

CHAPTER 2024-216

Committee Substitute for House Bill No. 1093

An act relating to the Florida Uniform Fiduciary Income and Principal Act; amending s. 738.101, F.S.; revising a short title; amending s. 738.102, F.S.; revising and providing definitions governing ch. 738, F.S.; amending s. 738.103, F.S.; specifying the scope of ch. 738, F.S.; amending s. 738.104, F.S.; specifying circumstances under which ch. 738, F.S., applies to a trust; repealing s. 738.1041, F.S., relating to total return unitrusts; repealing s. 738.105, F.S., relating to judicial control of discretionary powers; amending s. 738.201, F.S.; specifying the duties of a fiduciary; providing that a fiduciary's allocation, determination, or exercise of discretion is presumed to be fair and reasonable to all beneficiaries; requiring a fiduciary to take specified actions; authorizing a fiduciary to exercise discretionary power of administration under specified circumstances; requiring the fiduciary to consider specified factors before exercising such discretionary power; providing for applicability; amending s. 738.202, F.S.; defining the term "fiduciary decision"; prohibiting a court from ordering a fiduciary to change his or her decision unless the decision was an abuse of discretionary power; prohibiting a court from determining that a fiduciary abused its discretion under specified conditions; authorizing a court to order a specified remedy; authorizing a court to determine whether a proposed fiduciary decision will result in an abuse of discretion; providing that a beneficiary who opposes a proposed decision has the burden to establish that such decision is an abuse of discretion; requiring that any attorney fees incurred in defending an action related to the abuse of a fiduciary's discretion be paid from trust assets; creating s. 738.203, F.S.; authorizing a fiduciary to adjust between income and principal if such adjustment assists in administering the trust or estate impartially; providing construction; providing that a fiduciary is not liable to another for an adjustment, or failure to adjust, between income and principal made in good faith; requiring a fiduciary to consider certain relevant factors when considering such adjustment; prohibiting a fiduciary from exercising or considering such adjustment if certain conditions exist; revising applicability; authorizing a fiduciary to release or delegate to a cofiduciary specified powers to adjust under specified conditions; providing requirements and powers for any such releases and delegations; providing applicability; requiring that the description of an exercise of the power to adjust between income and principal contain specified information; amending s. 738.301, F.S.; defining terms; amending s. 738.302, F.S.; specifying applicability of specified provisions; authorizing the conversion of an income trust to a unitrust; restricting provisions to trusts that are beneficiaries of an estate; providing construction; providing that a fiduciary acting in good faith is not liable to a person affected by a certain action or inaction; amending s. 738.303, F.S.; specifying the authority of a fiduciary with respect to the administration of certain trusts; providing the circumstances under which a fiduciary may perform such actions;

authorizing a beneficiary or a fiduciary to request the court to allow the beneficiary or fiduciary to take a specified action; requiring a fiduciary to inform specified persons of a decision to take action; authorizing a beneficiary to request a court to direct the fiduciary to take the requested action under specified circumstances; requiring fiduciaries to consider specified factors before taking a certain action; authorizing a fiduciary to release or delegate the power to take certain actions; creating s. 738.304, F.S.; requiring a certain notice to be sent to specified parties; providing applicability; authorizing a person to consent to a specified action in a record; providing that such person does not need to be sent notice of such action; providing requirements for such notices; creating s. 738.305, F.S.; requiring a fiduciary of a unitrust to follow a certain policy; providing rules for a unitrust policy; providing additional actions a unitrust policy may contain; creating s. 738.306, F.S.; requiring a unitrust rate to be within a specified range; authorizing a unitrust policy to provide for specified limits within such range; requiring a fiduciary who is a non-independent person to use a specified unitrust rate; creating s. 738.307, F.S.; requiring a unitrust policy to provide a specified method for determining fair market value of an asset in determining a unitrust amount; authorizing specified unitrust policies to provide methods for determining a certain net fair market value; prohibiting certain property from being included in the determination of the value of a trust; creating s. 738.308, F.S.; requiring a unitrust policy to provide a specified period; specifying that such period must be a calendar year; authorizing a unitrust policy to provide certain standards for periods; creating s. 738.309, F.S.; providing applicability; authorizing a trustee of an express unitrust to determine the unitrust amount by reference to the net fair market value of the unitrust's assets in a specified timeframe; providing that distribution of a unitrust amount is considered a distribution of all the net income of an express unitrust and is considered an income interest; specifying that the unitrust amount is considered a reasonable apportionment of the total return of the express unitrust; providing that an express unitrust that allows a distribution in excess of a specified unitrust rate is considered a distribution of all of the income of the unitrust; authorizing an express unitrust to provide a mechanism for changing the unitrust rate and for conversion from a unitrust to an income trust or from an income trust to a unitrust; specifying that unless an express unitrust prohibits the power to change the rate or convert the trust, the trustee has such power; authorizing the governing instrument of an express unitrust to grant the trustee discretion to adopt a certain practice; specifying that unless an express unitrust provides otherwise, the distribution of an amount is considered a distribution from specified sources in a specified order of priority; authorizing a governing instrument of an express unitrust to allow exclusion of specified assets; providing that the use of such assets may be considered equivalent to income or to the unitrust amount; creating s. 738.310, F.S.; requiring a trustee, after the conversion of an income trust to a unitrust, to consider the unitrust amount paid from certain sources in a specified order of priority; amending s. 738.401, F.S.; defining terms; specifying that an attribute or action of an entity includes an attribute or

action from any other entity in which the initial entity has an ownership interest or holds another interest; requiring a fiduciary to allocate certain money and tangible personal property to income; requiring a fiduciary to allocate specified property and money to principal; providing that certain money received in an entity distribution is a capital distribution in specified circumstances; specifying that in cases of capital distribution, the amount received in an entity distribution must be reduced to the extent that cumulative distributions from the entity to the fiduciary are within certain ranges; authorizing a fiduciary to consider additional information before deciding to make or change a decision to make a payment to a beneficiary; providing that if a fiduciary receives specified additional information after a distribution to a beneficiary, the fiduciary is not required to change or recover the payment; authorizing a fiduciary in such a situation to exercise other specified powers; revising definitions; requiring a fiduciary to allocate certain money and property to principal; providing the mechanism for such allocation; defining the term “public entity”; conforming provisions to changes made by the act; amending s. 738.402, F.S.; conforming provisions to changes made by the act; amending s. 738.403, F.S.; providing applicability; authorizing a fiduciary to make certain determinations separately and differently from the decisions concerning distributions of income or principal; conforming provisions to changes made by the act; making technical changes; creating s. 738.404, F.S.; specifying receipts that a fiduciary must allocate to principal; creating s. 738.405, F.S.; providing for the allocation of income from rental property; creating s. 738.406, F.S.; specifying applicability; requiring a fiduciary to allocate to income certain amounts received as interest; requiring a fiduciary to allocate to income increments in value of certain bonds or other obligations; creating s. 738.407, F.S.; specifying applicability; requiring a fiduciary to allocate proceeds from insurance policies or contracts to principal in a specified manner; creating s. 738.408, F.S.; specifying circumstances under which a fiduciary may allocate an insubstantial allocation to principal, subject to certain conditions and limitations; creating s. 738.409, F.S.; defining terms; specifying the manner in which a fiduciary may determine incomes of separate funds; providing duties of a fiduciary of a marital trust and other trusts; requiring a fiduciary of a nonseparate fund to calculate internal income in a specified manner; providing construction; transferring, renumbering, and amending s. 738.603, F.S.; revising the definition of the term “liquidating asset”; providing applicability; requiring a fiduciary to allocate to income and principal the receipts produced by liquidating assets in a certain manner; transferring, renumbering, and amending s. 738.604, F.S.; requiring a fiduciary to allocate the receipts from interests in minerals, water, or other natural resources to income, principal, or between income and principal under specified conditions; revising applicability; providing that an allocation between income and principal from a receipt from a natural resource is presumed equitable under a specified condition; providing construction; transferring, renumbering, and amending s. 738.605, F.S.; requiring a fiduciary to allocate receipts from timber to income, principal, or between income and principal under

specified conditions; revising applicability; transferring, renumbering, and amending s. 738.606, F.S.; authorizing a settlor's spouse to require the trustee of a trust that receives certain property to make such property produce income under specified conditions; authorizing the trustee to take specified actions if directed by such spouse; providing that the trustee decides whether to take one or a combination of such actions; revising applicability; providing construction; transferring, renumbering, and amending s. 738.607, F.S.; revising the definition of the term "derivative"; requiring a fiduciary to allocate specified percentages of certain receipts and disbursements to income and allocate the balance to principal; providing construction; requiring certain fiduciaries to allocate a specified percentage to income and allocate the balance to principal of certain amounts; transferring, renumbering, and amending s. 738.608, F.S.; requiring a fiduciary to allocate to income a receipt from or related to asset-backed securities under a specified condition; requiring a fiduciary to allocate to income a specified percentage of receipts from the transaction and the disbursement of a payment received as a result of an interest in an asset-backed security; conforming provisions to changes made by the act; creating s. 738.416, F.S.; requiring a fiduciary to make specified allocations from receipts from other financial instruments or arrangements; providing construction; amending s. 738.501, F.S.; specifying the manner by which a fiduciary must make disbursements from income; amending s. 738.502, F.S.; specifying the manner by which a fiduciary must make disbursements from principal; amending s. 738.503, F.S.; defining the term "depreciation"; specifying the manner by which a fiduciary may make transfers from income to principal to account for depreciation; amending s. 738.504, F.S.; specifying the manner by which a fiduciary may make transfers from principal to income for reimbursements; transferring, renumbering, and amending s. 738.704, F.S.; providing that a fiduciary that makes or expects to make a certain principal disbursement may transfer an appropriate amount from income to principal in one or more accounting periods; providing applicability; making technical changes; deleting a provision relating to payments necessary to avoid defaulting on a mortgage or security interest on certain property; transferring, renumbering, and amending s. 738.705, F.S.; revising the sources from which a fiduciary must pay a tax required by a share of an entity's taxable income; requiring a fiduciary to adjust income or principal receipts if the taxes paid are reduced due to a deduction for a payment made to a beneficiary; providing construction; making technical changes; transferring, renumbering, and amending s. 738.706, F.S.; revising the circumstances under which a fiduciary may make adjustments between income and principal to offset shifts in the economic interests or tax benefits of specified beneficiaries; requiring a fiduciary to charge a beneficiary to reimburse the principal if the beneficiary benefits from an applicable tax deduction; requiring the share of reimbursement for each fiduciary or beneficiary to be the same as its share of the decrease in income tax; authorizing such fiduciary to charge a beneficiary to offset the estate tax by obtaining payment from the beneficiary, withholding an amount from future distributions, or adopting

another method or combination of methods; creating s. 738.508, F.S.; defining terms; specifying the manner by which property expenses are apportioned between a tenant and remainderman; providing applicability and construction; amending s. 738.601, F.S.; providing applicability; specifying the manner by which a fiduciary determines and distributes net income; providing circumstances under which a fiduciary may not reduce certain principal or income receipts; amending s. 738.602, F.S.; providing that certain beneficiaries of non-unitrusts are entitled to receive a specified share of net income; providing that certain requirements apply in determining a beneficiary's share of net income; providing construction; amending s. 738.701, F.S.; providing that an income beneficiary is entitled to net income when an asset is subject to a certain trust or successive interest; providing that an asset becomes subject to a specified trust on certain dates; amending s. 738.702, F.S.; specifying the manner by which a fiduciary allocates certain receipts and makes disbursements when a decedent dies or income interest begins; providing construction; amending s. 738.703, F.S.; defining the term "undistributed income"; specifying the manner by which a fiduciary makes allocations of undistributed income when income interest ends; amending s. 738.801, F.S.; providing for uniform application and construction of the act; amending s. 738.802, F.S.; providing construction in relation to federal law; amending s. 738.803, F.S.; making a technical change; amending s. 738.804, F.S.; revising application of ch. 738, F.S., to conform to changes made by the act; providing an effective date.

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

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

738.101 Short title.—This chapter may be cited as the “Florida Uniform Fiduciary Income and Principal and Income Act.”

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

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

(1) “Accounting period” means a calendar year unless ~~another 12-month period is selected by~~ a fiduciary selects another period of 12 calendar months or approximately 12 calendar months. The term includes a ~~part~~ portion of a calendar year or another period of 12 calendar months or approximately 12 calendar months which ~~other 12-month period that~~ begins when an income interest begins or ends when an income interest ends.

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

(3) “Beneficiary” includes:

(a) For a trust:

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

2. A remainder beneficiary; and

3. Any other successor beneficiary;

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

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

(4)(3) “Carrying value” means the fair market value at the time the assets are received by the fiduciary. For an estate and for a trust the estates of decedents and trusts described in s. 733.707(3), after the settlor’s grantor’s death, the assets are considered received as of the date of the settlor’s death. If there is a change in fiduciaries, a majority of the continuing fiduciaries may elect to adjust the carrying values to reflect the fair market value of the assets at the beginning of their administration. If such election is made, it must be reflected on the first accounting filed after the election. For assets acquired during the administration of the estate or trust, the carrying value is equal to the acquisition costs of the asset. Carrying value of assets should not be arbitrarily “written up” or “written down.” In some circumstances, including, but not limited to, those described in ss. 738.410 and 738.602, carrying value may be adjusted with proper disclosure to reflect changes in carrying value applied in a consistent manner.

(5) “Court” means a circuit court of this state.

(6) “Current income beneficiary” means a beneficiary to 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 trust as defined in this section, will, life estate, or term interest. “Distribute,” “distributed,” and “distributee” have corresponding meanings.

(8) “Estate” means a decedent’s estate, including the property of the decedent as the estate is originally constituted and the property of the estate as it exists at any time during administration.

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

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

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

~~(11)(7)~~ “Income interest” means the right of a current an income beneficiary to receive all or part of net income, whether the terms of the trust require the net income to be distributed or authorize the net income to be distributed in the fiduciary’s trustee’s discretion. The term includes the right of a current beneficiary to use property held by a fiduciary.

(12) “Independent person” means a person who is not:

(a) For a trust:

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

2. A settlor of the trust;

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

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

(b) For an estate, a beneficiary;

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

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

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

(13) “Internal Revenue Code” means the Internal Revenue Code of 1986, as amended.

(14)(8) “Mandatory income interest” means the right of a current an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.

(15)(9) “Net income” means the total ~~allocations receipts allocated to~~ income during an accounting period to income under the terms of a trust and this chapter minus the disbursements ~~made from income~~ during the period, other than distributions, allocated to income under the terms of the trust and this chapter. To the extent that the trust is a unitrust under ss. 738.301-738.310, the term means the unitrust amount determined under ss. 738.301-738.310. The term includes the amount of an adjustment from principal to income under s. 738.203. The term does not include the amount of an adjustment ~~plus or minus transfers under this chapter to or from income to~~ principal under s. 738.203 during the period.

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

(17) “Personal representative” means an executor, an administrator, a successor personal representative, a special administrator, or a person that performs substantially the same function with respect to an estate under the law governing the person’s status.

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

(19) “Record” means information inscribed on a tangible medium or stored in an electronic or other medium and is retrievable in perceivable form.

(20) “Settlor” means a person, including a testator, who creates or contributes property to a trust. If more than one person creates or contributes property to a trust, the term includes each person, to the extent of the trust property attributable to that person’s contribution, except to the extent that another person has the power to revoke or withdraw that portion.

(21) “Special tax benefit” means:

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Expressed in the will or trust instrument; or

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

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

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

2. A court order; or

3. A nonjudicial settlement agreement under s. 736.0111.

(c) For an estate, a will; or

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

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

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

(27) “Will” means any testamentary instrument recognized under applicable law which makes a legally effective disposition of an individual’s property, effective at the individual’s death. The term includes a codicil or other amendment to a testamentary instrument.

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

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

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

- (1) A trust or an estate.
- (2) A life estate or other term interest in which the interest of one or more persons will be succeeded by the interest of one or more other persons to the extent provided in s. 738.508.

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

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

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

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

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

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

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

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

738.201 Fiduciary duties; general principles.—

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

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

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

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

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

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

(3) A fiduciary shall:

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

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

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

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

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

(a) The terms of the trust.

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

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

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

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

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

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

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

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

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

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

(l) The identities and circumstances of the beneficiaries.

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) To the extent that the abuse of discretion has resulted in no distribution to a beneficiary or a distribution that is too small, the court

shall require the fiduciary to distribute from the trust to the beneficiary an amount the court determines will restore the beneficiary, in whole or in part, to his or her appropriate position;

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

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

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

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

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

738.203 Fiduciary's power to adjust.—

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

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

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

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

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

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

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

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

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

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

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

(g) The fiduciary is not an independent person;

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

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

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

(a) A cofiduciary to which paragraphs (5)(d)-(g) do not apply may exercise the power to adjust, unless the exercise of the power by the remaining

cofiduciary or cofiduciaries is not permitted by the terms of the trust or law other than this chapter; or

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

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

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

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

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

(a) Must be in a record;

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

1. From income to principal;

2. From principal to income;

3. For specified property; or

4. In specified circumstances.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e)1. If a fiduciary makes a good faith effort to comply with the notice provisions of subsection (13), but fails to deliver notice to one or more

beneficiaries entitled to such notice, neither the validity of the notice required under this subsection nor the fiduciary's power to adjust under this section shall be affected until the fiduciary has actual notice that one or more beneficiaries entitled to notice were not notified. Until the fiduciary has actual notice of the notice deficiency, the fiduciary shall have all of the powers and protections granted a fiduciary with the power to adjust under this chapter.

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

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

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

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

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

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

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

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

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

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

(a) “Eligible beneficiaries” means:

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

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

(b) “Super majority of the eligible beneficiaries” means:

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

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

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

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

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

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

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

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

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

(4) “Net fair market value of a trust” means the fair market value of the assets of the trust, less the reasonably known noncontingent liabilities of the trust.

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

(6) “Unitrust amount” means an amount computed by multiplying a determined value of a trust by a determined percentage. For a unitrust administered under a unitrust policy, the term means the applicable value multiplied by the unitrust rate.

(7) “Unitrust policy” means a policy described in ss. 738.301-738.310 and adopted under s. 738.303.

(8) “Unitrust rate” means the rate used to compute the unitrust amount for a unitrust administered under a unitrust policy.

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

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

738.302 Applications; duties and remedies.—

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

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

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

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

2. Prohibit conversion to an income trust; or

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

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

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

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

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

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

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

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

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

738.303 Authority of fiduciary.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

738.304 Notice.—

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

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

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

1. Including all of the following:

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

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

2. Excluding all of the following:

a. Power of appointment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

738.305 Unitrust policy.—

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

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

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

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

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

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

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

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

(a) Provide methods and standards for:

1. Determining the timing of the distributions;

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

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

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

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

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

738.306 Unitrust rate.—

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

(a) A fixed unitrust rate; or

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

a. A market index or other published data; or

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

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

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

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

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

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

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

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

738.307 Applicable value.—

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Any asset while held in an estate.

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

738.308 Period.—

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

(2) A unitrust policy may provide standards for:

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

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

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

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

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

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

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

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

738.309 Express unitrust.—

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

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

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

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

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

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

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

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

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

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

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

(c) Net realized short-term capital gains;

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

(e) The principal of the trust.

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

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

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

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

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

(3) Net realized short-term capital gains;

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

(5) The principal of the trust.

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

738.401 Character of receipts from entity.—

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

(a) “Capital distribution” means an entity distribution of money which is a:

1. Return of capital; or

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

(b) “Entity”:

1. Means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization or arrangement in which a fiduciary owns or holds

has an interest, regardless of whether the entity is a taxpayer for federal income tax purposes; and

2. Does not include:

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

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

c. An asset-backed security; or

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

(c) “Entity distribution” means a payment or transfer by an entity to a person in the person’s capacity as an owner or holder of an interest in the entity.

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

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

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

(a) Money received in an entity distribution; and

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

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

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

1. other than Money; or

2. Tangible personal property of nominal value.

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

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

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

~~(e) Money received from an entity listed on a public stock exchange during any year of the trust or estate which exceeds 10 percent of the fair market value of the trust's or estate's interest in the entity on the first day of that year. The amount to be allocated to principal must be reduced to the extent that the cumulative distributions from the entity to the trust or estate allocated to income do not exceed a cumulative annual return of 3 percent of the fair market value of the interest in the entity at the beginning of each year or portion of a year for the number of years or portion of years in the period that the interest in the entity has been held by the trust or estate. If a trustee has exercised a power to adjust under s. 738.104 during any period the interest in the entity has been held by the trust, the trustee, in determining the total income distributions from that entity, must take into account the extent to which the exercise of that power resulted in income to the trust from that entity for that period. If the income of the trust for any period has been computed under s. 738.1041, the trustee, in determining the total income distributions from that entity for that period, must take into account the portion of the unitrust amount paid as a result of the ownership of the trust's interest in the entity for that period.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) A fiduciary shall allocate to principal any money and property the fiduciary receives in a distribution or series of related distributions from a public entity which are greater than 10 percent of the fair market value of the fiduciary's interest in the public entity on the first day of the accounting period. The amount to be allocated to principal must be reduced to the extent that the cumulative distributions from the entity to the fiduciary allocated to income do not exceed a cumulative annual return of 3 percent of the fair market value of the interest in the entity at the beginning of each accounting period, or portion of an accounting period, during the lookback period. If a fiduciary has exercised a power to adjust under s. 738.203 during the lookback period, the fiduciary, in determining the total income distributions from that entity, must take into account the extent to which the exercise of that power resulted in income to the fiduciary from that entity for that

period. If the income of the fiduciary during the lookback period has been computed under ss. 738.301-738.310, the fiduciary, in determining the total income distribution from that entity for that period, must take into account the portion of the unitrust amount paid as a result of the ownership of the trust's interest in the entity for that period. As used in this subsection, the term "public entity" means an entity listed on a public stock exchange.

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

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

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

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

738.403 Business and other activity ~~activities~~ conducted by fiduciary.

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

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

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

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

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

(a) May determine:

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

a. Working capital;

b. The acquisition or replacement of fixed assets; and

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

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

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

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

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

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

(b) Farming.

(c) Raising and selling livestock and other animals.

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

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

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

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

(h) Any other business conducted by the fiduciary.

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

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

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

- (a) An individual during the individual's lifetime.
- (b) An estate.
- (c) A trust on termination of an income interest.
- (d) A payor under a contract naming the fiduciary as beneficiary.

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

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

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

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

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

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

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

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

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

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

738.406 Receipt on obligation to be paid in money.—

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

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

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

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

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

738.407 Insurance policy or contract.—

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

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

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

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

(b) Income; or

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

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

738.408 Insubstantial allocation not required.—

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

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

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

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

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

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

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

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

738.409 Deferred compensation, annuity, or similar payment.—

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

(a) “Internal income of the separate fund” means the amount determined under subsection (2).

(b) “Marital trust” means a trust:

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

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

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

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

c. The trust otherwise qualifies for a marital deduction.

(c) “Nonseparate fund” means an annuity, a deferred compensation plan, a pension plan, or other fund for which the value of the participant’s or

account owner's right to receive benefits can be determined only by the occurrence of a date or event as defined in the instrument governing the fund.

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

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

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

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

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

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

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

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

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

(4) The fiduciary of a marital trust shall:

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

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

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

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

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

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

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

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

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

738.410 ~~738.603~~ Liquidating asset.—

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

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

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

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

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

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

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

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

- ~~1. If received As nominal delay rental or nominal annual rent on a lease;~~
- ~~2. As a factor for interest or the equivalent of interest under an agreement creating a production payment; or~~
- ~~3. On account of an interest in renewable water; a receipt shall be allocated to income.~~

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

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

1. On account of an interest in nonrenewable water:

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

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

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

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

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

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

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

738.412 ~~738.605~~ Timber.—

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

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

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

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

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

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

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

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

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

738.413 ~~738.606~~ Marital deduction property not productive of income.

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

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

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

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

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

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

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

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

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

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

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

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

(2) To the extent that ~~a fiduciary does not account for a transaction in derivatives as a business under s. 738.403 for transactions in derivatives,~~

~~the fiduciary shall allocate 10 percent of to principal receipts from the transaction and 10 percent of and disbursements made in connection with the transaction to income and allocate the balance to principal these transactions.~~

(3) Subsection (4) applies if:

(a) A fiduciary:

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

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

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

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

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

(a) An amount received for granting the option;

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

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

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

738.415 738.608 Asset-backed securities.—

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

proceeds other than interest or current return. The term does not include an asset to which s. 738.401 or s. 738.602 applies.

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

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

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

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

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

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

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

(1) One-half of:

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

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

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

making those disbursements from income would be in the interests of the beneficiaries.

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

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

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

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

738.502 Disbursement from principal.—

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

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

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

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

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

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

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

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

(h) A payment related to environmental matters including:

1. Reclamation;

2. Assessing environmental conditions;

3. Remediating and removing environmental contamination;

4. Monitoring remedial activities and the release of substances;
5. Preventing future releases of substances;
6. Collecting amounts from persons liable or potentially liable for the costs of the activities described in subparagraphs 1.-5.;
7. Penalties imposed under environmental laws or regulations;
8. Other actions to comply with environmental laws or regulations;
9. Statutory or common law claims by third parties; and
- 10 Defending claims based on environmental matters.

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

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

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

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

738.503 Transfers from income to principal for depreciation.—

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

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

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

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

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

1. Under s. 738.410 for the asset; or

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

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

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

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

738.504 Reimbursement of income from principal.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

738.506 ~~738.705~~ Income taxes.—

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

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

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

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

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

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

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

(5) Subject to the limitations and excluded assets provided under s. 736.08145, a reimbursement of state or federal income tax elected to be made by a fiduciary pursuant to s. 736.08145 must be allocated and paid under paragraphs (3)(a) and (b) After applying subsections (1)-(3), the fiduciary shall adjust income or principal receipts to the extent that the trust's or estate's income taxes are reduced, but not eliminated, because the trust or estate receives a deduction for payments made to a beneficiary. The amount distributable to that beneficiary as income as a result of this adjustment shall be equal to the cash received by the trust or estate, reduced, but not below zero, by the entity's taxable income allocable to the trust or estate multiplied by the trust's or estate's income tax rate. The reduced amount shall be divided by the difference between 1 and the trust's or estate's income tax rate in order to determine the amount distributable to that beneficiary as income before giving effect to other receipts or disbursements allocable to that beneficiary's interest.

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

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

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

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

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

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

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

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

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

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

738.508 Apportionment of property expenses between tenant and remainderman.—

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

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

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

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

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

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

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

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

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

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

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

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

4. Extraordinary repairs.

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

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

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

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

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

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

738.601 Determination and distribution of net income.—

(1) This section applies when:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

738.602 Distribution to successor beneficiary.—

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

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

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

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

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

2. Reduced by:

a. Any liabilities of the estate or trust;

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

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

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

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

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

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

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

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

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

(5) The carrying value or fair market value of trust assets shall be determined on an asset-by-asset basis and is conclusive if reasonable and determined in good faith. Determinations of fair market value based on

appraisals performed within 2 years before or after the valuation date are presumed reasonable. The values of trust assets are conclusively presumed to be reasonable and determined in good faith unless proven otherwise in a proceeding commenced by or on behalf of a person interested in the trust within the time provided in s. 736.1008.

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

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

738.701 When right to income begins and ends.—

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

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

(b) A successive interest for a successor beneficiary.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

738.703 Apportionment when income interest ends.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Approved by the Governor May 29, 2024.

Filed in Office Secretary of State May 29, 2024.