

1
2 An act relating to trusts; amending s. 689.225,
3 F.S.; revising certain criteria for application
4 of the rule against perpetuities to certain
5 trusts; specifying exclusivity of application
6 of the rule; excluding common-law expressions
7 of the rule; amending s. 737.206, F.S.;
8 removing provision governing timing for
9 contesting validity of a trust; creating s.
10 737.2065, F.S.; providing timing for contesting
11 validity of a trust; amending s. 737.303, F.S.;
12 revising duty of trustee to inform or account
13 to beneficiaries of a trust; amending s.
14 737.625, F.S.; revising prohibition against a
15 killer's entitlement to benefits from a trust;
16 creating s. 737.626, F.S.; creating a provision
17 to govern evidence as to death or status in
18 trust proceedings; creating ss. 737.4031,
19 737.4032, and 737.4033, F.S.; providing for
20 judicial and nonjudicial modifications of
21 certain trusts under certain circumstances;
22 providing for representation of certain persons
23 in modification actions; specifying
24 nonapplication to certain trusts; providing
25 definitions; providing construction; providing
26 application relating to common law; providing
27 for award of costs and attorney fees in
28 modification proceedings; providing an
29 effective date.
30
31 Be It Enacted by the Legislature of the State of Florida:

1 Section 1. Paragraph (f) is added to subsection (2) of
2 section 689.225, Florida Statutes, and subsection (7) of said
3 section is amended, to read:

4 689.225 Statutory rule against perpetuities.--

5 (2) STATEMENT OF THE RULE.--

6 (f) As to any trust created after December 31, 2000,
7 this section shall apply to a nonvested property interest or
8 power of appointment contained in a trust by substituting 360
9 years in place of "90 years" in each place such term appears
10 in this section unless the terms of the trust require that all
11 beneficial interests in the trust vest or terminate within a
12 lesser period.

13 (7) RULE OF CONSTRUCTION.--With respect to any matter
14 relating to the validity of an interest within the rule
15 against perpetuities, unless a contrary intent appears, it
16 shall be presumed that the transferor of the interest intended
17 that the interest be valid. This section is the sole
18 expression of any rule against perpetuities or remoteness in
19 vesting in this state. No common-law rule against
20 perpetuities or remoteness in vesting shall exist with respect
21 to any interest or power regardless of whether such interest
22 or power is governed by this section.

23 Section 2. Section 737.206, Florida Statutes, is
24 amended to read:

25 737.206 Effect of fraud, duress, mistake, and undue
26 influence.--A trust is void if the execution is procured by
27 fraud, duress, mistake, or undue influence. Any part of the
28 trust is void if so procured, but the remainder of the trust
29 not so procured is valid if it is not invalid for other
30 reasons. ~~An action to contest the validity of all or part of~~

31

1 ~~a trust may not be commenced until the trust becomes~~
2 ~~irrevocable.~~

3 Section 3. Section 737.2065, Florida Statutes, is
4 created to read:

5 737.2065 Trust contests.--An action to contest the
6 validity of all or part of a trust may not be commenced until
7 the trust becomes irrevocable.

8 Section 4. Section 737.303, Florida Statutes, is
9 amended to read:

10 737.303 Duty to inform and account to
11 beneficiaries.--The trustee shall keep the beneficiaries of
12 the trust reasonably informed of the trust and its
13 administration. The trustee's duty to inform and account
14 includes, but is not limited to, the following:

15 (1) Within 30 days after acceptance of the trust, the
16 trustee shall inform the beneficiaries in writing of the
17 acceptance of the trust and the full name and address of the
18 trustee.

19 (2) Upon reasonable request, the trustee shall provide
20 a beneficiary with a complete copy of the trust instrument,
21 including amendments.

22 (3) Upon reasonable request, the trustee shall provide
23 a beneficiary with relevant information about the assets of
24 the trust and the particulars relating to administration.

25 (4)(a) A beneficiary is entitled to a statement of the
26 accounts of the trust annually and upon termination of the
27 trust or upon change of the trustee except as provided under
28 paragraph (c).

29 (b) For purposes of this section, the term
30 "beneficiary" means:

31

1 1. All current income or principal beneficiaries,
2 whether discretionary or mandatory; and

3 2. All reasonably ascertainable remainder
4 beneficiaries who would take if all income interests
5 immediately terminated.

6 (c) In the case of a trust described in s. 733.707(3),
7 during the grantor's lifetime, the trustee's duties under this
8 section ~~paragraph (a)~~ extend only to the grantor or the legal
9 representative of the grantor ~~during the grantor's lifetime~~.

10 (d) A beneficiary or the beneficiary's representative,
11 as defined in s. 731.303, may waive, in writing, the trustee's
12 duty to account under paragraph (a).

13 (e) All rights provided a beneficiary under this
14 section may be asserted by a legal representative or natural
15 guardian of the beneficiary. Notice under subsection (1) and a
16 statement of accounts under paragraph (a) provided to a
17 representative of the beneficiary as defined in s. 731.303
18 shall bind the beneficiary, and the trustee shall not be
19 required to provide such notice or statement of accounts to
20 any beneficiary who would be bound by an order binding on a
21 representative of the beneficiary under s. 731.303, if such
22 notice or statement of accounts, respectively, is provided to
23 that representative.

24 Section 5. Section 737.625, Florida Statutes, is
25 amended to read:

26 737.625 Killer not entitled to receive property or
27 other benefits by reason of victim's death.--

28 (1)A beneficiary of a trust who unlawfully and
29 intentionally kills or unlawfully and intentionally
30 participates in procuring the death of the grantor or another
31 person upon whose death such beneficiary's interest depends,

1 shall not be entitled to any trust interest, including
2 homestead, dependent upon the victim's death, and such
3 interest shall devolve as though the killer had predeceased
4 the victim.

5 (2) A final judgment of conviction of murder in any
6 degree is conclusive for the purposes of this section. In the
7 absence of a murder conviction in any degree, the court may
8 determine by the greater weight of the evidence whether the
9 killing was unlawful and intentional for purposes of this
10 section.

11 Section 6. Section 737.626, Florida Statutes, is
12 created to read:

13 737.626 Evidence as to death or status.--In
14 proceedings concerning trusts, this section relating to
15 determination of death and status is applicable:

16 (1) An authenticated copy of a death certificate
17 issued by an official or agency of the place where the death
18 purportedly occurred is prima facie evidence of the fact,
19 place, date, and time of death and the identity of the
20 decedent.

21 (2) A copy of any record or report of a governmental
22 agency, domestic or foreign, that a person is alive, missing,
23 detained, or, from the facts related, presumed dead is prima
24 facie evidence of the status and of the dates, circumstances
25 and places disclosed by the record or report.

26 (3) A person who is absent from the place of his or
27 her last known domicile for a continuous period of five years
28 and whose absence is not satisfactorily explained after
29 diligent search and inquiry is presumed to be dead. The
30 person's death is presumed to have occurred at the end of the
31

1 period unless there is evidence establishing that death
2 occurred earlier.

3 (4) This section does not preclude the establishment
4 of death by direct or circumstantial evidence prior to
5 expiration of the five year time period set forth in
6 subsection (3).

7 Section 7. Sections 737.4031, 737.4032, and 737.4033,
8 Florida Statutes, are created to read:

9 737.4031 Judicial modification of trusts.--

10 (1) If the purposes of a trust have been fulfilled or
11 have become illegal or impossible to fulfill or, if because of
12 circumstances not known to or anticipated by the settlor,
13 compliance with the terms of the trust would defeat or
14 substantially impair the accomplishment of a material purpose
15 of the trust or, if a material purpose of the trust no longer
16 exists, upon the application of a trustee of the trust or any
17 beneficiary a court at any time may modify the terms of a
18 trust which is not then revocable to:

19 (a) Amend or change the terms of the trust, including
20 terms governing distribution of the trust income or principal,
21 or terms governing administration of the trust;

22 (b) Terminate the trust in whole or in part;

23 (c) Direct or permit the trustee to do acts that are
24 not authorized or that are prohibited by the terms of the
25 trust; or

26 (d) Prohibit the trustee from performing acts that are
27 permitted or required by the terms of the trust.

28 (2) Upon the application of a trustee of the trust or
29 any beneficiary, a trust which is not then revocable may be
30 modified at any time by a court as provided in subsection (1),
31 and without regard to the reasons for modification provided in

1 subsection (1), if compliance with the terms of the trust is
2 not in the best interest of the persons having a beneficial
3 interest in the trust.

4 (a) The court shall exercise its discretion to order a
5 modification of the trust under this subsection in a manner
6 that conforms to the extent possible with the intention of the
7 settlor, taking into account the current circumstances and
8 best interests of the beneficiaries.

9 (b) This subsection shall not apply to a trust created
10 prior to January 1, 2001.

11 (c) This subsection shall not apply to a trust created
12 after December 31, 2000, if:

13 1. Under the terms of the trust, all beneficial
14 interests in the trust must vest or terminate within the
15 period prescribed by the rule against perpetuities in s.
16 689.225(2), notwithstanding s. 689.225(2)(f).

17 2. The terms of the trust expressly prohibit judicial
18 modification.

19 (d) Modification of a trust, as authorized in this
20 subsection, is not prohibited by a provision in the trust
21 instrument that prohibits amendment or revocation of the trust
22 if the provision does not expressly prohibit judicial
23 modification.

24 (3) In exercising its discretion to order a
25 modification of a trust under this section, the court shall
26 consider the terms and purposes of the trust, the facts and
27 circumstances surrounding the creation of the trust, and
28 extrinsic evidence relevant to the proposed modification.

29 (4) To the extent the interests of any person with a
30 beneficial interest in the trust who is unborn or
31 unascertained, whose identity is not then known for any

1 reason, or who is a minor or under a legal disability are not
2 represented by another beneficiary, such person shall be
3 represented by the person's legal guardian, if any, or, if
4 none, by a guardian ad litem appointed by the court upon the
5 court's own motion or upon application by the trustee or any
6 beneficiary.

7 (5) The court shall consider spendthrift provisions as
8 a factor in making a decision whether to modify a trust under
9 this section, but the court is not precluded from exercising
10 authority to modify the trust because the trust contains
11 spendthrift provisions.

12 (6) For purposes of this section:

13 (a) "Beneficiary" means:

14 1. All current income or principal beneficiaries,
15 whether the beneficiaries' beneficial interests are
16 discretionary or mandatory.

17 2. All reasonably ascertainable beneficiaries if all
18 current income interests immediately terminated, determined as
19 if any power of appointment over the trust assets were not
20 exercised.

21 (b) "Trust" means trust as defined in s. 731.201.

22 (c) A trust is revocable if revocable by the settlor
23 alone or in conjunction with any other person. A trust is not
24 revocable for purposes of this section if revocable by the
25 settlor only with the consent of all persons having a
26 beneficial interest in the property.

27 (d) A trust which is revocable shall be treated as
28 created when the right of revocation terminates.

29 (7) The provisions of this section are in addition to,
30 and not in derogation of, rights under the common law to
31 modify, amend, or revoke trusts.

1 737.4032 Nonjudicial modification of trusts.--
2 (1) A trust which is not revocable may be modified at
3 any time after the settlor's death, upon the unanimous
4 agreement of the trustee and all beneficiaries of the trust,
5 to:
6 (a) Amend or change the terms of the trust, including
7 terms governing distribution of the trust income or principal
8 or terms governing administration of the trust;
9 (b) Terminate the trust in whole or in part;
10 (c) Direct or permit the trustee to do acts that are
11 not authorized or that are prohibited by the terms of the
12 trust; or
13 (d) Prohibit the trustee from performing acts that are
14 permitted or required by the terms of the trust.
15 (2) This section shall not apply to any trust for
16 which a charitable deduction is allowed or allowable under the
17 Internal Revenue Code until the termination of all charitable
18 interests in the trust.
19 (3) An agreement to modify a trust under this section
20 shall be binding upon a person with a beneficial interest in
21 the trust who is unborn or unascertained, whose identity is
22 not then known for any reason, or who is a minor or under a
23 legal disability, to the extent that his or her interest is
24 represented by another beneficiary having the same or greater
25 quality of beneficial interest in the trust, but only to the
26 extent there is no conflict of interest between such person
27 and such beneficiary or among the persons represented.
28 (4) To the extent the interests of any person having a
29 beneficial interest in a trust who is unborn or unascertained,
30 whose identity is not then known for any reason, or who is a
31 minor or under a legal disability are not represented by a

1 beneficiary under subsection (3), such person shall be
2 represented by the person's legal guardian if there is one or,
3 if the person does not have a legal guardian, such person
4 shall be represented by a guardian ad litem appointed by the
5 court upon application by the trustee or any beneficiary.
6 Unless the court requires otherwise, the guardian ad litem's
7 decision whether to consent to modify the trust shall be
8 binding upon any person represented by the guardian ad litem
9 without seeking court approval.

10 (5) This section shall not apply to a trust created
11 prior to January 1, 2001.

12 (6) This section shall not apply to a trust created
13 after December 31, 2000, if, under the terms of the trust, all
14 beneficial interests in the trust must vest or terminate
15 within the period prescribed by the rule against perpetuities
16 in s. 689.225(2), notwithstanding s. 689.225(2)(f), unless the
17 terms of the trust expressly permit modification under this
18 section.

19 (7) Modification of a trust as authorized in this
20 section is not prohibited by a spendthrift clause, or by a
21 provision in the trust instrument that prohibits amendment or
22 revocation of the trust.

23 (8) For purposes of this section:

24 (a) "Beneficiary" means:

25 1. All current income or principal beneficiaries,
26 whether the beneficiaries' beneficial interests are
27 discretionary or mandatory.

28 2. All reasonably ascertainable beneficiaries if all
29 current income interests immediately terminated, determined as
30 if any power of appointment over the trust assets were not
31 exercised.

1 **(b) "Trust" means trust as defined in s. 731.201.**

2 **(c) A trust is revocable if revocable by the settlor**
3 **alone or in conjunction with any other person. A trust is not**
4 **revocable for purposes of this section if revocable by the**
5 **settlor only with the consent of all persons having a**
6 **beneficial interest in the property.**

7 **(d) A trust which is revocable shall be treated as**
8 **created when the right of revocation terminates.**

9 **(9) The provisions of this section are in addition to,**
10 **and not in derogation of, rights under the common law to**
11 **modify, amend, or revoke trusts.**

12 **737.4033 Costs and attorney's fees.--In all**
13 **proceedings under s. 737.4031 or s. 737.4032, the court shall**
14 **award taxable costs as in chancery actions, including**
15 **attorney's fees and guardian ad litem fees, and such costs may**
16 **be paid from the trust or as otherwise directed by the court.**

17 Section 8. This act shall take effect December 31,
18 2000.

19
20
21
22
23
24
25
26
27
28
29
30
31