

1 An act relating to the Florida Uniform Fiduciary Income and
2 Principal Act; amending s. 738.201(1)(a), F.S. to correct a
3 typographical error; deleting s. 738.201(6), F.S. as an
4 inadvertent carryforward from the prior Florida Uniform
5 Principal and Income Act; amending s. 738.203(5)(e), F.S.
6 to correct a typographical error; amending s.
7 738.303(1)(b), F.S. to correct a typographical error;
8 amending s. 738.409(1)(b), F.S. to expand its applicability
9 to both inter vivos and testamentary marital trusts;
10 amending s. 738.413, F.S. to correspond with s. 732.2125,
11 F.S. as that section provides that the elective share
12 election may be made not just by the surviving spouse but
13 also by certain others on behalf of the surviving spouse;
14 amending s. 738.505(3), F.S. to codify the change made by
15 the Division of Law Revision so that the revisor note can
16 be removed; amending s. 738.506(5), F.S. for clarity;
17 amending s. 738.508, F.S. to correct a typographical error;
18 and amending s.738.804, F.S. to clarify applicability and
19 provide transition rules.

20
21 Section 1. Paragraph (a) of subsection (1) of section
22 738.201, Florida Statutes, is amended to read:

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24 <<FL ST § 738.201(1)(a)>>
25

26 (a) Act in good faith, based on what is a fair and
27 reasonable ~~fee~~ to all beneficiaries;
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29 Section 2. Subsection (6) of section 738.201, Florida
30 Statutes, is deleted:
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32 <<FL ST § 738.201(6)>>
33

34 ~~(6) Except as provided in ss. 738.301-738.310, this chapter~~
35 ~~pertains to the administration of a trust and is applicable~~
36 ~~to any trust that is administered in this state or under~~
37 ~~its law. This chapter also applies to any estate that is~~
38 ~~administered in this state unless the provision is limited~~
39 ~~in application to a trustee, rather than a fiduciary.~~
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41 Section 3. Paragraph (e) of subsection (5) of section
42 738.203, Florida Statutes, is amended to read:
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44 <<FL ST § 738.203(5) (e)>>
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46 (e) Possessing or exercising the power would cause all or
47 part of the value of the trust assets to be included in the
48 gross estate of an individual for federal ~~real~~ estate tax
49 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;

Section 4. Paragraph (b) of subsection (1) of section
738.303, Florida Statutes, is amended to read:

<<FL ST § 738.303(1) (b)>>

(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~~ changes in the
percentage or method used to calculate the unitrust amount.

Section 5. Paragraph (b) of subsection (1) of section
738.409, Florida Statutes, is amended to read:

<<FL ST § 738.409(1) (b)>>

(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 or 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.
2523(f) or s. 2056(b) (7) of the Internal Revenue Code has
 been made;

b. The trust qualified for a marital deduction under s.
2523(e) or s. 2056(b) (5) of the Internal Revenue Code; or

c. The trust otherwise qualifies for a marital deduction.

Section 6. Section 738.413, Florida Statutes, is amended to
 read:

<<FL ST § 738.413>>

738.413 Marital deduction property not productive of
 income.—

(1) If a trust received property for which a gift or estate
 tax marital deduction was allowed, or if a trust received
 property satisfying the requirements of s. 732.2025 (2) (a)
 and (c), and such property has been used in whole or in
 part to satisfy an election ~~by a surviving spouse~~ under
 s. ~~732.2125~~ 732.201, 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

99 otherwise do not provide the spouse with sufficient income
100 from or use of the trust assets to qualify for the
101 deduction, or to satisfy an election ~~by a surviving spouse~~
102 under s. ~~732.2125~~ 732.201, to make the property productive
103 of income within a reasonable time. The trustee may:

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

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

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

109 (d) Exercise the fiduciary's authority under the terms of
110 the trust to otherwise provide the ~~surviving~~ spouse with
111 sufficient income from the trust assets, or the use of the
112 trust assets, to qualify for the marital deduction, or to
113 satisfy an election ~~by a surviving spouse~~ under s. ~~732.2125~~
114 732.201.

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

117 (3) Subsection (1) shall apply even though, in the case of
118 an elective share trust under s. 732.2025(2), a gift or
119 estate tax marital deduction election is not made or is
120 only partially made.

121 (4) The terms of a trust as defined in s. 738.102 may not
122 supersede this section unless such terms explicitly
123 reference this section.

Section 7. Subsection (3) of section 738.505, Florida Statutes, is amended to read:

<<FL ST § 738.505(3)>>

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

Section 8. Subsection (5) of section 738.506, Florida Statutes, is amended to read:

<<FL ST § 738.506(5)>>

(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~~ shall be allocated and paid ~~under~~ paragraphs (3)(a) and (b) in accordance with paragraphs (1) through (3) as if the fiduciary had paid the tax.

Section 9. Subsection (3) of section 738.508, Florida Statutes, is amended to read:

<<FL ST § 738.508(3)>>

(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.

Section 10. Section 738.804, Florida Statutes, is amended to read:

<<FL ST § 738.804>>

738.804 Application.

(1) Except as provided in the terms of the trust or this chapter, this chapter shall apply to any receipt or expense received or incurred and any disbursement made on or after January 1, 2025, by any trust or estate, whether established before, on or after January 1, 2025, and whether the asset involved was acquired by the trustee or personal representative before, on or after January 1, 2025. Receipts or expenses received or incurred and disbursements made before January 1, 2025, must be governed by the law of this state in effect at the time of the

event, except as otherwise expressly provided in the terms of the trust or in this chapter.

(2) The following transition rule shall apply to trusts established before January 1, 2025:

(a) If any trust established before January 1, 2025, had any undistributed income as of December 31, 2024, a fiduciary may add part or all of the undistributed income to principal, unless otherwise provided by the terms of the trust.

(b) In applying section 738.401(7) and 738.401(11) to a lookback period that includes accounting periods prior to January 1, 2025, the fiduciary shall determine income during the lookback period consistent with the law in this state in effect prior to January 1, 2025.

(c) In applying section 738.401(10)(b), a fiduciary shall determine whether additional money or property received from the investment entity would have been considered income in accounting periods prior to January 1, 2025, consistent with the law in this state in effect prior to January 1, 2025.

Section 11. These changes shall be effective upon becoming a law.