

A bill to be entitled

An act relating to fiduciary relationships; amending s. 711.501, F.S.; including additional investment instruments within the definition of the term "security account"; amending s. 737.402, F.S.; revising the powers conferred upon a trustee; amending s. 737.403, F.S.; specifying circumstances in which court authorization is not required for a trustee to exercise his or her power when a conflict of interest exists; 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 certain trusts; 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 certain trusts; 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

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

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

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

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

47 737.402 Powers of trustees conferred by this part.--

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

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

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59 (z)1. To prosecute or defend actions, claims, or
60 proceedings, including appeals, for the protection of trust
61 assets and of the trustee in the performance of his or her
62 duties.

63 2. To employ attorneys and other agents to advise and
64 assist the trustee in the exercise of any of the trustee's
65 powers and to pay compensation and costs incurred in connection
66 with such employment from the assets of the trust.

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

69 737.403 Power of court to permit deviation or to approve
70 transactions involving conflict of interest.--

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

80 (a) The exercise of any power described in s.
81 737.402(2)(a), (e), (g), (s), or (y);

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

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

88 revocation of the trust;

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

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

104 Section 4. Paragraph (h) of subsection (3) of section
 105 738.104, Florida Statutes, is amended, and subsection (11) is
 106 added to said section, to read:

107 738.104 Trustee's power to adjust.--

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

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

115 (11) This section pertains to the administration of a
 116 trust and is applicable to any trust that is administered either

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117 in this state or under Florida law.

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

121 738.1041 Total return unitrust.--

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

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

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

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

146 (12) This section shall be construed as pertaining to the
 147 administration of a trust and shall be available to any trust
 148 that is administered either in this state or under Florida law
 149 unless:

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

153 (b) The trust is a trust described in the Internal Revenue
 154 Code, 26 U.S.C. s. 170(f)(2)(B), s. 642(c)(5), s. 664(d), s.
 155 1361(d), s. 2702(a)(3), or s. 2702(b);

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

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

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

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

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

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

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175 738.303 Apportionment when income interest ends.--

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

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

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