

Amendment No. 01 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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3		.	
4		.	

ORIGINAL STAMP BELOW

The Committee on Judicial Oversight offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause

and insert:

Section 1. Section 731.303, Florida Statutes, is amended to read:

731.303 Representation.--In the administration of or in proceedings involving estates of decedents or trusts, the following apply:

(1) Persons are bound by orders binding others in the following cases:

(a) Orders binding the sole holder or all coholders of a power of revocation or a general, special, or limited power of appointment, including one in the form of a power of amendment or revocation to the extent that the power has not become unexercisable in fact, bind all persons to the extent that their interests, as persons who may take by virtue of the exercise or nonexercise of the power, are subject to the power.

Amendment No. 01 (for drafter's use only)

1 (b) To the extent there is no conflict of interest  
2 between them or among the persons represented:

3 1. Orders binding a guardian of the property bind the  
4 ward.

5 2. Orders binding a trustee bind beneficiaries of the  
6 trust in proceedings to probate a will, in establishing or  
7 adding to a trust, in reviewing the acts or accounts of a  
8 prior fiduciary, and in proceedings involving creditors or  
9 other third parties.

10 3. Orders binding a personal representative bind  
11 persons interested in the undistributed assets of a decedent's  
12 estate, in actions or proceedings by or against the estate.

13 (c) An unborn or unascertained person, or a minor or  
14 any other person under a legal disability, who is not  
15 otherwise represented is bound by an order to the extent that  
16 person's interest is represented by another party having the  
17 same or greater quality of interest in the proceeding.

18 (2) Orders binding a guardian of the person shall not  
19 bind the ward.

20 (3) In judicial proceedings involving the  
21 administration of estates or trusts, notice is required as  
22 follows:

23 (a) Notice as prescribed by the Florida Probate Rules  
24 shall be given to every interested person, or to one who can  
25 bind the interested person as described in paragraph (1)(a) or  
26 paragraph (1)(b). Notice may be given both to the interested  
27 person and to another who can bind him or her.

28 (b) Notice is given to unborn or unascertained persons  
29 who are not represented pursuant to paragraph (1)(a) or  
30 paragraph (1)(b) by giving notice to all known persons whose  
31 interests in the proceedings are the same as, or of a greater

Amendment No. 01 (for drafter's use only)

1 quality than, those of the unborn or unascertained persons.

2 (4) If the court determines that representation of the  
3 interest would otherwise be inadequate, the court may, at any  
4 time, appoint a guardian ad litem to represent the interests  
5 of an incapacitated person, an unborn or unascertained person,  
6 a minor or any other person otherwise under a legal  
7 disability, or a person whose identity or address is unknown.  
8 If not precluded by conflict of interest, a guardian ad litem  
9 may be appointed to represent several persons or interests.

10 (5) When a sole holder or coholder ~~Agreements,~~  
11 ~~waivers, consents, approvals, accounts, or other statements~~  
12 ~~that fully disclose the matters that are the subject of the~~  
13 ~~accounts or statements and that bind the sole holder or all~~  
14 ~~coholders of a general, special, or limited power of~~  
15 ~~appointment, including an exercisable a power of amendment or~~  
16 ~~revocation over property in an estate or trust, is bound by:~~

17 (a) Agreements, waivers, consents, or approvals; or  
18 (b) Accounts, trust accountings, or other written  
19 reports that adequately disclose matters set forth therein.~~to~~  
20 ~~the extent that the power has not become unexercisable in~~  
21 ~~fact, bind all persons to the extent that their interests, as~~

22  
23 then all persons who may take by virtue of, and whose  
24 interests are subject to, the exercise or nonexercise of the  
25 power, are also bound, but only to the extent of their  
26 interests ~~subject to the power.~~

27 Section 2. Paragraph (e) of subsection (1) of section  
28 732.2075, Florida Statutes, is amended to read:

29 732.2075 Sources from which elective share payable;  
30 abatement.--

31 (1) Unless otherwise provided in the decedent's will

Amendment No. 01 (for drafter's use only)

1 or, in the absence of a provision in the decedent's will, in a  
2 trust referred to in the decedent's will, the following are  
3 applied first to satisfy the elective share:

4 (e) Property interests included in the elective estate  
5 that pass or have passed to or for the benefit of the  
6 surviving spouse, including interests that are contingent upon  
7 making the election, but only to the extent that such  
8 contingent interests do not diminish other property interests  
9 that would be applied to satisfy the elective share in the  
10 absence of the contingent interests.

11 Section 3. Section 733.107, Florida Statutes, is  
12 amended to read:

13 733.107 Burden of proof in contests; presumption of  
14 undue influence.--

15 (1) In all proceedings contesting the validity of a  
16 will, the burden shall be upon the proponent of the will to  
17 establish prima facie its formal execution and attestation.  
18 Thereafter, the contestant shall have the burden of  
19 establishing the grounds on which the probate of the will is  
20 opposed or revocation is sought.

21 (2) The presumption of undue influence implements  
22 public policy against abuse of fiduciary or confidential  
23 relationships and is therefore a presumption shifting the  
24 burden of proof under ss. 90.301 through 90.304.

25 Section 4. Subsection (1) of section 733.702, Florida  
26 Statutes, is amended to read:

27 733.702 Limitations on presentation of claims.--

28 (1) If not barred by s. 733.710, no claim or demand  
29 against the decedent's estate that arose before the death of  
30 the decedent, including claims of the state and any of its  
31 political subdivisions, even if the claims are unmatured,

Amendment No. 01 (for drafter's use only)

1 contingent, or unliquidated; no claim for funeral or burial  
2 expenses; no claim for personal property in the possession of  
3 the personal representative; and no claim for damages,  
4 including, but not limited to, an action founded on fraud or  
5 another wrongful act or omission of the decedent, is binding  
6 on the estate, on the personal representative, or on any  
7 beneficiary unless filed in the probate proceeding on or  
8 before ~~within~~ the later of the date that is 3 months after the  
9 time of the first publication of the notice to creditors or,  
10 as to any creditor required to be served with a copy of the  
11 notice to creditors, 30 days after the date of service on the  
12 creditor, even though the personal representative has  
13 recognized the claim or demand by paying a part of it or  
14 interest on it or otherwise. The personal representative may  
15 settle in full any claim without the necessity of the claim  
16 being filed when the settlement has been approved by the  
17 interested persons.

18 Section 5. Section 737.115, Florida Statutes, is  
19 created to read:

20 737.115 Notice of trustee duties.--

21 (1) A trust described in s. 733.707(3) must contain a  
22 notice that the trustee may have duties and responsibilities  
23 in addition to those described in the instrument creating the  
24 trust. The notice may, but need not, read as follows:

25 "The trustee of a trust may have duties and  
26 responsibilities in addition to those described  
27 in the instrument creating the trust. If you  
28 have questions you should obtain legal advice."

29 (2) The absence of the notice described in this  
30 section in the trust instrument does not affect the validity  
31 of the trust. A trustee is not relieved of any duty if the

Amendment No. 01 (for drafter's use only)

1 notice is not contained in the trust instrument. No person is  
2 liable for the failure to include the notice in the trust  
3 instrument.

4 (3) This section applies to all trusts described in s.  
5 733.707(3) and amendments to those trusts executed on or after  
6 January 1, 2003.

7 Section 6. Section 737.116, Florida Statutes, is  
8 created to read:

9 737.116 Trust for care of animal.--

10 (1) A trust may be created to provide for the care of  
11 an animal alive during the settlor's lifetime. The trust  
12 terminates upon the death of the animal or, if the trust was  
13 created to provide for the care of more than one animal alive  
14 during the settlor's lifetime, upon the death of the last  
15 surviving animal.

16 (2) Except as provided in this section, the law of  
17 this state regarding the creation and administration of  
18 express trusts applies to a trust for the care of an animal.

19 (3) A trust authorized by this section may be enforced  
20 by a person appointed in the terms of the trust or, if no  
21 person is so appointed, by a person appointed by the court. A  
22 person having an interest in the welfare of the animal may  
23 request the court to appoint a person to enforce the trust or  
24 to remove a person appointed. The appointed person shall have  
25 the rights of a trust beneficiary for the purpose of enforcing  
26 the trust, including receiving accountings, notices, and other  
27 information from the trustee and providing consents.

28 (4) Property of a trust authorized by this section may  
29 be applied only to its intended use, except to the extent the  
30 court determines that the value of the trust property exceeds  
31 the amount required for the intended use. Property not

Amendment No. 01 (for drafter's use only)

1 required for the intended use, including the trust property  
2 remaining upon its termination, shall be distributed in the  
3 following order of priority:

4 (a) As directed by the terms of the trust;

5 (b) To the settlor, if then living;

6 (c) Pursuant to the residuary clause of the settlor's  
7 will if the trust for the animal was created in a preresiduary  
8 clause in the settlor's will;

9 (d) If the settlor is deceased, pursuant to the  
10 residuary provisions of the inter vivos trust if the trust for  
11 the animal was created in a preresiduary clause in the trust  
12 instrument; or

13 (e) To the settlor's heirs.

14 (5) This section applies to trusts created on or after  
15 January 1, 2003.

16 Section 7. Section 737.209, Florida Statutes, is  
17 created to read:

18 737.209 Improper distribution or payment; liability of  
19 distributee.--A distributee who was paid improperly must  
20 return the assets or funds received and the income from those  
21 assets or interest on the funds since distribution or payment,  
22 unless the distribution or payment cannot be questioned  
23 because of adjudication, estoppel, or limitations. If the  
24 distributee does not have the property, its value at the date  
25 of disposition, income thereon, and gain received by the  
26 distributee must be returned.

27 Section 8. Subsection (4) of section 737.303, Florida  
28 Statutes, is amended, and subsection (5) is added to that  
29 section, to read:

30 737.303 Duty to inform and account to  
31 beneficiaries.--The trustee shall keep the beneficiaries of

Amendment No. 01 (for drafter's use only)

1 the trust reasonably informed of the trust and its  
2 administration. The trustee's duty to inform and account  
3 includes, but is not limited to, the following:

4 (4)(a) A beneficiary is entitled to a ~~statement of the~~  
5 ~~accounts of the~~ trust accounting, as set forth in s. 737.3035,  
6 annually and upon termination of the trust or upon change of  
7 the trustee except as provided under paragraph (c).

8 (b) For purposes of this section, the term  
9 "beneficiary" means:

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

12 2. All reasonably ascertainable remainder  
13 beneficiaries who would take if all income interests  
14 immediately terminated.

15 (c) In the case of a trust described in s. 733.707(3),  
16 during the grantor's lifetime, the trustee's duties under this  
17 section extend only to the grantor or the legal representative  
18 of the grantor.

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

22 (e) All rights provided a beneficiary under this  
23 section may be asserted by a legal representative or natural  
24 guardian of the beneficiary. Notice under subsection (1) and a  
25 trust accounting ~~statement of accounts~~ under paragraph (a)  
26 provided to a representative of the beneficiary as defined in  
27 s. 731.303 shall bind the beneficiary, and the trustee shall  
28 not be required to provide such notice or trust accounting  
29 ~~statement of accounts~~ to any beneficiary who would be bound by  
30 an order binding on a representative of the beneficiary under  
31 s. 731.303, if such notice or trust accounting ~~statement of~~



Amendment No. 01 (for drafter's use only)

1 accounts, respectively, is provided to that representative.

2 (5) This section applies to trust accountings rendered  
3 for accounting periods beginning on or after January 1, 2003.

4 Section 9. Section 737.3035, Florida Statutes, is  
5 created to read:

6 737.3035 Trust accountings.--

7 (1) A trust accounting must be a reasonably  
8 understandable report from the date of the last accounting or,  
9 if none, from the date upon which the trustee became  
10 accountable, which adequately discloses the information  
11 required in subsection (2).

12 (2)(a) The accounting must begin with a statement  
13 identifying the trust, the trustee furnishing the accounting,  
14 and the time period covered by the accounting.

15 (b) The accounting must show all cash and property  
16 transactions and all significant transactions affecting  
17 administration during the accounting period, including  
18 compensation paid to the trustee and the trustee's agents.  
19 Gains and losses realized during the accounting period, and  
20 all receipts and disbursements must be shown.

21 (c) The accounting must, to the extent feasible,  
22 identify and value trust assets on hand at the close of the  
23 accounting period. For each asset or class of assets  
24 reasonably capable of valuation, the accounting shall contain  
25 two values, the asset acquisition value or carrying value and  
26 the estimated current value. The accounting must identify each  
27 known noncontingent liability with an estimated current amount  
28 of the liability if known.

29 (d) To the extent feasible, the accounting must show  
30 significant transactions that do not affect the amount for  
31 which the trustee is accountable, including name changes in

Amendment No. 01 (for drafter's use only)

1 investment holdings, adjustments to carrying value, a change  
2 of custodial institutions and stock splits.

3 (e) The accounting must reflect the allocation of  
4 receipts, disbursements, accruals, or allowances between  
5 income and principal when the allocation affects the interest  
6 of any beneficiary of the trust.

7 (3) This section applies to all trust accountings  
8 rendered for any accounting periods beginning on or after  
9 January 1, 2003.

10 Section 10. Section 737.307, Florida Statutes, is  
11 amended to read:

12 737.307 Limitations on proceedings against trustees  
13 after beneficiary receives trust disclosure documents  
14 account.--

15 (1) Unless previously barred by adjudication, consent,  
16 or limitations, an action against a trustee for breach of  
17 trust is barred for any beneficiary who has received a trust  
18 disclosure document adequately ~~final, annual, or periodic~~  
19 account or other statement fully disclosing the matter unless  
20 a proceeding to assert the claim is commenced within 6 months  
21 after receipt from the trustee of the trust disclosure  
22 document or the limitation notice that applies to the trust  
23 disclosure document, whichever is received later. All claims  
24 against a trustee who has issued a trust disclosure document  
25 adequately disclosing a matter but who has not delivered a  
26 limitation notice that applies to that trust disclosure  
27 document are barred as provided in chapter 95 as to the  
28 matters disclosed in the trust disclosure document.~~of the~~  
29 ~~final, annual, or periodic account or statement.~~ In any  
30 event, and notwithstanding lack of adequate full disclosure or  
31 delivery of a limitation notice, all claims against a trustee

Amendment No. 01 (for drafter's use only)

1 who has issued a final trust accounting ~~account or statement~~  
2 received by the beneficiary and has informed the beneficiary  
3 of the location and availability of records for his or her  
4 examination are barred as provided in chapter 95.

5 (2) As used in this section, the term "trust  
6 disclosure document" means a trust accounting as defined in s.  
7 737.3035 or any other written report of the trustee. A trust  
8 disclosure document adequately discloses a matter if it  
9 provides sufficient information so that a beneficiary knows of  
10 a claim or reasonably should have inquired into the existence  
11 of a claim with respect to that matter. An accounting that  
12 adequately discloses the information required by and that  
13 substantially complies with the standards set forth in s.  
14 737.3035 is a trust accounting under this section.

15 (3) As used in this section, the term "limitation  
16 notice" means a written statement of the trustee that an  
17 action by a beneficiary against the trustee for breach of  
18 trust based on any matter adequately disclosed in a trust  
19 disclosure document may be barred unless the action is  
20 commenced within 6 months after receipt of the trust  
21 disclosure document or receipt of a limitation notice that  
22 applies to that trust disclosure document, whichever is later.

23 (a) A limitation notice may be contained as a part of  
24 the trust disclosure document, may be accompanied concurrently  
25 by the trust disclosure document, or may be delivered  
26 separately from the trust disclosure document.

27 (b) A limitation notice may, but is not required to  
28 be, in the following form: "An action for breach of trust  
29 based on matters disclosed in a trust accounting or other  
30 written report of the trustee may be subject to a 6-month  
31 statute of limitations from the receipt of the trust

Amendment No. 01 (for drafter's use only)

1 accounting or other written report. If you have questions,  
2 please consult your attorney."

3 (c) For purposes of this section, a limitation notice  
4 applies to a trust disclosure document when the limitation  
5 notice:

6 1. Is contained as a part of the trust disclosure  
7 document;

8 2. Is accompanied concurrently by the trust disclosure  
9 document or is delivered separately within 10 days of the  
10 delivery of the trust disclosure document;

11 3. Is contained as a part of another trust disclosure  
12 document received within 1 year prior to the receipt of the  
13 latter trust disclosure document;

14 4. Is accompanied concurrently by another trust  
15 disclosure document that was received within 1 year prior to  
16 the receipt of the latter trust disclosure document or that  
17 was delivered separately within 10 days of the earlier trust  
18 disclosure document to the beneficiary; or

19 5. Is received after the trust disclosure document,  
20 but only if the limitation notice references that trust  
21 disclosure document and:

22 a. Offers to provide to the beneficiary upon request  
23 another copy of that trust disclosure document if it was  
24 received by the beneficiary within 1 year prior to receipt of  
25 the limitation notice; or

26 b. Is accompanied by another copy of that trust  
27 disclosure document if the trust disclosure document was  
28 received by the beneficiary 1 year or more prior to the  
29 receipt of the limitation notice.

30 (d) A limitation notice is not delivered separately if  
31 it is accompanied by another written communication, other than

Amendment No. 01 (for drafter's use only)

1 a written communication which refers only to the limitation  
2 notice.

3 (4) A beneficiary has received a trust disclosure  
4 document or a limitation notice final, annual, or periodic  
5 account or statement if, being an adult, it is received by the  
6 beneficiary or if, being a minor, disabled person, or person  
7 who may take by virtue of the exercise or nonexercise of a  
8 power of appointment, it is received by the beneficiary's  
9 representative as defined described in s. 731.303.

10 (5) This section applies to trust accountings for  
11 accounting periods beginning on or after January 1, 2003, and  
12 to written reports, other than trust accountings received by a  
13 beneficiary on or after January 1, 2003.

14 Section 11. (1) Section 731.303, Florida Statutes, as  
15 amended by this act, shall be given retroactive application.

16 (2) Section 737.303, Florida Statutes, as it existed  
17 prior to the effective date of this act shall be preserved and  
18 shall continue to apply to accounting periods beginning before  
19 January 1, 2003.

20 (3) Section 737.307, Florida Statutes, as it existed  
21 prior to the effective date of this act shall be preserved and  
22 shall continue to apply to any final, annual, or periodic  
23 account for periods beginning before January 1, 2003, and  
24 other statement fully disclosing the matter received by the  
25 beneficiary before January 1, 2003.

26 Section 12. Except as otherwise provided in this act,  
27 this act shall take effect upon becoming a law.

28  
29

30 ===== T I T L E A M E N D M E N T =====

31 And the title is amended as follows:

Amendment No. 01 (for drafter's use only)

1           On page 1, lines 2-12,  
2 remove: all of said lines  
3  
4 and insert:  
5           An act relating to probate and trusts; amending  
6           s. 731.303, F.S.; clarifying existing law  
7           regarding representation in the administration  
8           of a trust; providing for retroactive  
9           application; amending s. 732.2075, F.S.;  
10          revising provisions governing sources from  
11          which the elective share is payable; amending  
12          s. 733.107, F.S.; clarifying the circumstances  
13          which shift the burden of proof in certain  
14          proceedings contesting the validity of a will;  
15          amending s. 733.702, F.S.; clarifying the  
16          limitation on the presentation of claims;  
17          creating s. 737.115, F.S.; requiring certain  
18          trusts to contain a specified notice; creating  
19          s. 737.116, F.S.; providing for the  
20          establishment of trusts for an animal; creating  
21          s. 737.209, F.S.; codifying existing law  
22          regarding improper distribution in the  
23          administration of a trust; amending s. 737.303,  
24          F.S.; making conforming amendments relating to  
25          the duty to inform and with respect to trust  
26          accounting; creating s. 737.3035, F.S.;  
27          codifying trust accounting principles; amending  
28          s. 737.307, F.S.; requiring notice of statute  
29          of limitations to trust beneficiaries;  
30          providing for application; providing an  
31          effective date.