

## Florida Adopts Uniform Fiduciary Income and Principal Act

**F**lorida recently modernized its laws related to the administration of estates and trusts by enacting the Florida Uniform Fiduciary Income and Principal Act (the act or UFIPA).<sup>1</sup> The act, which becomes effective January 1, 2025, provides important rules to guide fiduciaries in administering estates, trusts, and other fiduciary arrangements, such as legal life estates. In adopting the act, Florida became the eighth state to enact a version of the Uniform Fiduciary Income and Principal Act (UFIPA). The model act was approved by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 2018.<sup>2</sup> Adoption of the act makes Florida a more attractive jurisdiction for trust administration and resolves some problematic aspects of existing law.

### History of the Act and Guidelines in Development

Florida law includes several statutory frameworks to advise fiduciaries in carrying out their duties.<sup>3</sup> Governing instruments — such as wills and trust agreements — cannot include every rule that may apply. Therefore, these statutes operate to fill the gaps and guide fiduciaries in carrying out their duties. The statutory frameworks include the Florida Probate Code (in the case of estate administrations),<sup>4</sup> the Florida Trust Code (in the case of trust administrations),<sup>5</sup> and the act (more broadly applicable to estates, trusts, and other fiduciary relationships, to address distinctions between income and principal).

Florida adopted the Florida Uni-

form Principal and Income Act in 2002 (the 2002 act or FPIA).<sup>6</sup> The 2002 act was based on NCCUSL's 1997 Uniform Principal and Income Act (the 1997 uniform act)<sup>7</sup> and has served our state well for over two decades. The 2002 act has been amended over time, to improve certain aspects of the 2002 act and address updates in federal tax law.<sup>8</sup>

In developing the 2002 act, important policy considerations dictated significant deviations from the 1997 uniform act. Thus, while largely adopting the 1997 uniform act, the 2002 act contained several Florida specific provisions not found in the 1997 uniform act, such as rules regarding life estates, unitrusts, and distributions from entities, references to Florida's elective share regime, and inclusion of carrying value in certain calculations (the Florida specific provisions). These deviations remain an important aspect of Florida law and, therefore, are retained in the act. As with the 2002 act, the act is not a wholesale adoption of UFIPA. Instead, Florida modifies UFIPA to continue to incorporate Florida's important policy considerations that remain relevant. While the look and feel of the act has changed, Florida's substantive law regarding allocation of income and principal has been largely maintained.

Although the Florida specific provisions are preserved, UFIPA is adopted as much as possible. In so doing, the act advances NCCUSL's goal of adopting uniform laws among the states, aids fiduciaries (and their attorneys) who may be familiar with UFIPA or the laws of other states in applying

Florida law, and utilizes UFIPA's updated language addressing concepts of income and principal. To promote uniformity, Florida's statutory numbering scheme is substantially modified to align with UFIPA. The unitrust provisions are restructured, migrating from a single section<sup>9</sup> to a series of sections setting forth specific rules. Furthermore, certain terms are changed to align with UFIPA. The old concept of "partial liquidations" is replaced with the UFIPA concept of "capital distributions,"<sup>10</sup> and the phrase "terms of the trust" is used throughout the act to reflect the settlor's intent.<sup>11</sup>

The Florida Bar Real Property, Probate and Trust Law Section's Principal and Income Committee (the committee) spent over five years drafting the act with meaningful input from various stakeholders, including other sections of The Florida Bar (such as the Tax Section), the Florida Bankers Association, the Florida Institute of Certified Public Accountants, and other legal and accounting professionals.

The joint, and sometimes contradictory, goals of retaining the Florida specific provisions and promoting uniformity presented considerable drafting challenges. Deference was given to maintaining the Florida specific provisions.

### Reasons for Change

Recognizing areas for improvement and acknowledging the changing use of and nature of trust arrangements, NCCUSL sought to update the 1997 uniform act.<sup>12</sup> The result of this effort was the approval of UFIPA in

2018. Florida has grown considerably over the past 20 years and has become a destination for wealth. As such, it was appropriate for the committee to carefully consider UFIPA to keep Florida laws current and on pace with other states.

UFIPA updates various rules to adapt to the modern nature of trusts, in particular, the growing use of longer-term and fully discretionary trusts with a series of successor beneficiaries, as opposed to the more traditional structure of a life tenant followed by a single class of remainder beneficiaries.<sup>13</sup> Some commentators have suggested that the longer-term nature of trusts stems from the federal enactment of the generation-skipping transfer tax (GST tax).<sup>14</sup> Due to the nature and operation of the GST tax, once exemption is allocated, there are significant tax benefits in retaining assets within such exempt trusts for as long as possible. Indeed, Florida's rule against perpetuities (which limits the duration of trusts) has been extended to 1,000 years.<sup>15</sup> The purpose, asset mix, and tax profile of a trust may change considerably over time. Therefore, a corollary of longer-term trusts is granting the trustee increased discretion in administration to address changing circumstances.

UFIPA is designed to promote flexibility in the ongoing administration of trusts and to allow the fiduciary to adjust to the changing needs and circumstances of the beneficiaries over time. Many modern trusts are drafted with minimal distinction between principal and income beneficiaries, with each class receiving only discretionary distributions from the fiduciary. This contrasts with the more traditional structure of mandatory income distributions but discretionary principal distributions.<sup>16</sup> Throughout UFIPA, the fiduciary is granted greater flexibility, so the fiduciary may better carry out its duties to the beneficiaries.

Investment strategies have also changed considerably over the past 20 years. Modern portfolio theory (MPT) contemplates a portfolio-based approach to evaluating trust investments, values diversification, and considers the risk of the overall port-

folio instead of analyzing each investment separately.<sup>17</sup> MPT stresses total return from both income and capital appreciation. UFIPA, in deemphasizing traditional determinations of income, promotes implementation of MPT. Perhaps most notably, UFIPA broadens the authorized use of the power to adjust distributions and receipts between income and principal. UFIPA also incorporates several rules regarding the administration of unitrusts (*i.e.*, the income distribution is a specified percentage of the total trust assets). While Florida law already included unitrust rules, those rules have been expanded in the act to comply with UFIPA's current and more detailed provisions.

Trusts have also become more migratory over the past 20 years, raising questions about applicable governing law. Are determinations of income and principal questions of "construction" (and, thus, governed by the law of the jurisdiction of creation) or "administration" (and, thus, governed by the law of the current trust situs, which may change from time to time)?<sup>18</sup> Governing law itself may be a question of construction requiring one to consider where and when the trust was established.<sup>19</sup> Regardless, UFIPA adopts a more practical approach; specifically, that a trust is governed by the laws of its situs (or principal place of administration).<sup>20</sup>

In addition, note that UFIPA's name places the word "income" before "principal." Referencing "income" first suggests that items not allocated to income constitute "principal" (a concept also in line with the administration of unitrusts).<sup>21</sup> Furthermore, this name change may reduce name confusion with the Uniform Prudent Investor Act.<sup>22</sup>

### Structure of Florida's New Act

The act is set forth in F.S. Ch. 738 (Principal and Income). The act deviates from prior Florida law in that the ordering and numbering scheme has been updated to match UFIPA (see the mapping chart). While the ordering and numbering scheme of the chapter has changed, what remains consistent is Florida's alignment with the uniform acts. The 2002 act aligned

with the 1997 uniform act, and the act now aligns with UFIPA. The act consists of 50 sections, including an expansion of the unitrust rules from a single dense section<sup>23</sup> to 10 more specific and discrete sections.<sup>24</sup>

Consistent with UFIPA, the act includes a new rule specifying that the act applies when Florida is the principal place of administration.<sup>25</sup> Thus, the act would apply to a trust established outside Florida but later administered in Florida, perhaps by reason of the trustee moving to Florida and relocating the trust assets to Florida. Furthermore, the act applies to all administrations after its January 1, 2025, effective date.<sup>26</sup> This includes trust administrations that began prior to the effective date. While Florida substantive law remains largely unchanged, the new provisions of the act could potentially alter the allocation of receipts and expenses between income and principal.

The act includes a detailed set of technical rules to aid fiduciaries in the administration of estates and trusts. While the governing instrument may provide specific rules regarding the allocation of income and principal that override the act, the inclusion of such rules in trusts is not common. Thus, the act provides default rules to address various scenarios that a fiduciary may encounter.

The preliminary aspects of the act, as well as definitions to be used throughout the act, are set forth at its beginning.<sup>27</sup> The act includes a definition of "carrying value," a Florida specific provision that has been retained despite its lack of inclusion in the past two uniform acts. While such uniform acts generally determine value based on fair market value, Florida continues to use carrying value as a more readily accessible base for certain calculations. The phrase, "terms of the trust," is also defined. This phrase includes all manifestations of a settlor's intent and extends beyond the terms of a trust instrument. Thus, the terms of a trust may include the terms of a decedent's will admitted to probate.

Fiduciary duties, general principles, and judicial aspects are then addressed.<sup>28</sup> Rules deviating from traditional determinations of income and

principal — specifically, rules related to the power to adjust and unitrusts — are set forth in F.S. §§738.203-738.310. Traditional classifications of income and principal for receipts and disbursements are included in F.S. §§738.401-738.504, with receipts normally apportioned (rules regarding IRAs, liquidating assets, minerals, water, other natural resources, timber, etc.) being grouped together in F.S. §§738.408-738.416, and the allocation of disbursements being grouped together in F.S. §§738.501-738.507. Rules regarding the creation and termination of interests follow in F.S. §§738.601-738.703 (these rules are relocated from the beginning part of the 2002 act). The act concludes with miscellaneous provisions set forth in F.S. §§738.801-738.804.

### **Fiduciary Thresholds and Judicial Involvement**

F.S. §738.201 sets forth various rules and duties to guide the fiduciary in carrying out its obligation to properly allocate receipts between income and principal. The duties of good faith and impartiality, also included in the Florida Trust Code,<sup>29</sup> are repeated in the act. This section contemplates that the governing instrument may override the act.<sup>30</sup> Notwithstanding the ability to override, great care should be taken prior to drafting provisions that deviate substantially from customary rules regarding income and principal, as such deviations may not be respected for federal income tax purposes.<sup>31</sup> The statute protects a fiduciary by providing a default rule that its decisions are presumed to be fair and reasonable.<sup>32</sup> Moreover, the statute provides a default rule for allocating to principal receipts and disbursements not otherwise allocated by the terms of the trust or the other provisions of the act.<sup>33</sup> The act includes a new provision providing that undistributed income shall be added to principal, a term frequently included in trust instruments but now specifically included in the act.<sup>34</sup>

The fiduciary is explicitly authorized to exercise the power to adjust or migrate to or from a unitrust if such exercise will assist the fiduciary

in its impartial administration.<sup>35</sup> The fiduciary must consider several enumerated factors, including the terms of the trust, the asset mix, and the identities and circumstances of the beneficiaries.<sup>36</sup> The factors do not include consideration of the settlor's intent. Consideration of the settlor's subjective intent was determined to place too great a burden on the fiduciary; the focus instead is on the more objective "terms of the trust,"<sup>37</sup> given that the settlor may (or may not) have considered the beneficiaries' current situation in developing the "terms of the trust."

The act contemplates judicial review in matters of income and principal determinations and largely maintains prior law under the 2002 act. Generally, courts are directed to respect a fiduciary's decision, even if the court would have acted differently.<sup>38</sup> An exception, of course, is if the court determines that the fiduciary has abused its discretion.<sup>39</sup> In the event of such abuse, the aggrieved beneficiary is entitled to the remedies set forth in the Florida Trust Code, as well as the remedies set forth in the act. The remedies are structured to restore the beneficiaries to the positions they would have been in had the fiduciary not abused its discretion (for example, by requiring a distribution or limiting future distributions).<sup>40</sup> The act continues to specify that fiduciary disgorgement remains a remedy of last resort.<sup>41</sup> A fiduciary may seek a protective order before acting, confirming that such potential action will not constitute an abuse of discretion.<sup>42</sup> F.S. §738.202 includes an attorneys' fees provision. Specifically, if the fiduciary is sued but prevails — confirming that the fiduciary's action or inaction was not an abuse of its discretion — attorneys' fees and costs shall be paid from the trust.<sup>43</sup>

### **Traditional Allocations of Income and Principal**

Fiduciary arrangements are funded with property (the principal) that often generates a return — the income generated from the principal. A common analogy is the relationship between a tree and its fruit, with the tree being the principal and the

income being the fruit produced by the tree. Traditionally, income and principal have been determined on a transaction-by-transaction basis. Receipts resulting from income earned by the principal, such as interest income, real estate rental income, and ordinary dividends, are allocated to income.<sup>44</sup> Expenses related to the production of income reduce net income, which is the amount ultimately payable to the income beneficiaries. Common examples of expenses reducing income include bank fees, realtor commissions incurred in the rental of real estate, and similar expenses. Principal transactions generally consist of changes on the estate's or trust's balance sheet — the exchange of one asset for another. In the tree example, this is perhaps the equivalent to the exchange of one tree for another. As an alternative example, perhaps a fiduciary alters a portfolio of securities to better meet the needs of the beneficiaries. Consistent with prior law, the act includes various technical and detailed rules regarding the allocation of receipts and disbursements. If the fiduciary cannot determine the proper allocation of a receipt or disbursement, the fiduciary is directed to apply the item to principal.<sup>45</sup>

Some receipts are normally apportioned.<sup>46</sup> These receipts constitute a mix of income and principal. The fiduciary must evaluate the receipt in light of the terms of the governing instrument and the act to determine the proper apportionment. For example, the first 5% (based on carrying value) of a receipt from a liquidating asset, such as income from a royalty right, is allocable to income, while the remainder is allocable to principal.<sup>47</sup>

### **Modern Portfolio Theory**

Under the traditional trust income and principal approach, tension may arise between investing for the benefit of income versus principal beneficiaries, particularly during times of low income returns and rising asset values.<sup>48</sup> Federal income tax law also favors long-term investment by applying lower long-term capital gains tax rates relative to ordinary income tax rates. Therefore, if the

income beneficiaries can participate in asset growth, it may be beneficial to all parties to invest in capital assets, which generally favor principal appreciation over income generation. As noted above, the trend toward adoption of MPT also considers the investment portfolio as a whole, with less emphasis on distinctions between principal and income. Recognizing the importance of these concepts, the 2002 act incorporated two deviations from traditional determinations of income and principal: the power to adjust and rules regarding unitrusts. Both concepts are retained and refined in the act.

### Power To Adjust

The power to adjust allows a disinterested trustee to adjust between income and principal. For example, if a growth strategy is determined to be in the best interest of the beneficiaries collectively, the fiduciary may utilize its power to change the character of certain receipts from principal to income. Alternatively, if the performance of certain assets favors income over principal beneficiaries, the fiduciary may utilize the power to adjust to shift amounts from income to principal. The 2002 act imposed significant constraints on a fiduciary's ability to exercise its power to adjust. Specifically, consistent with the 1997 uniform act, the power to adjust could be used only if the fiduciary was otherwise unable to comply with its duty of impartiality.<sup>49</sup> The fiduciary was required to consider "all factors relevant to the trust and its beneficiaries," including nine specific factors set forth in the statute.<sup>50</sup> That high threshold may have prevented many trustees from utilizing the power to adjust. As such, the power to adjust has been perhaps underutilized by fiduciaries even when they may have invested the trust assets using MPT.

These shortcomings were recognized by the drafters of UFIPA when they significantly expanded the power to adjust.<sup>51</sup> The act adopted this expanded approach; under the act, the fiduciary is no longer forced to determine that it is impossible to maintain impartiality without use of the power to adjust. Instead, the

fiduciary has the ability to use the power to adjust if it will "assist" the fiduciary in carrying out its duty of impartiality.<sup>52</sup> Thus, the standard of impossibility has been replaced with the standard of assistance, encouraging the fiduciary to use the power when appropriate in carrying out its duties. Furthermore, no court order is required to use the power, permitting the fiduciary to exercise the power to adjust on its own accord in compliance with the statute.<sup>53</sup>

The act retains the factors the fiduciary must consider, but moves them from the power to adjust provision to the general provisions applicable to all fiduciary decisions.<sup>54</sup> The act also adds new accountability procedures that require the fiduciary to establish a record of its use of the power<sup>55</sup> and to disclose its use of the power at least annually to the qualified beneficiaries (excluding the Florida attorney general).<sup>56</sup> Various savings clauses continue to apply to prevent negative tax implications to the fiduciary or the trust.<sup>57</sup> If a fiduciary is unable to exercise the power to adjust, the statute includes rules to enable the fiduciary to release or delegate its power to allow exercise of the power to adjust by another fiduciary.<sup>58</sup>

### Unitrusts

Unitrusts are trusts that abandon

traditional determinations of income and principal, and instead determine income based on the total value of assets owned by the trust (the valuation base) on a given date (the valuation date). On the valuation date, the valuation base is multiplied by a percentage set forth in the governing instrument or applicable state law (the unitrust rate). The product of the valuation base and the unitrust rate is the income generated by the unitrust.

Similar to the power to adjust, unitrusts promote implementation of MPT, perhaps in a more robust manner. The fiduciary is permitted to pursue an investment philosophy as it deems appropriate in the best interests of all beneficiaries, with asset appreciation and income earned benefiting all beneficiaries on the next valuation date. Although the 1997 uniform act did not include provisions for unitrusts, Florida was forward-thinking and included unitrust rules as part of the 2002 act.<sup>59</sup> The rules are consolidated into a single dense section.<sup>60</sup>

As unitrusts have become more commonplace and MPT has gained increased acceptance, UFIPA included several unitrust rules.<sup>61</sup> The act largely adopted those rules. The act restructures Florida's unitrust provisions, from one expansive section to a series of smaller and more dis-

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crete sections.<sup>62</sup> Maintaining existing Florida law, the unitrust rate must be within the federal tax safe harbor of at least 3% and not more than 5%.<sup>63</sup> While the act allows a trust settlor to intentionally deviate from the 3-5% safe harbor, great caution should be taken when planning outside this range. Among the risks of specifying a rate outside of the safe harbor are that gain could be recognized on appreciated assets or valuable GST tax exemptions could be lost by the trust.<sup>64</sup>

Even if the governing instrument is silent regarding the use of a unitrust, the trustee may convert a traditional income trust to a unitrust — or convert a unitrust to an income trust — following the detailed notice and other procedures set forth in the act.<sup>65</sup> No court approval is required, although the fiduciary may seek a protective order prior to converting to or from a unitrust.<sup>66</sup> Following a conversion, the act includes new tax ordering rules to help determine the federal income tax attributes of the unitrust amount; generally, income generated by the unitrust trends from ordinary income, to capital gains, to distributions of principal.<sup>67</sup>

### Receipts from Entities

The allocation of receipts from entities (e.g., corporations, partnerships, and limited liability companies) can be complex. The general rule is that money (i.e., cash) distributed from an entity is a receipt of income to the fiduciary.<sup>68</sup> However, there are numerous exceptions to this rule. If money received is not from the entity's profitable operations, but rather from other events such as a redemption, then the money is treated as receipt of principal.<sup>69</sup> The 2002 act deviated substantially from the 1997 uniform act in setting forth objective rules to help guide the fiduciary in allocating fiduciary receipts from entities between income and principal.<sup>70</sup> These Florida specific provisions may prevent a fiduciary from inappropriately using a controlled entity to favor principal beneficiaries by restricting distributions from the entity (or alternatively to favor income beneficiaries by making modest cash distributions).<sup>71</sup>

Therefore, although UFIPA, like the 1997 uniform act, places a large focus on fiduciary discretion, Florida again deviates in the act in favor of upholding important policy considerations by retaining the more objective Florida specific provisions.

Much of the complexity arises when an entity makes a substantial distribution comprised of undistributed profits (income) and other assets (principal). While the structure of Florida's rules remains largely unchanged, the terminology has changed. The 2002 act referred to such distributions as "partial liquidations" while the act changes to the uniform term "capital distributions."<sup>72</sup> Under the act and consistent with prior law, the "capital distribution" threshold is met if the entity specifies a capital distribution or the fiduciary receives greater than 20% of its pro rata share of the entity's gross assets.<sup>73</sup> If this threshold is met, then the fiduciary must allocate a portion of the receipt to income, and the remainder to principal. The income portion consists of the greater of a 3% cumulative annual return or the fiduciary's share of any flow through income tax stemming from ownership of the entity.<sup>74</sup> What if the entity retained its profits for many years? How many prior years must the fiduciary review to calculate the income portion? These important questions were raised during the drafting of the act. As time goes by, records may become unavailable and it may become difficult to determine prior allocations to the income beneficiaries. Therefore, the act makes an important change to Florida law by limiting the income portion of a capital distribution to a three-year lookback period.<sup>75</sup> The three-year lookback limitation may require income beneficiaries to be more vigilant; perhaps requesting distributions from the underlying entities or a unitrust conversion. The act retains a similar but more specific rule for receipts from public entities.<sup>76</sup> For public entities, the threshold test is 10% of the fair market value of the fiduciary's interest in the public entity.<sup>77</sup>

The act also retains the Florida specific provision governing individual trustees owning investment

entities.<sup>78</sup> Under such rules, if a non-independent trustee owns an entity consisting primarily of passive investments — defined as deriving more than 50% of its net income from interest, dividends, royalties, and similar investments — then for the current and prior two years the entity is ignored and the returns on the underlying assets are considered in determining the appropriate allocations to income and principal.<sup>79</sup>

### Disbursements

While renumbered, the act largely retains the disbursement provisions under the 2002 act. To address situations where income is insufficient to cover disbursements, the phrase "to the extent income is sufficient," is added in several places.<sup>80</sup> A new section is added to address reimbursements of income from principal to coincide with existing law regarding reimbursements of principal from income.<sup>81</sup> Further, in response to F.S. §736.08145 allowing a fiduciary to reimburse the "owner" of a "grantor trust" for federal income tax purposes, a new provision is added to specify how such disbursements are allocated among income and principal.<sup>82</sup>

### Death of Individual or Termination of Income Interest

F.S. §§738.601 and 738.602 set forth rules regarding the determination and distribution of income after a decedent's death, in the case of an estate, or after the current income interest ends in the case of a trust. Although renumbered from the 2002 act, these sections have remained largely unchanged. Specifically, these sections set forth rules for determining the income and principal allocable to each interest. The act continues the Florida specific provisions relating to the use of fair market values in determining the value of distributions to a beneficiary and the use of carrying values (as opposed to fair market values) in determining the allocation of net income.

F.S. §§738.701-738.703 set forth rules for apportioning receipts and disbursements when a decedent dies or an income interest ends. Although renumbered, these sections are sub-

**MAPPING CHART**

<b>FIPA</b>	<b>FPIA</b>	<b>Titles - FIPA</b>
738.101	738.101	Short title
738.102	738.102	Definitions
738.103		Scope
738.104		Governing law
738.201	738.103	Fiduciary duties; general principles
738.202	738.105	Judicial review of exercise of discretionary power; request for instruction
738.203	738.104	Fiduciary's power to adjust
738.301	738.1041	Definitions
738.302	738.1041	Application; duties and remedies
738.303	738.1041	Authority of fiduciary
738.304	738.1041	Notice
738.305	738.1041	Unitrust policy
738.306	738.1041	Unitrust rate
738.307	738.1041	Applicable value
738.308	738.1041	Period
738.309	738.1041	Express Unitrust
738.310	738.1041	Other rules
738.401	738.401	Character of receipts from entity
738.402	738.402	Distribution from trust or estate
738.403	738.403	Business and other activities conducted by fiduciary
738.404	738.501	Principal receipts
738.405	738.502	Rental property
738.406	738.503	Receipt on obligation to be paid in money
738.407	738.504	Insurance policy or contract
738.408	738.601	Insubstantial allocation not required
738.409	738.602	Deferred Compensation, annuity, or similar payment
738.410	738.603	Liquidating asset
738.411	738.604	Minerals, water, and other natural resources
738.412	738.605	Timber
738.413	738.606	Marital deduction property not productive of income
738.414	738.607	Derivatives or options
738.415	738.608	Asset-backed securities
738.416		Other financial instrument or arrangement
738.501	738.701	Disbursement from income
738.502	738.702	Disbursement from principal
738.503	738.703	Transfers from income to principal for depreciation
738.504		Reimbursement of income from principal
738.505	738.704	Reimbursement of principal from income
738.506	738.705	Income taxes
738.507	738.706	Adjustment between principal and income because of taxes
738.508	738.801	Apportionment of property expenses between tenant and remainderman
738.601	738.201	Determination and distribution of net income
738.602	738.202	Distribution to successor beneficiary
738.701	738.301	When right to income begins and ends
738.702	738.302	Apportionment of receipts and disbursements when decedent dies or income interest begins
738.703	738.303	Apportionment when income interest ends
738.801	738.802	Uniformity of application and construction
738.802		Relation to electronic signatures in global and national commerce act
738.803	738.803	Severability
738.804	738.804	Application



stantially similar to those in the 2002 act.

## Life Estates

Among the changes that Florida made to the 1997 uniform act was the adoption of F.S. §738.801, which sets forth rules regarding the apportionment of expenses between the life tenant (*i.e.*, the holder of an estate for life or a term of years in real or personal property) and the remainderman (*i.e.*, the holder of the remainder interest after the expiration of the tenant's estate). This is a very helpful Florida specific provision, given that Florida's homestead laws may create a life estate in favor of the surviving spouse. The provision is retained but it is relocated to F.S. §738.508 in the act where it more naturally fits, and is retitled, "Apportionment of Prop-

erty Expenses Between Tenant and Remainderman."

## Conclusion

The act is an important update to Florida law that provides clear, updated guidelines to facilitate the administration of estates and trusts. While seeking to promote uniformity among state laws, the act also retains Florida Specific Provisions that carry out the state's unique policy choices. The adoption of the act reflects Florida's intent to continually update its laws to make it an attractive place for estate and trust administrations. □

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<sup>1</sup> The act, as approved, available at <https://laws.flrules.org/2024/216>.

<sup>2</sup> NCCUSL is now known as the Uniform Law Commission.

<sup>3</sup> For an interesting discussion of trust law evolving to a statutory framework, see John H. Langbein, *Why Did Trust Law Become Statute Law in the United States?*, 58 ALA. L. REV. 1069, 1070 (2007).

<sup>4</sup> FLA. STAT. CH. 731-735.

<sup>5</sup> FLA. STAT. CH. 736.

<sup>6</sup> FLA. STAT. CH. 738 (2023).

<sup>7</sup> The 1997 uniform act, as amended, available at <https://www.uniformlaws.org/committees/community-home/librarydocuments?LibraryKey=8471fb91-472d-4fb3-8788-f8696395996c>.

<sup>8</sup> For example, in 2005 a Florida Specific Provision was added to address private trustees owning investment entities. FIPA 738.401(7) (S. 8, Ch. 2005-85). In 2009, the rules regarding retirement plan distributions were amended to address REV. RUL. 2006-26, 2006-22 I.R.B. 939 (May 30, 2006) (clarifying circumstances where an IRA owned by a marital trust constitutes a qualifying income interest eligible for the estate tax marital deduction). FIPA 738.602 (S. 8, Ch. 2009-207).

<sup>9</sup> FPIA §738.1041.

<sup>10</sup> FIPA §738.401(1)(a).

<sup>11</sup> FIPA §738.102(24).

<sup>12</sup> UFIPA is the fourth version of the INCOME AND PRINCIPAL ACT, following acts promulgated in 1931, 1962, and 1997. John H. Langbein, *Why Did Trust Law Become Statute Law in the United States?*, 58 ALA. L. REV. 1069, 1070 (2007).

<sup>13</sup> UFIPA, prefatory note at 1.

<sup>14</sup> See Robert H. Sitkoff & Max Schanzenbach, *Perpetuities or Taxes? Explaining the Rise of the Perpetual Trust*, 27 CARDOZO L. REV. 2495 (2006).

<sup>15</sup> FLA. STAT. §689.225(2)(g).

<sup>16</sup> UFIPA, prefatory note at 1.

<sup>17</sup> See Bryon W. Harmon & Laura A. Fisher, *The Prudence of Passivity: An Argument for Default Passive Management in Trust Investing*, 44 ACTEC L. J. 147 (2019).

<sup>18</sup> UFIPA, prefatory note at 2-3.

<sup>19</sup> *Id.* at 3.

<sup>20</sup> *Id.*

<sup>21</sup> UFIPA §101 cmt.

<sup>22</sup> *Id.*

<sup>23</sup> FPIA §738.1041.

<sup>24</sup> FIPA §§738.301-310.

<sup>25</sup> FIPA §738.104.

<sup>26</sup> FIPA §738.804.

<sup>27</sup> FIPA §§738.101-104.

<sup>28</sup> FIPA §§738.201-202.

<sup>29</sup> FLA. STAT. §736.0801; §736.0803.

<sup>30</sup> FIPA §738.201(d).

<sup>31</sup> TREAS. REG. §1.643(b)-1 (providing that, for income tax purposes related to the taxation of estates and trusts, trust provisions "that depart fundamentally from traditional principles of income and principal will generally not be recognized").

<sup>32</sup> FIPA §738.201(2).

<sup>33</sup> FIPA §738.201(3).

<sup>34</sup> FIPA §738.201(3)(c).

<sup>35</sup> FIPA §738.201(4)-(5).

<sup>36</sup> *Id.*

<sup>37</sup> UFIPA §201 cmt.

<sup>38</sup> FIPA §738.202(2).

<sup>39</sup> *Id.*

<sup>40</sup> FIPA §738.202(3).

<sup>41</sup> FIPA §738.202(3)(f).

<sup>42</sup> FIPA §738.202(4).

<sup>43</sup> FIPA §738.202(5).

<sup>44</sup> FIPA §738.406(2) (as to interest); FIPA §738.405 (as to rental income); FIPA §738.401(3)(a) (as to dividends).

<sup>45</sup> FIPA §738.201.

<sup>46</sup> FIPA §§738.408-416.

<sup>47</sup> FIPA §738.410.

<sup>48</sup> ROBERT A. ESPERTI, ET AL., IRREVOCABLE TRUSTS: ANALYSIS WITH FORMS ¶13.01.2.A (2024).

<sup>49</sup> FPIA §738.104(1); §738.104(3).

<sup>50</sup> FPIA §738.104(2).

<sup>51</sup> UFIPA, prefatory note at 1.

<sup>52</sup> FIPA §738.203(1).

<sup>53</sup> *Id.*

<sup>54</sup> FIPA §738.201.

<sup>55</sup> FIPA §738.203(1).

<sup>56</sup> FIPA §738.203(11).

<sup>57</sup> FIPA §738.203(5).

<sup>58</sup> FIPA §738.203(6)-(7).

<sup>59</sup> FPIA §738.1041.

<sup>60</sup> *Id.*

<sup>61</sup> UFIPA §§301-309.

<sup>62</sup> FIPA §§738.301-310.

<sup>63</sup> FIPA §738.306; TREAS. REG. §1.643(b)-1.

<sup>64</sup> I.R.C. §1001; TREAS. REG. §26.2601-1(b) (4)(i)(D)(2); §26.2601-1(b)(4)(i)(E), ex. 11.

<sup>65</sup> FIPA §738.303(1)-(4).

<sup>66</sup> FIPA §738.303(1); §738.202(4).

<sup>67</sup> FIPA §738.310.

<sup>68</sup> FPIA §738.401(2); §738.401(3)(a).

<sup>69</sup> FPIA §738.401(3)(b); §738.401(4)(b).

<sup>70</sup> 1997 uniform act §401; FIPA §738.401.

<sup>71</sup> CAROL A. CANTRELL & F. GORDON SPOOR, FIDUCIARY ACCOUNTING ANSWER BOOK Q8:13 (2019).

<sup>72</sup> FPIA §738.401(5); FIPA §738.401(6).

<sup>73</sup> FIPA §738.401(6)(b).

<sup>74</sup> FIPA §738.401(7).

<sup>75</sup> FIPA §738.401(1)(d)(7).

<sup>76</sup> FIPA §738.401(11).

<sup>77</sup> *Id.*

<sup>78</sup> FIPA §738.401(10).

<sup>79</sup> *Id.*

<sup>80</sup> FIPA §738.501(1)(a), (1)(b), and (3).

<sup>81</sup> FIPA §738.504; §738.704; §738.505.

<sup>82</sup> FIPA §738.506(5).