

By the Committee on Judiciary; and Senator Burt

308-1857D-02

1 A bill to be entitled
2 An act relating to probate and trusts; amending
3 s. 660.46, F.S.; conforming provisions relating
4 to trust accountings; amending s. 731.303,
5 F.S.; clarifying existing law regarding
6 representation in the administration of a
7 trust; providing for retroactive application;
8 amending s. 732.2075, F.S.; revising provisions
9 governing sources from which the elective share
10 is payable; amending s. 733.107, F.S.;
11 clarifying the circumstances which shift the
12 burden of proof in certain proceedings
13 contesting the validity of a will; amending s.
14 733.702, F.S.; clarifying the limitation on the
15 presentation of claims; creating s. 737.115,
16 F.S.; requiring certain trusts to contain a
17 specified notice; creating s. 737.116, F.S.;
18 providing for the establishment of trusts for
19 an animal; creating s. 737.209, F.S.; codifying
20 existing law regarding improper distribution in
21 the administration of a trust; amending s.
22 737.303, F.S.; making conforming amendments
23 relating to the duty to inform and with respect
24 to trust accounting; creating s. 737.3035,
25 F.S.; codifying trust accounting principles;
26 amending s. 737.307, F.S.; requiring notice of
27 statute of limitations to trust beneficiaries;
28 providing for application; providing an
29 effective date.

30
31 Be It Enacted by the Legislature of the State of Florida:

1 Section 1. Section 660.46, Florida Statutes, is
2 amended to read:

3 660.46 Substitution of fiduciaries.--

4 (1) The provisions of this section shall apply to the
5 transfer of fiduciary accounts by substitution, and for those
6 purposes these provisions shall constitute alternative
7 procedures to those provided or required by any other
8 provisions of law relating to the transfer of fiduciary
9 accounts or the substitution of persons acting or who are to
10 act in a fiduciary capacity. In this section, and only for
11 its purposes, the term:

12 (a) "Limitation notice" has the meaning ascribed in s.
13 737.307(3).

14 (b)~~(a)~~ "Original fiduciary" means any trust company or
15 trust department which, at the time of the initiation of the
16 proceedings provided for in this section, holds or has been
17 named or otherwise designated to hold a fiduciary capacity,
18 alone or with others, with respect to any fiduciary account
19 and which proposes in the proceedings provided for in this
20 section to terminate its fiduciary capacity with respect to
21 such fiduciary account by the substitution of a proposed
22 substitute fiduciary.

23 (c)~~(b)~~ "Proposed substitute fiduciary" means any trust
24 company or trust department qualified under the laws of this
25 state to act in the fiduciary capacity to which it is proposed
26 in said proceedings to be substituted in the place and stead
27 of the original fiduciary.

28 (d) "Trust accounting" has the meaning ascribed in s.
29 737.3035.

30 (e) "Trust disclosure document" has the meaning
31 ascribed in s. 737.307(2).

1 (2) Any original fiduciary and any proposed substitute
2 fiduciary may, with respect to any fiduciary account or
3 accounts which they shall mutually select, initiate
4 proceedings by joining in the filing of a petition in the
5 circuit court, requesting the substitution of the proposed
6 substitute fiduciary for the original fiduciary as to such
7 fiduciary account or accounts. The petition may be filed in
8 the county in which the main office of the original fiduciary
9 is located and, except to the extent inconsistent with the
10 provisions of this section, shall be governed by the Florida
11 Rules of Civil Procedure; however, if any fiduciary account is
12 then the subject of a proceeding in a court in this state
13 pursuant to the Florida Probate Code, the Florida Guardianship
14 Law, chapter 737, or chapter 747, the petition relating to
15 such fiduciary account shall be filed in that proceeding and
16 shall be governed by the procedural or other relevant rules
17 applicable to such proceeding except to the extent
18 inconsistent with the provisions of this section.

19 (3) Unless a waiver or consent shall be filed in the
20 proceedings as provided in subsection (4), the provisions of
21 s. 731.301(1) and (2) shall apply with respect to notice of
22 the proceedings to all persons who are then cofiduciaries with
23 the original fiduciary, other than a person joining as a
24 petitioner in the proceedings; to all persons named in the
25 governing instrument as substitutes or successors to the
26 fiduciary capacity of the original fiduciary; to the persons
27 then living who are entitled under the governing instrument to
28 appoint a substitute or successor to act in the fiduciary
29 capacity of the original fiduciary; to all vested
30 beneficiaries of the fiduciary account; and to all then-living
31 originators of the governing instrument. Unless a waiver or

1 consent shall be filed in the proceedings as provided in
2 subsection (4), the provisions of s. 731.301 shall apply with
3 respect to notice to all contingent beneficiaries of the
4 fiduciary account. Only the persons or classes of persons
5 described in the foregoing provisions of this subsection shall
6 be deemed to be interested persons for the purposes of this
7 section and the proceedings and notices provided for in this
8 section; and the provisions of ss. 731.301(3) and 731.303(3),
9 (4), and (5)~~and (4)~~, relating to notice requirements, the
10 effect of notice, and representation of interests, shall apply
11 to the proceedings provided for in this section.

12 (4) Any interested person, including a guardian ad
13 litem, administrator ad litem, guardian of the property,
14 personal representative, trustee, or other fiduciary, may
15 waive any right of notice and may consent to any action or
16 proceeding which may be permitted by this section. Any such
17 waiver or consent must be filed in the proceedings and may be
18 filed at any time, and the notice requirements of this section
19 shall not apply to any person who files any such waiver or
20 consent.

21 (5) If no answer which constitutes an objection to the
22 petition or the relief requested therein, or which otherwise
23 requires a hearing, is served on the petitioners and filed
24 with the court in which the proceeding is pending by any
25 interested person or class of persons to whom notice has been
26 given as provided in subsection (3), within 30 days from the
27 service of such notice, the petition shall be considered ex
28 parte as to such interested person or class of persons. If an
29 answer which constitutes an objection to the petition or the
30 relief requested therein, or which otherwise requires a
31 hearing, is timely served and filed by any interested person

1 or class of persons, a hearing shall be set and reasonable
2 notice shall be given. The court, upon consideration of the
3 petition and the interests of the interested persons, shall
4 either grant or deny the relief requested by the petition;
5 and, if the relief is granted, the court shall order the
6 proposed substitute fiduciary to be substituted in the place
7 and stead of the original fiduciary, in the fiduciary capacity
8 theretofore held by the original fiduciary, effective on such
9 date as shall be specified in the court order which shall not
10 be more than 30 days from the date of the entry of such order
11 unless a longer period, not exceeding 90 days from the date of
12 the entry of such order, shall be requested by the
13 petitioners. The date so specified may be referred to in this
14 section as the effective date of the order for substitution.
15 The court shall order the requested substitution unless it
16 determines that such substitution would constitute or create a
17 material detriment to the estate, trust, or other fiduciary
18 account or to the interests of the beneficiaries thereof.

19 (6) All court costs and the fees of guardians ad litem
20 arising in connection with any proceeding hereunder shall be
21 paid by the petitioners and shall not be charged to any
22 fiduciary account.

23 (7) On the effective date of the order for
24 substitution, the original fiduciary shall transfer and
25 deliver, to the trust company or trust department so
26 substituted by the court order for substitution, each
27 fiduciary account with respect to which the order for
28 substitution is applicable, together with all documents and
29 records pertaining thereto and all other information in the
30 possession of the original fiduciary which may be necessary
31 for the proper continuation of the fiduciary functions; and

1 thereupon the trust company or trust department so substituted
2 shall hold the fiduciary capacity previously held by the
3 original fiduciary and shall have all the rights, powers, and
4 duties theretofore held or exercisable by the original
5 fiduciary by virtue of its former fiduciary capacity, but the
6 trust company or trust department so substituted shall not
7 exercise any right or power which, by the governing
8 instrument, is expressly made personal to the original
9 fiduciary. The proceedings in which the order for
10 substitution was entered shall not be finally terminated until
11 settlement of the final account of the original fiduciary
12 pursuant to the provisions of subsection (8).

13 (8) Within 30 days after the effective date of an
14 order for substitution entered hereunder, the original
15 fiduciary shall file a final trust accounting ~~account~~ with the
16 court and shall send a copy thereof to each interested person
17 who does not file a waiver or consent, together with a notice
18 of the filing of the final trust accounting ~~account~~. The trust
19 company or trust department substituted for the original
20 fiduciary by the court order for substitution shall be deemed
21 to be an interested party for the purposes of this subsection.
22 Objections to a final trust accounting ~~account~~ may be filed by
23 any interested party who has not filed a waiver or consent,
24 and, to be considered by the court, any such objections must
25 be filed with the court and served on the original fiduciary
26 within 60 days after a copy of the final trust accounting
27 ~~account~~ and notice of the filing of the final trust accounting
28 ~~account~~ have been sent to such interested person. Objections
29 shall be tried and determined by the court upon the
30 application of the original fiduciary or any interested person
31 who has not filed a waiver or consent. Upon expiration of the

1 time for filing objections if no objections have been timely
2 filed, or at such earlier time as waivers or consents have
3 been filed by all interested persons, or, if objections have
4 been timely filed by an interested person entitled to do so,
5 then upon the hearing on any such objections, the court shall
6 enter an appropriate order on such final trust accounting
7 ~~account~~ and on all unapproved annual or other trust accounting
8 ~~accounts~~ previously filed. If consents to a final trust
9 accounting account are filed with the court by all interested
10 persons to whom a copy of the final trust accounting account
11 is required hereunder to be sent, the court shall enter an
12 order approving such trust accounting account and all
13 unapproved annual or other trust accounting accounts
14 previously filed.

15 (9) Unless previously or otherwise barred by
16 adjudication, waiver, consent, limitation, or the ~~foregoing~~
17 provisions of ~~this~~ subsection(8), an action for breach of
18 trust or breach of fiduciary duties or responsibilities
19 against an original fiduciary in whose place and stead another
20 trust company or trust department has been substituted
21 pursuant to the provisions of this section is barred for any
22 beneficiary who has received a trust disclosure document
23 ~~adequately final, annual or periodic account or other~~
24 ~~statement fully~~ disclosing the matter unless a proceeding to
25 assert the claim is commenced within 6 months after receipt of
26 the trust disclosure document or the limitation notice that
27 applies to the trust disclosure document, whichever is
28 received later final, annual or periodic account or statement.
29 In any event, and notwithstanding lack of adequate full
30 disclosure, all claims against such original fiduciary which
31 has issued a final trust disclosure document account or

1 ~~statement~~ received by the beneficiary and has informed the
2 beneficiary of the location and availability of records for
3 his or her examination are barred as provided in chapter 95.
4 Subsections (2) and (3) of s. 737.307 apply to this
5 subsection.

6 (10) A beneficiary has received a final trust
7 disclosure document or a limitation notice ~~account or~~
8 ~~statement~~ if, when the beneficiary is an adult, it is received
9 by him or her or if, when the beneficiary is a minor or a
10 disabled person, it is received by his or her representative
11 as defined ~~described~~ in s. 731.303.

12 (11)~~(9)~~ The filing of a petition hereunder or the
13 substitution of fiduciaries pursuant to law shall not be
14 deemed as the resignation by any trust company or trust
15 department of any fiduciary capacity or relationship.

16 (12) This section applies to trust accountings for
17 accounting periods beginning on or after January 1, 2003, and
18 to written reports, other than trust accountings, received by
19 a beneficiary on or after January 1, 2003.

20 Section 2. Section 731.303, Florida Statutes, is
21 amended to read:

22 731.303 Representation.--In the administration of or
23 in proceedings involving estates of decedents or trusts, the
24 following apply:

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

27 (a) Orders binding the sole holder or all coholders of
28 a power of revocation or a general, special, or limited power
29 of appointment, including one in the form of a power of
30 amendment or revocation to the extent that the power has not
31 become unexercisable in fact, bind all persons to the extent

1 that their interests, as persons who may take by virtue of the
2 exercise or nonexercise of the power, are subject to the
3 power.

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

6 1. Orders binding a guardian of the property bind the
7 ward.

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

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

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

21 (2) Orders binding a guardian of the person shall not
22 bind the ward.

23 (3) In judicial proceedings involving the
24 administration of estates or trusts,notice is required as
25 follows:

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

31

1 (b) Notice is given to unborn or unascertained persons
2 who are not represented pursuant to paragraph (1)(a) or
3 paragraph (1)(b) by giving notice to all known persons whose
4 interests in the proceedings are the same as, or of a greater
5 quality than, those of the unborn or unascertained persons.

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

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

21 (a) Agreements, waivers, consents, or approvals; or

22 (b) Accounts, trust accountings, or other written

23 reports that adequately disclose matters set forth therein,~~to~~
24 ~~the extent that the power has not become unexercisable in~~
25 ~~fact, bind all persons to the extent that their interests, as~~
26
27 then all persons who may take by virtue of, and whose interest
28 are subject to,the exercise or nonexercise of the power,~~are~~
29 also bound, but only to the extent of their interests ~~subject~~
30 ~~to the power.~~

31

1 Section 3. Paragraph (e) of subsection (1) of section
2 732.2075, Florida Statutes, is amended to read:

3 732.2075 Sources from which elective share payable;
4 abatement.--

5 (1) Unless otherwise provided in the decedent's will
6 or, in the absence of a provision in the decedent's will, in a
7 trust referred to in the decedent's will, the following are
8 applied first to satisfy the elective share:

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

16 Section 4. Section 733.107, Florida Statutes, is
17 amended to read:

18 733.107 Burden of proof in contests; presumption of
19 undue influence--

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

26 (2) The presumption of undue influence implements
27 public policy against abuse of fiduciary or confidential
28 relationships and is therefore a presumption shifting the
29 burden of proof under ss. 90.301 through 90.304.

30 Section 5. Subsection (1) of section 733.702, Florida
31 Statutes, is amended to read:

1 733.702 Limitations on presentation of claims.--
2 (1) If not barred by s. 733.710, no claim or demand
3 against the decedent's estate that arose before the death of
4 the decedent, including claims of the state and any of its
5 political subdivisions, even if the claims are unmatured,
6 contingent, or unliquidated; no claim for funeral or burial
7 expenses; no claim for personal property in the possession of
8 the personal representative; and no claim for damages,
9 including, but not limited to, an action founded on fraud or
10 another wrongful act or omission of the decedent, is binding
11 on the estate, on the personal representative, or on any
12 beneficiary unless filed in the probate proceeding on or
13 before ~~within~~ the later of the date that is 3 months after the
14 time of the first publication of the notice to creditors or,
15 as to any creditor required to be served with a copy of the
16 notice to creditors, 30 days after the date of service on the
17 creditor, even though the personal representative has
18 recognized the claim or demand by paying a part of it or
19 interest on it or otherwise. The personal representative may
20 settle in full any claim without the necessity of the claim
21 being filed when the settlement has been approved by the
22 interested persons.

23 Section 6. Section 737.115, Florida Statutes, is
24 created to read:

25 737.115 Notice of trustee duties.--

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

30 "The trustee of a trust may have duties and
31 responsibilities in addition to those described

1 in the instrument creating the trust. If you
2 have questions you should obtain legal advice."
3 (2) The absence of the notice described in this
4 section in the trust instrument does not affect the validity
5 of the trust. A trustee is not relieved of any duty if the
6 notice is not contained in the trust instrument. No person is
7 liable for the failure to include the notice in the trust
8 instrument.
9 (3) This section applies to all trusts described in s.
10 733.707(3) and amendments to those trusts executed on or after
11 January 1, 2003.
12 Section 7. Section 737.116, Florida Statutes, is
13 created to read:
14 737.116 Trust for care of animal.--
15 (1) A trust may be created to provide for the care of
16 an animal alive during the settlor's lifetime. The trust
17 terminates upon the death of the animal or, if the trust was
18 created to provide for the care of more than one animal alive
19 during the settlor's lifetime, upon the death of the last
20 surviving animal.
21 (2) Except as provided in this section, the law of
22 this state regarding the creation and administration of
23 express trusts applies to a trust for the care of an animal.
24 (3) A trust authorized by this section may be enforced
25 by a person appointed in the terms of the trust or, if no
26 person is so appointed, by a person appointed by the court. A
27 person having an interest in the welfare of the animal may
28 request the court to appoint a person to enforce the trust or
29 to remove a person appointed. The appointed person shall have
30 the rights of a trust beneficiary for the purpose of enforcing
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1 the trust, including receiving accountings, notices, and other
2 information from the trustee and providing consents.

3 (4) Property of a trust authorized by this section may
4 be applied only to its intended use, except to the extent the
5 court determines that the value of the trust property exceeds
6 the amount required for the intended use. Property not
7 required for the intended use, including the trust property
8 remaining upon its termination, shall be distributed in the
9 following order of priority:

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

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

12 (c) Pursuant to the residuary clause of the settlor's
13 will if the trust for the animal was created in a preresiduary
14 clause in the settlor's will;

15 (d) If the settlor is deceased, pursuant to the
16 residuary provisions of the inter vivos trust if the trust for
17 the animal was created in a preresiduary clause in the trust
18 instrument; or

19 (e) To the settlor's heirs.

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

22 Section 8. Section 737.209, Florida Statutes, is
23 created to read:

24 737.209 Improper distribution or payment; liability of
25 distributee.--A distributee who was paid improperly must
26 return the assets or funds received and the income from those
27 assets or interest on the funds since distribution or payment,
28 unless the distribution or payment cannot be questioned
29 because of adjudication, estoppel, or limitations. If the
30 distributee does not have the property, its value at the date
31

1 of disposition, income thereon, and gain received by the
2 distributee must be returned.

3 Section 9. Subsection (4) of section 737.303, Florida
4 Statutes, is amended, and subsection (5) is added to that
5 section, to read:

6 737.303 Duty to inform and account to
7 beneficiaries.--The trustee shall keep the beneficiaries of
8 the trust reasonably informed of the trust and its
9 administration. The trustee's duty to inform and account
10 includes, but is not limited to, the following:

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

15 (b) For purposes of this section, the term
16 "beneficiary" means:

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

19 2. All reasonably ascertainable remainder
20 beneficiaries who would take if all income interests
21 immediately terminated.

22 (c) In the case of a trust described in s. 733.707(3),
23 during the grantor's lifetime, the trustee's duties under this
24 section extend only to the grantor or the legal representative
25 of the grantor.

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

29 (e) All rights provided a beneficiary under this
30 section may be asserted by a legal representative or natural
31 guardian of the beneficiary. Notice under subsection (1) and a

1 trust accounting ~~statement of accounts~~ under paragraph (a)
2 provided to a representative of the beneficiary as defined in
3 s. 731.303 shall bind the beneficiary, and the trustee shall
4 not be required to provide such notice or trust accounting
5 ~~statement of accounts~~ to any beneficiary who would be bound by
6 an order binding on a representative of the beneficiary under
7 s. 731.303, if such notice or trust accounting ~~statement of~~
8 ~~accounts~~, respectively, is provided to that representative.

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

11 Section 10. Section 737.3035, Florida Statutes, is
12 created to read:

13 737.3035 Trust accountings.--

14 (1) A trust accounting must be a reasonably
15 understandable report from the date of the last accounting or,
16 if none, from the date upon which the trustee became
17 accountable, which adequately discloses the information
18 required in subsection (2).

19 (2)(a) The accounting must begin with a statement
20 identifying the trust, the trustee furnishing the accounting,
21 and the time period covered by the accounting.

22 (b) The accounting must show all cash and property
23 transactions and all significant transactions affecting
24 administration during the accounting period, including
25 compensation paid to the trustee and the trustee's agents.
26 Gains and losses realized during the accounting period, and
27 all receipts and disbursements must be shown.

28 (c) The accounting must, to the extent feasible,
29 identify and value trust assets on hand at the close of the
30 accounting period. For each asset or class of assets
31 reasonably capable of valuation, the accounting shall contain

1 two values, the asset acquisition value or carrying value and
2 the estimated current value. The accounting must identify each
3 known noncontingent liability with an estimated current amount
4 of the liability if known.

5 (d) To the extent feasible, the accounting must show
6 significant transactions that do not affect the amount for
7 which the trustee is accountable, including name changes in
8 investment holdings, adjustments to carrying value, a change
9 of custodial institutions and stock splits.

10 (e) The accounting must reflect the allocation of
11 receipts, disbursements, accruals, or allowances between
12 income and principal when the allocation affects the interest
13 of any beneficiary of the trust.

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

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

19 737.307 Limitations on proceedings against trustees
20 after beneficiary receives trust disclosure documents
21 account.--

22 (1) Unless previously barred by adjudication, consent,
23 or limitations, an action against a trustee for breach of
24 trust is barred for any beneficiary who has received a trust
25 disclosure document adequately ~~final, annual, or periodic~~
26 ~~account or other statement~~ fully disclosing the matter unless
27 a proceeding to assert the claim is commenced within 6 months
28 after receipt from the trustee of the trust disclosure
29 document or the limitation notice that applies to the trust
30 disclosure document, whichever is received later. All claims
31 against a trustee who has issued a trust disclosure document

1 adequately disclosing a matter but who has not delivered a
2 limitation notice that applies to that trust disclosure
3 document are barred as provided in chapter 95 as to the
4 matters disclosed in the trust disclosure document.~~of the~~
5 ~~final, annual, or periodic account or statement.~~ In any
6 event, and notwithstanding lack of adequate full disclosure or
7 delivery of a limitation notice, all claims against a trustee
8 who has issued a final trust accounting account or statement
9 received by the beneficiary and has informed the beneficiary
10 of the location and availability of records for his or her
11 examination are barred as provided in chapter 95.

12 (2) As used in this section, the term "trust
13 disclosure document" means a trust accounting as defined in s.
14 737.3035 or any other written report of the trustee. A trust
15 disclosure document adequately discloses a matter if it
16 provides sufficient information so that a beneficiary knows of
17 a claim or reasonably should have inquired into the existence
18 of a claim with respect to that matter. An accounting that
19 adequately discloses the information required by and that
20 substantially complies with the standards set forth in s.
21 737.3035 is a trust accounting under this section.

22 (3) As used in this section, the term "limitation
23 notice" means a written statement of the trustee that an
24 action by a beneficiary against the trustee for breach of
25 trust based on any matter adequately disclosed in a trust
26 disclosure document may be barred unless the action is
27 commenced within 6 months after receipt of the trust
28 disclosure document or receipt of a limitation notice that
29 applies to that trust disclosure document, whichever is later.

30 (a) A limitation notice may be contained as a part of
31 the trust disclosure document, may be accompanied concurrently

1 by the trust disclosure document, or may be delivered
2 separately from the trust disclosure document.

3 (b) A limitation notice may, but is not required to
4 be, in the following form: "An action for breach of trust
5 based on matters disclosed in a trust accounting or other
6 written report of the trustee may be subject to a 6-month
7 statute of limitations from the receipt of the trust
8 accounting or other written report. If you have questions,
9 please consult your attorney."

10 (c) For purposes of this section, a limitation notice
11 applies to a trust disclosure document when the limitation
12 notice:

13 1. Is contained as a part of the trust disclosure
14 document;

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

18 3. Is contained as a part of another trust disclosure
19 document received within 1 year prior to the receipt of the
20 latter trust disclosure document;

21 4. Is accompanied concurrently by another trust
22 disclosure document that was received within 1 year prior to
23 the receipt of the latter trust disclosure document or that
24 was delivered separately within 10 days of the earlier trust
25 disclosure document to the beneficiary; or

26 5. Is received after the trust disclosure document,
27 but only if the limitation notice references that trust
28 disclosure document and:

29 a. Offers to provide to the beneficiary upon request
30 another copy of that trust disclosure document if it was
31

1 received by the beneficiary within 1 year prior to receipt of
2 the limitation notice; or

3 b. Is accompanied by another copy of that trust
4 disclosure document if the trust disclosure document was
5 received by the beneficiary 1 year or more prior to the
6 receipt of the limitation notice.

7 (d) A limitation notice is not delivered separately if
8 it is accompanied by another written communication, other than
9 a written communication which refers only to the limitation
10 notice.

11 (4) A beneficiary has received a trust disclosure
12 document or a limitation notice ~~final, annual, or periodic~~
13 ~~account or statement~~ if, being an adult, it is received by the
14 beneficiary or if, being a minor, disabled person, or person
15 who may take by virtue of the exercise or nonexercise of a
16 power of appointment, it is received by the beneficiary's
17 representative as defined ~~described~~ in s. 731.303.

18 (5) This section applies to trust accountings for
19 accounting periods beginning on or after January 1, 2003, and
20 to written reports, other than trust accountings, received by
21 a beneficiary on or after January 1, 2003.

22 Section 12. (1) Section 660.46, Florida Statutes, as
23 it existed prior to the effective date of this act shall be
24 preserved and shall continue to apply to any final, annual, or
25 periodic account for periods beginning before January 1, 2003,
26 and other statements fully disclosing the matter received by
27 the beneficiary before January 1, 2003.

28 (2) Section 731.303, Florida Statutes, as amended by
29 this act, shall be given retroactive application.

30 (3) Section 737.303, Florida Statutes, as it existed
31 prior to the effective date of this act shall be preserved and

1 shall continue to apply to accounting periods beginning before
2 January 1, 2003.

3 (4) Section 737.307, Florida Statutes, as it existed
4 prior to the effective date of this act shall be preserved and
5 shall continue to apply to any final, annual, or periodic
6 account for periods beginning before January 1, 2003, and
7 other statements fully disclosing the matter received by the
8 beneficiary before January 1, 2003.

9 Section 13. Except as otherwise provided in this act,
10 this act shall take effect upon becoming a law.

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 720

- 4 -- Clarifies that the doctrine of virtual
5 representation applies to the judicial and
6 nonjudicial administration of a trust and all of
7 that which binds a sole- or co-holder of a power
8 of appointment also binds those who may take by
9 virtue of that representation;
10 -- Clarifies sources from which an elective share is
11 payable;
12 -- Codifies the statement of the presumption of undue
13 influence as shifting the burden of proof in will
14 contests and provides the underlying public policy
15 for the presumption;
16 -- Clarifies the statute of limitations period for
17 creditors' claims against an estate;
18 -- Requires specified trusts to include notice to a
19 trustee of his or her duties and responsibilities
20 under state and federal law;
21 -- Provides for the creation, validity,
22 enforceability and termination of trusts for the
23 care of animals;
24 -- Provides for the recovery of improperly
25 distributed assets;
26 -- Codifies trust accounting standards for the
27 administration of trusts;
28 -- Revises the provisions governing the 6-month
29 statute of limitations period for beneficiary
30 claims against a trustee, and requires limitation
31 notice; and
 -- Conforms similar provisions in the banking code to
 the proposed changes in the probate and trust
 code.