

By Senator Grant

13-801B-99

1                                   A bill to be entitled  
2           An act relating to trusts and trust powers;  
3           amending s. 689.225, F.S.; providing additional  
4           exclusions from the statutory rule against  
5           perpetuities; providing legislative intent with  
6           respect to exclusiveness of statutory rule;  
7           amending s. 737.306, F.S.; revising standards  
8           governing when a successor trustee is not under  
9           a duty to institute an action against a prior  
10          trustee or the prior trustee's estate; creating  
11          s. 737.2035, F.S.; providing for costs and  
12          attorney's fees in trust proceedings; providing  
13          applicability; amending s. 660.41, F.S.;  
14          excluding certain banks or associations and  
15          trust companies from a prohibition against  
16          exercising certain powers and duties and acting  
17          within certain capacities in this state;  
18          providing effective dates.

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

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22           Section 1. Effective July 1, 2000, subsection (5) of  
23 section 689.225, Florida Statutes, is amended to read:

24           689.225 Statutory rule against perpetuities.--

25           (5) EXCLUSIONS FROM STATUTORY RULE AGAINST  
26 PERPETUITIES.--Subsection (2) does not apply to:

27           (a) A nonvested property interest or a power of  
28 appointment arising out of a nondonative transfer, except a  
29 nonvested property interest or a power of appointment arising  
30 out of:

31           1. A premarital or postmarital agreement;

- 1           2. A separation or divorce settlement;  
2           3. A spouse's election;  
3           4. A similar arrangement arising out of a prospective,  
4 existing, or previous marital relationship between the  
5 parties;  
6           5. A contract to make or not to revoke a will or  
7 trust;  
8           6. A contract to exercise or not to exercise a power  
9 of appointment;  
10          7. A transfer in satisfaction of a duty of support; or  
11          8. A reciprocal transfer;  
12          (b) A fiduciary's power relating to the administration  
13 or management of assets, including the power of a fiduciary to  
14 sell, lease, or mortgage property, and the power of a  
15 fiduciary to determine principal and income;  
16          (c) A power to appoint a fiduciary;  
17          (d) A discretionary power of a trustee to distribute  
18 principal before termination of a trust to a beneficiary  
19 having an indefeasibly vested interest in the income and  
20 principal;  
21          (e) A nonvested property interest held by a charity,  
22 government, or governmental agency or subdivision, if the  
23 nonvested property interest is preceded by an interest held by  
24 another charity, government, or governmental agency or  
25 subdivision;  
26          (f) A nonvested property interest in, or a power of  
27 appointment with respect to, a trust or other property  
28 arrangement forming part of a pension, profit-sharing, stock  
29 bonus, health, disability, death benefit, income deferral, or  
30 other current or deferred benefit plan for one or more  
31 employees, independent contractors, or their beneficiaries or

1 spouses, to which contributions are made for the purpose of  
2 distributing to or for the benefit of the participants, or  
3 their beneficiaries or spouses, the property, income, or  
4 principal in the trust or other property arrangement, except a  
5 nonvested property interest or a power of appointment that is  
6 created by an election of a participant or a beneficiary or  
7 spouse; ~~or~~

8 (g) A property interest, power of appointment, or  
9 arrangement that was not subject to the common-law rule  
10 against perpetuities or is excluded by another statute of this  
11 state; ~~or.~~

12 (h) A nonvested property interest or a power of  
13 appointment when the grantor or creator of such interest or  
14 power expresses his or her intention in the written instrument  
15 creating such interest or power that the provisions of this  
16 section not apply. An election under this paragraph shall be  
17 made by a statement in the written instrument that identifies  
18 the interest or interests to which the election applies,  
19 coupled with an expression of the grantor's or creator's  
20 intention that the rule against perpetuities not apply to the  
21 interest or interests identified. An election shall not be  
22 deemed to have been made by implication merely because  
23 provisions of the written instrument violate this section.

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25 This section is the sole expression of any rule against  
26 perpetuities, remoteness in vesting, or restraint upon the  
27 power of alienation or accumulations in this state. No  
28 common-law rule against perpetuities, remoteness in vesting,  
29 or restraint upon the power of alienation or accumulations  
30 shall exist with respect to interests or powers that are  
31 either governed by or excluded from this section.

1           Section 2. Subsection (3) of section 737.306, Florida  
2 Statutes, is amended, and subsection (5) is added to that  
3 section, to read:

4           737.306 Personal liability of trustee.--

5           (3) A successor trustee ~~succeeding a trustee who was~~  
6 ~~also the grantor of the trust~~ is not personally liable for any  
7 action taken or omitted to be taken by any such prior trustee;  
8 nor does any such successor trustee have a duty to institute  
9 any action against any such prior trustee, or file any claim  
10 against any such prior trustee's estate, for any of the prior  
11 trustee's acts or omissions as trustee under any of the  
12 following circumstances: ~~This subsection applies only with~~  
13 ~~respect to a trust that is revocable during the time that the~~  
14 ~~grantor serves as trustee.~~

15           (a) The successor trustee succeeds a trustee who was  
16 also the grantor of a trust that was revocable during the time  
17 that the grantor served as trustee;

18           (b) As to any beneficiary who has waived any  
19 accounting required by s. 737.303, but only as to the periods  
20 before or included in such waiver;

21           (c) As to any beneficiary who has released the  
22 successor trustee from such duty to institute any action or  
23 file any claim;

24           (d) As to any person who is not a beneficiary within  
25 the meaning of s. 737.303(4)(b); or

26           (e) As to any beneficiary described in s.  
27 737.303(4)(b):

28           1. If a super majority of the reasonably ascertainable  
29 current income or principal beneficiaries described in s.  
30 737.303(4)(b)1. and a super majority of the reasonably  
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1 ascertainable remainder beneficiaries described in s.

2 737.303(4)(b)2. have released the successor trustee;

3 2. If the beneficiary has not delivered a written  
4 request to the successor trustee to institute an action or  
5 file a claim against the prior trustee within 6 months after  
6 the date of the successor trustee's acceptance of the trust,  
7 if the successor trustee has notified the beneficiary in  
8 writing of its acceptance in accordance with s. 737.303(1) and  
9 such writing advises the beneficiary that, unless the  
10 beneficiary delivers such written request within 6 months  
11 after the date of acceptance, his or her right to proceed  
12 against the successor trustee will be barred pursuant to this  
13 section; or

14 3. For any action or claim that the beneficiary is  
15 barred from bringing against the prior trustee.

16 (5) For the purposes of this section, a super majority  
17 of beneficiaries means at least two-thirds in interest of the  
18 beneficiaries if the interests of the beneficiaries are  
19 reasonably ascertainable; otherwise it means at least  
20 two-thirds in number of the beneficiaries. A release or waiver  
21 under this section may be exercised by a legal representative  
22 or natural guardian of the beneficiary without the filing of  
23 any proceeding or approval of any court. Nothing in subsection  
24 (3) affects any liability of the prior trustee or the right of  
25 the successor trustee or any beneficiary to pursue an action  
26 or claim against the prior trustee.

27 Section 3. Section 737.2035, Florida Statutes, is  
28 created to read:

29 737.2035 Costs and attorney's fees in trust  
30 proceedings.--

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1       (1) In all trust proceedings, costs may be awarded as  
2 in chancery actions.

3       (2) Any attorney who has rendered services to a trust  
4 may apply to the court for an order awarding attorney's fees,  
5 and, after notice and service upon the trustee and all  
6 beneficiaries entitled to an accounting under s. 737.303, the  
7 court shall enter its order on the fee application.

8       (3) When costs and attorney's fees are to be paid out  
9 of the trust, the court may in its discretion direct from what  
10 part of the trust they shall be paid.

11       Section 4. Section 3 applies only to the services of  
12 an attorney which are rendered on or after July 1, 1999.

13       Section 5. Effective September 1, 1999, section  
14 660.41, Florida Statutes, is amended to read:

15       660.41 Corporations; certain fiduciary functions  
16 prohibited.--All corporations, ~~except banks or associations~~  
17 ~~and trust companies incorporated under the laws of this state~~  
18 ~~and having trust powers and except national banking~~  
19 ~~associations or federal associations located in this state and~~  
20 ~~having trust powers,~~are prohibited from exercising any of the  
21 powers or duties and from acting in any of the capacities,  
22 within this state, as follows:

23       (1) As personal representative of the estate of any  
24 decedent, whether such decedent was a resident of this state  
25 or not, and whether the administration of the estate of such  
26 decedent is original or ancillary; however, if the personal  
27 representative of the estate of a nonresident decedent is a  
28 corporation duly authorized, qualified, and acting as such  
29 personal representative in the jurisdiction of the domicile of  
30 the decedent, it may as a foreign personal representative  
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1 perform such duties and exercise such powers and privileges as  
2 are required, authorized, or permitted by s. 734.101.

3 (2) As receiver or trustee under appointment of any  
4 court in this state.

5 (3) As assignee, receiver, or trustee of any insolvent  
6 person or corporation or under any assignment for the benefit  
7 of creditors.

8 (4) As fiscal agent, transfer agent, or registrar of  
9 any municipal or private corporation, except that this  
10 prohibition shall not be so construed as to prevent banks,  
11 associations, and trust companies not located in this state  
12 from acting within the state where located as fiscal agent,  
13 transfer agent, or registrar of municipal or private  
14 corporations of this state. Nothing herein shall prevent any  
15 Florida corporation that is not a bank, association, or trust  
16 company and that does not have trust powers from being its own  
17 fiscal agent, transfer agent, or registrar concerning its own  
18 affairs, stock, or securities. Nothing herein shall prevent  
19 any Florida corporation or corporation having its principal  
20 place of business in Florida registered as a transfer agent  
21 with the Federal Deposit Insurance Corporation, the  
22 Comptroller of the Currency, the Board of Governors of the  
23 Federal Reserve System, or the Securities and Exchange  
24 Commission from acting as a transfer agent for any other  
25 private corporation. Nothing in this section or in any other  
26 law of this state shall be construed to prohibit a foreign  
27 bank, foreign association, or foreign trust company as trustee  
28 of any charitable foundation or endowment, employees' pension,  
29 retirement or profit-sharing trust, alone or together with a  
30 cotrustee, from: making loans or committing to make loans to  
31 any other person; contracting, in this state or elsewhere,

1 with any person to acquire from such person a part or the  
2 entire interest in a loan which such person proposes to make,  
3 has heretofore made, or hereafter makes, together with a like  
4 interest in any security instrument covering real or personal  
5 property in the state proposed to be given or hereafter or  
6 heretofore given to such person to secure or evidence such  
7 loan; servicing directly or entering into servicing contracts  
8 with persons, and enforcing in this state the loans made by it  
9 or obligations heretofore or hereafter acquired by it in the  
10 transaction of business outside this state or in the  
11 transaction of any business authorized or permitted hereby; or  
12 acquiring, holding, leasing, mortgaging, contracting with  
13 respect to, or otherwise protecting, managing, or conveying  
14 property in this state which has heretofore or may hereafter  
15 be assigned, transferred, mortgaged, or conveyed to it as  
16 security for, or in whole or in part in satisfaction of, a  
17 loan or loans made by it or obligations acquired by it in the  
18 transaction of any business authorized or permitted hereby.  
19 However, no such foreign bank, foreign association, or foreign  
20 trust company shall be deemed to be transacting business in  
21 this state, shall be required to qualify so to do, or shall be  
22 deemed to be unlawfully exercising powers or duties, acting in  
23 an unlawful or prohibited capacity, or violating any of the  
24 provisions of this section or of any other law of this state  
25 solely by reason of the performance of any of the acts or  
26 business hereinbefore permitted or authorized hereby; further,  
27 nothing herein shall be construed as authorizing or permitting  
28 any foreign bank, association, or trust company to maintain an  
29 office within this state.  
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1 This section does not apply to banks or associations and trust  
2 companies incorporated under the laws of this state and having  
3 trust powers, banks or associations and trust companies  
4 resulting from an interstate merger transaction with a Florida  
5 bank pursuant to s. 658.2953 and having trust powers, or  
6 national banking associations or federal associations located  
7 in this state and having trust powers.

8 Section 6. This act shall take effect July 1, 1999.

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11 SENATE SUMMARY

12 Excludes certain instruments from the statutory rule  
13 against perpetuities when the maker expressly declares  
14 his or her intent that it not do so. Provides that the  
15 statutory rule against perpetuities is the sole  
16 expression of any rule against perpetuities, remoteness  
17 in vesting, or restraint upon the power of alienation or  
18 accumulations. Provides circumstances under which a  
19 successor trustee is not under a duty to institute an  
20 action against a prior trustee or the prior trustee's  
21 estate. Authorizes the award of costs and attorney's fees  
22 in trust proceedings. Excludes banks or associations and  
23 trust companies resulting from an interstate merger  
24 transaction with a Florida bank under Florida law and  
25 having trust powers from a prohibition against  
26 corporations conducting trust business in Florida. (See  
27 bill for details.)  
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