrangement under the Florida Uniform Transfers to Minors Act; a  
162 business trust providing for certificates to be issued to  
163 beneficiaries; a common trust fund; a land trust under s.  
164 689.071; a trust created by the form of the account or by the  
165 deposit agreement at a financial institution; a voting trust; a  
166 security arrangement; a liquidation trust; a trust for the  
167 primary purpose of paying debts, dividends, interest, salaries,  
168 wages, profits, pensions, retirement benefits, or employee  
169 benefits of any kind; or an arrangement under which a person is  
170 a nominee, an escrowee, or an agent for another.

171 (26) ~~(14)~~ "Trustee" means a person, other than a personal  
172 representative, that owns or holds property for the benefit of a  
173 beneficiary. The term includes an original, additional, or  
174 successor trustee, regardless of whether they are ~~or not~~  
175 appointed or confirmed by a court.

176 (27) "Will" means any testamentary instrument recognized  
177 under applicable law which makes a legally effective disposition  
178 of an individual's property, effective at the individual's  
179 death. The term includes a codicil or other amendment to a  
180 testamentary instrument.

181 Section 3. Section 738.103, Florida Statutes, is amended to  
182 read:

183 (Substantial rewording of section. See  
184 s. 738.103, F.S., for present text.)  
185 738.103 Scope.—Except as otherwise provided in the terms of



172844

186 a trust or this chapter, this chapter applies to all of the  
187 following:

188 (1) A trust or an estate.

189 (2) A life estate or other term interest in which the  
190 interest of one or more persons will be succeeded by the  
191 interest of one or more other persons to the extent provided in  
192 s. 738.508.

193 Section 4. Section 738.104, Florida Statutes, is amended to  
194 read:

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

197 738.104 Governing law.—Except as otherwise provided in the  
198 terms of a trust or this chapter, this chapter applies when this  
199 state is the principal place of administration of a trust or  
200 estate or the situs of property that is not held in a trust or  
201 estate and is subject to a life estate or other term interest  
202 described in s. 738.103(2). By accepting the trusteeship of a  
203 trust having its principal place of administration in this state  
204 or by moving the principal place of administration of a trust to  
205 this state, the trustee submits to the application of this  
206 chapter to any matter within the scope of this chapter involving  
207 the trust.

208 Section 5. Section 738.1041, Florida Statutes, is repealed.

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

210 Section 7. Section 738.201, Florida Statutes, is amended to  
211 read:

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

214 738.201 Fiduciary duties; general principles.—





172844

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

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

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

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

226       (d) Administer the trust or estate in accordance with this  
227 chapter, except to the extent that the terms of the trust  
228 provide otherwise or authorize the fiduciary to determine  
229 otherwise.

230       (2) A fiduciary's allocation, determination, or exercise of  
231 discretion under this chapter is presumed to be fair and  
232 reasonable to all beneficiaries. A fiduciary may exercise a  
233 discretionary power of administration given to the fiduciary by  
234 the terms of the trust, and an exercise of the power that  
235 produces a result different from a result required or permitted  
236 by this chapter does not create an inference that the fiduciary  
237 abused the fiduciary's discretion.

238       (3) A fiduciary shall:

239       (a) Add a receipt to principal, to the extent that the  
240 terms of the trust and this chapter do not allocate the receipt  
241 between income and principal;

242       (b) Charge a disbursement to principal, to the extent that  
243 the terms of the trust and this chapter do not allocate the



172844

244 disbursement between income and principal; and  
245 (c) Within 65 days after the fiscal year ends, add any  
246 undistributed income to principal, unless otherwise provided by  
247 the terms of the trust.  
248 (4) A fiduciary may exercise the power to adjust under s.  
249 738.203(1), convert an income trust to a unitrust under ss.  
250 738.301-738.310, change the percentage or method used to  
251 calculate a unitrust amount under ss. 738.301-738.310, or  
252 convert a unitrust to an income trust under ss. 738.301-738.310  
253 if the fiduciary determines the exercise of the power will  
254 assist the fiduciary to administer the trust or estate  
255 impartially.  
256 (5) The fiduciary must consider the following factors in  
257 making the determination in subsection (4), including:  
258 (a) The terms of the trust.  
259 (b) The nature, distribution standards, and expected  
260 duration of the trust.  
261 (c) The effect of the allocation rules, including specific  
262 adjustments between income and principal, under ss. 738.301-  
263 738.416.  
264 (d) The desirability of liquidity and regularity of income.  
265 (e) The desirability of the preservation and appreciation  
266 of principal.  
267 (f) The extent to which an asset is used or may be used by  
268 a beneficiary.  
269 (g) The increase or decrease in the value of principal  
270 assets, reasonably determined by the fiduciary.  
271 (h) Whether and to what extent the terms of the trust give  
272 the fiduciary power to accumulate income or invade principal or



172844

273 prohibit the fiduciary from accumulating income or invading  
274 principal.

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

277 (j) The effect of current and reasonably expected economic  
278 conditions.

279 (k) The reasonably expected tax consequences of the  
280 exercise of the power.

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

282 (6) Except as provided in ss. 738.301-738.310, this chapter  
283 pertains to the administration of a trust and is applicable to  
284 any trust that is administered in this state or under its law.  
285 This chapter also applies to any estate that is administered in  
286 this state unless the provision is limited in application to a  
287 trustee, rather than a fiduciary.

288 Section 8. Section 738.202, Florida Statutes, is amended to  
289 read:

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

292 738.202 Judicial review of exercise of discretionary power;  
293 request for instruction.—

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

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

299 (b) The fiduciary's exercise or nonexercise of a  
300 discretionary power regarding income and principal granted by  
301 the terms of the trust or this chapter, including the power to



172844

302 adjust under s. 738.203, convert an income trust to a unitrust  
303 under ss. 738.301-738.310, change the percentage or method used  
304 to calculate a unitrust amount under ss. 738.301-738.310,  
305 convert a unitrust to an income trust under ss. 738.301-738.310,  
306 or the method used to make property productive of income under  
307 s. 738.413.

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

310 (2) The court may not order a fiduciary to change a  
311 fiduciary decision unless the court determines that the  
312 fiduciary decision was an abuse of the fiduciary's discretion. A  
313 court may not determine that a fiduciary abused its discretion  
314 merely because the court would have exercised the discretion in  
315 a different manner or would not have exercised the discretion.

316 (3) If the court determines that a fiduciary decision was  
317 an abuse of the fiduciary's discretion, the court may order a  
318 remedy authorized by law, including those prescribed under ss.  
319 736.1001 and 736.1002. Following such a determination by the  
320 court, the remedy is to place the beneficiaries in the positions  
321 the beneficiaries would have occupied if the fiduciary had not  
322 abused its discretion, as follows:

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

325 (b) The court may order the fiduciary to exercise or  
326 refrain from exercising the power to convert an income trust to  
327 a unitrust under ss. 738.301-738.310, change the percentage or  
328 method used to calculate a unitrust amount under ss. 738.301-  
329 738.310, or convert a unitrust to an income trust under ss.  
330 738.301-738.310;



172844

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

333 (d) To the extent that the abuse of discretion has resulted  
334 in no distribution to a beneficiary or a distribution that is  
335 too small, the court shall require the fiduciary to distribute  
336 from the trust to the beneficiary an amount the court determines  
337 will restore the beneficiary, in whole or in part, to his or her  
338 appropriate position;

339 (e) To the extent that the abuse of discretion has resulted  
340 in a distribution to a beneficiary that is too large, the court  
341 shall restore the beneficiaries, the trust, or both, in whole or  
342 in part, to their appropriate positions by requiring the  
343 fiduciary to withhold an amount from one or more future  
344 distributions to the beneficiary who received the distribution  
345 that was too large or requiring that beneficiary to return some  
346 or all of the distribution to the trust; or

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

353 (4) On petition by the fiduciary for instruction, the court  
354 may determine whether a proposed fiduciary decision will result  
355 in an abuse of the fiduciary's discretion. If the petition  
356 describes the proposed decision, contains sufficient information  
357 to inform the beneficiary of the reasons for making the proposed  
358 decision and the facts on which the fiduciary relies, and  
359 explains how the beneficiary will be affected by the proposed



172844

360 decision, a beneficiary who opposes the proposed decision has  
361 the burden to establish that it will result in an abuse of the  
362 fiduciary's discretion.

363 (5) If an action is instituted alleging an abuse of  
364 discretion in the exercise or nonexercise of the fiduciary's  
365 discretion under this chapter and the court determines no abuse  
366 of discretion has occurred, the fiduciary's costs and attorney  
367 fees incurred in defending the action shall be paid from the  
368 trust assets.

369 Section 9. Section 738.203, Florida Statutes, is created to  
370 read:

371 738.203 Fiduciary's power to adjust.-

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

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

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

383 (4) In deciding whether and to what extent to exercise the  
384 power to adjust under subsection (1), a fiduciary shall consider  
385 all factors the fiduciary considers relevant, including relevant  
386 factors in s. 738.201(5), and the application of ss. 738.401(9),  
387 738.408 and 738.413.

388 (5) A fiduciary may not exercise the power under subsection



172844

389 (1) to make an adjustment or under s. 738.408 to make a  
390 determination that an allocation is insubstantial if:

391 (a) The adjustment or determination would reduce the amount  
392 payable to a current income beneficiary from a trust that  
393 qualifies for a special tax benefit, except to the extent that  
394 the adjustment is made to provide for a reasonable apportionment  
395 of the total return of the trust between the current income  
396 beneficiary and successor beneficiaries;

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

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

404 (d) Possessing or exercising the power would cause a person  
405 to be treated as the owner of all or part of the trust for  
406 federal income tax purposes and the person would not be treated  
407 as the owner if the fiduciary did not possess the power to  
408 adjust;

409 (e) Possessing or exercising the power would cause all or  
410 part of the value of the trust assets to be included in the  
411 gross estate of an individual for federal real estate tax  
412 purposes and the assets would not be included in the gross  
413 estate of the individual if the fiduciary did not possess the  
414 power to adjust;

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



172844

418           (g) The fiduciary is not an independent person;  
419           (h) The trust is irrevocable and provides for income to be  
420 paid to the settlor, and possessing or exercising the power  
421 would cause the adjusted principal or income to be considered an  
422 available resource or available income under a public-benefit  
423 program; or  
424           (i) The trust is a unitrust under ss. 738.301-738.310.  
425           (6) If paragraph (5) (d), paragraph (5) (e), paragraph  
426 (5) (f), or paragraph (5) (g) applies to a fiduciary:  
427           (a) A cofiduciary to which paragraphs (5) (d)-(g) do not  
428 apply may exercise the power to adjust, unless the exercise of  
429 the power by the remaining cofiduciary or cofiduciaries is not  
430 permitted by the terms of the trust or law other than this  
431 chapter; or  
432           (b) If there is no cofiduciary to which paragraphs (5) (d)-  
433 (g) do not apply, the fiduciary may appoint a cofiduciary to  
434 which paragraphs (5) (d)-(g) do not apply which may be a special  
435 fiduciary with limited powers, and the appointed cofiduciary may  
436 exercise the power to adjust under subsection (1), unless the  
437 appointment of a cofiduciary or the exercise of the power by a  
438 cofiduciary is not permitted by the terms of the trust or law  
439 other than this chapter.  
440           (7) A fiduciary may release or delegate to a cofiduciary  
441 the power to adjust under subsection (1) if the fiduciary  
442 determines that the fiduciary's possession or exercise of the  
443 power will or may:  
444           (a) Cause a result described in paragraph (5) (a), paragraph  
445 (5) (b), paragraph (5) (c), paragraph (5) (d), paragraph (5) (e),  
446 paragraph (5) (f), or paragraph (5) (h); or





172844

447 (b) Deprive the trust of a tax benefit or impose a tax  
448 burden not described in paragraph (5) (a), paragraph (5) (b),  
449 paragraph (5) (c), paragraph (5) (d), paragraph (5) (e), or  
450 paragraph (5) (f).

451 (8) A fiduciary's release or delegation to a cofiduciary  
452 under subsection (7) of the power to adjust under subsection  
453 (1):

454 (a) Must be in a record;

455 (b) Applies to the entire power, unless the release or  
456 delegation provides a limitation, which may be a limitation to  
457 the power to adjust:

458 1. From income to principal;

459 2. From principal to income;

460 3. For specified property; or

461 4. In specified circumstances.

462 (c) For a delegation, may be modified by a redelegation  
463 under this subsection by the cofiduciary to which the delegation  
464 is made; and

465 (d) Subject to paragraph (c), is permanent, unless the  
466 release or delegation provides a specified period, including a  
467 period measured by the life of an individual or the lives of  
468 more than one individual.

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

473 (10) The exercise of the power to adjust under subsection  
474 (1) in any accounting period may apply to the current period,  
475 the immediately preceding period, and one or more subsequent



172844

476 periods.

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

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

481 (b) Communicated at least annually to the qualified  
482 beneficiaries as defined in s. 736.0103 other than the Attorney  
483 General.

484 (12) With respect to a trust in existence on January 1,  
485 2003:

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

490 1. An objection is made if, within 60 days after the date  
491 of the statement required in subsection (13), a super majority  
492 of the eligible beneficiaries deliver to the fiduciary a written  
493 objection to the application of this section to such trust. An  
494 objection shall be deemed to be delivered to the fiduciary on  
495 the date the objection is mailed to the mailing address listed  
496 in the notice provided in subsection (13).

497 2. An objection is terminated upon the earlier of the  
498 receipt of consent from a super majority of eligible  
499 beneficiaries of the class that made the objection, or the  
500 resolution of the objection under paragraph (c).

501 (b) An objection or consent under this section may be  
502 executed by a legal representative or natural guardian of a  
503 beneficiary without the filing of any proceeding or approval of  
504 any court.



172844

505       (c) If an objection is delivered to the fiduciary, then the  
506 fiduciary may petition the circuit court for an order quashing  
507 the objection and vesting in such fiduciary the power to adjust  
508 under this section. The burden will be on the objecting  
509 beneficiaries to prove that the power to adjust would be  
510 inequitable, illegal, or otherwise in contravention of the  
511 grantor's intent. The court may award costs and attorney fees  
512 relating to the fiduciary's petition in the same manner as in  
513 chancery actions. When costs and attorney fees are to be paid  
514 out of the trust, the court may, in its discretion, direct from  
515 which part of the trust they shall be paid.

516       (d) If no timely objection is made or if the fiduciary is  
517 vested with the power to adjust by court order, the fiduciary  
518 may thereafter exercise the power to adjust without providing  
519 notice of its intent to do so unless, in vesting the fiduciary  
520 with the power to adjust, the court determines that unusual  
521 circumstances require otherwise.

522       (e)1. If a fiduciary makes a good faith effort to comply  
523 with the notice provisions of subsection (13), but fails to  
524 deliver notice to one or more beneficiaries entitled to such  
525 notice, neither the validity of the notice required under this  
526 subsection nor the fiduciary's power to adjust under this  
527 section shall be affected until the fiduciary has actual notice  
528 that one or more beneficiaries entitled to notice were not  
529 notified. Until the fiduciary has actual notice of the notice  
530 deficiency, the fiduciary shall have all of the powers and  
531 protections granted a fiduciary with the power to adjust under  
532 this chapter.

533       2. When the fiduciary has actual notice that one or more



172844

534 beneficiaries entitled to notice under subsection (13) were not  
535 notified, the fiduciary's power to adjust under this section  
536 shall cease until all beneficiaries who are entitled to such  
537 notice, including those who were previously provided with such  
538 notice, are notified and given the opportunity to object as  
539 provided for under this subsection.

540 (f) The objection of a super majority of eligible  
541 beneficiaries under this subsection shall be valid for a period  
542 of 1 year after the date of the notice set forth in subsection  
543 (13). Upon expiration of the objection, the fiduciary may  
544 thereafter give a new notice under subsection (13).

545 (g) This section is not intended to create or imply a duty  
546 of the fiduciary of a trust existing on January 1, 2003, to seek  
547 a power to adjust under this subsection or to give the notice  
548 described in subsection (13) if the fiduciary does not desire to  
549 have a power to adjust under this section, and no inference of  
550 impropriety shall be made as the result of a fiduciary not  
551 seeking a power to adjust under this subsection.

552 (13) (a) A fiduciary of a trust in existence on January 1,  
553 2003, that is not prohibited under subsection (5) from  
554 exercising the power to adjust shall, any time before initially  
555 exercising the power, provide to all eligible beneficiaries a  
556 statement containing the following:

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

560 2. A statement that unless a super majority of the eligible  
561 beneficiaries objects to the application of this section to the  
562 trust within 60 days after the date the statement pursuant to



172844

563 this subsection was served, this section shall apply to the  
564 trust; and

565 3. A statement that, if this section applies to the trust,  
566 the fiduciary will have the power to adjust between income and  
567 principal and that such a power may have an effect on the  
568 distributions to such beneficiary from the trust.

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

572 (c) The statement shall be served informally, in the manner  
573 provided in the Florida Rules of Civil Procedure relating to  
574 service of pleadings subsequent to the initial pleading. The  
575 statement may be served on a legal representative or natural  
576 guardian of a beneficiary without the filing of any proceeding  
577 or approval of any court.

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

579 1. "Eligible beneficiaries" means:

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

583 b. If there is no beneficiary described in s.  
584 736.0103(19) (c), the beneficiaries described in s.  
585 736.0103(19) (a) and (b).

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

587 a. If at the time the determination is made there are one  
588 or more beneficiaries described in s. 736.0103(19) (c), at least  
589 two-thirds in interest of the beneficiaries described in s.  
590 736.0103(19) (a) or two-thirds in interest of the beneficiaries  
591 described in s. 736.0103(19) (c), if the interests of the



172844

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

594 b. If there is no beneficiary described in s.  
595 736.0103(19)(c), at least two-thirds in interest of the  
596 beneficiaries described in s. 736.0103(19)(a) or two-thirds in  
597 interest of the beneficiaries described in s. 736.0103(19)(b),  
598 if the interests of the beneficiaries are reasonably  
599 ascertainable, otherwise, two-thirds in number of either such  
600 class.

601 (15) A trust exists on January 1, 2003, if it is not  
602 revocable on January 1, 2003. A trust is revocable if revocable  
603 by the grantor alone or in conjunction with any other person. A  
604 trust is not revocable for purposes of this section if revocable  
605 by the grantor only with the consent of all persons having a  
606 beneficial interest in the property.

607 Section 10. Section 738.301, Florida Statutes, is amended  
608 to read:

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

611 738.301 Definitions.—For purposes of this section and ss.  
612 738.302-738.310:

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

615 (2) "Express unitrust" means a trust for which, under the  
616 terms of the trust without regard to this section and ss.  
617 738.302-738.310, net income must be calculated as a unitrust  
618 amount.

619 (3) "Income trust" means a trust, created by an inter vivos  
620 or testamentary instrument, that directs or permits the trustee



172844

621 to distribute the net income of the trust to one or more  
622 persons, in fixed proportions or in amounts or proportions  
623 determined by the trustee and regardless of whether the trust  
624 directs or permits the trustee to distribute the principal of  
625 the trust to one or more such persons.

626 (4) "Net fair market value of a trust" means the fair  
627 market value of the assets of the trust, less the reasonably  
628 known noncontingent liabilities of the trust.

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

631 (6) "Unitrust amount" means an amount computed by  
632 multiplying a determined value of a trust by a determined  
633 percentage. For a unitrust administered under a unitrust policy,  
634 the term means the applicable value multiplied by the unitrust  
635 rate.

636 (7) "Unitrust policy" means a policy described in ss.  
637 738.301-738.310 and adopted under s. 738.303.

638 (8) "Unitrust rate" means the rate used to compute the  
639 unitrust amount for a unitrust administered under a unitrust  
640 policy.

641 Section 11. Section 738.302, Florida Statutes, is amended  
642 to read:

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

645 738.302 Applications; duties and remedies.-

646 (1) Except as otherwise provided in subsection (2), ss.  
647 738.301-738.310 apply to all of the following:

648 (a) An income trust, unless the terms of the trust  
649 expressly prohibit the use of ss. 738.301-738.310 by a specific



172844

650 reference to this paragraph or corresponding provision of prior  
651 law, or an explicit expression of intent that net income not be  
652 calculated as a unitrust amount.

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

655 1. Prohibit the use of ss. 738.301-738.310 by a specific  
656 reference to this paragraph or corresponding provision of prior  
657 law;

658 2. Prohibit conversion to an income trust; or

659 3. Limit changes to the method of calculating the unitrust  
660 amount.

661 (c) A unitrust that had been converted from an income  
662 trust.

663 (2) The provisions of ss. 738.301-738.310 do not apply to a  
664 trust described in s. 170(f)(2)(B), s. 642(c)(5), s. 664(d), s.  
665 2702(a)(3)(A)(ii) or (iii), or s. 2702(b) of the Internal  
666 Revenue Code.

667 (3) An income trust to which ss. 738.301-738.310 apply  
668 under paragraph (1)(a) may be converted to a unitrust under ss.  
669 738.301-738.310 regardless of the terms of the trust concerning  
670 distributions. Conversion to a unitrust under ss. 738.301-  
671 738.310 does not affect other terms of the trust concerning  
672 distributions of income or principal.

673 (4) Sections 738.301-738.310 apply to an estate only to the  
674 extent that a trust is a beneficiary of the estate. To the  
675 extent of the trust's interest in the estate, the estate may be  
676 administered as a unitrust, the administration of the estate as  
677 a unitrust may be discontinued, or the percentage or method used  
678 to calculate the unitrust amount may be changed, in the same





172844

679 manner as for a trust under those sections.

680 (5) The provisions of ss. 738.301-738.310 do not create a  
681 duty to take or consider action under ss. 738.301-738.310 or to  
682 inform a beneficiary about the applicability of ss. 738.301-  
683 738.310.

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

687 Section 12. Section 738.303, Florida Statutes, is amended  
688 to read:

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

691 738.303 Authority of fiduciary.-

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

694 (a) Convert an income trust to a unitrust if the fiduciary  
695 adopts in a record a unitrust policy for the trust which  
696 provides:

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

700 2. The percentage and method used to calculate the unitrust  
701 amount.

702 (b) Change the percentage or method used to calculate a  
703 unitrust amount for a unitrust if the fiduciary adopts in a  
704 record a unitrust policy or an amendment or replacement of a  
705 unitrust policy providing charges in the percentage or method  
706 used to calculate the unitrust amount.

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



172844

708 adopts in a record a determination that, in administering the  
709 trust, the net income of the trust will be net income determined  
710 without regard to ss. 738.301-738.310 rather than a unitrust  
711 amount.

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

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

716 (b) The fiduciary sends a notice in a record to the  
717 qualified beneficiaries determined under ss. 736.0103 and  
718 736.0110 in the manner required by s. 738.304, describing and  
719 proposing to take the action.

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

- 722 1. If an individual, living; or  
723 2. If not an individual, in existence.

724 (d) At least one member of each class of the qualified  
725 beneficiaries determined under ss. 736.0103 and 736.0110, other  
726 than the Attorney General, receiving the notice under paragraph  
727 (b) is:

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

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

735 (3) If a fiduciary receives, not later than the date stated  
736 in the notice under s. 738.304(4) (e), an objection in a record



172844

737 described in s. 738.304(4) (d) to a proposed action, the  
738 fiduciary or a beneficiary may request the court to have the  
739 action taken as proposed, taken with modifications, or  
740 prevented. A person described in s. 738.304(1) may oppose the  
741 proposed action in the proceeding under this subsection  
742 regardless of whether the person:  
743 (a) Consented under s. 738.304(3); or  
744 (b) Objected under s. 738.304(4) (d).  
745 (4) If, after sending a notice under paragraph (2) (b), a  
746 fiduciary decides not to take the action proposed in the notice,  
747 the fiduciary must notify in a record each person described in  
748 s. 738.304(1) of the decision not to take the action and the  
749 reasons for the decision.  
750 (5) If a beneficiary requests in a record that a fiduciary  
751 take an action described in subsection (1) and the fiduciary  
752 declines to act or does not act within 60 days after receiving  
753 the request, the beneficiary may request the court to direct the  
754 fiduciary to take the action requested.  
755 (6) In deciding whether and how to take an action  
756 authorized in subsection (1), or whether and how to respond to a  
757 request by a beneficiary under subsection (5), a fiduciary must  
758 consider all factors relevant to the trust and beneficiaries,  
759 including the relevant factors listed in s. 738.201(5).  
760 (7) A fiduciary may release or delegate the power to  
761 convert an income trust to a unitrust under paragraph (1) (a),  
762 change the percentage or method used to calculate a unitrust  
763 amount under paragraph (1) (b), or convert a unitrust to an  
764 income trust under paragraph (1) (c), for a reason described in  
765 s. 738.203(7) and in the manner described in s. 738.203(8).



172844

766 Section 13. Section 738.304, Florida Statutes, is created  
767 to read:

768 738.304 Notice.—

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

771 (a) The qualified beneficiaries determined under s.  
772 736.0103, other than the Attorney General.

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

776 1. Including all of the following:

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

779 b. Power to appoint or remove a trustee or person described  
780 in this paragraph.

781 2. Excluding all of the following:

782 a. Power of appointment.

783 b. Power of a beneficiary over the trust, to the extent  
784 that the exercise or nonexercise of the power affects the  
785 beneficial interest of the beneficiary or another beneficiary  
786 represented by the beneficiary under ss. 736.0301-736.0306 with  
787 respect to the exercise or nonexercise of the power.

788 c. Power over the trust if the terms of the trust provide  
789 that the power is held in a nonfiduciary capacity and the power  
790 must be held in a nonfiduciary capacity to achieve a tax  
791 objective under the Internal Revenue Code.

792 (c) Each person that is granted a power by the terms of the  
793 trust to appoint or remove a trustee or person described in  
794 paragraph (b) to the extent that the power is exercisable when



795 the person that exercises the power is not serving as a trustee  
796 or person described in paragraph (b).

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

799 (3) A person may consent in a record at any time to action  
800 proposed under s. 738.303(2) (b). A notice required by s.  
801 738.303(2) (b) need not be sent to a person that consents under  
802 this subsection.

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

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

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

808 (c) For a change in the percentage or method used to  
809 calculate the unitrust amount, a copy of the unitrust policy or  
810 amendment or replacement of the unitrust policy adopted under s.  
811 738.303(1) (b).

812 (d) A statement that the person to which the notice is sent  
813 may object to the proposed action by stating in a record the  
814 basis for the objection and sending or delivering the record to  
815 the fiduciary.

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

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

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

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



824 Section 14. Section 738.305, Florida Statutes, is created  
825 to read:

826 738.305 Unitrust policy.—

827 (1) In administering a unitrust under ss. 738.301-738.310,  
828 a fiduciary shall follow a unitrust policy adopted under s.  
829 738.303(1)(a) or (b) or amended or replaced under s.  
830 738.303(1)(b).

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

832 (a) The unitrust rate or method for determining the  
833 unitrust rate under s. 738.306.

834 (b) The method for determining the applicable value under  
835 s. 738.307.

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

838 1. Mandatory as provided in ss. 738.307(1) and (3),  
839 738.308(1), and 738.310; or

840 2. Optional as provided in ss. 738.306, 738.307(2), and  
841 738.308(2), to the extent that the fiduciary elects to adopt  
842 those rules.

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

844 (a) Provide methods and standards for:

845 1. Determining the timing of the distributions;

846 2. Making distributions in cash or in kind or partly in  
847 cash and partly in kind; or

848 3. Correcting an underpayment or overpayment to a  
849 beneficiary based on the unitrust amount if there is an error in  
850 calculating the unitrust amount.

851 (b) Specify sources and the order of sources, including  
852 categories of income for federal income tax purposes, from which



172844

853 distributions of a unitrust amount are paid.

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

856 Section 15. Section 738.306, Florida Statutes, is created  
857 to read:

858 738.306 Unitrust rate.—

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

861 (a) A fixed unitrust rate; or

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

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

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

867 2. If the rate calculated under this paragraph would be  
868 less than 3, the rate is 3; and if the rate calculated would be  
869 more than 5, the rate is 5.

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

872 (a) A limit on how much the unitrust rate determined under  
873 paragraph (1)(b) may increase over the unitrust rate for the  
874 preceding period or a mathematical blend of unitrust rates over  
875 a stated number of preceding periods.

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

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



172844

882       (3) If the fiduciary is not an independent person, the  
883 percentage used to calculate the unitrust amount is the rate  
884 determined under s. 7520(a)(2) of the Internal Revenue Code in  
885 effect for the month the conversion under this section becomes  
886 effective and for each January thereafter; however, if the rate  
887 determined under s. 7520(a)(2) of the Internal Revenue Code  
888 exceeds 5 percent, the unitrust rate is 5 percent, and if the  
889 rate determined under s. 7520(a)(2) of the Internal Revenue Code  
890 is less than 3 percent, the unitrust rate is 3 percent.

891       Section 16. Section 738.307, Florida Statutes, is created  
892 to read:

893       738.307 Applicable value.—

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

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

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

901       (2) Except as otherwise provided in s. 738.309, a unitrust  
902 policy may provide methods for determining the amount of the net  
903 fair market value of the trust to take into account in  
904 determining the applicable value, including any of the  
905 following:

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

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

910       (c) Making other exceptions or modifications of the





172844

911 treatment of specific assets or groups or types of assets.

912 (d) Including identification and treatment of cash or  
913 property held for distribution.

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

916 (f) Determining the reasonable known liabilities of the  
917 trust, including treatment of liabilities to conform with the  
918 treatment of assets under paragraphs (a)-(e).

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

921 (a) Any residential property or any tangible personal  
922 property that, as of the first business day of the current  
923 valuation year, one or more current beneficiaries of the trust  
924 have or have had the right to occupy or have or have had the  
925 right to possess or control, other than in his or her capacity  
926 as trustee of the trust. Instead, the right of occupancy or the  
927 right to possession and control is the unitrust amount with  
928 respect to such property; however, the unitrust amount must be  
929 adjusted to take into account partial distributions from or  
930 receipt into the trust of such property during the valuation  
931 year;

932 (b) Any asset specifically given to a beneficiary and the  
933 return on investment on such property, which return on  
934 investment must be distributable to the beneficiary; and

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

936 Section 17. Section 738.308, Florida Statutes, is created  
937 to read:

938 738.308 Period.—

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



172844

940 ss. 738.306 and 738.307. The period must be the calendar year.  
941 (2) A unitrust policy may provide standards for:  
942 (a) Using fewer preceding periods under s. 738.306(1)(b)1.  
943 or (2)(a) or (b) if:  
944 1. The trust was not in existence in a preceding period; or  
945 2. Market indices or other published data are not available  
946 for a preceding period;  
947 (b) Using fewer preceding periods under 738.307(2)(e) if:  
948 1. The trust was not in existence in a preceding period; or  
949 2. Fair market values are not available for a preceding  
950 period; and  
951 (c) Prorating a unitrust amount on a daily basis for a part  
952 of a period in which the trust or the administration of the  
953 trust as a unitrust or the interest of any beneficiary commences  
954 or terminates.  
955 Section 18. Section 738.309, Florida Statutes, is created  
956 to read:  
957 738.309 Express unitrust.—  
958 (1) This section applies to a trust that, by its governing  
959 instrument, requires or allows income or net income to be  
960 calculated as a unitrust amount.  
961 (2) The trustee of an express unitrust may determine the  
962 unitrust amount by reference to the net fair market value of the  
963 unitrust's assets in 1 or more years.  
964 (3) Distribution of a unitrust amount is considered a  
965 distribution of all of the net income of an express unitrust and  
966 is considered to be an income interest.  
967 (4) The unitrust amount is considered to be a reasonable  
968 apportionment of the total return of an express unitrust.



969       (5) An express unitrust that provides or allows a  
970 distribution based on a unitrust rate in excess of 5 percent per  
971 year of the net fair market value of the unitrust assets is  
972 considered a distribution of all of the income of the unitrust  
973 and a distribution of principal of the unitrust to the extent  
974 that the distribution exceeds 5 percent per year.

975       (6) An express unitrust may provide a mechanism for  
976 changing the unitrust rate, similar to the mechanism provided  
977 under s. 738.306, based upon the factors noted in that section,  
978 and may provide for a conversion from a unitrust to an income  
979 trust or a reconversion of an income trust to a unitrust under  
980 s. 738.303.

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

985       (8) The governing instrument of an express unitrust may  
986 grant the trustee discretion to adopt a consistent practice of  
987 treating capital gains as part of the unitrust amount to the  
988 extent that the unitrust amount exceeds the income determined as  
989 if the trust were not an express unitrust, or the governing  
990 instrument may specify the ordering of classes of income.

991       (9) Unless the terms of the express unitrust specifically  
992 provide otherwise as provided in subsection (8), the  
993 distribution of a unitrust amount is considered a distribution  
994 made from the following sources, which are listed in order of  
995 priority:

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



172844

- 998        (b) Ordinary income not allocable to net accounting income;  
999        (c) Net realized short-term capital gains;  
1000       (d) Net realized long-term capital gains; and  
1001       (e) The principal of the trust.

1002       (10) The governing instrument of an express unitrust may  
1003 provide that the trustee may exclude assets used by the  
1004 unitrust's beneficiary, including, but not limited to, a  
1005 residence property or tangible personal property, from the net  
1006 fair market value of the unitrust's assets for the purposes of  
1007 computing the unitrust amount. The use of these assets may be  
1008 considered equivalent to income or to the unitrust amount.

1009  
1010       Section 19. Section 738.310, Florida Statutes, is created  
1011 to read:

1012       738.310 Other rules.—Following the conversion of an income  
1013 trust to a unitrust, the trustee shall consider the unitrust  
1014 amount as paid from the following sources, which are listed in  
1015 order of priority:

1016       (1) Net accounting income determined under this chapter as  
1017 if the trust were not a unitrust;

1018       (2) Ordinary income not allocable to net accounting income;

1019       (3) Net realized short-term capital gains;

1020       (4) Net realized long-term capital gains; and

1021       (5) The principal of the trust.

1022       Section 20. Section 738.401, Florida Statutes, is amended  
1023 to read:

1024       738.401 Character of receipts from entity.—

1025       (1) For purposes of this section, the term:

1026       (a) "Capital distribution" means an entity distribution of



172844

1027 money which is a:  
1028       1. Return of capital; or  
1029       2. Distribution in total or partial liquidation of the  
1030 entity.  
1031       (b) "Entity":  
1032       1. Means a corporation, partnership, limited liability  
1033 company, regulated investment company, real estate investment  
1034 trust, common trust fund, or any other organization or  
1035 arrangement in which a fiduciary owns or holds ~~has~~ an interest,  
1036 regardless of whether the entity is a taxpayer for federal  
1037 income tax purposes; and  
1038       2. Does not include:  
1039       a. A trust or estate to which s. 738.402 applies;  
1040       b. A business or other activity to which s. 738.403 applies  
1041 which is not conducted by an entity described in subparagraph  
1042 1.;  
1043       c. An asset-backed security; or  
1044       d. An instrument or arrangement to which s. 738.416 applies  
1045 ~~other than a trust or estate to which s. 738.402 applies, a~~  
1046 ~~business or activity to which s. 738.403 applies, or an asset-~~  
1047 ~~backed security to which s. 738.608 applies.~~  
1048       (c) "Entity distribution" means a payment or transfer by an  
1049 entity to a person in the person's capacity as an owner or  
1050 holder of an interest in the entity.  
1051       (d) "Lookback period" means the accounting period and the  
1052 preceding two accounting periods or, if less, the number of  
1053 accounting periods, or portion of accounting periods, that the  
1054 interest in the entity has been held by the fiduciary.  
1055       (2) In this section, an attribute or action of an entity



172844

1056 includes an attribute or action of any other entity in which the  
1057 initial entity owns or holds an interest, including an interest  
1058 owned or held indirectly through another entity.

1059 (3) Except as otherwise provided in paragraphs (4) (b), (c),  
1060 and (d) ~~this section~~, a fiduciary shall allocate to income:

1061 (a) Money received in an entity distribution; and

1062 (b) Tangible personal property of nominal value received  
1063 from the ~~money received from an~~ entity.

1064 (4) ~~(3) Except as otherwise provided in this section, A~~  
1065 fiduciary shall allocate the following ~~receipts from an~~ entity  
1066 to principal:

1067 (a) Property received in an entity distribution which is  
1068 not:

1069 1. ~~other than~~ Money; or

1070 2. Tangible personal property of nominal value.

1071 (b) Money received in an entity ~~one~~ distribution ~~or a~~  
1072 ~~series of related distributions~~ in an exchange for part or all  
1073 of ~~the fiduciary's a trust's or estate's~~ interest in the entity  
1074 to the extent that the entity distribution reduces the  
1075 fiduciary's interest in the entity relative to the interest of  
1076 other persons that own or hold interests in the entity.

1077 (c) Money received in an entity distribution that is a  
1078 capital distribution, to the extent not allocated to income  
1079 ~~total or partial liquidation of the~~ entity.

1080 (d) Money received in an entity distribution from an entity  
1081 that is a regulated investment company or a real estate  
1082 investment trust if the money received represents short-term or  
1083 long-term capital gain realized within the entity.

1084 ~~(e) Money received from an entity listed on a public stock~~



172844

1085 ~~exchange during any year of the trust or estate which exceeds 10~~  
1086 ~~percent of the fair market value of the trust's or estate's~~  
1087 ~~interest in the entity on the first day of that year. The amount~~  
1088 ~~to be allocated to principal must be reduced to the extent that~~  
1089 ~~the cumulative distributions from the entity to the trust or~~  
1090 ~~estate allocated to income do not exceed a cumulative annual~~  
1091 ~~return of 3 percent of the fair market value of the interest in~~  
1092 ~~the entity at the beginning of each year or portion of a year~~  
1093 ~~for the number of years or portion of years in the period that~~  
1094 ~~the interest in the entity has been held by the trust or estate.~~  
1095 ~~If a trustee has exercised a power to adjust under s. 738.104~~  
1096 ~~during any period the interest in the entity has been held by~~  
1097 ~~the trust, the trustee, in determining the total income~~  
1098 ~~distributions from that entity, must take into account the~~  
1099 ~~extent to which the exercise of that power resulted in income to~~  
1100 ~~the trust from that entity for that period. If the income of the~~  
1101 ~~trust for any period has been computed under s. 738.1041, the~~  
1102 ~~trustee, in determining the total income distributions from that~~  
1103 ~~entity for that period, must take into account the portion of~~  
1104 ~~the unitrust amount paid as a result of the ownership of the~~  
1105 ~~trust's interest in the entity for that period.~~

1106 (5)(4) If a fiduciary elects, or continues an election made  
1107 by its predecessor, to reinvest dividends in shares of stock of  
1108 a distributing corporation or fund, whether evidenced by new  
1109 certificates or entries on the books of the distributing entity,  
1110 the new shares retain their character as income.

1111 (6)(5) Except as otherwise provided in subsections (10) and  
1112 (11), money received in an entity distribution is a capital  
1113 distribution ~~Money is received in partial liquidation:~~



172844

1114 (a) To the extent that the entity, at or near the time of  
1115 the entity a distribution, indicates that such money is a  
1116 capital distribution ~~in partial liquidation~~; or

1117 (b) To the extent that the total amount of money and  
1118 property received by the fiduciary in the entity ~~in a~~  
1119 distribution or a series of related entity distributions is or  
1120 will be greater than from an entity that is not listed on a  
1121 ~~public stock exchange exceeds~~ 20 percent of the fiduciary's  
1122 ~~trust's or estate's~~ pro rata share of the entity's gross assets,  
1123 as shown by the entity's year-end financial statements  
1124 immediately preceding the initial receipt.

1125  
1126 ~~This subsection does not apply to an entity to which subsection~~  
1127 ~~(7) applies.~~

1128 (7)(6) In the case of a capital distribution, the amount  
1129 received in an entity distribution allocated to principal must  
1130 be reduced to the extent that the cumulative distributions from  
1131 the entity to the fiduciary ~~Money may not be taken into account~~  
1132 ~~in determining any excess under paragraph (5) (b), to the extent~~  
1133 ~~that the cumulative distributions from the entity to the trust~~  
1134 ~~or the estate~~ allocated to income do not exceed the greater of:

1135 (a) A cumulative annual return of 3 percent of the entity's  
1136 carrying value computed at the beginning of each accounting  
1137 period, or portion of an accounting period, during the lookback  
1138 period ~~for the number of years or portion of years that the~~  
1139 ~~entity was held by the fiduciary.~~ If a fiduciary trustee has  
1140 exercised a power to adjust under s. 738.203 during the lookback  
1141 period, the fiduciary ~~s. 738.104~~ during any period the interest  
1142 ~~in the entity has been held by the trust, the trustee, in~~





172844

1143 determining the total income distributions from that entity,  
1144 must take into account the extent to which the exercise of the  
1145 power resulted in income to the fiduciary ~~trust~~ from that entity  
1146 for that period. If the income of a fiduciary during the  
1147 lookback ~~trust for any~~ period has been computed under ss.  
1148 738.301-738.310, the fiduciary pursuant to s. 738.1041, the  
1149 ~~trustee~~, in determining the total income distributions from the  
1150 entity for that period, must take into account the portion of  
1151 the unitrust amount paid as a result of the ownership of the  
1152 trust's interest in the entity for that period; or

1153 (b) In ~~If~~ the case of an entity is treated as a  
1154 partnership, subchapter S corporation, or a disregarded entity  
1155 under pursuant to the Internal Revenue Code of 1986, as amended,  
1156 the amount of income tax attributable to the fiduciary's ~~trust's~~  
1157 ~~or estate's~~ ownership share of the entity, based on its pro rata  
1158 share of the taxable income of the entity that distributes the  
1159 money, during the lookback period for the number of years or  
1160 portion of years that the interest in the entity was held by the  
1161 fiduciary, calculated as if all of the ~~that~~ tax was incurred by  
1162 the fiduciary.

1163 (8) If a fiduciary receives additional information about  
1164 the application of this section to an entity distribution before  
1165 the fiduciary has paid part of the entity distribution to a  
1166 beneficiary, the fiduciary may consider the additional  
1167 information before making the payment to the beneficiary and may  
1168 change a decision to make the payment to the beneficiary.

1169 (9) If a fiduciary receives additional information about  
1170 the application of this section to an entity distribution after  
1171 the fiduciary has paid part of the entity distribution to a



172844

1172 beneficiary, the fiduciary is not required to change or recover  
1173 the payment to the beneficiary but may consider that information  
1174 in determining whether to exercise its other powers, including  
1175 but not limited to the power to adjust under s. 738.203.

1176 (10)(7) The following applies to money or property received  
1177 by a private trustee as a distribution from an investment entity  
1178 described in this subsection:

1179 (a) The trustee shall first treat as income of the trust  
1180 all of the money or property received from the investment entity  
1181 in the current accounting period ~~year~~ which would be considered  
1182 income under this chapter if the trustee had directly held the  
1183 trust's pro rata share of the assets of the investment entity.  
1184 For this purpose, all distributions received in the current  
1185 accounting period ~~year~~ must be aggregated.

1186 (b) The trustee shall next treat as income of the trust any  
1187 additional money or property received in the current accounting  
1188 period ~~year~~ which would have been considered income in the prior  
1189 2 accounting periods ~~years~~ under paragraph (a) if additional  
1190 money or property had been received from the investment entity  
1191 in any of those prior 2 accounting periods ~~years~~. The amount to  
1192 be treated as income must ~~shall~~ be reduced by any distributions  
1193 of money or property made by the investment entity to the trust  
1194 during the current and the prior 2 accounting periods ~~years~~  
1195 which were treated as income under this paragraph.

1196 (c) The remainder of the distribution, if any, is treated  
1197 as principal.

1198 (d) As used in this subsection, the term:

1199 1. "Investment entity" means an entity, other than a  
1200 business activity conducted by the trustee described in s.



172844

1201 738.403 or an entity that is listed on a public stock exchange,  
1202 which is treated as a partnership, subchapter S corporation, or  
1203 disregarded entity under ~~pursuant to~~ the Internal Revenue Code  
1204 ~~of 1986, as amended,~~ and which normally derives 50 percent or  
1205 more of its annual cumulative net income from interest,  
1206 dividends, annuities, royalties, rental activity, or other  
1207 passive investments, including income from the sale or exchange  
1208 of such passive investments.

1209 2. "Private trustee" means a trustee who is a natural  
1210 person, but is not an independent person as set forth in s.  
1211 738.102 ~~only if the trustee is unable to use the power to adjust~~  
1212 ~~between income and principal with respect to receipts from~~  
1213 ~~entities described in this subsection pursuant to s. 738.104. A~~  
1214 ~~bank, trust company, or other commercial trustee is not~~  
1215 ~~considered a private trustee.~~

1216 (11) A fiduciary shall allocate to principal any money and  
1217 property the fiduciary receives in a distribution or series of  
1218 related distributions from a public entity which are greater  
1219 than 10 percent of the fair market value of the fiduciary's  
1220 interest in the public entity on the first day of the accounting  
1221 period. The amount to be allocated to principal must be reduced  
1222 to the extent that the cumulative distributions from the entity  
1223 to the fiduciary allocated to income do not exceed a cumulative  
1224 annual return of 3 percent of the fair market value of the  
1225 interest in the entity at the beginning of each accounting  
1226 period, or portion of an accounting period, during the lookback  
1227 period. If a fiduciary has exercised a power to adjust under s.  
1228 738.203 during the lookback period, the fiduciary, in  
1229 determining the total income distributions from that entity,



172844

1230 must take into account the extent to which the exercise of that  
1231 power resulted in income to the fiduciary from that entity for  
1232 that period. If the income of the fiduciary during the lookback  
1233 period has been computed under ss. 738.301-738.310, the  
1234 fiduciary, in determining the total income distribution from  
1235 that entity for that period, must take into account the portion  
1236 of the unitrust amount paid as a result of the ownership of the  
1237 trust's interest in the entity for that period. As used in this  
1238 subsection, the term "public entity" means an entity listed on a  
1239 public stock exchange.

1240 (12)-(8) This section must shall be applied before ss.  
1241 738.506 and 738.507 ss. 738.705 and 738.706 and does not modify  
1242 or change any of the provisions of those sections.

1243 Section 21. Section 738.402, Florida Statutes, is amended  
1244 to read:

1245 738.402 Distribution from trust or estate.—A fiduciary  
1246 shall allocate to income an amount received as a distribution of  
1247 income, including a unitrust distribution under ss. 738.301-  
1248 738.310, from a trust or an estate in which the fiduciary trust  
1249 has an interest, other than an interest a purchased in a trust  
1250 that is an investment entity, and shall interest and allocate to  
1251 principal an amount received as a distribution of principal from  
1252 the such a trust or estate. If a fiduciary purchases, or  
1253 receives from a settlor, an interest in a trust that is an  
1254 investment entity, or a decedent or donor transfers an interest  
1255 in such a trust to a fiduciary, s. 738.401, s. 738.415, or s.  
1256 738.416 or s. 738.608 applies to a receipt from the trust.

1257 Section 22. Section 738.403, Florida Statutes, is amended  
1258 to read:



172844

1259 738.403 Business and other activity ~~activities~~ conducted by  
1260 fiduciary.—

1261 (1) This section applies to ~~If a fiduciary who conducts a~~  
1262 business or other activity conducted by a fiduciary if the  
1263 fiduciary determines that it is in the best interests of  
1264 ~~interest of all~~ the beneficiaries to account separately for the  
1265 business or other activity instead of:

1266 (a) Accounting for the business or other activity as part  
1267 of the fiduciary's ~~trust's or estate's~~ general accounting  
1268 records; or

1269 (b) Conducting the business or other activity through an  
1270 entity described in s. 738.401(1) (b). ~~the~~

1271 (2) A fiduciary may account separately under this section  
1272 ~~maintain separate accounting records~~ for the transactions of a  
1273 ~~the~~ business or another ~~other~~ activity, regardless of whether ~~or~~  
1274 ~~not the~~ assets of the ~~such~~ business or other activity are  
1275 segregated from other ~~trust or estate~~ assets held by the  
1276 fiduciary.

1277 (3) ~~(2)~~ A fiduciary who accounts separately under this  
1278 section for a business or other activity:

1279 (a) May determine:

1280 1. The extent to which the net cash receipts of the  
1281 business or other activity must be retained for:

1282 a. Working capital;

1283 b. The acquisition or replacement of fixed assets; and

1284 c. Other reasonably foreseeable needs of the business or  
1285 other activity; and ~~working capital, the acquisition or~~  
1286 ~~replacement of fixed assets, and other reasonably foreseeable~~  
1287 ~~needs of the business or activity, and~~



172844

1288           2. The extent to which the remaining net cash receipts are  
1289 accounted for as principal or income in the fiduciary's trust's  
1290 ~~or estate's~~ general accounting records for the trust.

1291           (b) May make a determination under paragraph (a) separately  
1292 and differently from the fiduciary's decisions concerning  
1293 distributions of income or principal; and

1294           (c) Shall account for the net amount received from the sale  
1295 of an asset of ~~If a fiduciary sells assets of~~ the business or  
1296 other activity, other than a sale in the ordinary course of the  
1297 business or other activity, ~~the fiduciary must account for the~~  
1298 ~~net amount received~~ as principal in the fiduciary's trust's or  
1299 ~~estate's~~ general accounting records for the trust, to the extent  
1300 the fiduciary determines that the net amount received is no  
1301 longer required in the conduct of the business or other  
1302 activity.

1303           (4)(3) Activities for which a fiduciary may account  
1304 separately under this section ~~maintain separate accounting~~  
1305 ~~records~~ include:

1306           (a) Retail, manufacturing, service, and other traditional  
1307 business activities.

1308           (b) Farming.

1309           (c) Raising and selling livestock and other animals.

1310           (d) Managing ~~Management of~~ rental properties.

1311           (e) Extracting ~~Extraction of~~ minerals and other natural  
1312 resources.

1313           (f) Growing and cutting timber ~~operations.~~

1314           (g) An activity ~~Activities~~ to which s. 738.414, s. 738.415,  
1315 or s. 738.416 ~~s. 738.607~~ applies.

1316           (h) Any other business conducted by the fiduciary.



172844

1317 Section 23. Section 738.404, Florida Statutes, is created  
1318 to read:

1319 738.404 Principal receipts.—A fiduciary shall allocate to  
1320 principal:

1321 (1) To the extent not allocated to income under this  
1322 chapter, an asset received from any of the following:

1323 (a) An individual during the individual's lifetime.

1324 (b) An estate.

1325 (c) A trust on termination of an income interest.

1326 (d) A payor under a contract naming the fiduciary as  
1327 beneficiary.

1328 (2) Except as otherwise provided in ss. 738.401-738.416,  
1329 money or other property received from the sale, exchange,  
1330 liquidation, or change in the form of a principal asset.

1331 (3) An amount recovered from a third party to reimburse the  
1332 fiduciary because of a disbursement described in s. 738.502(1)  
1333 or for another reason to the extent not based on the loss of  
1334 income.

1335 (4) Proceeds of property taken by eminent domain except  
1336 that proceeds awarded for loss of income in an accounting period  
1337 are income if a current income beneficiary had a mandatory  
1338 income interest during the period.

1339 (5) Net income received in an accounting period during  
1340 which there is no beneficiary to which a fiduciary may or must  
1341 distribute income.

1342 (6) Other receipts as provided in ss. 738.408-738.416.

1343 Section 24. Section 738.405, Florida Statutes, is created  
1344 to read:

1345 738.405 Rental property.—To the extent that a fiduciary



172844

1346 does not account for the management of rental property as a  
1347 business under s. 738.403, the fiduciary shall allocate to  
1348 income an amount received as rent of real or personal property,  
1349 including an amount received for cancellation or renewal of a  
1350 lease. An amount received as a refundable deposit, including a  
1351 security deposit or a deposit that is to be applied as rent for  
1352 future periods:

1353 (1) Must be added to principal and held subject to the  
1354 terms of the lease, except as otherwise provided by law other  
1355 than this chapter; and

1356 (2) Is not allocated to income or available for  
1357 distribution to a beneficiary until the fiduciary's contractual  
1358 obligations have been satisfied with respect to that amount.

1359 Section 25. Section 738.406, Florida Statutes, is created  
1360 to read:

1361 738.406 Receipt on obligation to be paid in money.—

1362 (1) This section does not apply to an obligation to which  
1363 s. 738.409, s. 738.410, s. 738.411, s. 738.412, s. 738.414, s.  
1364 738.415, or s. 738.416 applies.

1365 (2) A fiduciary shall allocate to income, without provision  
1366 for amortization of premium, an amount received as interest on  
1367 an obligation to pay money to the fiduciary, including an amount  
1368 received as consideration for prepaying principal.

1369 (3) A fiduciary shall allocate to principal an amount  
1370 received from the sale, redemption, or other disposition of an  
1371 obligation to pay money to the fiduciary.

1372 (4) A fiduciary shall allocate to income the increment in  
1373 value of a bond or other obligation for the payment of money  
1374 bearing no stated interest but payable or redeemable, at





172844

1375 maturity or another future time, in an amount that exceeds the  
1376 amount in consideration of which it was issued. If the increment  
1377 in value accrues and becomes payable pursuant to a fixed  
1378 schedule of appreciation, it may be distributed to the  
1379 beneficiary who was the income beneficiary at the time of  
1380 increment from the first principal cash available or, if none is  
1381 available, when the increment is realized by sale, redemption,  
1382 or other disposition. If unrealized increment is distributed as  
1383 income but out of principal, the principal must be reimbursed  
1384 for the increment when realized. If, in the reasonable judgment  
1385 of the fiduciary, exercised in good faith, the ultimate payment  
1386 of the bond principal is in doubt, the fiduciary may withhold  
1387 the payment of incremental interest to the income beneficiary.

1388 Section 26. Section 738.407, Florida Statutes, is created  
1389 to read:

1390 738.407 Insurance policy or contract.—

1391 (1) This section does not apply to a contract to which s.  
1392 738.409 applies.

1393 (2) Except as otherwise provided in subsection (3), a  
1394 fiduciary shall allocate to principal the proceeds of a life  
1395 insurance policy or other contract received by the fiduciary as  
1396 beneficiary, including a contract that insures against damage  
1397 to, destruction of, or loss of title to an asset. The fiduciary  
1398 shall allocate dividends on an insurance policy to income to the  
1399 extent that premiums on the policy are paid from income and to  
1400 principal to the extent premiums on the policy are paid from  
1401 principal.

1402 (3) A fiduciary shall allocate to income proceeds of a  
1403 contract that insures the fiduciary against loss of:



172844

- 1404 (a) Occupancy or other use by a current income beneficiary;
- 1405 (b) Income; or
- 1406 (c) Subject to s. 738.403, profits from a business.

1407 Section 27. Section 738.408, Florida Statutes, is created  
1408 to read:

1409 738.408 Insubstantial allocation not required.—

1410 (1) If a fiduciary determines that an allocation between  
1411 income and principal required by s. 738.409, s. 738.410, s.  
1412 738.411, s. 738.412, or s. 738.415 is insubstantial, the  
1413 fiduciary may allocate the entire amount to principal, unless s.  
1414 738.203(5) applies to the allocation.

1415 (2) A fiduciary may presume an allocation is insubstantial  
1416 under subsection (1) if:

1417 (a) The amount of the allocation would increase or decrease  
1418 net income in an accounting period, as determined before the  
1419 allocation, by less than 10 percent; and

1420 (b) The asset producing the receipt to be allocated has a  
1421 carrying value less than 10 percent of the total carrying value  
1422 of the assets owned or held by the fiduciary at the beginning of  
1423 the accounting period.

1424 (3) The power to make a determination under subsection (1)  
1425 may be:

1426 (a) Exercised by a cofiduciary in the manner described in  
1427 s. 738.203(6); or

1428 (b) Released or delegated for a reason described in s.  
1429 738.203(7) and in the manner described in s. 738.203(8).

1430 Section 28. Section 738.409, Florida Statutes, is created  
1431 to read:

1432 738.409 Deferred compensation, annuity, or similar



172844

1433 payment.—  
1434 (1) As used in this section, the term:  
1435 (a) "Internal income of the separate fund" means the amount  
1436 determined under subsection (2).  
1437 (b) "Marital trust" means a trust:  
1438 1. Of which the settlor's surviving spouse is the only  
1439 current income beneficiary and is entitled to a distribution of  
1440 all the current net income of the trust; and  
1441 2. That qualifies for a marital deduction with respect to  
1442 the settlor's estate under the Internal Revenue Code or  
1443 comparable law of any state because:  
1444 a. An election to qualify for a marital deduction under s.  
1445 2056(b) (7) of the Internal Revenue Code has been made;  
1446 b. The trust qualified for a marital deduction under s.  
1447 2056(b) (5) of the Internal Revenue Code; or  
1448 c. The trust otherwise qualifies for a marital deduction.  
1449 (c) "Nonseparate fund" means an annuity, a deferred  
1450 compensation plan, a pension plan, or other fund for which the  
1451 value of the participant's or account owner's right to receive  
1452 benefits can be determined only by the occurrence of a date or  
1453 event as defined in the instrument governing the fund.  
1454 (d) "Payment" means an amount a fiduciary may receive over  
1455 a fixed number of years or during the life of one or more  
1456 individuals because of services rendered or property transferred  
1457 to the payor in exchange for future amounts the fiduciary may  
1458 receive. The term includes an amount received in money or  
1459 property from the payor's general assets or from a separate fund  
1460 created by the payor.  
1461 (e) "Percent calculated" means a percent equal to the rate



172844

1462 determined under s. 7520 of the Internal Revenue Code in effect  
1463 for the month preceding the beginning of the accounting period;  
1464 however, if the percent calculated exceeds 5 percent, it must be  
1465 reduced to 5 percent, and if the percent calculated is less than  
1466 3 percent, it must be increased to 3 percent. Notwithstanding  
1467 the preceding sentence, a fiduciary who is an independent person  
1468 as defined in s. 738.102 may set the percent calculated at a  
1469 percentage no less than 3 percent and no greater than 5 percent.

1470 (f) "Separate fund" includes a private or commercial  
1471 annuity, an individual retirement account, and a pension,  
1472 profit-sharing, stock-bonus, stock ownership plan, or other  
1473 deferred compensation fund holding assets exclusively for the  
1474 benefit of a participant or account owner.

1475 (2) For each accounting period, the following rules apply  
1476 to a separate fund:

1477 (a) The fiduciary may determine the internal income of the  
1478 separate fund as if the separate fund were a trust subject to  
1479 this chapter.

1480 (b) Alternatively, the fiduciary may deem the internal  
1481 income of the separate fund to equal the percent calculated of  
1482 the value of the separate fund according to the most recent  
1483 statement of value preceding the beginning of the accounting  
1484 period. The fiduciary is not liable for good faith reliance upon  
1485 any valuation supplied by the person or persons in possession of  
1486 the fund. If the fiduciary makes or terminates an election under  
1487 this paragraph, the fiduciary must make such disclosure in a  
1488 trust disclosure document that satisfies the requirements of s.  
1489 736.1008(4)(c).

1490 (c) If the fiduciary cannot determine the value of the



172844

1491 separate fund under paragraph (b), the value of the separate  
1492 fund is deemed to equal the present value of the expected future  
1493 payments, as determined under s. 7520 of the Internal Revenue  
1494 Code for the month preceding the beginning of the accounting  
1495 period for which the computation is made.

1496 (d) The fiduciary may elect the method of determining the  
1497 income of the fund pursuant to this subsection and may change  
1498 the method of determining income of the fund for any future  
1499 accounting period.

1500 (3) A fiduciary shall allocate a payment received from a  
1501 separate fund during an accounting period to income, to the  
1502 extent of the internal income of the separate fund during the  
1503 period, and allocate the balance to principal.

1504 (4) The fiduciary of a marital trust shall:

1505 (a) Withdraw from a separate fund the amount the current  
1506 income beneficiary of the trust requests the fiduciary to  
1507 withdraw, not greater than the amount by which the internal  
1508 income of the separate fund during the accounting period exceeds  
1509 the amount the fiduciary otherwise receives from the separate  
1510 fund during the period.

1511 (b) Transfer from principal to income the amount the  
1512 current income beneficiary requests the fiduciary to transfer,  
1513 but not greater than the amount by which the internal income of  
1514 the separate fund during the period exceeds the amount the  
1515 fiduciary receives from the separate fund during the period  
1516 after the application of paragraph (a).

1517 (c) Distribute to the current income beneficiary as income:

1518 1. The amount of the internal income of the separate fund  
1519 received or withdrawn during the period; and



172844

1520           2. The amount transferred from principal to income under  
1521 paragraph (b).

1522           (5) For a trust, other than a marital trust, of which one  
1523 or more current income beneficiaries are entitled to a  
1524 distribution of all the current net income, the fiduciary shall  
1525 transfer from principal to income the amount by which the  
1526 internal income of the separate fund during the accounting  
1527 period exceeds the amount the fiduciary receives from the  
1528 separate fund during the period.

1529           (6) The fiduciary of a nonseparate fund shall calculate  
1530 internal income of the fund as the percent calculated of the  
1531 present value of the right to receive the remaining payments as  
1532 determined under s. 7520(a)(2) of the Internal Revenue Code for  
1533 the month preceding the beginning of the accounting period.

1534           (7) If a fiduciary owns a separate fund or a nonseparate  
1535 fund before January 1, 2025, the fiduciary may determine  
1536 internal income, allocate payments, and account for unwithdrawn  
1537 internal income as provided in this section or in the manner  
1538 used by the fiduciary before January 1, 2025. Such fiduciary is  
1539 not required to consider subsection (5). If the fiduciary  
1540 acquires a separate fund or a nonseparate fund on or after  
1541 January 1, 2025, the fiduciary must calculate internal income,  
1542 allocate payments, and account for unwithdrawn internal income  
1543 as provided in this section.

1544           Section 29. Section 738.603, Florida Statutes, is  
1545 transferred, renumbered as section 738.410, Florida Statutes,  
1546 and amended to read:

1547           738.410 ~~738.603~~ Liquidating asset.—

1548           (1) As used in ~~For purposes of~~ this section, the term



172844

1549 "liquidating asset" means an asset whose value ~~the value of~~  
1550 ~~which~~ will diminish or terminate because the asset is expected  
1551 to produce receipts for a ~~period of~~ limited time duration. The  
1552 term includes a leasehold, patent, copyright, royalty right, and  
1553 right to receive payments during a period of ~~for~~ more than 1  
1554 year under an arrangement that does not provide for the payment  
1555 of interest on the unpaid balance. ~~The term does not include a~~  
1556 ~~payment subject to s. 738.602, resources subject to s. 738.604,~~  
1557 ~~timber subject to s. 738.605, an activity subject to s. 738.607,~~  
1558 ~~an asset subject to s. 738.608, or any asset for which the~~  
1559 ~~fiduciary establishes a reserve for depreciation under s.~~  
1560 ~~738.703.~~

1561 (2) This section does not apply to a receipt that is  
1562 subject to s. 738.401, s. 738.409, s. 738.411, s. 738.412, s.  
1563 738.414, s. 738.415, s. 738.416, or s. 738.503.

1564 (3) A fiduciary shall allocate to income a receipt produced  
1565 by a liquidating asset to the extent that the receipt does not  
1566 exceed 5 percent of the ~~receipts from the~~ carrying value of the  
1567 asset at the beginning of the accounting period and allocate a  
1568 liquidating asset and the balance to principal the balance of  
1569 the receipt.

1570 (4) The amount ~~Amounts~~ allocated to principal shall reduce  
1571 the carrying value of the liquidating asset, but not below zero.  
1572 Amounts received in excess of the remaining carrying value must  
1573 be allocated to principal.

1574 Section 30. Section 738.604, Florida Statutes, is  
1575 transferred, renumbered as section 738.411, Florida Statutes,  
1576 and amended to read:

1577 738.411 ~~738.604~~ Minerals, water, and other natural



172844

1578 resources.-

1579 (1) To the extent that if a fiduciary does not account for  
1580 a receipt accounts for receipts from an interest in minerals,  
1581 water, or other natural resources as a business under s. 738.403  
1582 pursuant to this section, the fiduciary shall allocate the  
1583 receipt such receipts as follows:

1584 (a) To income, to the extent received:

1585 1. If received As nominal delay rental or nominal annual  
1586 rent on a lease;

1587 2. As a factor for interest or the equivalent of interest  
1588 under an agreement creating a production payment; or

1589 3. On account of an interest in renewable water; ~~a receipt~~  
1590 shall be allocated to income.

1591 (b) To principal, if received from a production payment, a  
1592 receipt shall be allocated to income if and to the extent that  
1593 subparagraph (a)2. does not apply; or the agreement creating the  
1594 production payment provides a factor for interest or its  
1595 equivalent. The balance shall be allocated to principal.

1596 (c) Between income and principal equitably, to the extent  
1597 received:

1598 1. On account of an interest in nonrenewable water;

1599 2. If an amount received As a royalty, shut-in-well  
1600 payment, take-or-pay payment, or bonus; ~~or, or delay rental is~~  
1601 more than nominal, 90 percent shall be allocated to principal  
1602 and the balance to income.

1603 3. ~~(d) If an amount is received~~ From a working interest or  
1604 any other interest not provided for in paragraph (a) ~~or,~~  
1605 paragraph (b) or subparagraph 1. or subparagraph 2. ~~or~~  
1606 paragraph (c), 90 percent of the net amount received shall be





172844

1607 ~~allocated to principal and the balance to income.~~

1608       (2) ~~An amount received on account of an interest in water~~  
1609 ~~that is renewable shall be allocated to income. If the water is~~  
1610 ~~not renewable, 90 percent of the amount shall be allocated to~~  
1611 ~~principal and the balance to income.~~

1612       ~~(3) This section ~~chapter~~ applies to an interest owned or~~  
1613 ~~held by a fiduciary regardless of whether ~~or not~~ a settlor~~  
1614 ~~decedent or donor~~ was extracting minerals, water, or other  
1615 natural resources before the fiduciary owned or held the  
1616 ~~interest became subject to the trust or estate.~~

1617       (3) An allocation of a receipt under paragraph (1) (c) is  
1618 presumed to be equitable if the amount allocated to principal is  
1619 equal to the amount allowed by the Internal Revenue Code as a  
1620 deduction for depletion of the interest.

1621       (4) If a fiduciary trust or estate owns or holds an  
1622 interest in minerals, water, or other natural resources before  
1623 January 1, 2025 ~~on January 1, 2003~~, the fiduciary may allocate  
1624 receipts from the interest as provided in this section ~~chapter~~  
1625 or in the manner used by the fiduciary before January 1, 2025  
1626 ~~January 1, 2003~~. If the fiduciary trust or estate acquires an  
1627 interest in minerals, water, or other natural resources on or  
1628 after January 1, 2025 ~~January 1, 2003~~, the fiduciary must ~~shall~~  
1629 allocate receipts from the interest as provided in this section  
1630 ~~chapter~~.

1631       Section 31. Section 738.605, Florida Statutes, is  
1632 transferred, renumbered as section 738.412, Florida Statutes,  
1633 and amended to read:

1634       738.412 ~~738.605~~ Timber.—

1635       (1) To the extent that ~~If~~ a fiduciary does not account



172844

1636 ~~accounts~~ for receipts from the sale of timber and related  
1637 products as a business under s. 738.403 ~~pursuant to this~~  
1638 ~~section,~~ the fiduciary shall allocate the ~~such~~ net receipts ~~as~~  
1639 ~~follows:~~

1640 (a) To income, to the extent that the amount of timber cut  
1641 ~~removed~~ from the land does not exceed the rate of growth of the  
1642 timber ~~during the accounting periods in which a beneficiary has~~  
1643 ~~a mandatory income interest;~~

1644 (b) To principal, to the extent that the amount of timber  
1645 cut removed from the land exceeds the rate of growth of the  
1646 timber or the net receipts are from the sale of standing timber;

1647 (c) ~~To or~~ Between income and principal if the net receipts  
1648 are from the lease of land used for growing and cutting timber  
1649 ~~timberland~~ or from a contract to cut timber from land ~~owned by a~~  
1650 ~~trust or estate~~ by determining the amount of timber cut removed  
1651 from the land under the lease or contract and applying the rules  
1652 in paragraphs (a) and (b); or

1653 (d) To principal, to the extent that advance payments,  
1654 bonuses, and other payments are not allocated under ~~pursuant to~~  
1655 paragraph (a), paragraph (b), or paragraph (c).

1656 (2) In determining net receipts to be allocated under  
1657 ~~pursuant to~~ subsection (1), a fiduciary shall deduct and  
1658 transfer to principal a reasonable amount for depletion.

1659 (3) This section chapter applies to land owned or held by a  
1660 fiduciary regardless of whether or not a settlor decedent or  
1661 ~~donor~~ was cutting harvesting timber from the land property  
1662 before the fiduciary owned or held the property ~~became subject~~  
1663 ~~to the trust or estate.~~

1664 (4) If a fiduciary ~~trust or estate~~ owns or holds an



172844

1665 interest in land used for growing and cutting timber before  
1666 January 1, 2025 ~~timberland on January 1, 2003~~, the fiduciary may  
1667 allocate net receipts from the sale of timber and related  
1668 products as provided in this section ~~chapter~~ or in the manner  
1669 used by the fiduciary before January 1, 2025 ~~January 1, 2003~~. If  
1670 the fiduciary ~~trust or estate~~ acquires an interest in land used  
1671 for growing and cutting timber on or after January 1, 2025  
1672 ~~timberland after January 1, 2003~~, the fiduciary must ~~shall~~  
1673 allocate net receipts from the sale of timber and related  
1674 products as provided in this section ~~chapter~~.

1675 Section 32. Section 738.606, Florida Statutes, is  
1676 transferred, renumbered as section 738.413, Florida Statutes,  
1677 and amended to read:

1678 738.413 ~~738.606~~ Marital deduction property not productive  
1679 of income.—

1680 (1) If a trust received property for which a gift or estate  
1681 tax marital deduction was under the Internal Revenue Code or  
1682 ~~comparable law of any state is allowed~~, for all or if part of a  
1683 trust received property satisfying, ~~or if assets are transferred~~  
1684 ~~to a trust that satisfies~~ the requirements of s. 732.2025(2)(a)  
1685 and (c), and such property has ~~assets have~~ been used in whole or  
1686 in part to satisfy an election by a surviving spouse under s.  
1687 732.2125, and the settlor's spouse holds a mandatory income  
1688 interest in the trust, the spouse may require the trustee, to  
1689 the extent that the trust assets otherwise do ~~consist of~~  
1690 ~~property that, in the aggregate, does~~ not provide the spouse  
1691 with sufficient income from or use of the trust assets to  
1692 qualify for the deduction, or to satisfy an election by a  
1693 surviving spouse under s. 732.2125, to make the property



1694 productive of income within a reasonable time. The trustee may:  
1695 (a) Convert property to property productive of income  
1696 within a reasonable time;  
1697 (b) Exercise the power to adjust under s. 738.203;  
1698 (c) Exercise the power to convert to or from a unitrust  
1699 under s. 738.303; or  
1700 (d) Exercise the fiduciary's authority under the terms of  
1701 the trust to otherwise provide the surviving spouse with  
1702 sufficient income from the trust assets, or the use of the trust  
1703 assets, to qualify for the marital deduction, or to satisfy an  
1704 election by a surviving spouse under s. 732.2125.  
1705 (2) The trustee may decide which action or combination of  
1706 actions listed in subsection (1) to take.  
1707 (3) Subsection (1) shall apply, and if amounts the trustee  
1708 transfers from principal to income under s. 738.104 and  
1709 distributes to the spouse from principal pursuant to the terms  
1710 of the trust are insufficient to provide the spouse with the  
1711 beneficial enjoyment required to obtain the marital deduction,  
1712 even though, in the case of an elective share trust under s.  
1713 732.2025(2), a marital deduction is not made or is only  
1714 partially made, the spouse may require the trustee of such  
1715 marital trust or elective share trust to make property  
1716 productive of income, convert property within a reasonable time,  
1717 or exercise the power conferred by ss. 738.104 and 738.1041.  
1718 (4) The terms of a trust as defined in s. 738.102 may not  
1719 supersede this section unless such terms explicitly reference  
1720 this section ~~The trustee may decide which action or combination~~  
1721 ~~of actions to take.~~  
1722 ~~(2) In cases not governed by subsection (1), proceeds from~~



172844

1723 ~~the sale or other disposition of an asset are principal without~~  
1724 ~~regard to the amount of income the asset produces during any~~  
1725 ~~accounting period.~~

1726 Section 33. Section 738.607, Florida Statutes, is  
1727 transferred, renumbered as section 738.414, Florida Statutes,  
1728 and amended to read:

1729 738.414 ~~738.607~~ Derivatives or ~~and~~ options.-

1730 (1) As used in ~~For purposes of~~ this section, the term  
1731 "derivative" means a contract, an ~~or financial~~ instrument, or  
1732 other arrangement, or a combination of contracts, and financial  
1733 instruments, or other arrangements, of which the value, rights,  
1734 and obligations are, in whole or in part, dependent on or  
1735 derived from an underlying which gives a trust the right or  
1736 obligation to participate in some or all changes in the price of  
1737 a tangible or intangible asset, a ~~or~~ group of tangible or  
1738 intangible assets, an index, or an occurrence of an event. The  
1739 term includes stocks, fixed income securities, and financial  
1740 instruments and arrangements based on indices, commodities,  
1741 interest rates, weather-related events, and credit-default  
1742 events ~~assets, or changes in a rate, an index of prices or~~  
1743 ~~rates, or other market indicator for an asset or a group of~~  
1744 ~~assets.~~

1745 (2) To the extent that a fiduciary does not account for a  
1746 transaction in derivatives as a business under s. 738.403 ~~for~~  
1747 ~~transactions in derivatives,~~ the fiduciary shall allocate 10  
1748 percent of ~~to principal~~ receipts from the transaction and 10  
1749 percent of ~~and~~ disbursements made in connection with the  
1750 transaction to income and allocate the balance to principal  
1751 ~~those transactions.~~



172844

1752           (3) Subsection (4) applies if:  
1753           (a) A fiduciary:  
1754            1. ~~If a fiduciary~~ Grants an option to buy property from a  
1755 ~~the trust, regardless of or estate~~ whether ~~or not~~ the trust ~~or~~  
1756 ~~estate~~ owns the property when the option is granted;;  
1757            2. Grants an option that permits another person to sell  
1758 property to the trust;; or  
1759            3. ~~estate, or~~ Acquires an option to buy property for the  
1760 trust ~~or estate or~~ an option to sell an asset owned by the trust  
1761 ~~or estate;~~ and  
1762           (b) The fiduciary or other owner of the asset is required  
1763 to deliver the asset if the option is exercised, ~~an amount~~  
1764 ~~received for granting the option shall be allocated to~~  
1765 ~~principal. An amount paid to acquire the option shall be paid~~  
1766 ~~from principal.~~  
1767           (4) If this subsection applies, the fiduciary must allocate  
1768 10 percent to income and allocate the balance to principal of  
1769 the following amounts:  
1770            (a) An amount received for granting the option;  
1771            (b) An amount paid to acquire the option; and  
1772            (c) A Gain or loss realized on upon the exercise, exchange,  
1773 settlement, offset, closing, or expiration of the option of an  
1774 option, including an option granted to a grantor of the trust or  
1775 estate for services rendered, shall be allocated to principal.  
1776           Section 34. Section 738.608, Florida Statutes, is  
1777 transferred, renumbered as section 738.415, Florida Statutes,  
1778 and amended to read:  
1779            738.415 738.608 Asset-backed securities.—  
1780            (1) Except as otherwise provided in subsection (2), a



172844

1781 fiduciary shall allocate to income a receipt from or related to  
1782 an asset-backed security, as defined in s. 738.102, to the  
1783 extent that the payor identifies the payment as being from ~~For~~  
1784 ~~purposes of this section, "asset-backed security" means an asset~~  
1785 ~~the value of which is based upon the right given the owner to~~  
1786 ~~receive distributions from the proceeds of financial assets that~~  
1787 ~~provide collateral for the security. The term includes an asset~~  
1788 ~~that gives the owner the right to receive from the collateral~~  
1789 ~~financial assets only the interest or other current return and~~  
1790 allocate to principal the balance of the receipt ~~or only the~~  
1791 ~~proceeds other than interest or current return. The term does~~  
1792 ~~not include an asset to which s. 738.401 or s. 738.602 applies.~~

1793 (2) If a fiduciary receives one or more payments in  
1794 exchange for part or all of the fiduciary's interest in an  
1795 asset-backed security, including a liquidation or redemption of  
1796 the fiduciary's interest in the security ~~trust or estate~~  
1797 ~~receives a payment from interest or other current return and~~  
1798 ~~from other proceeds of the collateral financial assets, the~~  
1799 fiduciary must shall allocate to income 10 percent of receipts  
1800 from the transaction and 10 percent of disbursements made in  
1801 connection with the transaction, and allocate to principal the  
1802 ~~portion of the payment which the payor identifies as being from~~  
1803 ~~interest or other current return and allocate the balance of the~~  
1804 receipts and disbursements ~~payment to principal.~~

1805 (3) ~~If a trust or estate receives one or more payments in~~  
1806 ~~exchange for the trust's or estate's entire interest in an~~  
1807 ~~asset-backed security during a single accounting period, the~~  
1808 ~~fiduciary shall allocate the payments to principal. If a payment~~  
1809 ~~is one of a series of payments that will result in the~~



1810 ~~liquidation of the trust's or estate's interest in the security~~  
1811 ~~over more than a single accounting period, the fiduciary shall~~  
1812 ~~allocate 10 percent of the payment to income and the balance to~~  
1813 ~~principal.~~

1814 Section 35. Section 738.416, Florida Statutes, is created  
1815 to read:

1816 738.416 Other financial instrument or arrangement.—A  
1817 fiduciary shall allocate receipts from or related to a financial  
1818 instrument or arrangement not otherwise addressed by this  
1819 chapter. The allocation must be consistent with ss. 738.414 and  
1820 738.415.

1821 Section 36. Section 738.501, Florida Statutes, is amended  
1822 to read:

1823 (Substantial rewording of section. See  
1824 s. 738.501, F.S., for present text.)

1825 738.501 Disbursement from income.—Subject to s. 738.504,  
1826 and except as otherwise provided in s. 738.601(3)(b) or (c), a  
1827 fiduciary shall disburse from income:

1828 (1) One-half of:

1829 (a) The regular compensation of the fiduciary and of any  
1830 person providing investment advisory, custodial, or other  
1831 services to the fiduciary to the extent that income is  
1832 sufficient; and

1833 (b) An expense for an accounting, judicial or nonjudicial  
1834 proceeding, or other matter that involves both income and  
1835 successive interests to the extent income is sufficient.

1836 (2) The balance of the disbursements described in  
1837 subsection (1), to the extent that a fiduciary who is an  
1838 independent person determines that making those disbursements





172844

1839 from income would be in the interests of the beneficiaries.

1840 (3) Any other ordinary expense incurred in connection with  
1841 administration, management, or preservation of property and  
1842 distribution of income, including interest, an ordinary repair,  
1843 a regularly recurring tax assessed against principal, and an  
1844 expense of an accounting, judicial or nonjudicial proceeding, or  
1845 other matter that involves primarily an income interest, to the  
1846 extent that income is sufficient.

1847 (4) A premium on insurance covering loss of a principal  
1848 asset or income from or use of the asset.

1849 Section 37. Section 738.502, Florida Statutes, is amended  
1850 to read:

1851 (Substantial rewording of section. See  
1852 s. 738.502, F.S., for present text.)

1853 738.502 Disbursement from principal.—

1854 (1) Subject to s. 738.505, and except as otherwise provided  
1855 in s. 738.601(3)(b), a fiduciary shall disburse all of the  
1856 following from principal:

1857 (a) The balance of the disbursements described in s.  
1858 738.501(1) and (3), after application of s. 738.501(2).

1859 (b) The fiduciary's compensation calculated on principal as  
1860 a fee for acceptance, distribution, or termination.

1861 (c) A payment of an expense to prepare for or execute a  
1862 sale or other disposition of property.

1863 (d) A payment on the principal of a trust debt.

1864 (e) A payment of an expense of an accounting, judicial or  
1865 nonjudicial proceeding, or other matter that involves primarily  
1866 principal, including a proceeding to construe the terms of the  
1867 trust or protect property.



172844

1868       (f) A payment of a premium for insurance, including title  
1869 insurance, not described in s. 738.501(4) of which the fiduciary  
1870 is the owner and beneficiary.

1871       (g) A payment of estate, inheritance, and other transfer  
1872 taxes, including penalties, apportioned to the trust.

1873       (h) A payment related to environmental matters including:

1874       1. Reclamation;

1875       2. Assessing environmental conditions;

1876       3. Remediating and removing environmental contamination;

1877       4. Monitoring remedial activities and the release of  
1878 substances;

1879       5. Preventing future releases of substances;

1880       6. Collecting amounts from persons liable or potentially  
1881 liable for the costs of the activities described in  
1882 subparagraphs 1.-5.;

1883       7. Penalties imposed under environmental laws or  
1884 regulations;

1885       8. Other actions to comply with environmental laws or  
1886 regulations;

1887       9. Statutory or common law claims by third parties; and

1888       10. Defending claims based on environmental matters.

1889       (i) A payment of a premium for insurance for matters  
1890 described in paragraph (h).

1891       (2) If a principal asset is encumbered with an obligation  
1892 that requires income from the asset to be paid directly to a  
1893 creditor, the fiduciary must transfer from principal to income  
1894 an amount equal to the income paid to the creditor in reduction  
1895 of the principal balance of the obligation.

1896       Section 38. Section 738.503, Florida Statutes, is amended



172844

1897 to read:  
1898 (Substantial rewording of section. See  
1899 s. 738.503, F.S., for present text.)  
1900 738.503 Transfers from income to principal for  
1901 depreciation.-  
1902 (1) For purposes of this section, "depreciation" means a  
1903 reduction in value due to wear, tear, decay, corrosion, or  
1904 gradual obsolescence of a tangible asset having a useful life of  
1905 more than 1 year.  
1906 (2) A fiduciary may transfer to principal a reasonable  
1907 amount of the net cash receipts from a principal asset that is  
1908 subject to depreciation but may not transfer any amount for  
1909 depreciation:  
1910 (a) Of the part of real property used or available for use  
1911 by a beneficiary as a residence;  
1912 (b) Of tangible personal property held or made available  
1913 for the personal use or enjoyment of a beneficiary; or  
1914 (c) Under this section, to the extent that the fiduciary  
1915 accounts:  
1916 1. Under s. 738.410 for the asset; or  
1917 2. Under s. 738.403 for the business or other activity in  
1918 which the asset is used.  
1919 (3) An amount transferred to principal under this section  
1920 need not be separately held.  
1921 Section 39. Section 738.504, Florida Statutes, is amended  
1922 to read:  
1923 (Substantial rewording of section. See  
1924 s. 738.504, F.S., for present text.)  
1925 738.504 Reimbursement of income from principal.-



172844

1926           (1) If a fiduciary makes or expects to make an income  
1927 disbursement described in subsection (2), the fiduciary may  
1928 transfer an appropriate amount from principal to income in one  
1929 or more accounting periods to reimburse income.

1930           (2) To the extent that the fiduciary has not been and does  
1931 not expect to be reimbursed by a third party, income  
1932 disbursements to which subsection (1) applies include:

1933           (a) An amount chargeable to principal but paid from income  
1934 because principal is illiquid;

1935           (b) A disbursement made to prepare property for sale,  
1936 including improvements and commissions; and

1937           (c) A disbursement described in s. 738.502(1).

1938           (3) If an asset whose ownership gives rise to an income  
1939 disbursement becomes subject to a successive interest after an  
1940 income interest ends, the fiduciary may continue to make  
1941 transfers under subsection (1).

1942           Section 40. Section 738.704, is transferred, renumbered as  
1943 section 738.505, Florida Statutes, and amended to read:

1944           738.505 ~~738.704~~ Reimbursement of principal from income  
1945 ~~Transfers from income to reimburse principal.~~

1946           (1) If a fiduciary makes or expects to make a principal  
1947 disbursement described in subsection (2) ~~this section~~, the  
1948 fiduciary may transfer an appropriate amount from income to  
1949 principal in one or more accounting periods to reimburse  
1950 principal or to provide a reserve for future principal  
1951 disbursements.

1952           ~~(2) Principal disbursements to which subsection (1) applies~~  
1953 ~~include the following, but only~~ To the extent that a the  
1954 fiduciary has not been and does not expect to be reimbursed by a



172844

1955 third party, principal disbursements to which subsection (1)  
1956 applies include:

1957 (a) An amount chargeable to income but paid from principal  
1958 because income is not sufficient; ~~the amount is unusually large.~~

1959 (b) The cost of an improvement to principal, whether a  
1960 change to an existing asset or the construction of a new asset,  
1961 including a special assessment; ~~Disbursements made to prepare~~  
1962 property for rental, including tenant allowances, leasehold  
1963 improvements, and broker's commissions.

1964 (c) A disbursement made to prepare property for rental,  
1965 including tenant allowances, leasehold improvements, and  
1966 commissions; ~~Disbursements described in s. 738.702(1)(g).~~

1967 (d) A periodic payment on an obligation secured by a  
1968 principal asset, to the extent the amount transferred from  
1969 income to principal for depreciation is less than the periodic  
1970 payment; and

1971 (e) A disbursement described in s. 738.502(1).

1972 (3) If an ~~the~~ asset whose ~~the~~ ownership of which gives rise  
1973 to a principal disbursement ~~the disbursements~~ becomes subject to  
1974 a successive ~~income~~ interest after an income interest ends, the  
1975 a fiduciary may continue to make transfers under ~~transfer~~