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A bill to be entitled

An act relating to trusts; amending s. 711.501, F.S.; expanding the definition of the term "security account"; amending s. 737.402, F.S.; providing certain powers to trustees; amending s. 737.403, F.S.; specifying when court authorization is not required for payment from trust assets; amending s. 738.104, F.S.; providing that adjustments affecting the value of trust assets are not deemed to benefit a trustee under certain circumstances; providing for applicability of trustee adjustment power to trusts administered under Florida law outside Florida; amending s. 738.1041, F.S., relating to total return unitrust; defining the terms "fair market value" and "unitrust amount"; providing a remedy; providing that certain provisions shall apply to the administration of trusts outside Florida; amending s. 738.303, F.S.; defining the term "undistributed income"; providing an effective date.

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

Section 1. Subsection (10) of section 711.501, Florida Statutes, is amended to read:

711.501 Definitions.--In ss. 711.50-711.512, unless the context otherwise requires, the term:

(10) "Security account" means:

(a) A reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings, or dividends earned or

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30 declared on a security in an account, a reinvestment account, or
 31 a brokerage account, whether or not credited to the account
 32 before the owner's death; ~~or~~

33 (b) An investment management, investment advisory,
 34 investment agency, custody, or other account with a bank or
 35 trust company, including the securities in the account, the cash
 36 balance in the account, and cash equivalents, and interest,
 37 earnings, or dividends earned or declared on a security in the
 38 account, whether or not credited to the account before the
 39 owner's death; or

40 (c)~~(b)~~ A cash balance or other property held for or due to
 41 the owner of a security as a replacement for or product of an
 42 account security, whether or not credited to the account before
 43 the owner's death.

44 Section 2. Paragraphs (y) and (z) of subsection (2) of
 45 section 737.402, Florida Statutes, are amended to read:

46 737.402 Powers of trustees conferred by this part.--

47 (2) Unless otherwise provided in the trust instrument, a
 48 trustee has the power:

49 (y) To employ persons, including attorneys, auditors,
 50 investment advisers, or agents, even if they are the trustee or
 51 associated with the trustee, to advise or assist the trustee in
 52 the performance of his or her administrative duties; to pay
 53 compensation and costs incurred in connection with such
 54 employment from the assets of the trust; to act without
 55 independent investigation upon their recommendations; and,
 56 instead of acting personally, to employ one or more agents to
 57 perform any act of administration, whether or not discretionary.

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58 (z) To prosecute or defend actions, claims, or
 59 proceedings, including appeals, for the protection of trust
 60 assets and of the trustee in the performance of his or her
 61 duties; to employ attorneys and other agents to advise and
 62 assist the trustee in the exercise of such powers; and to pay
 63 compensation and costs incurred in connection with such
 64 employment from the assets of the trust.

65 Section 3. Subsection (2) of section 737.403, Florida
 66 Statutes, is amended to read:

67 737.403 Power of court to permit deviation or to approve
 68 transactions involving conflict of interest.--

69 (2) If the duty of the trustee and the trustee's
 70 individual interest or his or her interest as trustee of another
 71 trust conflict in the exercise of a trust power, the power may
 72 be exercised only by court authorization, ~~except as provided in~~
 73 ~~s. 737.402(2)(a), (e), (g), (s) and (y)~~. Under this section,
 74 personal profit or advantage to an affiliated or subsidiary
 75 company or association is personal profit to any corporate
 76 trustee. Court authorization is not required for any of the
 77 following:

78 (a) The exercise of any power described in s.
 79 737.402(2)(a), (e), (g), (s), or (y);

80 (b) The exercise of any power for which the trust
 81 instrument acknowledges the trustee's conflict of interest and
 82 expressly authorizes the exercise of that power notwithstanding
 83 the conflict;

84 (c) The exercise of any power consented to in writing by a
 85 settlor of the trust while the settlor holds the right of
 86 revocation of the trust;

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87 (d) The exercise of any power consented to in writing by
 88 each of the beneficiaries to whom the trustee is required to
 89 provide any annual or periodic accounting. Consent under this
 90 paragraph may be given by a person who represents the interest
 91 of the beneficiary pursuant to s. 731.303 or by the legal
 92 guardian of the beneficiary or, if there is no legal guardian,
 93 the natural guardian of the beneficiary; or

94 (e) Payment of costs or attorney's fees incurred in any
 95 trust proceeding from the assets of the trust unless an action
 96 has been filed or defense asserted against the trustee based
 97 upon a breach of trust. Court authorization is not required if
 98 the action or defense is later withdrawn or dismissed by the
 99 party alleging a breach of trust, or resolved without a
 100 determination by the court that the trustee has committed a
 101 breach of trust.

102 Section 4. Paragraph (h) of subsection (3) of section
 103 738.104, Florida Statutes, is amended, and subsection (11) is
 104 added to said section, to read:

105 738.104 Trustee's power to adjust.--

106 (3) A trustee may not make an adjustment:

107 (h) If the trustee is not a beneficiary of the trust but
 108 the adjustment would benefit the trustee directly or indirectly,
 109 except that in the case of a trustee whose compensation for
 110 acting as trustee is based upon the value of trust assets, an
 111 adjustment that affects the value of trust assets is not deemed
 112 to benefit the trustee.

113 (11) This section pertains to the administration of a
 114 trust and is applicable to any trust that is administered under
 115 Florida law.

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116 Section 5. Paragraphs (e) and (f) are added to subsection
 117 (1) of section 738.1041, Florida Statutes, and subsections (10)
 118 and (12) of said section are amended, to read:

119 738.1041 Total return unitrust.--

120 (1) For purposes of this section, the term:

121 (e) "Fair market value" means the fair market value of
 122 assets held by the trust as otherwise determined under this
 123 chapter, reduced by all known noncontingent liabilities except
 124 for those liabilities that, upon payment, will represent
 125 expenses under s. 738.701 or s. 738.702.

126 (f) "Unitrust amount" means the amount determined by
 127 multiplying the fair market value of the assets as defined in
 128 paragraph (e) by the percentage calculated under paragraph
 129 (2)(b).

130 (10) Any trustee or disinterested person who in good faith
 131 takes or fails to take any action under this section shall not
 132 be liable to any person affected by such action or inaction,
 133 regardless of whether such person received written notice as
 134 provided in this section and regardless of whether such person
 135 was under a legal disability at the time of the delivery of such
 136 notice. Such person's exclusive remedy shall be to obtain, under
 137 subsection (11), an order of the court directing the trustee to
 138 convert an income trust to a total return unitrust, to reconvert
 139 from a total return unitrust to an income trust, or to change
 140 the percentage used to calculate the unitrust amount. If a court
 141 determines that the trustee or disinterested person has not
 142 acted in good faith in taking or failing to take any action
 143 under this section, the provisions of s. 738.105(3) apply.

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144 (12) This section shall be construed as pertaining to the
 145 administration of a trust and shall be available to any trust
 146 that is administered ~~in this state~~ under Florida law unless:

147 (a) The governing instrument reflects an intention that
 148 the current beneficiary or beneficiaries are to receive an
 149 amount other than a reasonable current return from the trust;

150 (b) The trust is a trust described in the Internal Revenue
 151 Code, 26 U.S.C. s. 170(f)(2)(B), s. 642(c)(5), s. 664(d), s.
 152 1361(d), s. 2702(a)(3), or s. 2702(b);

153 (c) One or more persons to whom the trustee could
 154 distribute income have a power of withdrawal over the trust:

155 1. That is not subject to an ascertainable standard under
 156 the Internal Revenue Code, 26 U.S.C. s. 2041 or s. 2514, and
 157 exceeds in any calendar year the amount set forth in the
 158 Internal Revenue Code, 26 U.S.C. s. 2041(b)(2) or s. 2514(e); or

159 2. A power of withdrawal over the trust that can be
 160 exercised to discharge a duty of support he or she possesses;

161 (d) The governing instrument expressly prohibits use of
 162 this section by specific reference to the section. A provision
 163 in the governing instrument that, "The provisions of section
 164 738.1041, Florida Statutes, as amended, or any corresponding
 165 provision of future law, shall not be used in the administration
 166 of this trust," or similar words reflecting such intent shall be
 167 sufficient to preclude the use of this section; or

168 (e) The trust is a trust with respect to which a trustee
 169 currently possesses the power to adjust under s. 738.104.

170 Section 6. Subsection (1) of section 738.303, Florida
 171 Statutes, is amended to read:

172 738.303 Apportionment when income interest ends.--

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173 (1) For purposes of this section, "undistributed income"
174 means net income received on or before the date on which an
175 income interest ends. The term does not include an item of
176 income or expense that is due or accrued or net income that has
177 been added or is required to be added to principal under the
178 terms of the trust. In the case of a trust being administered as
179 a unitrust pursuant to s. 738.1041, the term "undistributed
180 income" means the prorated unitrust amount computed on a daily
181 basis through the date on which the income interest ends.

182 Section 7. This act shall take effect upon becoming a law.