

By the Committee on Banking and Insurance; and Senator Grant

311-1930-99

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

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

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

21 737.306 Personal liability of trustee.--

22 (3) A successor trustee ~~succeeding a trustee who was~~
 23 ~~also the grantor of the trust~~ is not personally liable for any
 24 action taken or omitted to be taken by any ~~such~~ prior trustee;
 25 nor does any ~~such~~ successor trustee have a duty to institute
 26 any action against any ~~such~~ prior trustee, or file any claim
 27 against any ~~such~~ prior trustee's estate, for any of the prior
 28 trustee's acts or omissions as trustee under any of the
 29 following circumstances: ~~This subsection applies only with~~
 30 ~~respect to a trust that is revocable during the time that the~~
 31 ~~grantor serves as trustee.~~

1 (a) The successor trustee succeeds a trustee who was
2 also the grantor of a trust that was revocable during the time
3 that the grantor served as trustee;

4 (b) As to any beneficiary who has waived any
5 accounting required by s. 737.303, but only as to the periods
6 included in such waiver;

7 (c) As to any beneficiary who has released the
8 successor trustee from such duty to institute any action or
9 file any claim;

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

12 (e) As to any beneficiary described in s.
13 737.303(4)(b):

14 1. If a super majority of the reasonably ascertainable
15 current income or principal beneficiaries described in s.
16 737.303(4)(b)1. and a super majority of the reasonably
17 ascertainable remainder beneficiaries described in s.
18 737.303(4)(b)2. have released the successor trustee;

19 2. If the beneficiary has not delivered a written
20 request to the successor trustee to institute an action or
21 file a claim against the prior trustee within 6 months after
22 the date of the successor trustee's acceptance of the trust,
23 if the successor trustee has notified the beneficiary in
24 writing of its acceptance in accordance with s. 737.303(1) and
25 such writing advises the beneficiary that, unless the
26 beneficiary delivers such written request within 6 months
27 after the date of acceptance, his or her right to proceed
28 against the successor trustee will be barred pursuant to this
29 section; or

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

1 (5) For the purposes of this section, a super majority
2 of beneficiaries means at least two-thirds in interest of the
3 beneficiaries if the interests of the beneficiaries are
4 reasonably ascertainable; otherwise it means at least
5 two-thirds in number of the beneficiaries. A release or waiver
6 under this section may be exercised by a legal representative
7 or natural guardian of the beneficiary without the filing of
8 any proceeding or approval of any court. Nothing in subsection
9 (3) affects any liability of the prior trustee or the right of
10 the successor trustee or any beneficiary to pursue an action
11 or claim against the prior trustee.

12 Section 2. Section 737.2035, Florida Statutes, is
13 created to read:

14 737.2035 Costs and attorney's fees in trust
15 proceedings.--

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

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

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

26 Section 3. Section 2 applies only to the services of
27 an attorney which are rendered on or after July 1, 1999.

28 Section 4. Effective September 1, 1999, section
29 660.41, Florida Statutes, is amended to read:

30 660.41 Corporations; certain fiduciary functions
31 ~~prohibited.--All corporations, except banks or associations~~

1 ~~and trust companies incorporated under the laws of this state~~
2 ~~and having trust powers and except national banking~~
3 ~~associations or federal associations located in this state and~~
4 ~~having trust powers,~~ are prohibited from exercising any of the
5 powers or duties and from acting in any of the capacities,
6 within this state, as follows:

7 (1) As personal representative of the estate of any
8 decedent, whether such decedent was a resident of this state
9 or not, and whether the administration of the estate of such
10 decedent is original or ancillary; however, if the personal
11 representative of the estate of a nonresident decedent is a
12 corporation duly authorized, qualified, and acting as such
13 personal representative in the jurisdiction of the domicile of
14 the decedent, it may as a foreign personal representative
15 perform such duties and exercise such powers and privileges as
16 are required, authorized, or permitted by s. 734.101.

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

19 (3) As assignee, receiver, or trustee of any insolvent
20 person or corporation or under any assignment for the benefit
21 of creditors.

22 (4) As fiscal agent, transfer agent, or registrar of
23 any municipal or private corporation, except that this
24 prohibition shall not be so construed as to prevent banks,
25 associations, and trust companies not located in this state
26 from acting within the state where located as fiscal agent,
27 transfer agent, or registrar of municipal or private
28 corporations of this state. Nothing herein shall prevent any
29 Florida corporation that is not a bank, association, or trust
30 company and that does not have trust powers from being its own
31 fiscal agent, transfer agent, or registrar concerning its own

1 | affairs, stock, or securities. Nothing herein shall prevent
2 | any Florida corporation or corporation having its principal
3 | place of business in Florida registered as a transfer agent
4 | with the Federal Deposit Insurance Corporation, the
5 | Comptroller of the Currency, the Board of Governors of the
6 | Federal Reserve System, or the Securities and Exchange
7 | Commission from acting as a transfer agent for any other
8 | private corporation. Nothing in this section or in any other
9 | law of this state shall be construed to prohibit a foreign
10 | bank, foreign association, or foreign trust company as trustee
11 | of any charitable foundation or endowment, employees' pension,
12 | retirement or profit-sharing trust, alone or together with a
13 | cotrustee, from: making loans or committing to make loans to
14 | any other person; contracting, in this state or elsewhere,
15 | with any person to acquire from such person a part or the
16 | entire interest in a loan which such person proposes to make,
17 | has heretofore made, or hereafter makes, together with a like
18 | interest in any security instrument covering real or personal
19 | property in the state proposed to be given or hereafter or
20 | heretofore given to such person to secure or evidence such
21 | loan; servicing directly or entering into servicing contracts
22 | with persons, and enforcing in this state the loans made by it
23 | or obligations heretofore or hereafter acquired by it in the
24 | transaction of business outside this state or in the
25 | transaction of any business authorized or permitted hereby; or
26 | acquiring, holding, leasing, mortgaging, contracting with
27 | respect to, or otherwise protecting, managing, or conveying
28 | property in this state which has heretofore or may hereafter
29 | be assigned, transferred, mortgaged, or conveyed to it as
30 | security for, or in whole or in part in satisfaction of, a
31 | loan or loans made by it or obligations acquired by it in the

1 transaction of any business authorized or permitted hereby.
2 However, no such foreign bank, foreign association, or foreign
3 trust company shall be deemed to be transacting business in
4 this state, shall be required to qualify so to do, or shall be
5 deemed to be unlawfully exercising powers or duties, acting in
6 an unlawful or prohibited capacity, or violating any of the
7 provisions of this section or of any other law of this state
8 solely by reason of the performance of any of the acts or
9 business hereinbefore permitted or authorized hereby; further,
10 nothing herein shall be construed as authorizing or permitting
11 any foreign bank, association, or trust company to maintain an
12 office within this state.

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14 This section does not apply to banks or associations and trust
15 companies incorporated under the laws of this state and having
16 trust powers, banks or associations and trust companies
17 resulting from an interstate merger transaction with a Florida
18 bank pursuant to s. 658.2953 and having trust powers, or
19 national banking associations or federal associations
20 authorized and qualified to exercise trust powers in Florida.

21 Section 5. This act shall take effect July 1, 1999.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 2068

Deletes the section of the bill amending the exclusions from the rule against perpetuities.

Revises the provisions relating to successor trustee liability, to provide that a successor trustee is not personally liable for the actions of the prior trustee, and has no duty to institute an action against the prior trustee, for any beneficiary who has waived any accounting required by s. 737.303, F.S., but only as to the period included in the waiver.

Clarifies the bill's provisions that allow national banking associations and federal associations authorized and qualified to exercise trust powers under federal law to exercise such powers under Florida law.