

Bill No. SB 1170

Barcode 144346

CHAMBER ACTION

Senate

House

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The Committee on Judiciary (Aronberg) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Part I of chapter 736, Florida Statutes, consisting of sections 736.0101, 736.0102, 736.0103, 736.0104, 736.0105, 736.0106, 736.0107, 736.0108, 736.0109, 736.0110, 736.0111, and 736.0112, is created to read:

PART I

GENERAL PROVISIONS AND DEFINITIONS

736.0101 Short title.--This chapter may be cited as the "Florida Trust Code" and for purposes of this chapter is referred to as the "code."

736.0102 Scope.--This code applies to express trusts, charitable or noncharitable, and trusts created pursuant to a law, judgment, or decree that requires the trust to be administered in the manner of an express trust. This code does

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1 not apply to constructive or resulting trusts;
2 conservatorships; custodial arrangements pursuant to the
3 Florida Uniform Transfers to Minors Act; business trusts
4 providing for certificates to be issued to beneficiaries;
5 common trust funds; land trusts under s. 689.05; trusts
6 created by the form of the account or by the deposit agreement
7 at a financial institution; voting trusts; security
8 arrangements; liquidation trusts; trusts for the primary
9 purpose of paying debts, dividends, interest, salaries, wages,
10 profits, pensions, or employee benefits of any kind; and any
11 arrangement under which a person is nominee or escrowee for
12 another.

13 736.0103 Definitions.--Unless the context otherwise
14 requires, in this code:

15 (1) "Action," with respect to an act of a trustee,
16 includes a failure to act.

17 (2) "Affiliate" means any person or entity that
18 directly or indirectly through one or more intermediaries owns
19 or controls, is owned or controlled by, or is under common
20 control or ownership with, the fiduciary. An affiliate may
21 include, but is not limited to, an investment adviser,
22 administrator, broker, transfer agent, placement agent,
23 servicing agent, registrar, custodian, underwriter, sponsor,
24 distributor, or manager.

25 (3) "Ascertainable standard" means a standard relating
26 to an individual's health, education, support, or maintenance
27 within the meaning of s. 2041(b)(1)(A) or s. 2514(c)(1) of the
28 Internal Revenue Code of 1986, as amended.

29 (4) "Beneficiary" means a person who:

30 (a) Has a present or future beneficial interest in a
31 trust, vested or contingent; or

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1 (b) Holds a power of appointment over trust property
2 in a capacity other than that of trustee.

3 (5) "Charitable trust" means a trust, or portion of a
4 trust, created for a charitable purpose as described in s.
5 736.0405(1).

6 (6) "Environmental law" means a federal, state, or
7 local law, rule, regulation, or ordinance that relates to
8 protection of the environment or human health.

9 (7) "General power of appointment" means a power of
10 appointment exercisable in favor of the holder of the power,
11 the power holder's creditors, the power holder's estate, or
12 the creditors of the power holder's estate.

13 (8) "Guardian of the person" means a person appointed
14 by the court to make decisions regarding the support, care,
15 education, health, and welfare of a minor or an incapacitated
16 adult. The term does not include a guardian ad litem.

17 (9) "Guardian of the property" means a person
18 appointed by the court to administer the estate of a minor or
19 incapacitated adult.

20 (10) "Interests of the beneficiaries" means the
21 beneficial interests provided in the terms of the trust.

22 (11) "Jurisdiction" with respect to a geographic area,
23 includes a state or country.

24 (12) "Power of withdrawal" means a presently
25 exercisable general power of appointment other than a power:

26 (a) Exercisable by a trustee and limited by an
27 ascertainable standard; or

28 (b) Exercisable by another person only upon consent of
29 the trustee or a person holding an adverse interest.

30 (13) "Property" means anything that may be the subject
31 of ownership, real or personal, legal or equitable, or any

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1 interest therein.

2 (14) "Qualified beneficiary" means a living
3 beneficiary who, on the date the beneficiary's qualification
4 is determined:

5 (a) Is a distributee or permissible distributee of
6 trust income or principal;

7 (b) Would be a distributee or permissible distributee
8 of trust income or principal if the interests of the
9 distributees described in paragraph (a) terminated on that
10 date without causing the trust to terminate; or

11 (c) Would be a distributee or permissible distributee
12 of trust income or principal if the trust terminated in
13 accordance with its terms on that date.

14 (15) "Revocable," as applied to a trust, means
15 revocable by the settlor without the consent of the trustee or
16 a person holding an adverse interest.

17 (16) "Settlor" means a person, including a testator,
18 who creates or contributes property to a trust. If more than
19 one person creates or contributes property to a trust, each
20 person is a settlor of the portion of the trust property
21 attributable to that person's contribution except to the
22 extent another person has the power to revoke or withdraw that
23 portion.

24 (17) "Spendthrift provision" means a term of a trust
25 that restrains both voluntary and involuntary transfer of a
26 beneficiary's interest.

27 (18) "State" means any state of the United States and
28 includes the District of Columbia, the Commonwealth of Puerto
29 Rico, and any territory or possession subject to the
30 legislative authority of the United States.

31 (19) "Terms of a trust" means the manifestation of the

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1 settlor's intent regarding a trust's provisions as expressed
2 in the trust instrument or as may be established by other
3 evidence that would be admissible in a judicial proceeding.

4 (20) "Trust instrument" means an instrument executed
5 by a settlor that contains terms of the trust, including any
6 amendments to the trust.

7 (21) "Trustee" means the original trustee and includes
8 any additional trustee, any successor trustee, and any
9 cotrustee.

10 736.0104 Knowledge.--

11 (1) Subject to subsection (2), a person has knowledge
12 of a fact if the person:

13 (a) Has actual knowledge of the fact;

14 (b) Has received a notice or notification of the fact;

15 or

16 (c) Has reason to know the fact from all the other
17 facts and circumstances known to the person at the time in
18 question.

19 (2) An organization that conducts activities through
20 employees has notice or knowledge of a fact involving a trust
21 only from the time the information was received by an employee
22 having responsibility to act on matters involving the trust,
23 or would have been brought to the employee's attention if the
24 organization had exercised reasonable diligence. An
25 organization exercises reasonable diligence if the
26 organization maintains reasonable routines for communicating
27 significant information to the employee having responsibility
28 to act on matters involving the trust and there is reasonable
29 compliance with the routines. Reasonable diligence does not
30 require an employee of the organization to communicate
31 information unless the communication is part of the

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1 individual's regular duties or the individual knows a matter
2 involving the trust would be materially affected by the
3 information.

4 736.0105 Default and mandatory rules.--

5 (1) Except as otherwise provided in the terms of the
6 trust, this code governs the duties and powers of a trustee,
7 relations among trustees, and the rights and interests of a
8 beneficiary.

9 (2) The terms of a trust prevail over any provision of
10 this code except:

11 (a) The requirements for creating a trust.

12 (b) The duty of the trustee to act in good faith and
13 in accordance with the terms and purposes of the trust and the
14 interests of the beneficiaries.

15 (c) The requirement that a trust and its terms be for
16 the benefit of the trust's beneficiaries, and that the trust
17 have a purpose that is lawful, not contrary to public policy,
18 and possible to achieve.

19 (d) The periods of limitation for commencing a
20 judicial proceeding.

21 (e) The power of the court to take such action and
22 exercise such jurisdiction as may be necessary in the
23 interests of justice.

24 (f) The requirements under s. 736.0108(1) for the
25 designation of a principal place of administration of the
26 trust.

27 (g) The jurisdiction and venue provisions in ss.
28 736.0202, 736.0203, and 736.0204.

29 (h) The restrictions on the designation of
30 representative under s. 736.0306.

31 (i) The formalities required under s. 736.0403(2) for

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1 the execution of a trust.

2 (j) The power of the court to modify or terminate a
3 trust under ss. 736.0410-736.04115, except as provided in s.
4 736.04115(3)(b), and under ss. 736.0413, 736.0415, and
5 736.0416.

6 (k) The ability to modify a trust under s. 736.0412,
7 except as provided in s. 736.0412(4)(b).

8 (l) The effect of a spendthrift provision and the
9 rights of certain creditors and assignees to reach a trust as
10 provided in part V.

11 (m) The trustee's duty under s. 736.05053 to pay
12 expenses and obligations of the settlor's estate.

13 (n) The trustee's duty under s. 736.05055 to file a
14 notice of trust at the settlor's death.

15 (o) The right of a trustee under s. 736.0701 to
16 decline a trusteeship and the right of a trustee under s.
17 736.0705 to resign a trusteeship.

18 (p) The power of the court under s. 736.0702 to
19 require, dispense with, modify, or terminate a bond.

20 (q) The power of the court under s. 736.0708(2) to
21 adjust a trustee's compensation specified in the terms of the
22 trust that is unreasonably low or high.

23 (r) The duty under s. 736.0813(1)(a) and (b) to notify
24 qualified beneficiaries of an irrevocable trust of the
25 existence of the trust, of the identity of the trustee, and of
26 their rights to trust accountings.

27 (s) The duty under s. 736.0813(1)(c) and (d) to
28 provide a complete copy of the trust instrument and to account
29 to qualified beneficiaries.

30 (t) The duty under s. 736.0813(1)(e) to respond to the
31 request of a qualified beneficiary of an irrevocable trust for

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1 relevant information about the assets and liabilities of the
2 trust and the particulars relating to trust administration.

3 (u) The effect of an exculpatory term under s.
4 736.1011.

5 (v) The rights under ss. 736.1013-736.1017 of a person
6 other than a trustee or beneficiary.

7 (w) The effect of a penalty clause for contesting a
8 trust under s. 736.1108.

9 736.0106 Common law of trusts; principles of
10 equity.--The common law of trusts and principles of equity
11 supplement this code, except to the extent modified by this
12 code or another law of this state.

13 736.0107 Governing law.--The meaning and effect of the
14 terms of a trust are determined by:

15 (1) The law of the jurisdiction designated in the
16 terms of the trust, provided there is a sufficient nexus to
17 the designated jurisdiction at the time of the creation of the
18 trust or during the trust administration, including, but not
19 limited to, the location of real property held by the trust or
20 the residence or location of an office of the settlor,
21 trustee, or any beneficiary; or

22 (2) In the absence of a controlling designation in the
23 terms of the trust, the law of the jurisdiction where the
24 settlor resides at the time the trust is first created.

25
26 Notwithstanding subsection (1) or subsection (2), a
27 designation in the terms of a trust is not controlling as to
28 any matter for which the designation would be contrary to a
29 strong public policy of this state.

30 736.0108 Principal place of administration.--

31 (1) Terms of a trust designating the principal place

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1 of administration of the trust are valid only if there is a
2 sufficient connection with the designated jurisdiction.

3 Without precluding other means for establishing a sufficient
4 connection, terms of a trust designating the principal place
5 of administration are valid and controlling if:

6 (a) A trustee's principal place of business is located
7 in or a trustee is a resident of the designated jurisdiction;
8 or

9 (b) All or part of the administration occurs in the
10 designated jurisdiction.

11 (2) Unless otherwise validly designated in the trust
12 instrument, the principal place of administration of a trust
13 is the trustee's usual place of business where the records
14 pertaining to the trust are kept or, if the trustee has no
15 place of business, the trustee's residence. In the case of
16 cotrustees, the principal place of administration is:

17 (a) The usual place of business of the corporate
18 trustee, if there is only one corporate cotrustee;

19 (b) The usual place of business or residence of the
20 individual trustee who is a professional fiduciary, if there
21 is only one such person and no corporate cotrustee; or
22 otherwise

23 (c) The usual place of business or residence of any of
24 the cotrustees as agreed on by the cotrustees.

25 (3) Notwithstanding any other provision of this
26 section, the principal place of administration of a trust, for
27 which a bank, association, or trust company organized under
28 the laws of this state or bank or savings association
29 organized under the laws of the United States with its main
30 office in this state has been appointed trustee, shall not be
31 moved or otherwise affected solely because the trustee engaged

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1 in an interstate merger transaction with an out-of-state bank
2 pursuant to s. 658.2953 in which the out-of-state bank is the
3 resulting bank.

4 (4) A trustee is under a continuing duty to administer
5 the trust at a place appropriate to its purposes and its
6 administration.

7 (5) Without precluding the right of the court to
8 order, approve, or disapprove a transfer, the trustee, in
9 furtherance of the duty prescribed by subsection (4), may
10 transfer the trust's principal place of administration to
11 another state or to a jurisdiction outside of the United
12 States.

13 (6) The trustee shall notify the qualified
14 beneficiaries of a proposed transfer of a trust's principal
15 place of administration not less than 60 days before
16 initiating the transfer. The notice of proposed transfer must
17 include:

18 (a) The name of the jurisdiction to which the
19 principal place of administration is to be transferred.

20 (b) The address and telephone number at the new
21 location at which the trustee can be contacted.

22 (c) An explanation of the reasons for the proposed
23 transfer.

24 (d) The date on which the proposed transfer is
25 anticipated to occur.

26 (e) The date, not less than 60 days after the notice
27 is provided, by which the qualified beneficiary must notify
28 the trustee of an objection to the proposed transfer.

29 (7) The authority of a trustee to act under this
30 section without court approval to transfer a trust's principal
31 place of administration is suspended if a qualified

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1 beneficiary files a lawsuit objecting to the proposed transfer
2 on or before the date specified in the notice. The suspension
3 is effective until the lawsuit is dismissed or withdrawn.

4 (8) In connection with a transfer of the trust's
5 principal place of administration, the trustee may transfer
6 any of the trust property to a successor trustee designated in
7 the terms of the trust or appointed pursuant to s. 736.0704.

8 736.0109 Methods and waiver of notice.--

9 (1) Notice to a person under this code or the sending
10 of a document to a person under this code must be accomplished
11 in a manner reasonably suitable under the circumstances and
12 likely to result in receipt of the notice or document.

13 Permissible methods of notice or for sending a document
14 include first-class mail, personal delivery, delivery to the
15 person's last known place of residence or place of business,
16 or a properly directed facsimile or other electronic message.

17 (2) Notice otherwise required under this code or a
18 document otherwise required to be sent under this code need
19 not be provided to a person whose identity or location is
20 unknown to and not reasonably ascertainable by the trustee.

21 (3) Notice under this code or the sending of a
22 document under this code may be waived by the person to be
23 notified or to whom the document is to be sent.

24 (4) Notice of a judicial proceeding must be given as
25 provided in the Florida Rules of Civil Procedure.

26 736.0110 Others treated as qualified beneficiaries.--

27 (1) A charitable organization expressly designated to
28 receive distributions under the terms of a charitable trust
29 has the rights of a qualified beneficiary under this code if
30 the charitable organization, on the date the charitable
31 organization's qualification is being determined:

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1 (a) Is a distributee or permissible distributee of
2 trust income or principal;

3 (b) Would be a distributee or permissible distributee
4 of trust income or principal on termination of the interests
5 of other distributees or permissible distributees then
6 receiving or eligible to receive distributions; or

7 (c) Would be a distributee or permissible distributee
8 of trust income or principal if the trust terminated on that
9 date.

10 (2) A person appointed to enforce a trust created for
11 the care of an animal or another noncharitable purpose as
12 provided in s. 736.0408 or s. 736.0409 has the rights of a
13 qualified beneficiary under this code.

14 (3) The Attorney General may assert the rights of a
15 qualified beneficiary with respect to a charitable trust
16 having its principal place of administration in this state.

17 736.0111 Nonjudicial settlement agreements.--

18 (1) For purposes of this section, the term "interested
19 persons" means persons whose interest would be affected by a
20 settlement agreement.

21 (2) Except as otherwise provided in subsection (3),
22 interested persons may enter into a binding nonjudicial
23 settlement agreement with respect to any matter involving a
24 trust.

25 (3) A nonjudicial settlement agreement among the
26 trustee and trust beneficiaries is valid only to the extent
27 the terms and conditions could be properly approved by the
28 court. A nonjudicial settlement may not be used to produce a
29 result not authorized by other provisions of this code,
30 including, but not limited to, terminating or modifying a
31 trust in an impermissible manner.

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1 (4) Matters that may be resolved by a nonjudicial
2 settlement agreement include:

3 (a) The interpretation or construction of the terms of
4 the trust.

5 (b) The approval of a trustee's report or accounting.

6 (c) The direction to a trustee to refrain from
7 performing a particular act or the grant to a trustee of any
8 necessary or desirable power.

9 (d) The resignation or appointment of a trustee and
10 the determination of a trustee's compensation.

11 (e) The transfer of a trust's principal place of
12 administration.

13 (f) The liability of a trustee for an action relating
14 to the trust.

15 (5) Any interested person may request the court to
16 approve or disapprove a nonjudicial settlement agreement.

17 736.0112 Qualification of foreign trustee.--Unless
18 otherwise doing business in this state, local qualification by
19 a foreign trustee is not required for the trustee to receive
20 distribution from a local estate. Nothing in this chapter
21 shall affect the provisions of s. 660.41.

22 Section 2. Part II of chapter 736, Florida Statutes,
23 consisting of sections 736.0201, 736.0202, 736.0203, 736.0204,
24 736.0205, 736.0206, and 736.0207, is created to read:

25 PART II

26 JUDICIAL PROCEEDINGS

27
28 736.0201 Role of court in trust proceedings.--

29 (1) Except as provided in subsection (5) and s.
30 736.0206, proceedings concerning trusts shall be commenced by
31 filing a complaint and shall be governed by the Florida Rules

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1 of Civil Procedure.

2 (2) The court may intervene in the administration of a
3 trust to the extent the court's jurisdiction is invoked by an
4 interested person or as provided by law.

5 (3) A trust is not subject to continuing judicial
6 supervision unless ordered by the court.

7 (4) A judicial proceeding involving a trust may relate
8 to the validity, administration, or distribution of a trust,
9 including proceedings to:

10 (a) Determine the validity of all or part of a trust;

11 (b) Appoint or remove a trustee;

12 (c) Review trustees' fees;

13 (d) Review and settle interim or final accounts;

14 (e) Ascertain beneficiaries; determine any question
15 arising in the administration or distribution of any trust,

16 including questions of construction of trust instruments;
17 instruct trustees; and determine the existence or nonexistence
18 of any immunity, power, privilege, duty, or right;

19 (f) Obtain a declaration of rights; or

20 (g) Determine any other matters involving trustees and
21 beneficiaries.

22 (5) A proceeding for the construction of a
23 testamentary trust may be filed in the probate proceeding for
24 the testator's estate. The proceeding shall be governed by the
25 Florida Probate Rules.

26 736.0202 Jurisdiction over trustee and beneficiary.--

27 (1) By accepting the trusteeship of a trust having its
28 principal place of administration in this state or by moving
29 the principal place of administration to this state, the
30 trustee submits personally to the jurisdiction of the courts
31 of this state regarding any matter involving the trust.

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1 (2) With respect to their interests in the trust, the
 2 beneficiaries of a trust having its principal place of
 3 administration in this state are subject to the jurisdiction
 4 of the courts of this state regarding any matter involving the
 5 trust. By accepting a distribution from such a trust, the
 6 recipient submits personally to the jurisdiction of the courts
 7 of this state regarding any matter involving the distribution.

8 (3) This section does not preclude other methods of
 9 obtaining jurisdiction over a trustee, beneficiary, or other
 10 person receiving property from the trust.

11 736.0203 Subject-matter jurisdiction.--The circuit
 12 court has original jurisdiction in this state of all
 13 proceedings arising under this code.

14 736.0204 Venue.--Venue for actions and proceedings
 15 concerning trusts, including those under s. 736.0201, may be
 16 laid in:

17 (1) Any county where the venue is proper under chapter
 18 47;

19 (2) Any county where the beneficiary suing or being
 20 sued resides or has its principal place of business; or

21 (3) The county where the trust has its principal place
 22 of administration.

23 736.0205 Trust proceedings; dismissal of matters
 24 relating to foreign trusts.--Over the objection of a party,
 25 the court shall not entertain proceedings under s. 736.0201
 26 for a trust registered, or having its principal place of
 27 administration, in another state unless all interested parties
 28 could not be bound by litigation in the courts of the state
 29 where the trust is registered or has its principal place of
 30 administration. The court may condition a stay or dismissal of
 31 a proceeding under this section on the consent of any party to

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1 jurisdiction of the state where the trust is registered or has
2 its principal place of business, or the court may grant a
3 continuance or enter any other appropriate order.

4 736.0206 Proceedings for review of employment of
5 agents and review of compensation of trustee and employees of
6 trust.--

7 (1) After notice to all interested persons, the court
8 may review the propriety of the employment by a trustee of any
9 person, including any attorney, auditor, investment adviser,
10 or other specialized agent or assistant, and the
11 reasonableness of any compensation paid to that person or to
12 the trustee.

13 (2) If the settlor's estate is being probated, and the
14 settlor's trust or the trustee of the settlor's trust is a
15 beneficiary under the settlor's will, the trustee, any person
16 employed by the trustee, or any interested person may have the
17 propriety of employment and the reasonableness of the
18 compensation of the trustee or any person employed by the
19 trustee determined in the probate proceeding.

20 (3) The burden of proof of the propriety of the
21 employment and the reasonableness of the compensation shall be
22 on the trustee and the person employed by the trustee. Any
23 person who is determined to have received excessive
24 compensation from a trust for services rendered may be ordered
25 to make appropriate refunds.

26 (4) Court proceedings to determine reasonable
27 compensation of a trustee or any person employed by a trustee,
28 if required, are a part of the trust administration process.
29 The costs, including attorney's fees, of the person assuming
30 the burden of proof of propriety of the employment and
31 reasonableness of the compensation shall be determined by the

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1 court and paid from the assets of the trust unless the court
2 finds the compensation paid or requested to be substantially
3 unreasonable. The court shall direct from which part of the
4 trust assets the compensation shall be paid.

5 (5) The court may determine reasonable compensation
6 for a trustee or any person employed by a trustee without
7 receiving expert testimony. Any party may offer expert
8 testimony after notice to interested persons. If expert
9 testimony is offered, a reasonable expert witness fee shall be
10 awarded by the court and paid from the assets of the trust.
11 The court shall direct from which part of the trust assets the
12 fee shall be paid.

13 (6) Persons given notice as provided in this section
14 shall be bound by all orders entered on the complaint.

15 (7) In a proceeding pursuant to subsection (2), the
16 petitioner may serve formal notice as provided in the Florida
17 Probate Rules, and such notice shall be sufficient for the
18 court to acquire jurisdiction over the person receiving the
19 notice to the extent of the person's interest in the trust.

20 736.0207 Trust contests.--An action to contest the
21 validity of all or part of a trust may not be commenced until
22 the trust becomes irrevocable, except this section does not
23 prohibit such action by the guardian of the property of an
24 incapacitated settlor.

25 Section 3. Part III of chapter 736, Florida Statutes,
26 consisting of sections 736.0301, 736.0302, 736.0303, 736.0304,
27 736.0305, and 736.0306, is created to read:

28 PART III

29 REPRESENTATION

30
31 736.0301 Representation; basic effect.--

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1 (1) Notice, information, accountings, or reports given
 2 to a person who may represent and bind another person under
 3 this part may serve as a substitute for and have the same
 4 effect as notice, information, accountings, or reports given
 5 directly to the other person.

6 (2) Actions taken by a person who represents the
 7 interests of another person under this part are binding on the
 8 person whose interests are represented to the same extent as
 9 if the actions had been taken by the person whose interests
 10 are represented.

11 (3) Except as otherwise provided in s. 736.0602, a
 12 person under this part who represents a settlor lacking
 13 capacity may receive notice and give a binding consent on the
 14 settlor's behalf.

15 (4) A trustee is not liable for giving notice,
 16 information, accountings, or reports to a beneficiary who is
 17 represented by another person under this part and nothing in
 18 this part prohibits the trustee from giving notice,
 19 information, accountings, or reports to the person
 20 represented.

21 736.0302 Representation by holder of power of
 22 appointment.--

23 (1) The holder of a power of appointment may represent
 24 and bind persons whose interests, as permissible appointees,
 25 takers in default, or otherwise, are subject to the power.

26 (2) Subsection (1) does not apply to:

27 (a) Any matter determined by the court to involve
 28 fraud or bad faith by the trustee;

29 (b) A power of a trustee to distribute trust property;
 30 or

31 (c) A power of appointment held by a person while the

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1 person is the sole trustee.

2 736.0303 Representation by fiduciaries and
3 parents.--To the extent there is no conflict of interest
4 between the representative and the person represented or among
5 those being represented with respect to a particular question
6 or dispute:

7 (1) A guardian of the property may represent and bind
8 the estate that the guardian of the property controls.

9 (2) An agent having authority to act with respect to
10 the particular question or dispute may represent and bind the
11 principal.

12 (3) A trustee may represent and bind the beneficiaries
13 of the trust.

14 (4) A personal representative of a decedent's estate
15 may represent and bind persons interested in the estate.

16 (5) A parent may represent and bind the parent's
17 unborn child, or the parent's minor child if a guardian of the
18 property for the minor child has not been appointed.

19 736.0304 Representation by person having substantially
20 identical interest.--Unless otherwise represented, a minor,
21 incapacitated, or unborn individual, or a person whose
22 identity or location is unknown and not reasonably
23 ascertainable, may be represented by and bound by another
24 person having a substantially identical interest with respect
25 to the particular question or dispute, but only to the extent
26 there is no conflict of interest between the representative
27 and the person represented.

28 736.0305 Appointment of representative.--

29 (1) If the court determines that an interest is not
30 represented under this part, or that the otherwise available
31 representation might be inadequate, the court may appoint a

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1 representative to receive notice, give consent, and otherwise
 2 represent, bind, and act on behalf of a minor, incapacitated,
 3 or unborn individual, or a person whose identity or location
 4 is unknown. If not precluded by a conflict of interest, a
 5 representative may be appointed to represent several persons
 6 or interests.

7 (2) A representative may act on behalf of the
 8 individual represented with respect to any matter arising
 9 under this code, whether or not a judicial proceeding
 10 concerning the trust is pending.

11 (3) In making decisions, a representative may consider
 12 general benefits accruing to the living members of the
 13 represented individual's family.

14 736.0306 Designated representative.--

15 (1) If authorized in the trust instrument, one or more
 16 persons may be designated to represent and bind a beneficiary
 17 and receive any notice, information, accounting, or report.

18 (2) Except as otherwise provided in this code, a
 19 person designated, as provided in subsection (1) may not
 20 represent and bind a beneficiary while that person is serving
 21 as trustee.

22 (3) Except as otherwise provided in this code, a
 23 person designated, as provided in subsection (1) may not
 24 represent and bind another beneficiary if the person
 25 designated also is a beneficiary, unless:

- 26 (a) That person was named by the settlor; or
- 27 (b) That person is the beneficiary's spouse or a
- 28 grandparent or descendant of a grandparent of the beneficiary
- 29 or the beneficiary's spouse.

30 (4) No person designated, as provided in subsection
 31 (1) is liable to the beneficiary whose interests are

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1 represented, or to anyone claiming through that beneficiary,
2 for any actions or omissions to act made in good faith.

3 Section 4. Part IV of chapter 736, Florida Statutes,
4 consisting of sections 736.0401, 736.0402, 736.0403, 736.0404,
5 736.0405, 736.0406, 736.0407, 736.0408, 736.0409, 736.0410,
6 736.04113, 736.04115, 736.0412, 736.0413, 736.0414, 736.0415,
7 736.0416, and 736.0417, is created to read:

8 PART IV

9 CREATION, VALIDITY, MODIFICATION, AND TERMINATION

10

11 736.0401 Methods of creating trust.--A trust may be
12 created by:

13 (1) Transfer of property to another person as trustee
14 during the settlor's lifetime or by will or other disposition
15 taking effect on the settlor's death;

16 (2) Declaration by the owner of property that the
17 owner holds identifiable property as trustee; or

18 (3) Exercise of a power of appointment in favor of a
19 trustee.

20 736.0402 Requirements for creation.--

21 (1) A trust is created only if:

22 (a) The settlor has capacity to create a trust.

23 (b) The settlor indicates an intent to create the
24 trust.

25 (c) The trust has a definite beneficiary or is:

26 1. A charitable trust;

27 2. A trust for the care of an animal, as provided in
28 s. 736.0408; or

29 3. A trust for a noncharitable purpose, as provided in
30 s. 736.0409.

31 (d) The trustee has duties to perform.

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1 (e) The same person is not the sole trustee and sole
2 beneficiary.

3 (2) A beneficiary is definite if the beneficiary can
4 be ascertained now or in the future, subject to any applicable
5 rule against perpetuities.

6 (3) A power of a trustee to select a beneficiary from
7 an indefinite class is valid. If the power is not exercised
8 within a reasonable time, the power fails and the property
9 subject to the power passes to the persons who would have
10 taken the property had the power not been conferred.

11 736.0403 Trusts created in other jurisdictions;
12 formalities required for revocable trusts.--

13 (1) A trust not created by will is validly created if
14 the creation of the trust complies with the law of the
15 jurisdiction in which the trust instrument was executed or the
16 law of the jurisdiction in which, at the time of creation, the
17 settlor was domiciled.

18 (2) Notwithstanding subsection (1):

19 (a) No trust or confidence of or in any messuages,
20 lands, tenements, or hereditaments shall arise or result
21 unless the trust complies with the provisions of s. 689.05.

22 (b) The testamentary aspects of a revocable trust,
23 executed by a settlor who is a domiciliary of this state at
24 the time of execution, are invalid unless the trust instrument
25 is executed by the settlor with the formalities required for
26 the execution of a will in this state. For purposes of this
27 subsection, the term "testamentary aspects" means those
28 provisions of the trust instrument that dispose of the trust
29 property on or after the death of the settlor other than to
30 the settlor's estate.

31 (3) Paragraph (2)(b) does not apply to trusts

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1 established as part of an employee annuity described in s. 403
2 of the Internal Revenue Code of 1986, as amended, an
3 individual retirement account as described in s. 408 of the
4 Internal Revenue Code of 1986, as amended, a Keogh (HR-10)
5 Plan, or a retirement or other plan that is qualified under s.
6 401 of the Internal Revenue Code of 1986, as amended.

7 (4) Paragraph (2)(b) applies to trusts created on or
8 after the effective date of this code. Section 737.111, as in
9 effect prior to the effective date of this code, continues to
10 apply to trusts created before the effective date of this
11 code.

12 736.0404 Trust purposes.--A trust may be created only
13 to the extent the purposes of the trust are lawful, not
14 contrary to public policy, and possible to achieve. A trust
15 and its terms must be for the benefit of its beneficiaries.

16 736.0405 Charitable purposes; enforcement.--

17 (1) A trust may be created for charitable purposes.
18 Charitable purposes include, but are not limited to, the
19 relief of poverty; the advancement of arts, sciences,
20 education, or religion; and the promotion of health,
21 governmental, or municipal purposes.

22 (2) If the terms of a charitable trust do not indicate
23 a particular charitable purpose or beneficiary, the court may
24 select one or more charitable purposes or beneficiaries. The
25 selection must be consistent with the settlor's intent to the
26 extent such intent can be ascertained.

27 (3) The settlor of a charitable trust, among others,
28 has standing to enforce the trust.

29 736.0406 Effect of fraud, duress, mistake, or undue
30 influence.--A trust is void if the creation of the trust is
31 procured by fraud, duress, mistake, or undue influence. Any

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1 part of the trust is void if procured by such means, but the
2 remainder of the trust not procured by such means is valid if
3 the remainder is not invalid for other reasons.

4 736.0407 Evidence of oral trust.--Except as required
5 by s. 736.0403 or a law other than this code, a trust need not
6 be evidenced by a trust instrument but the creation of an oral
7 trust and its terms may be established only by clear and
8 convincing evidence.

9 736.0408 Trust for care of an 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 on 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, on the death of the last
15 surviving animal.

16 (2) A trust authorized by this section may be enforced
17 by a person appointed in the terms of the trust or, if no
18 person is appointed, by a person appointed by the court. A
19 person having an interest in the welfare of the animal may
20 request the court to appoint a person to enforce the trust or
21 to remove a person appointed.

22 (3) Property of a trust authorized by this section may
23 be applied only to the intended use of the property, except to
24 the extent the court determines that the value of the trust
25 property exceeds the amount required for the intended use.
26 Except as otherwise provided in the terms of the trust,
27 property not required for the intended use must be distributed
28 to the settlor, if then living, otherwise as part of the
29 settlor's estate.

30 736.0409 Noncharitable trust without ascertainable
31 beneficiary.--Except as otherwise provided in s. 736.0408 or

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1 by another provision of law, the following rules apply:

2 (1) A trust may be created for a noncharitable purpose
3 without a definite or definitely ascertainable beneficiary or
4 for a noncharitable but otherwise valid purpose to be selected
5 by the trustee. The trust may not be enforced for more than 21
6 years.

7 (2) A trust authorized by this section may be enforced
8 by a person appointed in the terms of the trust or, if no
9 person is appointed, by a person appointed by the court.

10 (3) Property of a trust authorized by this section may
11 be applied only to the intended use of the property, except to
12 the extent the court determines that the value of the trust
13 property exceeds the amount required for the intended use.
14 Except as otherwise provided in the terms of the trust,
15 property not required for the intended use must be distributed
16 to the settlor, if then living, otherwise as part of the
17 settlor's estate.

18 736.0410 Modification or termination of trust;
19 proceedings for disapproval of nonjudicial acts.--

20 (1) In addition to the methods of termination
21 prescribed by ss. 736.04113-736.0414, a trust terminates to
22 the extent the trust expires or is revoked or is properly
23 distributed pursuant to the terms of the trust.

24 (2) A proceeding to disapprove a proposed modification
25 or termination under s. 736.0412 or a trust combination or
26 division under s. 736.0417 may be commenced by any
27 beneficiary.

28 (3) A proceeding to disapprove a proposed termination
29 under s. 736.0414(1) may be commenced by any qualified
30 beneficiary.

31 736.04113 Judicial modification of irrevocable trust

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1 when modification is not inconsistent with settlor's
2 purpose.--

3 (1) Upon the application of a trustee of the trust or
4 any qualified beneficiary, a court at any time may modify the
5 terms of a trust that is not then revocable in the manner
6 provided in subsection (2), if:

7 (a) The purposes of the trust have been fulfilled or
8 have become illegal, impossible, wasteful, or impracticable to
9 fulfill;

10 (b) Because of circumstances not anticipated by the
11 settlor, compliance with the terms of the trust would defeat
12 or substantially impair the accomplishment of a material
13 purpose of the trust; or

14 (c) A material purpose of the trust no longer exists.

15 (2) In modifying a trust under this section, a court
16 may:

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

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

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

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

26 (3) In exercising discretion to modify a trust under
27 this section:

28 (a) The court shall consider the terms and purposes of
29 the trust, the facts and circumstances surrounding the
30 creation of the trust, and extrinsic evidence relevant to the
31 proposed modification.

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1 (b) The court shall consider spendthrift provisions as
2 a factor in making a decision but the court is not precluded
3 from modifying a trust because the trust contains spendthrift
4 provisions.

5 (4) The provisions of this section are in addition to,
6 and not in derogation of, rights under the common law to
7 modify, amend, terminate, or revoke trusts.

8 736.04115 Judicial modification of irrevocable trust
9 when modification is in best interest of beneficiaries.--

10 (1) Without regard to the reasons for modification
11 provided in s. 736.04113, if compliance with the terms of a
12 trust is not in the best interests of the beneficiaries, upon
13 the application of a trustee or any qualified beneficiary, a
14 court may at any time modify a trust that is not then
15 revocable as provided in s. 736.04113(2).

16 (2) In exercising discretion to modify a trust under
17 this section:

18 (a) The court shall exercise discretion in a manner
19 that conforms to the extent possible with the intent of the
20 settlor, taking into account the current circumstances and
21 best interests of the beneficiaries.

22 (b) The court shall consider the terms and purposes of
23 the trust, the facts and circumstances surrounding the
24 creation of the trust, and extrinsic evidence relevant to the
25 proposed modification.

26 (c) The court shall consider spendthrift provisions as
27 a factor in making a decision but the court is not precluded
28 from modifying a trust because the trust contains spendthrift
29 provisions.

30 (3) This section shall not apply to:

31 (a) Any trust created prior to January 1, 2001.

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1 (b) Any trust created after December 31, 2000, if:

2 1. Under the terms of the trust, all beneficial
3 interests in the trust must vest or terminate within the
4 period prescribed by the rule against perpetuities in s.
5 689.225(2), notwithstanding s. 689.225(2)(f).

6 2. The terms of the trust expressly prohibit judicial
7 modification.

8 (4) For purposes of subsection (3), a revocable trust
9 shall be treated as created when the right of revocation
10 terminates.

11 (5) The provisions of this section are in addition to,
12 and not in derogation of, rights under the common law to
13 modify, amend, terminate, or revoke trusts.

14 736.0412 Nonjudicial modification of irrevocable
15 trust.--

16 (1) After the settlor's death, a trust may be modified
17 at any time as provided in s. 736.04113(2) upon the unanimous
18 agreement of the trustee and all qualified beneficiaries.

19 (2) 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 (3) An agreement to modify a trust under this section
24 is binding on a beneficiary whose interest is represented by
25 another person under part III of this code.

26 (4) This section shall not apply to:

27 (a) Any trust created prior to January 1, 2001.

28 (b) Any trust created after December 31, 2000, if,
29 under the terms of the trust, all beneficial interests in the
30 trust must vest or terminate within the period prescribed by
31 the rule against perpetuities in s. 689.225(2),

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1 notwithstanding s. 689.225(2)(f), unless the terms of the
2 trust expressly authorize nonjudicial modification.

3 (c) Any trust for which a charitable deduction is
4 allowed or allowable under the Internal Revenue Code until the
5 termination of all charitable interests in the trust.

6 (5) For purposes of subsection (4), a revocable trust
7 shall be treated as created when the right of revocation
8 terminates.

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

12 736.0413 Cy pres.--

13 (1) If a particular charitable purpose becomes
14 unlawful, impracticable, impossible to achieve, or wasteful,
15 the court may apply the doctrine of cy pres to modify or
16 terminate the trust by directing that the trust property be
17 applied or distributed, in whole or in part, in a manner
18 consistent with the settlor's charitable purposes.

19 (2) A proceeding to modify or terminate a trust under
20 this section may be commenced by a settlor, a trustee, or any
21 qualified beneficiary.

22 736.0414 Modification or termination of uneconomic
23 trust.--

24 (1) After notice to the qualified beneficiaries, the
25 trustee of a trust consisting of trust property having a total
26 value less than \$50,000 may terminate the trust if the trustee
27 concludes that the value of the trust property is insufficient
28 to justify the cost of administration.

29 (2) Upon application of a trustee or any qualified
30 beneficiary, the court may modify or terminate a trust or
31 remove the trustee and appoint a different trustee if the

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1 court determines that the value of the trust property is
2 insufficient to justify the cost of administration.

3 (3) Upon termination of a trust under this section,
4 the trustee shall distribute the trust property in a manner
5 consistent with the purposes of the trust. The trustee may
6 enter into agreements or make such other provisions that the
7 trustee deems necessary or appropriate to protect the
8 interests of the beneficiaries and the trustee and to carry
9 out the intent and purposes of the trust.

10 (4) The existence of a spendthrift provision in the
11 trust does not make this section inapplicable unless the trust
12 instrument expressly provides that the trustee may not
13 terminate the trust pursuant to this section.

14 (5) This section does not apply to an easement for
15 conservation or preservation.

16 736.0415 Reformation to correct mistakes.--Upon
17 application of a settlor or any interested person, the court
18 may reform the terms of a trust, even if unambiguous, to
19 conform the terms to the settlor's intent if it is proved by
20 clear and convincing evidence that both the accomplishment of
21 the settlor's intent and the terms of the trust were affected
22 by a mistake of fact or law, whether in expression or
23 inducement. In determining the settlor's original intent, the
24 court may consider evidence relevant to the settlor's intent
25 even though the evidence contradicts an apparent plain meaning
26 of the trust instrument.

27 736.0416 Modification to achieve settlor's tax
28 objectives.--Upon application of any interested person, to
29 achieve the settlor's tax objectives the court may modify the
30 terms of a trust in a manner that is not contrary to the
31 settlor's probable intent. The court may provide that the

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1 modification has retroactive effect.

2 736.0417 Combination and division of trusts.--

3 (1) After notice to the qualified beneficiaries, a
4 trustee may combine two or more trusts into a single trust or
5 divide a trust into two or more separate trusts, if the result
6 does not impair rights of any beneficiary or adversely affect
7 achievement of the purposes of the trusts or trust,
8 respectively.

9 (2) Subject to the terms of the trust, the trustee may
10 take into consideration differences in federal tax attributes
11 and other pertinent factors in administering the trust
12 property of any separate account or trust, in making
13 applicable tax elections, and in making distributions. A
14 separate trust created by severance must be treated as a
15 separate trust for all purposes from the date on which the
16 severance is effective. The effective date of the severance
17 may be retroactive to a date before the date on which the
18 trustee exercises such power.

19 Section 5. Part V of chapter 736, Florida Statutes,
20 consisting of sections 736.0501, 736.0502, 736.0503, 736.0504,
21 736.0505, 736.05053, 736.05055, 736.0506, and 736.0507, is
22 created to read:

23 PART V

24 CREDITORS' CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS

25
26 736.0501 Rights of beneficiary's creditor or
27 assignee.--To the extent a beneficiary's interest is not
28 subject to a spendthrift provision, the court may authorize a
29 creditor or assignee of the beneficiary to reach the
30 beneficiary's interest by attachment of present or future
31 distributions to or for the benefit of the beneficiary or by

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1 other means. The court may limit the award to such relief as
2 is appropriate under the circumstances.

3 736.0502 Spendthrift provision.--

4 (1) A spendthrift provision is valid only if the
5 provision restrains both voluntary and involuntary transfer of
6 a beneficiary's interest. This subsection does not apply to
7 any trust in existence on the effective date of this code.

8 (2) A term of a trust providing that the interest of a
9 beneficiary is held subject to a spendthrift trust, or words
10 of similar import, is sufficient to restrain both voluntary
11 and involuntary transfer of the beneficiary's interest.

12 (3) A beneficiary may not transfer an interest in a
13 trust in violation of a valid spendthrift provision and,
14 except as otherwise provided in this part, a creditor or
15 assignee of the beneficiary may not reach the interest or a
16 distribution by the trustee before receipt of the interest or
17 distribution by the beneficiary.

18 (4) A valid spendthrift provision does not prevent the
19 appointment of interests through the exercise of a power of
20 appointment.

21 736.0503 Exceptions to spendthrift provision.--

22 (1) As used in this section, the term "child" includes
23 any person for whom an order or judgment for child support has
24 been entered in this or any other state.

25 (2) To the extent provided in subsection (3), a
26 spendthrift provision is unenforceable against:

27 (a) A beneficiary's child, spouse, or former spouse
28 who has a judgment or court order against the beneficiary for
29 support or maintenance.

30 (b) A judgment creditor who has provided services for
31 the protection of a beneficiary's interest in the trust.

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1 (c) A claim of this state or the United States to the
2 extent a law of this state or a federal law so provides.

3 (3) Except as otherwise provided in this subsection, a
4 claimant against which a spendthrift provision may not be
5 enforced may obtain from a court, or pursuant to the Uniform
6 Interstate Family Support Act, an order attaching present or
7 future distributions to or for the benefit of the beneficiary.
8 The court may limit the award to such relief as is appropriate
9 under the circumstances. Notwithstanding this subsection, the
10 remedies provided in this subsection apply to a claim by a
11 beneficiary's child, spouse, former spouse, or a judgment
12 creditor described in paragraph (2)(a) or paragraph (2)(b)
13 only as a last resort upon an initial showing that traditional
14 methods of enforcing the claim are insufficient.

15 736.0504 Discretionary trusts; effect of standard.--

16 (1) Whether or not a trust contains a spendthrift
17 provision, a creditor of a beneficiary may not compel a
18 distribution that is subject to the trustee's discretion, even
19 if:

20 (a) The discretion is expressed in the form of a
21 standard of distribution; or

22 (b) The trustee has abused the discretion.

23 (2) If the trustee's discretion to make distributions
24 for the trustee's own benefit is limited by an ascertainable
25 standard, a creditor may not reach or compel distribution of
26 the beneficial interest except to the extent the interest
27 would be subject to the creditor's claim were the beneficiary
28 not acting as trustee.

29 (3) This section does not limit the right of a
30 beneficiary to maintain a judicial proceeding against a
31 trustee for an abuse of discretion or failure to comply with a

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1 standard for distribution.

2 736.0505 Creditors' claims against settlor.--

3 (1) Whether or not the terms of a trust contain a
4 spendthrift provision, the following rules apply:

5 (a) The property of a revocable trust is subject to
6 the claims of the settlor's creditors during the settlor's
7 lifetime to the extent the property would not otherwise be
8 exempt by law if owned directly by the settlor.

9 (b) With respect to an irrevocable trust, a creditor
10 or assignee of the settlor may reach the maximum amount that
11 can be distributed to or for the settlor's benefit. If a trust
12 has more than one settlor, the amount the creditor or assignee
13 of a particular settlor may reach may not exceed the settlor's
14 interest in the portion of the trust attributable to that
15 settlor's contribution.

16 (c) Notwithstanding the provisions of paragraph (b),
17 the assets of an irrevocable trust may not be subject to the
18 claims of an existing or subsequent creditor or assignee of
19 the settlor, in whole or in part, solely because of the
20 existence of a discretionary power granted to the trustee by
21 the terms of the trust, or any other provision of law, to pay
22 directly to the taxing authorities or to reimburse the settlor
23 for any tax on trust income or principal which is payable by
24 the settlor under the law imposing such tax.

25 (2) For purposes of this section:

26 (a) During the period the power may be exercised, the
27 holder of a power of withdrawal is treated in the same manner
28 as the settlor of a revocable trust to the extent of the
29 property subject to the power.

30 (b) Upon the lapse, release, or waiver of the power,
31 the holder is treated as the settlor of the trust only to the

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1 extent the value of the property affected by the lapse,
2 release, or waiver exceeds the greater of the amount specified
3 in:

- 4 1. Section 2041(b)(2) or s. 2514(e); or
- 5 2. Section 2503(b),

6
7 of the Internal Revenue Code of 1986, as amended.

8 736.05053 Trustee's duty to pay expenses and
9 obligations of settlor's estate.--

10 (1) A trustee of a trust described in s. 733.707(3)
11 shall pay to the personal representative of a settlor's estate
12 any amounts that the personal representative certifies in
13 writing to the trustee are required to pay the expenses of the
14 administration and obligations of the settlor's estate.
15 Payments made by a trustee, unless otherwise provided in the
16 trust instrument, must be charged as expenses of the trust
17 without a contribution from anyone. The interests of all
18 beneficiaries of such a trust are subject to the provisions of
19 this subsection; however, the payments must be made from
20 assets, property, or the proceeds of the assets or property,
21 other than assets proscribed in s. 733.707(3), that are
22 included in the settlor's gross estate for federal estate tax
23 purposes.

24 (2) Unless a settlor provides by will, or designates
25 in a trust described in s. 733.707(3) funds or property
26 passing under the trust to be used as designated, the expenses
27 of the administration and obligations of the settlor's estate
28 must be paid from the trust in the following order:

29 (a) Property of the residue of the trust remaining
30 after all distributions that are to be satisfied by reference
31 to a specific property or type of property, fund, or sum.

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1 (b) Property that is not to be distributed from
2 specified or identified property or a specified or identified
3 item of property.

4 (c) Property that is to be distributed from specified
5 or identified property or a specified or identified item of
6 property.

7 (3) Trust distributions that are to be satisfied from
8 specified or identified property must be classed as
9 distributions to be satisfied from the general assets of the
10 trust and not otherwise disposed of in the trust instrument on
11 the failure or insufficiency of funds or property from which
12 payment should be made, to the extent of the insufficiency.

13 Trust distributions given for valuable consideration abate
14 with other distributions of the same class only to the extent
15 of the excess over the value of the consideration until all
16 others of the same class are exhausted. Except as provided in
17 this section, trust distributions abate equally and ratably
18 and without preference or priority between real and personal
19 property. When a specified or identified item of property that
20 has been designated for distribution in the trust instrument
21 or that is charged with a distribution is sold or taken by the
22 trustee, other beneficiaries shall contribute according to
23 their respective interests to the beneficiary whose property
24 has been sold or taken. Before distribution, the trustee shall
25 determine the amounts of the respective contributions and such
26 amounts must be paid or withheld before distribution is made.

27 (4) The trustee shall pay the expenses of trust
28 administration, including compensation of trustees and
29 attorneys of the trustees, before and in preference to the
30 expenses of the administration and obligations of the
31 settlor's estate.

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1 736.05055 Notice of trust.--

2 (1) Upon the death of a settlor of a trust described
3 in s. 733.707(3), the trustee must file a notice of trust with
4 the court of the county of the settlor's domicile and the
5 court having jurisdiction of the settlor's estate.

6 (2) The notice of trust must contain the name of the
7 settlor, the settlor's date of death, the title of the trust,
8 if any, the date of the trust, and the name and address of the
9 trustee.

10 (3) If the settlor's probate proceeding has been
11 commenced, the clerk shall notify the trustee in writing of
12 the date of the commencement of the probate proceeding and the
13 file number.

14 (4) The clerk shall file and index the notice of trust
15 in the same manner as a caveat unless there exists a probate
16 proceeding for the settlor's estate, in which case the notice
17 of trust must be filed in the probate proceeding and the clerk
18 shall send a copy to the personal representative.

19 (5) The clerk shall send a copy of any caveat filed
20 regarding the settlor to the trustee, and the notice of trust
21 to any caveator, unless there is a probate proceeding pending
22 and the personal representative and the trustee are the same.

23 (6) Any proceeding affecting the expenses of the
24 administration or obligations of the settlor's estate prior to
25 the trustee filing a notice of trust are binding on the
26 trustee.

27 (7) The trustee's failure to file the notice of trust
28 does not affect the trustee's obligation to pay expenses of
29 administration and obligations of the settlor's estate as
30 provided in s. 733.607(2).

31 736.0506 Overdue distribution.--

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1 (1) As used in this section, the term "mandatory
 2 distribution" means a distribution of income or principal the
 3 trustee is required to make to a beneficiary under the terms
 4 of the trust, including a distribution on termination of the
 5 trust. The term does not include a distribution subject to the
 6 exercise of the trustee's discretion even if:

7 (a) The discretion is expressed in the form of a
 8 standard of distribution; or

9 (b) The terms of the trust authorizing a distribution
 10 couple language of discretion with language of direction.

11 (2) A creditor or assignee of a beneficiary may reach
 12 a mandatory distribution of income or principal, including a
 13 distribution upon termination of the trust, if the trustee has
 14 not made the distribution to the beneficiary within a
 15 reasonable time after the designated distribution date,
 16 whether or not a trust contains a spendthrift provision.

17 736.0507 Personal obligations of trustee.--Except to
 18 the extent of the trustee's interest in the trust other than
 19 as a trustee, trust property is not subject to personal
 20 obligations of the trustee, even if the trustee becomes
 21 insolvent or bankrupt.

22 Section 6. Part VI of chapter 736, Florida Statutes,
 23 consisting of sections 736.0601, 736.0602, 736.0603, and
 24 736.0604, is created to read:

25 PART VI

26 REVOCABLE TRUSTS

27
 28 736.0601 Capacity of settlor of revocable trust.--The
 29 capacity required to create, amend, revoke, or add property to
 30 a revocable trust, or to direct the actions of the trustee of
 31 a revocable trust, is the same as that required to make a

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1 will.

2 736.0602 Revocation or amendment of revocable trust.--

3 (1) Unless the terms of a trust expressly provide that
4 the trust is irrevocable, the settlor may revoke or amend the
5 trust. This subsection does not apply to a trust created under
6 an instrument executed before the effective date of this code.

7 (2) If a revocable trust is created or funded by more
8 than one settlor:

9 (a) To the extent the trust consists of community
10 property, the trust may be revoked by either spouse acting
11 alone but may be amended only by joint action of both spouses.

12 (b) To the extent the trust consists of property other
13 than community property, each settlor may revoke or amend the
14 trust with regard to the portion of the trust property
15 attributable to that settlor's contribution.

16 (c) Upon the revocation or amendment of the trust by
17 fewer than all of the settlors, the trustee shall promptly
18 notify the other settlors of the revocation or amendment.

19 (3) Subject to s. 736.0403(2), the settlor may revoke
20 or amend a revocable trust:

21 (a) By substantial compliance with a method provided
22 in the terms of the trust; or

23 (b) If the terms of the trust do not provide a method,
24 by:

25 1. A later will or codicil that expressly refers to
26 the trust or specifically devises property that would
27 otherwise have passed according to the terms of the trust; or

28 2. Any other method manifesting clear and convincing
29 evidence of the settlor's intent.

30 (4) Upon revocation of a revocable trust, the trustee
31 shall deliver the trust property as the settlor directs.

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1 (5) A settlor's powers with respect to revocation,
 2 amendment, or distribution of trust property may be exercised
 3 by an agent under a power of attorney only as authorized by s.
 4 709.08.

5 (6) A guardian of the property of the settlor may
 6 exercise a settlor's powers with respect to revocation,
 7 amendment, or distribution of trust property only as provided
 8 in s. 744.441.

9 (7) A trustee who does not know that a trust has been
 10 revoked or amended is not liable for distributions made and
 11 other actions taken on the assumption that the trust had not
 12 been amended or revoked.

13 736.0603 Settlor's powers; powers of withdrawal.--

14 (1) While a trust is revocable, the duties of the
 15 trustee are owed exclusively to the settlor.

16 (2) During the period the power may be exercised, the
 17 holder of a power of withdrawal has the rights of a settlor of
 18 a revocable trust under this section to the extent of the
 19 property subject to the power.

20 736.0604 Limitation on action contesting validity of
 21 revocable trust.--An action to contest the validity of a trust
 22 that was revocable at the settlor's death is barred, if not
 23 commenced within the earlier of:

24 (1) The time as provided in chapter 95; or

25 (2) Six months after the trustee sent the person a
 26 copy of the trust instrument and a notice informing the person
 27 of the trust's existence, of the trustee's name and address,
 28 and of the time allowed for commencing a proceeding.

29 Section 7. Part VII of chapter 736, Florida Statutes,
 30 consisting of sections 736.0701, 736.0702, 736.0703, 736.0704,
 31 736.0705, 736.0706, 736.0707, 736.0708, and 736.0709, is

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1 created to read:

2 PART VII

3 OFFICE OF TRUSTEE

4

5 736.0701 Accepting or declining trusteeship.--

6 (1) Except as otherwise provided in subsection (3), a
7 person designated as trustee accepts the trusteeship:

8 (a) By substantially complying with a method of
9 acceptance provided in the terms of the trust; or

10 (b) If the terms of the trust do not provide a method
11 or the method provided in the terms is not expressly made
12 exclusive, by accepting delivery of the trust property,
13 exercising powers or performing duties as trustee, or
14 otherwise indicating acceptance of the trusteeship.

15 (2) A person designated as trustee who has not
16 accepted the trusteeship may decline the trusteeship. A
17 designated trustee who does not accept the trusteeship within
18 a reasonable time after knowing of the designation is deemed
19 to have declined the trusteeship.

20 (3) A person designated as trustee may, without
21 accepting the trusteeship:

22 (a) Act to preserve the trust property if, within a
23 reasonable time after acting, the person sends to a qualified
24 beneficiary a written statement declining the trusteeship.

25 (b) Inspect or investigate trust property to determine
26 potential liability under environmental or other law or for
27 any other purpose.

28 736.0702 Trustee's bond.--

29 (1) A trustee shall give bond to secure performance of
30 the trustee's duties only if the court finds that a bond is
31 needed to protect the interests of the beneficiaries or is

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1 required by the terms of the trust and the court has not
2 dispensed with the requirement.

3 (2) The court may specify the amount of a bond, the
4 trustee's liabilities under the bond, and whether sureties are
5 necessary. The court may modify or terminate a bond at any
6 time.

7 736.0703 Cotrustees.--

8 (1) Cotrustees who are unable to reach a unanimous
9 decision may act by majority decision.

10 (2) If a vacancy occurs in a cotrusteeship, the
11 remaining cotrustees or a majority of the remaining cotrustees
12 may act for the trust.

13 (3) A cotrustee must participate in the performance of
14 a trustee's function unless the cotrustee is unavailable to
15 perform the function because of absence, illness,
16 disqualification under other provision of law, or other
17 temporary incapacity or the cotrustee has properly delegated
18 the performance of the function to another cotrustee.

19 (4) If a cotrustee is unavailable to perform duties
20 because of absence, illness, disqualification under other law,
21 or other temporary incapacity, and prompt action is necessary
22 to achieve the purposes of the trust or to avoid injury to the
23 trust property, the remaining cotrustee or a majority of the
24 remaining cotrustees may act for the trust.

25 (5) A cotrustee may not delegate to another cotrustee
26 the performance of a function the settlor reasonably expected
27 the cotrustees to perform jointly. A cotrustee may revoke a
28 delegation previously made.

29 (6) Except as otherwise provided in subsection (7), a
30 cotrustee who does not join in an action of another cotrustee
31 is not liable for the action.

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1 (7) Each cotrustee shall exercise reasonable care to:

2 (a) Prevent a cotrustee from committing a breach of
3 trust.

4 (b) Compel a cotrustee to redress a breach of trust.

5 (8) A dissenting cotrustee who joins in an action at
6 the direction of the majority of the cotrustees and who
7 notifies any cotrustee of the dissent at or before the time of
8 the action is not liable for the action.

9 736.0704 Vacancy in trusteeship; appointment of
10 successor.--

11 (1) A vacancy in a trusteeship occurs if:

12 (a) A person designated as trustee declines the
13 trusteeship;

14 (b) A person designated as trustee cannot be
15 identified or does not exist;

16 (c) A trustee resigns;

17 (d) A trustee is disqualified or removed;

18 (e) A trustee dies; or

19 (f) A trustee is adjudicated to be incapacitated.

20 (2) If one or more cotrustees remain in office, a
21 vacancy in a trusteeship need not be filled. A vacancy in a
22 trusteeship must be filled if the trust has no remaining
23 trustee.

24 (3) A vacancy in a trusteeship of a noncharitable
25 trust that is required to be filled must be filled in the
26 following order of priority:

27 (a) By a person named or designated pursuant to the
28 terms of the trust to act as successor trustee.

29 (b) By a person appointed by unanimous agreement of
30 the qualified beneficiaries.

31 (c) By a person appointed by the court.

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1 (4) A vacancy in a trusteeship of a charitable trust
2 that is required to be filled must be filled in the following
3 order of priority:

4 (a) By a person named or designated pursuant to the
5 terms of the trust to act as successor trustee.

6 (b) By a person selected by unanimous agreement of the
7 charitable organizations expressly designated to receive
8 distributions under the terms of the trust.

9 (c) By a person appointed by the court.

10 (5) The court may appoint an additional trustee or
11 special fiduciary whenever the court considers the appointment
12 necessary for the administration of the trust, whether or not
13 a vacancy in a trusteeship exists or is required to be filled.

14 736.0705 Resignation of trustee.--

15 (1) A trustee may resign:

16 (a) Upon at least 30 days' notice to the qualified
17 beneficiaries, the settlor, if living, and all cotrustees; or

18 (b) With the approval of the court.

19 (2) In approving a resignation, the court may issue
20 orders and impose conditions reasonably necessary for the
21 protection of the trust property.

22 (3) Any liability of a resigning trustee or of any
23 sureties on the trustee's bond for acts or omissions of the
24 trustee is not discharged or affected by the trustee's
25 resignation.

26 736.0706 Removal of trustee.--

27 (1) The settlor, a cotrustee, or a beneficiary may
28 request the court to remove a trustee or a trustee may be
29 removed by the court on the court's own initiative.

30 (2) The court may remove a trustee if:

31 (a) The trustee has committed a serious breach of

1 trust;

2 (b) The lack of cooperation among cotrustees
3 substantially impairs the administration of the trust;

4 (c) Due to the unfitness, unwillingness, or persistent
5 failure of the trustee to administer the trust effectively,
6 the court determines that removal of the trustee best serves
7 the interests of the beneficiaries; or

8 (d) There has been a substantial change of
9 circumstances or removal is requested by all of the qualified
10 beneficiaries, the court finds that removal of the trustee
11 best serves the interests of all of the beneficiaries and is
12 not inconsistent with a material purpose of the trust, and a
13 suitable cotrustee or successor trustee is available.

14 (3) Pending a final decision on a request to remove a
15 trustee, or in lieu of or in addition to removing a trustee,
16 the court may order such appropriate relief under s.
17 736.1001(2) as may be necessary to protect the trust property
18 or the interests of the beneficiaries.

19 736.0707 Delivery of property by former trustee.--

20 (1) Unless a cotrustee remains in office or the court
21 otherwise orders and until the trust property is delivered to
22 a successor trustee or other person entitled to the property,
23 a trustee who has resigned or been removed has the duties of a
24 trustee and the powers necessary to protect the trust
25 property.

26 (2) A trustee who has resigned or been removed shall
27 within a reasonable time deliver the trust property within the
28 trustee's possession to the cotrustee, successor trustee, or
29 other person entitled to the property, subject to the right of
30 the trustee to retain a reasonable reserve for the payment of
31 debts, expenses, and taxes. The provisions of this subsection

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1 are in addition to and are not in derogation of the rights of
2 a removed or resigning trustee under the common law.

3 736.0708 Compensation of trustee.--

4 (1) If the terms of a trust do not specify the
5 trustee's compensation, a trustee is entitled to compensation
6 that is reasonable under the circumstances.

7 (2) If the terms of a trust specify the trustee's
8 compensation, the trustee is entitled to be compensated as
9 specified but the court may allow more or less compensation
10 if:

11 (a) The duties of the trustee are substantially
12 different from those contemplated when the trust was created;

13 or

14 (b) The compensation specified by the terms of the
15 trust would be unreasonably low or high.

16 (3) If the trustee has rendered other services in
17 connection with the administration of the trust, the trustee
18 shall also be allowed reasonable compensation for the other
19 services rendered in addition to reasonable compensation as
20 trustee.

21 736.0709 Reimbursement of expenses.--

22 (1) A trustee is entitled to be reimbursed out of the
23 trust property, with interest as appropriate, for reasonable
24 expenses that were properly incurred in the administration of
25 the trust.

26 (2) An advance by the trustee of money for the
27 protection of the trust gives rise to a lien against trust
28 property to secure reimbursement with reasonable interest.

29 Section 8. Part VIII of chapter 736, Florida Statutes,
30 consisting of sections 736.0801, 736.0802, 736.0803, 736.0804,
31 736.0805, 736.0806, 736.0807, 736.0808, 736.0809, 736.0810,

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1 736.08105, 736.0811, 736.0812, 736.08125, 736.0813, 736.08135,
2 736.0814, 736.08147, 736.0815, 736.0816, 736.08163, 736.08165,
3 and 736.0817, is created to read:

4 PART VIII

5 DUTIES AND POWERS OF TRUSTEE

6
7 736.0801 Duty to administer trust.--Upon acceptance of
8 a trusteeship, the trustee shall administer the trust in good
9 faith, in accordance with its terms and purposes and the
10 interests of the beneficiaries, and in accordance with this
11 code.

12 736.0802 Duty of loyalty.--

13 (1) As between a trustee and the beneficiaries, a
14 trustee shall administer the trust solely in the interests of
15 the beneficiaries.

16 (2) Subject to the rights of persons dealing with or
17 assisting the trustee as provided in s. 736.1016, a sale,
18 encumbrance, or other transaction involving the investment or
19 management of trust property entered into by the trustee for
20 the trustee's own personal account or which is otherwise
21 affected by a conflict between the trustee's fiduciary and
22 personal interests is voidable by a beneficiary affected by
23 the transaction unless:

24 (a) The transaction was authorized by the terms of the
25 trust;

26 (b) The transaction was approved by the court;

27 (c) The beneficiary did not commence a judicial
28 proceeding within the time allowed by s. 736.1008;

29 (d) The beneficiary consented to the trustee's
30 conduct, ratified the transaction, or released the trustee in
31 compliance with s. 736.1012;

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1 (e) The transaction involves a contract entered into
2 or claim acquired by the trustee when that person had not
3 become or contemplated becoming trustee; or

4 (f) The transaction was consented to in writing by a
5 settlor of the trust while the trust was revocable.

6 (3) A sale, encumbrance, or other transaction
7 involving the investment or management of trust property is
8 presumed to be affected by a conflict between personal and
9 fiduciary interests if the sale, encumbrance, or other
10 transaction is entered into by the trustee with:

11 (a) The trustee's spouse;

12 (b) The trustee's descendants, siblings, parents, or
13 their spouses;

14 (c) An officer, director, employee, agent, or attorney
15 of the trustee; or

16 (d) A corporation or other person or enterprise in
17 which the trustee, or a person that owns a significant
18 interest in the trustee, has an interest that might affect the
19 trustee's best judgment.

20 (4) A transaction not concerning trust property in
21 which the trustee engages in the trustee's individual capacity
22 involves a conflict between personal and fiduciary interests
23 if the transaction concerns an opportunity properly belonging
24 to the trust.

25 (5)(a) An investment by a trustee authorized by lawful
26 authority to engage in trust business, as defined in s.
27 658.12(20), in investment instruments, as defined in s.
28 660.25(6), that are owned or controlled by the trustee or its
29 affiliate, or from which the trustee or its affiliate receives
30 compensation for providing services in a capacity other than
31 as trustee, is not presumed to be affected by a conflict

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1 between personal and fiduciary interests provided the
2 investment otherwise complies with chapters 518 and 660 and
3 the trustee complies with the disclosure requirements of this
4 subsection.

5 (b) A trustee who invests trust funds in investment
6 instruments that are owned or controlled by the trustee or its
7 affiliate shall disclose the following to all qualified
8 beneficiaries:

9 1. Notice that the trustee has invested trust funds in
10 investment instruments owned or controlled by the trustee or
11 its affiliate.

12 2. The identity of the investment instruments.

13 3. The identity and relationship to the trustee of any
14 affiliate that owns or controls the investment instruments.

15 (c) A trustee who invests trust funds in investment
16 instruments with respect to which the trustee or its affiliate
17 receives compensation for providing services in a capacity
18 other than as trustee shall disclose to all qualified
19 beneficiaries, the nature of the services provided by the
20 trustee or its affiliate, and all compensation, including, but
21 not limited to, fees or commissions paid or to be paid by the
22 account and received or to be received by an affiliate arising
23 from such affiliated investment.

24 (d) Disclosure required by this subsection shall be
25 made at least annually unless there has been no change in the
26 method or increase in the rate at which such compensation is
27 calculated since the most recent disclosure. The disclosure
28 may be given in a trust disclosure document as defined in s.
29 736.1008, in a copy of the prospectus for the investment
30 instrument, in any other written disclosure prepared for the
31 investment instrument under applicable federal or state law,

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1 or in a written summary that includes all compensation
 2 received or to be received by the trustee and any affiliate of
 3 the trustee and an explanation of the manner in which such
 4 compensation is calculated, either as a percentage of the
 5 assets invested or by some other method.

6 (e) This subsection shall apply as follows:

7 1. This subsection does not apply to qualified
 8 investment instruments or to a trust for which a right of
 9 revocation exists.

10 2. For investment instruments other than qualified
 11 investment instruments, paragraphs (a), (b), (c), and (d)
 12 shall apply to irrevocable trusts created on or after July 1,
 13 2007, which expressly authorize the trustee, by specific
 14 reference to this subsection, to invest in investment
 15 instruments owned or controlled by the trustee or its
 16 affiliate.

17 3. For investment instruments other than qualified
 18 investment instruments, paragraphs (a), (b), (c), and (d)
 19 shall apply to irrevocable trusts not described in
 20 subparagraph 2. only as follows:

21 a. Such paragraphs shall not apply until 60 days after
 22 the statement required in paragraph (f) is provided and no
 23 objection is made or any objection which is made has been
 24 terminated.

25 (I) An objection is made if, within 60 days after the
 26 date of the statement required in paragraph (f), a super
 27 majority of the eligible beneficiaries deliver to the trustee
 28 written objections to the application of this subsection to
 29 such trust. An objection shall be deemed to be delivered to
 30 the trustee on the date the objection is mailed to the mailing
 31 address listed in the notice provided in paragraph (f).

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1 (II) An objection is terminated upon the earlier of
 2 the receipt of consent from a super majority of eligible
 3 beneficiaries of the class that made the objection or the
 4 resolution of the objection pursuant to this subparagraph.

5 (III) If an objection is delivered to the trustee, the
 6 trustee may petition the court for an order overruling the
 7 objection and authorizing the trustee to make investments
 8 under this subsection. The burden shall be on the trustee to
 9 show good cause for the relief sought.

10 (IV) Any qualified beneficiary may petition the court
 11 for an order to prohibit, limit, or restrict a trustee's
 12 authority to make investments under this subsection. The
 13 burden shall be upon the petitioning beneficiary to show good
 14 cause for the relief sought.

15 (V) The court may award costs and attorney's fees
 16 relating to any petition under this subparagraph in the same
 17 manner as in chancery actions. When costs and attorney's fees
 18 are to be paid out of the trust, the court, in its discretion,
 19 may direct from which part of the trust such costs and fees
 20 shall be paid.

21 b. The objection of a super majority of eligible
 22 beneficiaries under this subparagraph may thereafter be
 23 removed by the written consent of a super majority of the
 24 class or classes of those eligible beneficiaries that made the
 25 objection.

26 (f)1. Any time prior to initially investing in any
 27 investment instrument described in this subsection other than
 28 a qualified investment instrument, the trustee of a trust
 29 described in subparagraph (e)3. shall provide to all qualified
 30 beneficiaries a statement containing the following:

31 a. The name, telephone number, street address, and

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1 mailing address of the trustee and of any individuals who may
2 be contacted for further information.

3 b. A statement that, unless a super majority of the
4 eligible beneficiaries objects to the application of this
5 subsection to the trust within 60 days after the date the
6 statement pursuant to this subsection was delivered, this
7 subsection shall apply to the trust.

8 c. A statement that, if this subsection applies to the
9 trust, the trustee will have the right to make investments in
10 investment instruments, as defined in s. 660.25(6), which are
11 owned or controlled by the trustee or its affiliate, or from
12 which the trustee or its affiliate receives compensation for
13 providing services in a capacity other than as trustee, and
14 that the trustee or its affiliate may receive fees in addition
15 to the trustee's compensation for administering the trust.

16
17 A statement by the trustee is not delivered if the statement
18 is accompanied by another written communication other than a
19 written communication by the trustee that refers only to the
20 statement.

21 2. For purposes of paragraph (e) and this paragraph:

22 a. "Eligible beneficiaries" means:

23 (I) If at the time the determination is made there are
24 one or more beneficiaries as described in s. 736.0103(14)(c),
25 the beneficiaries described in s. 736.0103(14)(a) and (c); or

26 (II) If there is no beneficiary described in s.
27 736.0103(14)(c), the beneficiaries described in s.
28 736.0103(14)(a) and (b).

29 b. "Super majority of the eligible beneficiaries"
30 means:

31 (I) If at the time the determination is made there are

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1 one or more beneficiaries as described in s. 736.0103(14)(c),
 2 at least two-thirds in interest of the beneficiaries described
 3 in s. 736.0103(14)(a) or two-thirds in interest of the
 4 beneficiaries described in s. 736.0103(14)(c), if the
 5 interests of the beneficiaries are reasonably ascertainable;
 6 otherwise, two-thirds in number of either such class; or
 7 (II) If there is no beneficiary as described in s.
 8 736.0103(14)(c), at least two-thirds in interest of the
 9 beneficiaries described in s. 736.0103(14)(a) or two-thirds in
 10 interest of the beneficiaries described in s. 736.0103(14)(b),
 11 if the interests of the beneficiaries are reasonably
 12 ascertainable; otherwise, two-thirds in number of either such
 13 class.

14 c. "Qualified investment instrument" means a mutual
 15 fund, common trust fund, or money market fund described in and
 16 governed by s. 736.0816(3).

17 d. An irrevocable trust is created upon execution of
 18 the trust instrument. If a trust that was revocable when
 19 created thereafter becomes irrevocable, the irrevocable trust
 20 is created when the right of revocation terminates.

21 (g) Nothing in this chapter is intended to create or
 22 imply a duty for the trustee to seek the application of this
 23 subsection to invest in investment instruments described in
 24 paragraph (a), and no inference of impropriety may be made as
 25 a result of a trustee electing not to invest trust assets in
 26 investment instruments described in paragraph (a).

27 (6) In voting shares of stock or in exercising powers
 28 of control over similar interests in other forms of
 29 enterprise, the trustee shall act in the best interests of the
 30 beneficiaries. If the trust is the sole owner of a corporation
 31 or other form of enterprise, the trustee shall elect or

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1 appoint directors or other managers who will manage the
2 corporation or enterprise in the best interests of the
3 beneficiaries.

4 (7) This section does not preclude the following
5 transactions, if fair to the beneficiaries:

6 (a) An agreement between a trustee and a beneficiary
7 relating to the appointment or compensation of the trustee;

8 (b) A payment of reasonable compensation to the
9 trustee;

10 (c) A transaction between a trust and another trust,
11 the decedent's estate, or a guardian of the property of which
12 the trustee is a fiduciary or in which a beneficiary has an
13 interest;

14 (d) A deposit of trust money in a regulated
15 financial-service institution operated by the trustee; or

16 (e) An advance by the trustee of money for the
17 protection of the trust.

18 (8) This section does not preclude the employment of
19 persons, including, but not limited to, attorneys,
20 accountants, investment advisers, or agents, even if they are
21 the trustee, an affiliate of the trustee, or otherwise
22 associated with the trustee, to advise or assist the trustee
23 in the exercise of any of the trustee's powers and to pay
24 reasonable compensation and costs incurred in connection with
25 such employment from the assets of the trust; to act without
26 independent investigation on their recommendations; and,
27 instead of acting personally, to employ one or more agents to
28 perform any act of administration, whether or not
29 discretionary.

30 (9) The court may appoint a special fiduciary to act
31 with respect to any proposed transaction that might violate

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1 this section if entered into by the trustee.

2 (10) Payment of costs or attorney's fees incurred in
3 any trust proceeding from the assets of the trust may be made
4 by the trustee without the approval of any person and without
5 court authorization, except that court authorization shall be
6 required if an action has been filed or defense asserted
7 against the trustee based upon a breach of trust. Court
8 authorization is not required if the action or defense is
9 later withdrawn or dismissed by the party that is alleging a
10 breach of trust or resolved without a determination by the
11 court that the trustee has committed a breach of trust.

12 736.0803 Impartiality.--If a trust has two or more
13 beneficiaries, the trustee shall act impartially in
14 administering the trust property, giving due regard to the
15 beneficiaries' respective interests.

16 736.0804 Prudent administration.--A trustee shall
17 administer the trust as a prudent person would, by considering
18 the purposes, terms, distribution requirements, and other
19 circumstances of the trust. In satisfying this standard, the
20 trustee shall exercise reasonable care, skill, and caution.

21 736.0805 Expenses of administration.--In administering
22 a trust, the trustee shall only incur expenses that are
23 reasonable in relation to the trust property, the purposes of
24 the trust, and the skills of the trustee.

25 736.0806 Trustee's skills.--A trustee who has special
26 skills or expertise, or is named trustee in reliance on the
27 trustee's representation that the trustee has special skills
28 or expertise, shall use those special skills or expertise.

29 736.0807 Delegation by trustee.--

30 (1) A trustee may delegate duties and powers that a
31 prudent trustee of comparable skills could properly delegate

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1 under the circumstances. The trustee shall exercise reasonable
2 care, skill, and caution in:

3 (a) Selecting an agent.

4 (b) Establishing the scope and terms of the
5 delegation, consistent with the purposes and terms of the
6 trust.

7 (c) Reviewing the agent's actions periodically, in
8 order to monitor the agent's performance and compliance with
9 the terms of the delegation.

10 (2) In performing a delegated function, an agent owes
11 a duty to the trust to exercise reasonable care to comply with
12 the terms of the delegation.

13 (3) A trustee who complies with subsection (1) is not
14 liable to the beneficiaries or to the trust for an action of
15 the agent to whom the function was delegated.

16 (4) By accepting a delegation of powers or duties from
17 the trustee of a trust that is subject to the law of this
18 state, an agent submits to the jurisdiction of the courts of
19 this state.

20 736.0808 Powers to direct.--

21 (1) Subject to ss. 736.0403(2) and 736.0602(3)(a), the
22 trustee may follow a direction of the settlor that is contrary
23 to the terms of the trust while a trust is revocable.

24 (2) If the terms of a trust confer on a person other
25 than the settlor of a revocable trust, the power to direct
26 certain actions of the trustee, the trustee shall act in
27 accordance with an exercise of the power unless the attempted
28 exercise is manifestly contrary to the terms of the trust or
29 the trustee knows the attempted exercise would constitute a
30 serious breach of a fiduciary duty that the person holding the
31 power owes to the beneficiaries of the trust.

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1 (3) The terms of a trust may confer on a trustee or
2 other person a power to direct the modification or termination
3 of the trust.

4 (4) A person, other than a beneficiary, who holds a
5 power to direct is presumptively a fiduciary who, as such, is
6 required to act in good faith with regard to the purposes of
7 the trust and the interests of the beneficiaries. The holder
8 of a power to direct is liable for any loss that results from
9 breach of a fiduciary duty.

10 736.0809 Control and protection of trust property.--A
11 trustee shall take reasonable steps to take control of and
12 protect the trust property.

13 736.0810 Recordkeeping and identification of trust
14 property.--

15 (1) A trustee shall keep clear, distinct, and accurate
16 records of the administration of the trust.

17 (2) A trustee shall keep trust property separate from
18 the trustee's own property.

19 (3) Except as otherwise provided in subsection (4), a
20 trustee shall cause the trust property to be designated so
21 that the interest of the trust, to the extent feasible,
22 appears in records maintained by a party other than a trustee
23 or beneficiary.

24 (4) If the trustee maintains records clearly
25 indicating the respective interests, a trustee may invest as a
26 whole the property of two or more separate trusts.

27 736.08105 Duty to ascertain marketable title of trust
28 real property.--A trustee holding title to real property
29 received from a settlor or estate shall not be required to
30 obtain title insurance or proof of marketable title until a
31 marketable title is required for a sale or conveyance of the

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1 real property.

2 736.0811 Enforcement and defense of claims.--A trustee
3 shall take reasonable steps to enforce claims of the trust and
4 to defend claims against the trust.

5 736.0812 Collecting trust property.--A trustee shall
6 take reasonable steps to compel a former trustee or other
7 person to deliver trust property to the trustee and, except as
8 provided in s. 736.08125, to redress a breach of trust known
9 to the trustee to have been committed by a former trustee.

10 736.08125 Protection of successor trustees.--

11 (1) A successor trustee is not personally liable for
12 actions taken by any prior trustee, nor does any successor
13 trustee have a duty to institute any proceeding against any
14 prior trustee, or file any claim against any prior trustee's
15 estate, for any of the prior trustee's actions as trustee
16 under any of the following circumstances:

17 (a) As to a successor trustee who succeeds a trustee
18 who was also the settlor of a trust that was revocable during
19 the time that the settlor served as trustee;

20 (b) As to any beneficiary who has waived any
21 accounting required by s. 736.0813, but only as to the periods
22 included in the waiver;

23 (c) As to any beneficiary who has released the
24 successor trustee from the duty to institute any proceeding or
25 file any claim;

26 (d) As to any person who is not an eligible
27 beneficiary; or

28 (e) As to any eligible beneficiary:

29 1. If a supermajority of the eligible beneficiaries
30 have released the successor trustee;

31 2. If the eligible beneficiary has not delivered a

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1 written request to the successor trustee to institute an
 2 action or file a claim against the prior trustee within 6
 3 months after the date of the successor trustee's acceptance of
 4 the trust, if the successor trustee has notified the eligible
 5 beneficiary in writing of acceptance by the successor trustee
 6 in accordance with 736.0813(1)(a) and that writing advises the
 7 beneficiary that, unless the beneficiary delivers the written
 8 request within 6 months after the date of acceptance, the
 9 right to proceed against the successor trustee will be barred
 10 pursuant to this section; or

11 3. For any action or claim that the eligible
 12 beneficiary is barred from bringing against the prior trustee.

13 (2) For the purposes of this section, the term:

14 (a) "Eligible beneficiaries" means:

15 1. At the time the determination is made, if there are
 16 one or more beneficiaries as described in s. 736.0103(14)(c),
 17 the beneficiaries described in s. 736.0103(14)(a) and (c); or

18 2. If there is no beneficiary as described in s.
 19 736.0103(14)(c), the beneficiaries described in s.
 20 736.0103(14)(a) and (b).

21 (b) "Supermajority of eligible beneficiaries" means at
 22 least two-thirds in interest of the eligible beneficiaries if
 23 the interests of the eligible beneficiaries are reasonably
 24 ascertainable, otherwise, at least two-thirds in number of the
 25 eligible beneficiaries.

26 (3) Nothing in this section affects any liability of
 27 the prior trustee or the right of the successor trustee or any
 28 beneficiary to pursue an action or claim against the prior
 29 trustee.

30 736.0813 Duty to inform and account.--The trustee
 31 shall keep the qualified beneficiaries of the trust reasonably

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1 informed of the trust and its administration.

2 (1) The trustee's duty to inform and account includes,
3 but is not limited to, the following:

4 (a) Within 60 days after acceptance of the trust, the
5 trustee shall give notice to the qualified beneficiaries of
6 the acceptance of the trust and the full name and address of
7 the trustee.

8 (b) Within 60 days after the date the trustee acquires
9 knowledge of the creation of an irrevocable trust, or the date
10 the trustee acquires knowledge that a formerly revocable trust
11 has become irrevocable, whether by the death of the settlor or
12 otherwise, the trustee shall give notice to the qualified
13 beneficiaries of the trust's existence, the identity of the
14 settlor or settlors, the right to request a copy of the trust
15 instrument, and the right to accountings under this section.

16 (c) Upon reasonable request, the trustee shall provide
17 a qualified beneficiary with a complete copy of the trust
18 instrument.

19 (d) A trustee of an irrevocable trust shall provide a
20 trust accounting, as set forth in s. 736.08135, to each
21 qualified beneficiary annually and on termination of the trust
22 or on change of the trustee.

23 (e) Upon reasonable request, the trustee shall provide
24 a qualified beneficiary with relevant information about the
25 assets and liabilities of the trust and the particulars
26 relating to administration.

27
28 Paragraphs (a) and (b) do not apply to an irrevocable trust
29 created before the effective date of this code, or to a
30 revocable trust that becomes irrevocable before the effective
31 date of this code. Paragraph (a) does not apply to a trustee

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1 who accepts a trusteeship before the effective date of this
2 code.

3 (2) A qualified beneficiary may waive the trustee's
4 duty to account under paragraph (1)(d). A qualified
5 beneficiary may withdraw a waiver previously given. Waivers
6 and withdrawals of prior waivers under this subsection must be
7 in writing. Withdrawals of prior waivers are effective only
8 with respect to accountings for future periods.

9 (3) The representation provisions of part III apply
10 with respect to all rights of a qualified beneficiary under
11 this section.

12 (4) As provided in s. 736.0603(1), the trustee's
13 duties under this section extend only to the settlor while a
14 trust is revocable.

15 (5) This section applies to trust accountings rendered
16 for accounting periods beginning on or after January 1, 2008.

17 736.08135 Trust accountings.--

18 (1) A trust accounting must be a reasonably
19 understandable report from the date of the last accounting or,
20 if none, from the date on which the trustee became
21 accountable, that adequately discloses the information
22 required in subsection (2).

23 (2)(a) The accounting must begin with a statement
24 identifying the trust, the trustee furnishing the accounting,
25 and the time period covered by the accounting.

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

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1 (c) To the extent feasible, the accounting must
 2 identify and value trust assets on hand at the close of the
 3 accounting period. For each asset or class of assets
 4 reasonably capable of valuation, the accounting shall contain
 5 two values, the asset acquisition value or carrying value and
 6 the estimated current value. The accounting must identify each
 7 known noncontingent liability with an estimated current amount
 8 of the liability if known.

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

14 (e) The accounting must reflect the allocation of
 15 receipts, disbursements, accruals, or allowances between
 16 income and principal when the allocation affects the interest
 17 of any beneficiary of the trust.

18 (f) The trustee shall include in the final accounting
 19 a plan of distribution for any undistributed assets shown on
 20 the final accounting.

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

24 736.0814 Discretionary powers; tax savings.--

25 (1) Notwithstanding the breadth of discretion granted
 26 to a trustee in the terms of the trust, including the use of
 27 such terms as "absolute," "sole," or "uncontrolled," the
 28 trustee shall exercise a discretionary power in good faith and
 29 in accordance with the terms and purposes of the trust and the
 30 interests of the beneficiaries. A court shall not determine
 31 that a trustee abused its discretion merely because the court

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1 would have exercised the discretion in a different manner or
2 would not have exercised the discretion.

3 (2) Subject to subsection (3) and unless the terms of
4 the trust expressly indicate that a rule in this subsection
5 does not apply, a person who is a beneficiary and a trustee
6 may not:

7 (a) Make discretionary distributions of either
8 principal or income to or for the benefit of that trustee,
9 except to provide for that trustee's health, education,
10 maintenance, or support as described under ss. 2041 and 2514
11 of the Internal Revenue Code;

12 (b) Make discretionary allocations of receipts or
13 expenses as between principal and income, unless the trustee
14 acts in a fiduciary capacity whereby the trustee has no power
15 to enlarge or shift any beneficial interest except as an
16 incidental consequence of the discharge of the trustee's
17 fiduciary duties;

18 (c) Make discretionary distributions of either
19 principal or income to satisfy any of the trustee's legal
20 support obligations; or

21 (d) Exercise any other power, including, but not
22 limited to, the right to remove or to replace any trustee, so
23 as to cause the powers enumerated in paragraph (a), paragraph
24 (b), or paragraph (c) to be exercised on behalf of, or for the
25 benefit of, a beneficiary who is also a trustee.

26 (3) Subsection (2) does not apply to:

27 (a) A power held by the settlor of the trust;

28 (b) A power held by the settlor's spouse who is the
29 trustee of a trust for which a marital deduction, as defined
30 in s. 2056(a) or s. 2523(a) of the Internal Revenue Code of
31 1986, as amended, was previously allowed;

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1 (c) Any trust during any period that the trust may be
2 revoked or amended by its settlor; or

3 (d) A trust if contributions to the trust qualify for
4 the annual exclusion under s. 2503(c) of the Internal Revenue
5 Code of 1986, as amended.

6 (4) A power whose exercise is limited or prohibited by
7 subsection (2) may be exercised by the remaining trustees
8 whose exercise of the power is not so limited or prohibited.
9 If there is no trustee qualified to exercise the power, on
10 petition by any qualified beneficiary, the court may appoint
11 an independent trustee with authority to exercise the power.

12 (5) A person who has the right to remove or to replace
13 a trustee does not possess nor may that person be deemed to
14 possess, by virtue of having that right, the powers of the
15 trustee that is subject to removal or to replacement.

16 736.08147 Duty to distribute trust income.--If a will
17 or trust instrument granting income to the settlor's or
18 testator's spouse for life is silent as to the time of
19 distribution of income and the frequency of distributions, the
20 trustee shall distribute all net income, as defined in chapter
21 738, to the spouse no less frequently than annually. This
22 provision shall apply to any trust established before, on, or
23 after July 1, 2007, unless the trust instrument expressly
24 directs or permits net income to be distributed less
25 frequently than annually.

26 736.0815 General powers of trustee.--

27 (1) A trustee, without authorization by the court,
28 may, except as limited or restricted by this code, exercise:

29 (a) Powers conferred by the terms of the trust.

30 (b) Except as limited by the terms of the trust:

31 1. All powers over the trust property that an

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1 unmarried competent owner has over individually owned
2 property.

3 2. Any other powers appropriate to achieve the proper
4 investment, management, and distribution of the trust
5 property.

6 3. Any other powers conferred by this code.

7 (2) The exercise of a power is subject to the
8 fiduciary duties prescribed by this code.

9 736.0816 Specific powers of trustee.--Except as
10 limited or restricted by this code, a trustee may:

11 (1) Collect trust property and accept or reject
12 additions to the trust property from a settlor, including an
13 asset in which the trustee is personally interested, and hold
14 property in the name of a nominee or in other form without
15 disclosure of the trust so that title to the property may pass
16 by delivery but the trustee is liable for any act of the
17 nominee in connection with the property so held.

18 (2) Acquire or sell property, for cash or on credit,
19 at public or private sale.

20 (3) Acquire an undivided interest in a trust asset,
21 including, but not limited to, a money market mutual fund,
22 mutual fund, or common trust fund, in which asset the trustee
23 holds an undivided interest in any trust capacity, including
24 any money market or other mutual fund from which the trustee
25 or any affiliate or associate of the trustee is entitled to
26 receive reasonable compensation for providing necessary
27 services as an investment adviser, portfolio manager, or
28 servicing agent. A trustee or affiliate or associate of the
29 trustee may receive compensation for such services in addition
30 to fees received for administering the trust provided such
31 compensation is fully disclosed in writing to all qualified

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1 beneficiaries.

2 (4) Exchange, partition, or otherwise change the
3 character of trust property.

4 (5) Deposit trust money in an account in a regulated
5 financial-service institution.

6 (6) Borrow money, with or without security, and
7 mortgage or pledge trust property for a period within or
8 extending beyond the duration of the trust and advance money
9 for the protection of the trust.

10 (7) With respect to an interest in a proprietorship,
11 partnership, limited liability company, business trust,
12 corporation, or other form of business or enterprise, continue
13 the business or other enterprise and take any action that may
14 be taken by shareholders, members, or property owners,
15 including, but not limited to, merging, dissolving, or
16 otherwise changing the form of business organization or
17 contributing additional capital.

18 (8) With respect to stocks or other securities,
19 exercise the rights of an absolute owner, including, but not
20 limited to, the right to:

21 (a) Vote, or give proxies to vote, with or without
22 power of substitution, or enter into or continue a voting
23 trust agreement.

24 (b) Hold a security in the name of a nominee or in
25 other form without disclosure of the trust so that title may
26 pass by delivery.

27 (c) Pay calls, assessments, and other sums chargeable
28 or accruing against the securities, and sell or exercise stock
29 subscription or conversion rights.

30 (d) Deposit the securities with a depository or other
31 regulated financial-service institution.

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1 (9) With respect to an interest in real property,
 2 construct, or make ordinary or extraordinary repairs to,
 3 alterations to, or improvements in, buildings or other
 4 structures, demolish improvements, raze existing or erect new
 5 party walls or buildings, subdivide or develop land, dedicate
 6 land to public use or grant public or private easements, and
 7 make or vacate plats and adjust boundaries.

8 (10) Enter into a lease for any purpose as lessor or
 9 lessee, including a lease or other arrangement for exploration
 10 and removal of natural resources, with or without the option
 11 to purchase or renew, for a period within or extending beyond
 12 the duration of the trust.

13 (11) Grant an option involving a sale, lease, or other
 14 disposition of trust property or acquire an option for the
 15 acquisition of property, including an option exercisable
 16 beyond the duration of the trust, and exercise an option so
 17 acquired.

18 (12) Insure the property of the trust against damage
 19 or loss and insure the trustee, trustee's agents, and
 20 beneficiaries against liability arising from the
 21 administration of the trust.

22 (13) Abandon or decline to administer property of no
 23 value or of insufficient value to justify the collection or
 24 continued administration of such property.

25 (14) Pay or contest any claim, settle a claim by or
 26 against the trust, and release, in whole or in part, a claim
 27 belonging to the trust.

28 (15) Pay taxes, assessments, compensation of the
 29 trustee and of employees and agents of the trust, and other
 30 expenses incurred in the administration of the trust.

31 (16) Allocate items of income or expense to trust

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1 income or principal, as provided by law.

2 (17) Exercise elections with respect to federal,
3 state, and local taxes.

4 (18) Select a mode of payment under any employee
5 benefit or retirement plan, annuity, or life insurance payable
6 to the trustee, exercise rights under such plan, annuity, or
7 insurance, including exercise of the right to indemnification
8 for expenses and against liabilities, and take appropriate
9 action to collect the proceeds.

10 (19) Make loans out of trust property, including, but
11 not limited to, loans to a beneficiary on terms and conditions
12 that are fair and reasonable under the circumstances, and the
13 trustee has a lien on future distributions for repayment of
14 those loans.

15 (20) Employ persons, including, but not limited to,
16 attorneys, accountants, investment advisers, or agents, even
17 if they are the trustee, an affiliate of the trustee, or
18 otherwise associated with the trustee, to advise or assist the
19 trustee in the exercise of any of the trustee's powers and pay
20 reasonable compensation and costs incurred in connection with
21 such employment from the assets of the trust and act without
22 independent investigation on the recommendations of such
23 persons.

24 (21) Pay an amount distributable to a beneficiary who
25 is under a legal disability or who the trustee reasonably
26 believes is incapacitated, by paying the amount directly to
27 the beneficiary or applying the amount for the beneficiary's
28 benefit, or by:

29 (a) Paying the amount to the beneficiary's guardian of
30 the property or, if the beneficiary does not have a guardian
31 of the property, the beneficiary's guardian of the person;

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1 (b) Paying the amount to the beneficiary's custodian
 2 under a Uniform Transfers to Minors Act or custodial trustee
 3 under a Uniform Custodial Trust Act, and, for that purpose,
 4 creating a custodianship or custodial trust;

5 (c) Paying the amount to an adult relative or other
 6 person having legal or physical care or custody of the
 7 beneficiary, to be expended on the beneficiary's behalf, if
 8 the trustee does not know of a guardian of the property,
 9 guardian of the person, custodian, or custodial trustee; or

10 (d) Managing the amount as a separate fund on the
 11 beneficiary's behalf, subject to the beneficiary's continuing
 12 right to withdraw the distribution.

13 (22) On distribution of trust property or the division
 14 or termination of a trust, make distributions in divided or
 15 undivided interests, allocate particular assets in
 16 proportionate or disproportionate shares, value the trust
 17 property for those purposes, and adjust for resulting
 18 differences in valuation.

19 (23) Prosecute or defend, including appeals, an
 20 action, claim, or judicial proceeding in any jurisdiction to
 21 protect trust property or the trustee in the performance of
 22 the trustee's duties.

23 (24) Sign and deliver contracts and other instruments
 24 that are useful to achieve or facilitate the exercise of the
 25 trustee's powers.

26 (25) On termination of the trust, exercise the powers
 27 appropriate to wind up the administration of the trust and
 28 distribute the trust property to the persons entitled to the
 29 property, subject to the right of the trustee to retain a
 30 reasonable reserve for the payment of debts, expenses, and
 31 taxes.

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1 736.08163 Powers of trustees relating to environmental
2 or human health laws or to trust property contaminated with
3 hazardous or toxic substances; liability.--

4 (1) From the creation of a trust until final
5 distribution of the assets from the trust, the trustee has,
6 without court authorization, the powers specified in
7 subsection (2).

8 (2) Unless otherwise provided in the trust instrument,
9 a trustee has the power, acting reasonably, to:

10 (a) Inspect or investigate, or cause to be inspected
11 or investigated, property held by the trustee, including
12 interests in sole proprietorships, partnerships, or
13 corporations and any assets owned by any such business entity
14 for the purpose of determining compliance with an
15 environmental law affecting that property or to respond to an
16 actual or threatened violation of an environmental law
17 affecting that property;

18 (b) Take, on behalf of the trust, any action necessary
19 to prevent, abate, or otherwise remedy an actual or potential
20 violation of an environmental law affecting property held by
21 the trustee, before or after initiation of an enforcement
22 action by a governmental body;

23 (c) Refuse to accept property in trust if the trustee
24 determines that any property to be donated or conveyed to the
25 trustee is contaminated with a hazardous substance or is being
26 used or has been used for an activity directly or indirectly
27 involving a hazardous substance, which circumstance could
28 result in liability to the trust or trustee or otherwise
29 impair the value of the assets to be held;

30 (d) Settle or compromise at any time any claim against
31 the trust or trustee that may be asserted by a governmental

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1 body or private party that involves the alleged violation of
2 an environmental law affecting property of any trust over
3 which the trustee has responsibility;

4 (e) Disclaim any power granted by any document, law,
5 or rule of law that, in the sole judgment of the trustee, may
6 cause the trustee to incur personal liability, or the trust to
7 incur liability, under any environmental law;

8 (f) Decline to serve as a trustee, or having
9 undertaken to serve as a trustee, resign at any time, if the
10 trustee believes there is or may be a conflict of interest in
11 its fiduciary capacity and in its individual capacity because
12 of potential claims or liabilities that may be asserted
13 against the trustee on behalf of the trust by reason of the
14 type or condition of the assets held; or

15 (g) Charge against the income and principal of the
16 trust the cost of any inspection, investigation, review,
17 abatement, response, cleanup, or remedial action that this
18 section authorizes the trustee to take and, if the trust
19 terminates or closes or the trust property is transferred to
20 another trustee, hold assets sufficient to cover the cost of
21 cleaning up any known environmental problem.

22 (3) A trustee is not personally liable to any
23 beneficiary or any other person for a decrease in value of
24 assets in a trust by reason of the trustee's compliance or
25 efforts to comply with an environmental law, specifically
26 including any reporting requirement under that law.

27 (4) A trustee that acquires ownership or control of a
28 vessel or other property, without having owned, operated, or
29 materially participated in the management of that vessel or
30 property before assuming ownership or control as trustee, is
31 not considered an owner or operator for purposes of liability

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1 under chapter 376, chapter 403, or any other environmental
2 law. A trustee that willfully, knowingly, or recklessly causes
3 or exacerbates a release or threatened release of a hazardous
4 substance is personally liable for the cost of the response,
5 to the extent that the release or threatened release is
6 attributable to the trustee's activities. This subsection does
7 not preclude the filing of claims against the assets that
8 constitute the trust held by the trustee or the filing of
9 actions against the trustee in its representative capacity and
10 in any such action, an award or judgment against the trustee
11 must be satisfied only from the assets of the trust.

12 (5) The acceptance by the trustee of the property or a
13 failure by the trustee to inspect or investigate the property
14 does not create any inference as to whether there is liability
15 under an environmental law with respect to that property.

16 (6) For the purposes of this section, the term
17 "hazardous substance" means a substance defined as hazardous
18 or toxic, or any contaminant, pollutant, or constituent
19 thereof, or otherwise regulated, by an environmental law.

20 (7) This section does not apply to any trust created
21 under a document executed before July 1, 1995, unless the
22 trust is amendable and the settlor amends the trust at any
23 time to incorporate the provisions of this section.

24 736.08165 Administration pending outcome of contest or
25 other proceeding.--

26 (1) Pending the outcome of a proceeding filed to
27 determine the validity of all or part of a trust or the
28 beneficiaries of all or part of a trust, the trustee shall
29 proceed with the administration of the trust as if no
30 proceeding had been commenced, except no action may be taken
31 and no distribution may be made to a beneficiary in

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1 contravention of the rights of those persons who may be
2 affected by the outcome of the proceeding.

3 (2) Upon motion of a party and after notice to
4 interested persons, a court, on good cause shown, may make an
5 exception to the prohibition under subsection (1) and
6 authorize the trustee to act or to distribute trust assets to
7 a beneficiary subject to any conditions the court, in the
8 court's discretion, may impose, including the posting of bond
9 by the beneficiary.

10 736.0817 Distribution on termination.--Upon the
11 occurrence of an event terminating or partially terminating a
12 trust, the trustee shall proceed expeditiously to distribute
13 the trust property to the persons entitled to the property,
14 subject to the right of the trustee to retain a reasonable
15 reserve for the payment of debts, expenses, and taxes. The
16 provisions of this section are in addition to and are not in
17 derogation of the rights of a trustee under the common law
18 with respect to final distribution of a trust.

19 Section 9. Part IX of chapter 736, Florida Statutes,
20 consisting of section 736.0901, is created to read:

21 PART IX

22 TRUST INVESTMENTS

23
24 736.0901 Applicability of chapter 518.--A trustee
25 shall invest trust property in accordance with chapter 518.

26 Section 10. Part X of chapter 736, Florida Statutes,
27 consisting of sections 736.1001, 736.1002, 736.1003, 736.1004,
28 736.1005, 736.1006, 736.1007, 736.1008, 736.1009, 736.1010,
29 736.1011, 736.1012, 736.1013, 736.1014, 736.1015, 736.1016,
30 736.1017, and 736.1018, is created to read:

31 PART X

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1 LIABILITY OF TRUSTEE AND RIGHTS OF PERSONS DEALING WITH TRUSTEE

2

3 736.1001 Remedies for breach of trust.--

4 (1) A violation by a trustee of a duty the trustee
5 owes to a beneficiary is a breach of trust.

6 (2) To remedy a breach of trust that has occurred or
7 may occur, the court may:

8 (a) Compel the trustee to perform the trustee's
9 duties;

10 (b) Enjoin the trustee from committing a breach of
11 trust;

12 (c) Compel the trustee to redress a breach of trust by
13 paying money or restoring property or by other means;

14 (d) Order a trustee to account;

15 (e) Appoint a special fiduciary to take possession of
16 the trust property and administer the trust;

17 (f) Suspend the trustee;

18 (g) Remove the trustee as provided in s. 736.706;

19 (h) Reduce or deny compensation to the trustee;

20 (i) Subject to s. 736.1016, void an act of the
21 trustee, impose a lien or a constructive trust on trust
22 property, or trace trust property wrongfully disposed of and
23 recover the property or its proceeds; or

24 (j) Order any other appropriate relief.

25 (3) As an illustration of the remedies available to
26 the court and without limiting the court's discretion as
27 provided in subsection (2), if a breach of trust results in
28 the favoring of any beneficiary to the detriment of any other
29 beneficiary or consists of an abuse of the trustee's
30 discretion:

31 (a) To the extent the breach of trust has resulted in

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1 no distribution to a beneficiary or a distribution that is too
 2 small, the court may require the trustee to pay from the trust
 3 to the beneficiary an amount the court determines will restore
 4 the beneficiary, in whole or in part, to his or her
 5 appropriate position.

6 (b) To the extent the breach of trust has resulted in
 7 a distribution to a beneficiary that is too large, the court
 8 may restore the beneficiaries, the trust, or both, in whole or
 9 in part, to their appropriate positions by requiring the
 10 trustee to withhold an amount from one or more future
 11 distributions to the beneficiary who received the distribution
 12 that was too large or by requiring that beneficiary to return
 13 some or all of the distribution to the trust.

14 736.1002 Damages for breach of trust.--

15 (1) A trustee who commits a breach of trust is liable
 16 for the greater of:

17 (a) The amount required to restore the value of the
 18 trust property and trust distributions to what they would have
 19 been if the breach had not occurred, including lost income,
 20 capital gain, or appreciation that would have resulted from
 21 proper administration; or

22 (b) The profit the trustee made by reason of the
 23 breach.

24 (2) Except as otherwise provided in this subsection,
 25 if more than one person, including a trustee or trustees, is
 26 liable to the beneficiaries for a breach of trust, each liable
 27 person is entitled to pro rata contribution from the other
 28 person or persons. A person is not entitled to contribution if
 29 the person committed the breach of trust in bad faith. A
 30 person who received a benefit from the breach of trust is not
 31 entitled to contribution from another person to the extent of

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1 the benefit received.

2 (3) In determining the pro rata shares of liable
3 persons in the entire liability for a breach of trust:

4 (a) Their relative degrees of fault shall be the basis
5 for allocation of liability.

6 (b) If equity requires, the collective liability of
7 some as a group shall constitute a single share.

8 (c) Principles of equity applicable to contribution
9 generally shall apply.

10 (4) The right of contribution shall be enforced as
11 follows:

12 (a) Contribution may be enforced by separate action,
13 whether or not judgment has been entered in an action against
14 two or more liable persons for the same breach of trust.

15 (b) When a judgment has been entered in an action
16 against two or more liable persons for the same breach of
17 trust, contribution may be enforced in that action by judgment
18 in favor of one judgment defendant against any other judgment
19 defendants by motion upon notice to all parties to the action.

20 (c) If there is a judgment for breach of trust against
21 the liable person seeking contribution, any separate action by
22 that person to enforce contribution must be commenced within 1
23 year after the judgment has become final by lapse of time for
24 appeal or after appellate review.

25 (d) If there is no judgment for the breach of trust
26 against the liable person seeking contribution, the person's
27 right of contribution is barred unless the person has:

28 1. Discharged by payment the common liability within
29 the period of the statute of limitations applicable to the
30 beneficiary's right of action against the liable person and
31 the person has commenced an action for contribution within 1

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1 year after payment, or

2 2. Agreed, while action is pending against the liable
3 person, to discharge the common liability and has within 1
4 year after the agreement paid the liability and commenced the
5 person's action for contribution.

6 (5) The beneficiary's recovery of a judgment for
7 breach of trust against one liable person does not of itself
8 discharge other liable persons from liability for the breach
9 of trust unless the judgment is satisfied. The satisfaction of
10 the judgment does not impair any right of contribution.

11 (6) The judgment of the court in determining the
12 liability of several defendants to the beneficiary for breach
13 of trust is binding upon such defendants in determining the
14 right of such defendants to contribution.

15 (7) Subsection (2) applies to all causes of action for
16 breach of trust pending on July 1, 2007, under which causes of
17 action the right of contribution among persons jointly and
18 severally liable is involved and to all causes of action filed
19 after July 1, 2007.

20 736.1003 Damages in absence of breach.--Absent a
21 breach of trust, a trustee is not liable to a beneficiary for
22 a loss or depreciation in the value of trust property or for
23 not having made a profit.

24 736.1004 Attorney's fees and costs.--

25 (1)(a) In all actions for breach of fiduciary duty or
26 challenging the exercise of, or failure to exercise, a
27 trustee's powers; and

28 (b) In proceedings arising under ss.
29 736.0410-736.0417,

30
31 the court shall award taxable costs as in chancery actions,

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1 including attorney fees and guardian ad litem fees.

2 (2) When awarding taxable costs under this section,
3 including attorney fees and guardian ad litem fees, the court,
4 in its discretion, may direct payment from a party's interest,
5 if any, in the trust or enter a judgment that may be satisfied
6 from other property of the party, or both.

7 736.1005 Attorney's fees for services to the trust.--

8 (1) Any attorney who has rendered services to a trust
9 may be awarded reasonable compensation from the trust. The
10 attorney may apply to the court for an order awarding
11 attorney's fees and, after notice and service on the trustee
12 and all beneficiaries entitled to an accounting under s.
13 736.0813, the court shall enter an order on the fee
14 application.

15 (2) Whenever attorney's fees are to be paid out of the
16 trust, the court, in its discretion, may direct from what part
17 of the trust the fees shall be paid.

18 (3) Except when a trustee's interest may be adverse in
19 a particular matter, the attorney shall give reasonable notice
20 in writing to the trustee of the attorney's retention by an
21 interested person and the attorney's entitlement to fees
22 pursuant to this section. A court may reduce any fee award for
23 services rendered by the attorney prior to the date of actual
24 notice to the trustee, if the actual notice date is later than
25 a date of reasonable notice. In exercising this discretion,
26 the court may exclude compensation for services rendered after
27 the reasonable notice date but prior to the date of actual
28 notice.

29 736.1006 Costs in trust proceedings.--

30 (1) In all trust proceedings, costs may be awarded as
31 in chancery actions.

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1 (2) Whenever costs are to be paid out of the trust,
2 the court, in its discretion, may direct from what part of the
3 trust the costs shall be paid.

4 736.1007 Trustee's attorney's fees.--

5 (1) If the trustee of a revocable trust retains an
6 attorney to render legal services in connection with the
7 initial administration of the trust, the attorney is entitled
8 to reasonable compensation for those legal services, payable
9 from the assets of the trust without court order. The trustee
10 and the attorney may agree to compensation that is determined
11 in a manner or amount other than the manner or amount provided
12 in this section. The agreement is not binding on a person who
13 bears the impact of the compensation unless that person is a
14 party to or otherwise consents to be bound by the agreement.
15 The agreement may provide that the trustee is not individually
16 liable for the attorney's fees and costs.

17 (2) Unless otherwise agreed, compensation based on the
18 value of the trust assets immediately following the settlor's
19 death and the income earned by the trust during initial
20 administration at the rate of 75 percent of the schedule
21 provided in s. 733.6171(3)(a)-(h) is presumed to be reasonable
22 total compensation for ordinary services of all attorneys
23 employed generally to advise a trustee concerning the
24 trustee's duties in initial trust administration.

25 (3) An attorney who is retained to render only limited
26 and specifically defined legal services shall be compensated
27 as provided in the retaining agreement. If the amount or
28 method of determining compensation is not provided in the
29 agreement, the attorney is entitled to a reasonable fee,
30 taking into account the factors set forth in subsection (6).

31 (4) Ordinary services of the attorney in an initial

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1 trust administration include legal advice and representation
2 concerning the trustee's duties relating to:

3 (a) Review of the trust instrument and each amendment
4 for legal sufficiency and interpretation.

5 (b) Implementation of substitution of the successor
6 trustee.

7 (c) Persons who must or should be served with required
8 notices and the method and timing of such service.

9 (d) The obligation of a successor to require a former
10 trustee to provide an accounting.

11 (e) The trustee's duty to protect, insure, and manage
12 trust assets and the trustee's liability relating to these
13 duties.

14 (f) The trustee's duty regarding investments imposed
15 by the prudent investor rule.

16 (g) The trustee's obligation to inform and account to
17 beneficiaries and the method of satisfaction of such
18 obligations, the liability of the trust and trustee to the
19 settlor's creditors, and the advisability or necessity for
20 probate proceedings to bar creditors.

21 (h) Contributions due to the personal representative
22 of the settlor's estate for payment of expenses of
23 administration and obligations of the settlor's estate.

24 (i) Identifying tax returns required to be filed by
25 the trustee, the trustee's liability for payment of taxes, and
26 the due date of returns.

27 (j) Filing a nontaxable affidavit, if not filed by a
28 personal representative.

29 (k) Order of payment of expenses of administration of
30 the trust and order and priority of abatement of trust
31 distributions.

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1 (l) Distribution of income or principal to
2 beneficiaries or funding of further trusts provided in the
3 governing instrument.

4 (m) Preparation of any legal documents required to
5 effect distribution.

6 (n) Fiduciary duties, avoidance of self-dealing,
7 conflicts of interest, duty of impartiality, and obligations
8 to beneficiaries.

9 (o) If there is a conflict of interest between a
10 trustee who is a beneficiary and other beneficiaries of the
11 trust, advice to the trustee on limitations of certain
12 authority of the trustee regarding discretionary distributions
13 or exercise of certain powers and alternatives for appointment
14 of an independent trustee and appropriate procedures.

15 (p) Procedures for the trustee's discharge from
16 liability for administration of the trust on termination or
17 resignation.

18 (5) In addition to the attorney's fees for ordinary
19 services, the attorney for the trustee shall be allowed
20 further reasonable compensation for any extraordinary service.
21 What constitutes an extraordinary service may vary depending
22 on many factors, including the size of the trust.
23 Extraordinary services may include, but are not limited to:

24 (a) Involvement in a trust contest, trust
25 construction, a proceeding for determination of beneficiaries,
26 a contested claim, elective share proceedings, apportionment
27 of estate taxes, or other adversary proceedings or litigation
28 by or against the trust.

29 (b) Representation of the trustee in an audit or any
30 proceeding for adjustment, determination, or collection of any
31 taxes.

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1 (c) Tax advice on postmortem tax planning, including,
2 but not limited to, disclaimer, renunciation of fiduciary
3 commission, alternate valuation date, allocation of
4 administrative expenses between tax returns, the QTIP or
5 reverse QTIP election, allocation of GST exemption,
6 qualification for Internal Revenue Code ss. 303 and 6166
7 privileges, deduction of last illness expenses, distribution
8 planning, asset basis considerations, throwback rules,
9 handling income or deductions in respect of a decedent,
10 valuation discounts, special use and other valuation, handling
11 employee benefit or retirement proceeds, prompt assessment
12 request, or request for release from personal liability for
13 payment of tax.

14 (d) Review of an estate tax return and preparation or
15 review of other tax returns required to be filed by the
16 trustee.

17 (e) Preparation of decedent's federal estate tax
18 return. If this return is prepared by the attorney, a fee of
19 one-half of 1 percent up to a value of \$10 million and
20 one-fourth of 1 percent on the value in excess of \$10 million,
21 of the gross estate as finally determined for federal estate
22 tax purposes, is presumed to be reasonable compensation for
23 the attorney for this service. These fees shall include
24 services for routine audit of the return, not beyond the
25 examining agent level, if required.

26 (f) Purchase, sale, lease, or encumbrance of real
27 property by the trustee or involvement in zoning, land use,
28 environmental, or other similar matters.

29 (g) Legal advice regarding carrying on of decedent's
30 business or conducting other commercial activity by the
31 trustee.

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1 (h) Legal advice regarding claims for damage to the
2 environment or related procedures.

3 (i) Legal advice regarding homestead status of trust
4 real property or proceedings involving the status.

5 (j) Involvement in fiduciary, employee, or attorney
6 compensation disputes.

7 (k) Considerations of special valuation of trust
8 assets, including discounts for blockage, minority interests,
9 lack of marketability, and environmental liability.

10 (6) Upon petition of any interested person in a
11 proceeding to review the compensation paid or to be paid to
12 the attorney for the trustee, the court may increase or
13 decrease the compensation for ordinary services of the
14 attorney for the trustee or award compensation for
15 extraordinary services if the facts and circumstances of the
16 particular administration warrant. In determining reasonable
17 compensation, the court shall consider all of the following
18 factors giving such weight to each as the court may determine
19 to be appropriate:

20 (a) The promptness, efficiency, and skill with which
21 the initial administration was handled by the attorney.

22 (b) The responsibilities assumed by, and potential
23 liabilities of, the attorney.

24 (c) The nature and value of the assets that are
25 affected by the decedent's death.

26 (d) The benefits or detriments resulting to the trust
27 or the trust's beneficiaries from the attorney's services.

28 (e) The complexity or simplicity of the administration
29 and the novelty of issues presented.

30 (f) The attorney's participation in tax planning for
31 the estate, the trust, and the trust's beneficiaries and tax

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1 return preparation or review and approval.

2 (g) The nature of the trust assets, the expenses of
3 administration, and the claims payable by the trust and the
4 compensation paid to other professionals and fiduciaries.

5 (h) Any delay in payment of the compensation after the
6 services were furnished.

7 (i) Any other relevant factors.

8 (7) The court may determine reasonable attorney's
9 compensation without receiving expert testimony. Any party may
10 offer expert testimony after notice to interested persons. If
11 expert testimony is offered, an expert witness fee may be
12 awarded by the court and paid from the assets of the trust.
13 The court shall direct from what part of the trust the fee is
14 to be paid.

15 (8) If a separate written agreement regarding
16 compensation exists between the attorney and the settlor, the
17 attorney shall furnish a copy to the trustee prior to
18 commencement of employment and, if employed, shall promptly
19 file and serve a copy on all interested persons. A separate
20 agreement or a provision in the trust suggesting or directing
21 the trustee to retain a specific attorney does not obligate
22 the trustee to employ the attorney or obligate the attorney to
23 accept the representation but, if the attorney who is a party
24 to the agreement or who drafted the trust is employed, the
25 compensation paid shall not exceed the compensation provided
26 in the agreement.

27 (9) Court proceedings to determine compensation, if
28 required, are a part of the trust administration process and
29 the costs, including fees for the trustee's attorney, shall be
30 determined by the court and paid from the assets of the trust
31 unless the court finds the attorney's fees request to be

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1 substantially unreasonable. The court shall direct from what
2 part of the trust the fees are to be paid.

3 (10) As used in this section, the term "initial trust
4 administration" means administration of a revocable trust
5 during the period that begins with the death of the settlor
6 and ends on the final distribution of trust assets outright or
7 to continuing trusts created under the trust agreement but, if
8 an estate tax return is required, not until after issuance of
9 an estate tax closing letter or other evidence of termination
10 of the estate tax proceeding. This initial period is not
11 intended to include continued regular administration of the
12 trust.

13 736.1008 Limitations on proceedings against
14 trustees.--

15 (1) Except as provided in subsection (2), all claims
16 by a beneficiary against a trustee for breach of trust are
17 barred as provided in chapter 95 as to:

18 (a) All matters adequately disclosed in a trust
19 disclosure document issued by the trustee, with the
20 limitations period beginning on the date of receipt of
21 adequate disclosure.

22 (b) All matters not adequately disclosed in a trust
23 disclosure document if the trustee has issued a final trust
24 accounting and has given written notice to the beneficiary of
25 the availability of the trust records for examination and that
26 any claims with respect to matters not adequately disclosed
27 may be barred unless an action is commenced within the
28 applicable limitations period provided in chapter 95. The
29 limitations period begins on the date of receipt of the final
30 trust accounting and notice.

31 (2) Unless sooner barred by adjudication, consent, or

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1 limitations, a beneficiary is barred from bringing an action
 2 against a trustee for breach of trust with respect to a matter
 3 that was adequately disclosed in a trust disclosure document
 4 unless a proceeding to assert the claim is commenced within 6
 5 months after receipt from the trustee of the trust disclosure
 6 document or a limitation notice that applies to that
 7 disclosure document, whichever is received later.

8 (3) When a trustee has not issued a final trust
 9 accounting or has not given written notice to the beneficiary
 10 of the availability of the trust records for examination and
 11 that claims with respect to matters not adequately disclosed
 12 may be barred, a claim against the trustee for breach of trust
 13 based on a matter not adequately disclosed in a trust
 14 disclosure document accrues when the beneficiary has actual
 15 knowledge of the trustee's repudiation of the trust or adverse
 16 possession of trust assets, and is barred as provided in
 17 chapter 95.

18 (4) As used in this section, the term:

19 (a) "Trust disclosure document" means a trust
 20 accounting or any other written report of the trustee. A trust
 21 disclosure document adequately discloses a matter if the
 22 document provides sufficient information so that a beneficiary
 23 knows of a claim or reasonably should have inquired into the
 24 existence of a claim with respect to that matter.

25 (b) "Trust accounting" means an accounting that
 26 adequately discloses the information required by and that
 27 substantially complies with the standards set forth in s.
 28 736.08135.

29 (c) "Limitation notice" means a written statement of
 30 the trustee that an action by a beneficiary against the
 31 trustee for breach of trust based on any matter adequately

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1 disclosed in a trust disclosure document may be barred unless
2 the action is commenced within 6 months after receipt of the
3 trust disclosure document or receipt of a limitation notice
4 that applies to that trust disclosure document, whichever is
5 later. A limitation notice may but is not required to be in
6 the following form: "An action for breach of trust based on
7 matters disclosed in a trust accounting or other written
8 report of the trustee may be subject to a 6-month statute of
9 limitations from the receipt of the trust accounting or other
10 written report. If you have questions, please consult your
11 attorney."

12 (5) For purposes of this section, a limitation notice
13 applies to a trust disclosure document when the limitation
14 notice is:

15 (a) Contained as a part of the trust disclosure
16 document or as a part of another trust disclosure document
17 received within 1 year prior to the receipt of the latter
18 trust disclosure document;

19 (b) Accompanied concurrently by the trust disclosure
20 document or by another trust disclosure document that was
21 received within 1 year prior to the receipt of the latter
22 trust disclosure document;

23 (c) Delivered separately within 10 days after the
24 delivery of the trust disclosure document or of another trust
25 disclosure document that was received within 1 year prior to
26 the receipt of the latter trust disclosure document. For
27 purposes of this paragraph, a limitation notice is not
28 delivered separately if the notice is accompanied by another
29 written communication, other than a written communication that
30 refers only to the limitation notice; or

31 (d) Received more than 10 days after the delivery of

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1 the trust disclosure document but only if the limitation
2 notice references that trust disclosure document and:

3 1. Offers to provide to the beneficiary on request
4 another copy of that trust disclosure document if the document
5 was received by the beneficiary within 1 year prior to receipt
6 of the limitation notice; or

7 2. Is accompanied by another copy of that trust
8 disclosure document if the trust disclosure document was
9 received by the beneficiary 1 year or more prior to the
10 receipt of the limitation notice.

11 (6) This section applies to trust accountings for
12 accounting periods beginning on or after January 1, 2008, and
13 to written reports, other than trust accountings, received by
14 a beneficiary on or after January 1, 2008.

15 736.1009 Reliance on trust instrument.--A trustee who
16 acts in reasonable reliance on the terms of the trust as
17 expressed in the trust instrument is not liable to a
18 beneficiary for a breach of trust to the extent the breach
19 resulted from the reliance.

20 736.1010 Event affecting administration or
21 distribution.--If the happening of an event, including
22 marriage, divorce, performance of educational requirements, or
23 death, affects the administration or distribution of a trust,
24 a trustee who has exercised reasonable care to ascertain the
25 happening of the event is not liable for a loss resulting from
26 the trustee's lack of knowledge.

27 736.1011 Exculpation of trustee.--

28 (1) A term of a trust relieving a trustee of liability
29 for breach of trust is unenforceable to the extent that the
30 term:

31 (a) Relieves the trustee of liability for breach of

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1 trust committed in bad faith or with reckless indifference to
2 the purposes of the trust or the interests of the
3 beneficiaries; or

4 (b) Was inserted into the trust instrument as the
5 result of an abuse by the trustee of a fiduciary or
6 confidential relationship with the settlor.

7 (2) An exculpatory term drafted or caused to be
8 drafted by the trustee is invalid as an abuse of a fiduciary
9 or confidential relationship unless the trustee proves that
10 the exculpatory term is fair under the circumstances and that
11 the term's existence and contents were adequately communicated
12 directly to the settlor.

13 736.1012 Beneficiary's consent, release, or
14 ratification.--A trustee is not liable to a beneficiary for
15 breach of trust if the beneficiary consented to the conduct
16 constituting the breach, released the trustee from liability
17 for the breach, or ratified the transaction constituting the
18 breach, unless:

19 (1) The consent, release, or ratification of the
20 beneficiary was induced by improper conduct of the trustee; or

21 (2) At the time of the consent, release, or
22 ratification, the beneficiary did not know of the
23 beneficiary's rights or of the material facts relating to the
24 breach.

25 736.1013 Limitation on personal liability of
26 trustee.--

27 (1) Except as otherwise provided in the contract, a
28 trustee is not personally liable on a contract properly
29 entered into in the trustee's fiduciary capacity in the course
30 of administering the trust if the trustee in the contract
31 disclosed the fiduciary capacity.

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1 (2) A trustee is personally liable for torts committed
 2 in the course of administering a trust or for obligations
 3 arising from ownership or control of trust property only if
 4 the trustee is personally at fault.

5 (3) A claim based on a contract entered into by a
 6 trustee in the trustee's fiduciary capacity, on an obligation
 7 arising from ownership or control of trust property, or on a
 8 tort committed in the course of administering a trust may be
 9 asserted in a judicial proceeding against the trustee in the
 10 trustee's fiduciary capacity, whether or not the trustee is
 11 personally liable for the claim.

12 (4) Issues of liability between the trust estate and
 13 the trustee individually may be determined in a proceeding for
 14 accounting, surcharge, or indemnification or in any other
 15 appropriate proceeding.

16 736.1014 Limitations on actions against certain
 17 trusts.--

18 (1) After the death of a settlor, no creditor of the
 19 settlor may bring, maintain, or continue any direct action
 20 against a trust described in s. 733.707(3), the trustee of the
 21 trust, or any beneficiary of the trust that is dependent on
 22 the individual liability of the settlor. Such claims and
 23 causes of action against the settlor shall be presented and
 24 enforced against the settlor's estate as provided in part VII
 25 of chapter 733 and the personal representative of the
 26 settlor's estate may obtain payment from the trustee of a
 27 trust described in s. 733.707(3) as provided in ss.
 28 733.607(2), 733.707(3), and 736.05053.

29 (2) This section does not preclude a direct action
 30 against a trust described in s. 733.707(3), the trustee of the
 31 trust, or a beneficiary of the trust that is not dependent on

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1 the individual liability of the settlor.

2 (3) This section does not affect the lien of any duly
3 recorded mortgage or security interest or the lien of any
4 person in possession of personal property or the right to
5 foreclose and enforce the mortgage or lien.

6 736.1015 Interest as general partner.--

7 (1) Unless personal liability is imposed in the
8 contract, a trustee who holds an interest as a general partner
9 in a general or limited partnership is not personally liable
10 on a contract entered into by the partnership after the
11 trust's acquisition of the interest if the fiduciary capacity
12 was disclosed in the contract or in a statement previously
13 filed pursuant to a Uniform Partnership Act or Uniform Limited
14 Partnership Act.

15 (2) A trustee who holds an interest as a general
16 partner is not personally liable for torts committed by the
17 partnership or for obligations arising from ownership or
18 control of the interest unless the trustee is personally at
19 fault.

20 (3) If the trustee of a revocable trust holds an
21 interest as a general partner, the settlor is personally
22 liable for contracts and other obligations of the partnership
23 as if the settlor were a general partner.

24 736.1016 Protection of person dealing with trustee.--

25 (1) A person other than a beneficiary who in good
26 faith assists a trustee or who in good faith and for value
27 deals with a trustee, without knowledge that the trustee is
28 exceeding or improperly exercising the trustee's powers, is
29 protected from liability as if the trustee properly exercised
30 the power.

31 (2) A person other than a beneficiary who in good

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1 faith deals with a trustee is not required to inquire into the
2 extent of the trustee's powers or the propriety of their
3 exercise.

4 (3) A person who in good faith delivers assets to a
5 trustee need not ensure their proper application.

6 (4) A person other than a beneficiary who in good
7 faith assists a former trustee or who in good faith and for
8 value deals with a former trustee, without knowledge that the
9 trusteeship has terminated, is protected from liability as if
10 the former trustee were still a trustee.

11 (5) Comparable protective provisions of other laws
12 relating to commercial transactions or transfer of securities
13 by fiduciaries prevail over the protection provided by this
14 section.

15 736.1017 Certification of trust.--

16 (1) Instead of furnishing a copy of the trust
17 instrument to a person other than a beneficiary, the trustee
18 may furnish to the person a certification of trust containing
19 the following information:

20 (a) The trust exists and the date the trust instrument
21 was executed.

22 (b) The identity of the settlor.

23 (c) The identity and address of the currently acting
24 trustee.

25 (d) The powers of the trustee.

26 (e) The revocability or irrevocability of the trust
27 and the identity of any person holding a power to revoke the
28 trust.

29 (f) The authority of cotrustees to sign or otherwise
30 authenticate and whether all or less than all are required in
31 order to exercise powers of the trustee.

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1 (g) The manner of taking title to trust property.

2 (2) A certification of trust may be signed or
3 otherwise authenticated by any trustee.

4 (3) A certification of trust must state that the trust
5 has not been revoked, modified, or amended in any manner that
6 would cause the representations contained in the certification
7 of trust to be incorrect.

8 (4) A certification of trust need not contain the
9 dispositive terms of a trust.

10 (5) A recipient of a certification of trust may
11 require the trustee to furnish copies of any excerpts from the
12 original trust instrument and later amendments that designate
13 the trustee and confer upon the trustee the power to act in
14 the pending transaction.

15 (6) A person who acts in reliance on a certification
16 of trust without knowledge that the representations contained
17 in the certification are incorrect is not liable to any person
18 for so acting and may assume without inquiry the existence of
19 the facts contained in the certification. Knowledge of the
20 terms of the trust may not be inferred solely from the fact
21 that a copy of all or part of the trust instrument is held by
22 the person relying on the certification.

23 (7) A person who in good faith enters into a
24 transaction in reliance on a certification of trust may
25 enforce the transaction against the trust property as if the
26 representations contained in the certification were correct.

27 (8) This section does not limit the right of a person
28 to obtain a copy of the trust instrument when required to be
29 furnished by law or in a judicial proceeding concerning the
30 trust.

31 736.1018 Improper distribution or payment; liability

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1 of distributee.--Any person who received a distribution or was
 2 paid improperly from a trust shall return the assets or funds
 3 received and the income from those assets or interest on the
 4 funds from the date of distribution or payment unless the
 5 distribution or payment cannot be questioned because of
 6 adjudication, estoppel, or limitations. If the person does not
 7 have the assets or funds, the value of the assets or funds at
 8 the date of disposition, income from the assets or funds, and
 9 gain received by the person from the assets or funds shall be
 10 returned.

11 Section 11. Part XI of chapter 736, Florida Statutes,
 12 consisting of sections 736.1101, 736.1102, 736.1103, 736.1104,
 13 736.1105, 736.1106, 736.1107, and 736.1108, is created to
 14 read:

15 PART XI

16 RULES OF CONSTRUCTION

17
 18 736.1101 Rules of construction; general
 19 provisions.--Except as provided in s. 736.0105(2):

20 (1) The intent of the settlor as expressed in the
 21 terms of the trust controls the legal effect of the
 22 dispositions made in the trust.

23 (2) The rules of construction as expressed in this
 24 part shall apply unless a contrary intent is indicated by the
 25 terms of the trust.

26 736.1102 Construction of generic terms.--Adopted
 27 persons and persons born out of wedlock are included in class
 28 gift terminology and terms of relationship, in accordance with
 29 rules for determining relationships for purposes of intestate
 30 succession.

31 736.1103 Gifts to multi-generation classes to be per

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1 stirpes.--Class gifts to descendants, issue, and other
2 multi-generation classes shall be per stirpes.

3 736.1104 Killer not entitled to receive property or
4 other benefits by reason of victim's death.--

5 (1) A beneficiary of a trust who unlawfully and
6 intentionally kills or unlawfully and intentionally
7 participates in procuring the death of the settlor or another
8 person on whose death such beneficiary's interest depends, is
9 not entitled to any trust interest, including homestead,
10 dependent on the victim's death and such interest shall
11 devolve as though the killer had predeceased the victim.

12 (2) A final judgment of conviction of murder in any
13 degree is conclusive for the purposes of this section. In the
14 absence of a murder conviction in any degree, the court may
15 determine by the greater weight of the evidence whether the
16 killing was unlawful and intentional for purposes of this
17 section.

18 736.1105 Dissolution of marriage; effect on revocable
19 trust.--Unless the trust instrument or the judgment for
20 dissolution of marriage or divorce expressly provides
21 otherwise, if a revocable trust is executed by a husband or
22 wife as settlor prior to annulment of the marriage or entry of
23 a judgment for dissolution of marriage or divorce of the
24 settlor from the settlor's spouse, any provision of the trust
25 that affects the settlor's spouse will become void upon
26 annulment of the marriage or entry of the judgment of
27 dissolution of marriage or divorce and any such trust shall be
28 administered and construed as if the settlor's spouse had died
29 on the date of the annulment or on entry of the judgment for
30 dissolution of marriage or divorce.

31 736.1106 Antilapse; survivorship with respect to

1 future interests under terms of inter vivos and testamentary
2 trusts; substitute takers.--

3 (1) As used in this section, the term:

4 (a) "Beneficiary" means the beneficiary of a future
5 interest and includes a class member if the future interest is
6 in the form of a class gift.

7 (b) "Distribution date," with respect to a future
8 interest, means the time when the future interest is to take
9 effect in possession or enjoyment. The distribution date need
10 not occur at the beginning or end of a calendar day, but can
11 occur at a time during the course of a day.

12 (c) "Future interest" includes an alternative future
13 interest and a future interest in the form of a class gift.

14 (d) "Future interest under the terms of a trust" means
15 a future interest created by an inter vivos or testamentary
16 transfer to an existing trust or creating a trust or by an
17 exercise of a power of appointment to an existing trust
18 directing the continuance of an existing trust, designating a
19 beneficiary of an existing trust, or creating a trust.

20 (e) "Surviving beneficiary" or "surviving descendant"
21 means a beneficiary or a descendant who did not predecease the
22 distribution date or is not deemed to have predeceased the
23 distribution date by operation of law.

24 (2) A future interest under the terms of a trust is
25 contingent upon the beneficiary surviving the distribution
26 date. Unless a contrary intent appears in the trust
27 instrument, if a beneficiary of a future interest under the
28 terms of a trust fails to survive the distribution date, and
29 the deceased beneficiary leaves surviving descendants, a
30 substitute gift is created in the beneficiary's surviving
31 descendants. They take per stirpes the property to which the

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1 beneficiary would have been entitled if the beneficiary had
2 survived the distribution date.

3 (3) In the application of this section:

4 (a) Words of survivorship attached to a future
5 interest are a sufficient indication of an intent contrary to
6 the application of this section.

7 (b) A residuary clause in a will is not a sufficient
8 indication of an intent contrary to the application of this
9 section, whether or not the will specifically provides that
10 lapsed or failed devises are to pass under the residuary
11 clause.

12 (4) If, after the application of subsections (2) and
13 (3), there is no surviving taker, the property passes in the
14 following order:

15 (a) If the future interest was created by the exercise
16 of a power of appointment, the property passes under the
17 donor's gift-in-default clause, if any, which clause is
18 treated as creating a future interest under the terms of a
19 trust.

20 (b) If no taker is produced by the application of
21 paragraph (a) and the trust was created in a nonresiduary
22 devise or appointment in the transferor's will, the property
23 passes under the residuary clause in the transferor's will.
24 For purposes of this section, the residuary clause is treated
25 as creating a future interest under the terms of a trust.

26 (c) If no taker is produced by the application of
27 paragraph (a) or paragraph (b), the property passes to those
28 persons, including the state, and in such shares as would
29 succeed to the transferor's intestate estate under the
30 intestate succession law of the transferor's domicile if the
31 transferor died when the disposition is to take effect in

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1 possession or enjoyment.

2

3 For purposes of paragraphs (b) and (c), the term "transferor"
4 with respect to a future interest created by the exercise of a
5 power of appointment, means the donor if the power was a
6 nongeneral power and the donee if the power was a general
7 power.

8 (5) This section applies to all trusts other than
9 trusts that were irrevocable before the effective date of this
10 code.

11 736.1107 Change in securities; accessions;
12 nonademption.--A gift of specific securities, rather than
13 their equivalent value, entitles the beneficiary only to:

14 (1) As much of the gifted securities of the same
15 issuer held by the trust estate at the time of the occurrence
16 of the event entitling the beneficiary to distribution.

17 (2) Any additional or other securities of the same
18 issuer held by the trust estate because of action initiated by
19 the issuer, excluding any acquired by exercise of purchase
20 options.

21 (3) Securities of another issuer held by the trust
22 estate as a result of a merger, consolidation, reorganization,
23 or other similar action initiated by the original issuer.

24 736.1108 Penalty clause for contest.--

25 (1) A provision in a trust instrument purporting to
26 penalize any interested person for contesting the trust
27 instrument or instituting other proceedings relating to a
28 trust estate or trust assets is unenforceable.

29 (2) This section applies to trusts created on or after
30 October 1, 1993. For purposes of this subsection, a revocable
31 trust shall be treated as created when the right of revocation

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1 terminates.

2 Section 12. Part XII of chapter 736, Florida Statutes,
3 consisting of sections 736.1201, 736.1202, 736.1203, 736.1204,
4 736.1205, 736.1206, 736.1207, 736.1208, 736.1209, and
5 736.1210, is created to read:

6 PART XII

7 CHARITABLE TRUSTS

8
9 736.1201 Definitions.--As used in this part:

10 (1) "Charitable organization" means an organization
11 described in s. 501(c)(3) of the Internal Revenue Code and
12 exempt from tax under s. 501(a) of the Internal Revenue Code.

13 (2) "Internal Revenue Code" means the Internal Revenue
14 Code of 1986, as amended.

15 (3) "Private foundation trust" means a trust,
16 including a trust described in s. 4947(a)(1) of the Internal
17 Revenue Code, as defined in s. 509(a) of the Internal Revenue
18 Code.

19 (4) "Split interest trust" means a trust for
20 individual and charitable beneficiaries that is subject to the
21 provisions of s. 4947(a)(2) of the Internal Revenue Code.

22 (5) "State attorney" means the state attorney for the
23 judicial circuit of the principal place of administration of
24 the trust pursuant to s. 736.0108.

25 736.1202 Application of this part.--Except as
26 otherwise provided in the trust, the provisions of this part
27 apply to all private foundation trusts and split interest
28 trusts, whether created or established before or after
29 November 1, 1971, and to all trust assets acquired by the
30 trustee before or after November 1, 1971.

31 736.1203 Trustee of a private foundation trust or a

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1 split interest trust.--Except as provided in s. 736.1205, the
2 trustee of a private foundation trust or a split interest
3 trust has the duties and powers conferred on the trustee by
4 this part.

5 736.1204 Powers and duties of trustee of a private
6 foundation trust or a split interest trust.--

7 (1) In the exercise of a trustee's powers, including
8 the powers granted by this part, a trustee has a duty to act
9 with due regard to the trustee's obligation as a fiduciary,
10 including a duty not to exercise any power in such a way as
11 to:

12 (a) Deprive the trust of an otherwise available tax
13 exemption, deduction, or credit for tax purposes;

14 (b) Deprive a donor of a trust asset or tax deduction
15 or credit; or

16 (c) Operate to impose a tax on a donor, trust, or
17 other person.

18
19 For purposes of this subsection, the term "tax" includes, but
20 is not limited to, any federal, state, or local excise,
21 income, gift, estate, or inheritance tax.

22 (2) Except as provided in s. 736.1205, a trustee of a
23 private foundation trust shall make distributions at such time
24 and in such manner as not to subject the trust to tax under s.
25 4942 of the Internal Revenue Code.

26 (3) Except as provided in subsection (4) and in s.
27 736.1205, a trustee of a private foundation trust, or a split
28 interest trust to the extent that the split interest trust is
29 subject to the provisions of s. 4947(a)(2) of the Internal
30 Revenue Code, in the exercise of the trustee's powers shall
31 not:

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1 (a) Engage in any act of self-dealing as defined in s.
2 4941(d) of the Internal Revenue Code;

3 (b) Retain any excess business holdings as defined in
4 s. 4943(c) of the Internal Revenue Code;

5 (c) Make any investments in a manner that subjects the
6 foundation to tax under s. 4944 of the Internal Revenue Code;

7 or

8 (d) Make any taxable expenditures as defined in s.
9 4945(d) of the Internal Revenue Code.

10 (4) Paragraphs (3)(b) and (c) shall not apply to a
11 split interest trust if:

12 (a) All the interest from income, and none of the
13 remainder interest, of the trust is devoted solely to one or
14 more of the purposes described in s. 170(c)(2)(B) of the
15 Internal Revenue Code, and all amounts in the trust for which
16 a deduction was allowed under s. 170, s. 545(b)(2), s.
17 556(b)(2), s. 642(c), s. 2055, s. 2106(a)(2), or s. 2522 of
18 the Internal Revenue Code have an aggregate fair market value
19 of not more than 60 percent of the aggregate fair market value
20 of all amounts in the trust; or

21 (b) A deduction was allowed under s. 170, s.
22 545(b)(2), s. 556(b)(2), s. 642(c), s. 2055, s. 2106(a)(2), or
23 s. 2522 of the Internal Revenue Code for amounts payable under
24 the terms of the trust to every remainder beneficiary but not
25 to any income beneficiary.

26 736.1205 Notice that this part does not apply.--In the
27 case of a power to make distributions, if the trustee
28 determines that the governing instrument contains provisions
29 that are more restrictive than s. 736.1204(2), or if the trust
30 contains other powers, inconsistent with the provisions of s.
31 736.1204(3) that specifically direct acts by the trustee, the

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1 trustee shall notify the state attorney when the trust becomes
 2 subject to this part. Section 736.1204 does not apply to any
 3 trust for which notice has been given pursuant to this section
 4 unless the trust is amended to comply with the terms of this
 5 part.

6 736.1206 Power to amend trust instrument.--

7 (1) In the case of a trust that is solely for a named
 8 charitable organization or organizations and for which the
 9 trustee does not possess any discretion concerning the
 10 distribution of income or principal among two or more such
 11 organizations, the trustee may amend the governing instrument
 12 to comply with the provisions of s. 736.1204(2) with the
 13 consent of the named charitable organization or organizations.

14 (2) In the case of a charitable trust that is not
 15 subject to the provisions of subsection (1), the trustee may
 16 amend the governing instrument to comply with the provisions
 17 of s. 736.1204(2) with the consent of the state attorney.

18 736.1207 Power of court to permit deviation.--This
 19 part does not affect the power of a court to relieve a trustee
 20 from any restrictions on the powers and duties that are placed
 21 on the trustee by the governing instrument or applicable law
 22 for cause shown and on complaint of the trustee, state
 23 attorney, or an affected beneficiary and notice to the
 24 affected parties.

25 736.1208 Release; property and persons affected;
 26 manner of effecting.--

27 (1) The trustee of a trust, all of the unexpired
 28 interests in which are devoted to one or more charitable
 29 purposes, may release a power to select charitable donees
 30 unless the creating instrument provides otherwise.

31 (2) The release of a power to select charitable donees

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1 may apply to all or any part of the property subject to the
2 power and may reduce or limit the charitable organizations, or
3 classes of charitable organizations, in whose favor the power
4 is exercisable.

5 (3) A release shall be effected by a duly acknowledged
6 written instrument signed by the trustee and delivered as
7 provided in subsection (4).

8 (4) Delivery of a release shall be accomplished as
9 follows:

10 (a) If the release is accomplished by specifying a
11 charitable organization or organizations as beneficiary or
12 beneficiaries of the trust, by delivery of a copy of the
13 release to each designated charitable organization.

14 (b) If the release is accomplished by reducing the
15 class of permissible charitable organizations, by delivery of
16 a copy of the release to the state attorney.

17 (5) If a release is accomplished by specifying a
18 public charitable organization or organizations as beneficiary
19 or beneficiaries of the trust, the trust at all times
20 thereafter shall be operated exclusively for the benefit of,
21 and be supervised by, the specified public charitable
22 organization or organizations.

23 736.1209 Election to come under this part.--With the
24 consent of that organization or organizations, a trustee of a
25 trust for the benefit of a public charitable organization or
26 organizations may come under s. 736.0838(5) by filing with the
27 state attorney an election, accompanied by the proof of
28 required consent. Thereafter the trust shall be subject to s.
29 736.1208(5).

30 736.1210 Interpretation.--This part shall be
31 interpreted to effectuate the intent of the state to preserve,

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1 foster, and encourage gifts to, or for the benefit of,
2 charitable organizations.

3 Section 13. Part XIII of chapter 736, Florida
4 Statutes, consisting of sections 736.1301, 736.1302, and
5 736.1303, is created to read:

6 PART XIII

7 MISCELLANEOUS

8
9 736.1301 Electronic records and signatures.--Any
10 provisions of this code governing the legal effect, validity,
11 or enforceability of electronic records or electronic
12 signatures, and of contracts formed or performed with the use
13 of such records or signatures, are deemed to conform to the
14 requirements of s. 102 of the Electronic Signatures in Global
15 and National Commerce Act, 15 U.S.C. s. 7002, and supersede,
16 modify, and limit the requirements of the Electronic
17 Signatures in Global and National Commerce Act.

18 736.1302 Severability clause.--If any provision of
19 this code or its application to any person or circumstances is
20 held invalid, the invalidity does not affect other provisions
21 or applications of this code that can be given effect without
22 the invalid provision or application, and to this end the
23 provisions of this code are severable.

24 736.1303 Application to existing relationships.--

25 (1) Except as otherwise provided in this code, on July
26 1, 2007:

27 (a) This code applies to all trusts created before,
28 on, or after such date.

29 (b) This code applies to all judicial proceedings
30 concerning trusts commenced on or after such date.

31 (c) This code applies to judicial proceedings

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1 concerning trusts commenced before such date, unless the court
 2 finds that application of a particular provision of this code
 3 would substantially interfere with the effective conduct of
 4 the judicial proceedings or prejudice the rights of the
 5 parties, in which case the particular provision of this code
 6 does not apply and the superseded law applies.

7 (d) Any rule of construction or presumption provided
 8 in this code applies to trust instruments executed before the
 9 effective date of this code unless there is a clear indication
 10 of a contrary intent in the terms of the trust.

11 (e) An act done before such date is not affected by
 12 this code.

13 (2) If a right is acquired, extinguished, or barred on
 14 the expiration of a prescribed period that has commenced to
 15 run under any other law before July 1, 2007, that law
 16 continues to apply to the right even if it has been repealed
 17 or superseded.

18 Section 14. Paragraph (a) of subsection (5) of section
 19 497.458, Florida Statutes, is amended to read:

20 497.458 Disposition of proceeds received on
 21 contracts.--

22 (5) The trustee of the trust established pursuant to
 23 this section shall only have the power to:

24 (a) Invest in investments as prescribed in s. 215.47
 25 and exercise the powers set forth in part VIII of chapter 736
 26 ~~part IV of chapter 737~~, provided that the licensing authority
 27 may by order require the trustee to liquidate or dispose of
 28 any investment within 30 days after such order, or within such
 29 other times as the order may direct. The licensing authority
 30 may issue such order if it determines that the investment
 31 violates any provision of this chapter or is not in the best

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1 interests of the preneed contract holders whose contracts are
2 secured by the trust funds.

3 Section 15. Section 518.117, Florida Statutes, is
4 created to read:

5 518.117 Permissible investments of fiduciary funds.--A
6 fiduciary that is authorized by lawful authority to engage in
7 trust business as defined in s. 658.12(20) may invest
8 fiduciary funds in accordance with s. 660.417 so long as the
9 investment otherwise complies with this chapter.

10 Section 16. Subsection (2) of section 607.0802,
11 Florida Statutes, is amended to read:

12 607.0802 Qualifications of directors.--

13 (2) In the event that the eligibility to serve as a
14 member of the board of directors of a condominium association,
15 cooperative association, homeowners' association, or mobile
16 home owners' association is restricted to membership in such
17 association and membership is appurtenant to ownership of a
18 unit, parcel, or mobile home, a grantor of a trust described
19 in s. 733.707(3), or a qualified beneficiary as defined in s.
20 736.0103(14) ~~737.303(4)(b)~~ of a trust which owns a unit,
21 parcel, or mobile home shall be deemed a member of the
22 association and eligible to serve as a director of the
23 condominium association, cooperative association, homeowners'
24 association, or mobile home owners' association, provided that
25 said beneficiary occupies the unit, parcel, or mobile home.

26 Section 17. Subsection (6) of section 660.25, Florida
27 Statutes, renumbered as subsection (7) and amended, and a new
28 subsection (6) is added to that section, to read:

29 660.25 Definitions.--Subject to other definitions
30 contained in other sections of this code, and unless the
31 context otherwise requires, in this chapter:

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1 (6) "Investment instrument" means any security as
2 defined in s. 2(a)(1) of the Securities Act of 1933; any
3 security of an open-end or closed-end management investment
4 company or investment trust registered under the Investment
5 Company Act of 1940, 15 U.S.C. ss. 80a-1 et seq., as amended;
6 any contract of sale of a commodity for future delivery within
7 the meaning of s. 2(i) of the Commodity Exchange Act; or any
8 other interest in securities, including, but not limited to,
9 shares or interests in a private investment fund, including,
10 but not limited to, a private investment fund organized as a
11 limited partnership, a limited liability company, a statutory
12 or common law business trust, a statutory trust, or a real
13 estate investment trust, a joint venture, or any other general
14 or limited partnership; derivatives or other interests of any
15 nature in securities such as options, options on futures, and
16 variable forward contracts; mutual funds; common trust funds;
17 money market funds; hedge funds; private equity or venture
18 capital funds; insurance contracts; and other entities or
19 vehicles investing in securities or interests in securities
20 whether registered or otherwise.

21 ~~(7)(6)~~ Terms used but not defined in this chapter, but
22 which are expressly defined in chapter 518, the financial
23 institutions codes, chapter 732, chapter 733, chapter 734,
24 chapter 735, chapter 736 ~~737~~, chapter 738, chapter 744, or
25 chapter 747, shall in this chapter, unless the context
26 otherwise requires, have the meanings ascribed to them in said
27 chapters; and references in any of said chapters to a "trust
28 company" or to "trust companies" shall include every trust
29 department as defined in s. 658.12.

30 Section 18. Section 660.417, Florida Statutes, is
31 amended to read:

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1 660.417 Investment of fiduciary funds in investment
 2 instruments ~~into mutual fund accounts~~; permissible activity
 3 under certain circumstances; limitations.--

4 (1) In addition to other investments authorized by law
 5 for the investment of funds held by a fiduciary, or by the
 6 instrument governing the fiduciary relationship, ~~and~~
 7 ~~notwithstanding any other provision of law~~, a bank or trust
 8 company acting as a fiduciary, agent or otherwise may, in the
 9 exercise of its investment discretion or at the direction of
 10 another person authorized to direct investment of funds held
 11 by the bank or trust company as fiduciary, invest and reinvest
 12 in investment instruments ~~the securities of an open-end or~~
 13 ~~closed-end management investment company or investment trust~~
 14 ~~registered under the Investment Company Act of 1940, 15 U.S.C.~~
 15 ~~ss. 80a-1 et seq., as amended~~, so long as the ~~portfolio of~~
 16 ~~such~~ investment instruments consist ~~company or investment~~
 17 ~~trust consists~~ substantially of investments not prohibited by
 18 the governing instrument.

19 (2) The fact that such bank or trust company or an
 20 affiliate of the bank or trust company provides services with
 21 respect to ~~the investment instruments~~ ~~company or investment~~
 22 ~~trust~~ such as that of an investment adviser, administrator,
 23 broker, custodian, transfer agent, placement agent, servicing
 24 agent, registrar, underwriter, sponsor, distributor, or
 25 manager or in any other capacity, ~~otherwise~~ and is receiving
 26 reasonable compensation for those services, shall not preclude
 27 such bank or trust company from investing or reinvesting in
 28 investment instruments ~~the securities of the open-end or~~
 29 ~~closed-end management investment trust registered under the~~
 30 ~~Investment Company Act of 1940, 15 U.S.C. ss. 80a-1 et seq.,~~
 31 ~~as amended~~. However, with respect to any funds so invested,

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1 the basis (expressed as a percentage of asset value or
2 otherwise) upon which such compensation is calculated shall be
3 disclosed (by prospectus, account statement or otherwise) to
4 all persons to whom statements of such account are rendered.

5 (3) The fact that such bank or trust company or an
6 affiliate of the bank or trust company owns or controls
7 investment instruments shall not preclude the bank or trust
8 company acting as a fiduciary from investing or reinvesting in
9 such investment instruments, provided such investment
10 instruments:

11 (a) Are held for sale by the bank or trust company or
12 by an affiliate of the bank or trust company in the ordinary
13 course of its business of providing investment services to its
14 customers and do not include any such interests held by the
15 bank or trust company or by an affiliate of the bank or trust
16 company for its own account.

17 (b) Are sold primarily to accounts for which the bank
18 or trust company is not acting as a fiduciary upon terms that
19 are not more favorable to the buyer than the terms upon which
20 they are sold to accounts for which the bank or trust company
21 is acting as a fiduciary.

22 Section 19. Paragraphs (a), (d), and (e) of subsection
23 (1) and subsections (2), (3), (9), and (10) of section 660.46,
24 Florida Statutes, are amended to read:

25 660.46 Substitution of fiduciaries.--

26 (1) The provisions of this section shall apply to the
27 transfer of fiduciary accounts by substitution, and for those
28 purposes these provisions shall constitute alternative
29 procedures to those provided or required by any other
30 provisions of law relating to the transfer of fiduciary
31 accounts or the substitution of persons acting or who are to

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1 act in a fiduciary capacity. In this section, and only for its
2 purposes, the term:

3 (a) "Limitation notice" has the meaning ascribed in s.
4 736.1008(4) ~~737.307(3)~~.

5 (d) "Trust accounting" has the meaning ascribed in s.
6 736.08135 ~~737.3035~~.

7 (e) "Trust disclosure document" has the meaning
8 ascribed in s. 736.1008(4)(a) ~~737.307(2)~~.

9 (2) Any original fiduciary and any proposed substitute
10 fiduciary may, with respect to any fiduciary account or
11 accounts which they shall mutually select, initiate
12 proceedings by joining in the filing of a petition in the
13 circuit court, requesting the substitution of the proposed
14 substitute fiduciary for the original fiduciary as to such
15 fiduciary account or accounts. The petition may be filed in
16 the county in which the main office of the original fiduciary
17 is located and, except to the extent inconsistent with the
18 provisions of this section, shall be governed by the Florida
19 Rules of Civil Procedure; however, if any fiduciary account is
20 then the subject of a proceeding in a court in this state
21 pursuant to the Florida Probate Code, the Florida Guardianship
22 Law, chapter 736 ~~737~~, or chapter 747, the petition relating to
23 such fiduciary account shall be filed in that proceeding and
24 shall be governed by the procedural or other relevant rules
25 applicable to such proceeding except to the extent
26 inconsistent with the provisions of this section.

27 (3) Unless a waiver or consent shall be filed in the
28 proceedings as provided in subsection (4), the provisions of
29 s. 731.301(1) and (2) shall apply with respect to notice of
30 the proceedings to all persons who are then cofiduciaries with
31 the original fiduciary, other than a person joining as a

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1 petitioner in the proceedings; to all persons named in the
2 governing instrument as substitutes or successors to the
3 fiduciary capacity of the original fiduciary; to the persons
4 then living who are entitled under the governing instrument to
5 appoint a substitute or successor to act in the fiduciary
6 capacity of the original fiduciary; to all vested
7 beneficiaries of the fiduciary account; and to all then-living
8 originators of the governing instrument. Unless a waiver or
9 consent shall be filed in the proceedings as provided in
10 subsection (4), the provisions of s. 731.301 shall apply with
11 respect to notice to all contingent beneficiaries of the
12 fiduciary account. Only the persons or classes of persons
13 described in the foregoing provisions of this subsection shall
14 be deemed to be interested persons for the purposes of this
15 section and the proceedings and notices provided for in this
16 section; and the provisions of ss. 731.301(3) and 731.303(3)
17 ~~and~~ (4) ~~and~~ ~~(5)~~, part III of chapter 736, relating to notice
18 requirements, the effect of notice, and representation of
19 interests, shall apply to the proceedings provided for in this
20 section.

21 (9) Unless previously or otherwise barred by
22 adjudication, waiver, consent, limitation, or the provisions
23 of subsection (8), an action for breach of trust or breach of
24 fiduciary duties or responsibilities against an original
25 fiduciary in whose place and stead another trust company or
26 trust department has been substituted pursuant to the
27 provisions of this section is barred for any beneficiary who
28 has received a trust disclosure document adequately disclosing
29 the matter unless a proceeding to assert the claim is
30 commenced within 6 months after receipt of the trust
31 disclosure document or the limitation notice that applies to

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1 the trust disclosure document, whichever is received later. In
 2 any event, and notwithstanding lack of adequate disclosure,
 3 all claims against such original fiduciary which has complied
 4 with the requirements of s. 736.1008 ~~issued a final trust~~
 5 ~~disclosure document received by the beneficiary and has~~
 6 ~~informed the beneficiary of the location and availability of~~
 7 ~~records for his or her examination~~ are barred as provided in
 8 chapter 95. Section 736.1008(4)(a) and (c) ~~737.307(2) and (3)~~
 9 applies to this subsection.

10 (10) A beneficiary has received a final trust
 11 disclosure document or a limitation notice if, when the
 12 beneficiary is an adult, it is received by him or her or if,
 13 when the beneficiary is a minor or a disabled person, it is
 14 received by his or her representative as provided in part III
 15 of chapter 736 ~~defined in s. 731.303.~~

16 Section 20. Section 660.418, Florida Statutes, is
 17 amended to read:

18 660.418 Investment of fiduciary funds in syndicate
 19 securities.--Notwithstanding any other provision of law, any
 20 financial institution with fiduciary powers may, in its
 21 fiduciary capacity, purchase bonds or other securities
 22 underwritten or otherwise distributed by the financial
 23 institution or by a syndicate that includes the financial
 24 institution, or an affiliate of the financial institution,
 25 provided that such purchase is made through a licensed
 26 securities dealer, is otherwise prudent, and is not prohibited
 27 by the instrument governing the fiduciary relationship and
 28 that disclosure is made at least annually to those persons
 29 entitled to a statement of accounts pursuant to s. 736.0813
 30 ~~737.303(4)~~ indicating that such securities have been or may be
 31 purchased. This section applies to purchases of bonds or other

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1 securities made at the time of the initial offering of such
2 bonds or securities or at any time after such initial
3 offering.

4 Section 21. Subsection (5) of section 689.071, Florida
5 Statutes, is amended to read:

6 689.071 Land trusts transferring interests in real
7 estate; ownership vests in trustee.--

8 (5) In addition to any other limitation on personal
9 liability existing pursuant to statute or otherwise, the
10 provisions of s. 736.1013 ~~737.306~~ apply to the trustee of a
11 land trust created pursuant to this section.

12 Section 22. Subsections (1) and (4) of section
13 689.075, Florida Statutes, are amended to read:

14 689.075 Inter vivos trusts; powers retained by
15 settlor.--

16 (1) A trust which is otherwise valid and which
17 complies with s. 736.0403 ~~737.111~~, including, but not limited
18 to, a trust the principal of which is composed of real
19 property, intangible personal property, tangible personal
20 property, the possible expectancy of receiving as a named
21 beneficiary death benefits as described in s. 733.808, or any
22 combination thereof, and which has been created by a written
23 instrument shall not be held invalid or an attempted
24 testamentary disposition for any one or more of the following
25 reasons:

26 (a) Because the settlor or another person or both
27 possess the power to revoke, amend, alter, or modify the trust
28 in whole or in part;

29 (b) Because the settlor or another person or both
30 possess the power to appoint by deed or will the persons and
31 organizations to whom the income shall be paid or the

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1 principal distributed;

2 (c) Because the settlor or another person or both
3 possess the power to add to, or withdraw from, the trust all
4 or any part of the principal or income at one time or at
5 different times;

6 (d) Because the settlor or another person or both
7 possess the power to remove the trustee or trustees and
8 appoint a successor trustee or trustees;

9 (e) Because the settlor or another person or both
10 possess the power to control the trustee or trustees in the
11 administration of the trust;

12 (f) Because the settlor has retained the right to
13 receive all or part of the income of the trust during her or
14 his life or for any part thereof; or

15 (g) Because the settlor is, at the time of the
16 execution of the instrument, or thereafter becomes, sole
17 trustee.

18 (4) This section shall be applicable to trusts
19 executed before or after July 1, 1969, by persons who are
20 living on or after said date. ~~However, the requirement of~~
21 ~~conformity with the formalities for the execution of wills as~~
22 ~~found in paragraph (1)(g) shall not be imposed upon any trust~~
23 ~~executed prior to July 1, 1969.~~

24 Section 23. Section 689.175, Florida Statutes, is
25 created to read:

26 689.175 Worthier title doctrine abolished.--The
27 doctrine of worthier title is abolished as a rule of law and
28 as a rule of construction. Language in a governing instrument
29 describing the beneficiaries of a disposition as the
30 transferor's "heirs," "heirs at law," "next of kin,"
31 "distributees," "relatives," or "family," or language of

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1 similar import, does not create or presumptively create a
2 reversionary interest in the transferor.

3 Section 24. Subsection (8) of section 709.08, Florida
4 Statutes, is amended to read:

5 709.08 Durable power of attorney.--

6 (8) STANDARD OF CARE.--Except as otherwise provided in
7 paragraph (4)(e), an attorney in fact is a fiduciary who must
8 observe the standards of care applicable to trustees as
9 described in s. 736.0901 ~~737.302~~. The attorney in fact is not
10 liable to third parties for any act pursuant to the durable
11 power of attorney if the act was authorized at the time. If
12 the exercise of the power is improper, the attorney in fact is
13 liable to interested persons as described in s. 731.201 for
14 damage or loss resulting from a breach of fiduciary duty by
15 the attorney in fact to the same extent as the trustee of an
16 express trust.

17 Section 25. Paragraph (c) of subsection (2) of section
18 721.08, Florida Statutes, is amended to read:

19 721.08 Escrow accounts; nondisturbance instruments;
20 alternate security arrangements; transfer of legal title.--

21 (2) One hundred percent of all funds or other property
22 which is received from or on behalf of purchasers of the
23 timeshare plan or timeshare interest prior to the occurrence
24 of events required in this subsection shall be deposited
25 pursuant to an escrow agreement approved by the division. The
26 funds or other property may be released from escrow only as
27 follows:

28 (c) Compliance with conditions.--

29 1. Timeshare licenses.--If the timeshare plan is one
30 in which timeshare licenses are to be sold and no cancellation
31 or default has occurred, the escrow agent may release the

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1 escrowed funds or other property to or on the order of the
2 developer upon presentation of:

3 a. An affidavit by the developer that all of the
4 following conditions have been met:

5 (I) Expiration of the cancellation period.

6 (II) Completion of construction.

7 (III) Closing.

8 (IV) Either:

9 (A) Execution, delivery, and recordation by each
10 interestholder of the nondisturbance and notice to creditors
11 instrument, as described in this section; or

12 (B) Transfer by the developer of legal title to the
13 subject accommodations and facilities, or all use rights
14 therein, into a trust satisfying the requirements of
15 subparagraph 4. and the execution, delivery, and recordation
16 by each other interestholder of the nondisturbance and notice
17 to creditors instrument, as described in this section.

18 b. A certified copy of each recorded nondisturbance
19 and notice to creditors instrument.

20 c. One of the following:

21 (I) A copy of a memorandum of agreement, as defined in
22 s. 721.05, together with satisfactory evidence that the
23 original memorandum of agreement has been irretrievably
24 delivered for recording to the appropriate official
25 responsible for maintaining the public records in the county
26 in which the subject accommodations and facilities are
27 located. The original memorandum of agreement must be recorded
28 within 180 days after the date on which the purchaser executed
29 her or his purchase agreement.

30 (II) A notice delivered for recording to the
31 appropriate official responsible for maintaining the public

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1 records in each county in which the subject accommodations and
 2 facilities are located notifying all persons of the identity
 3 of an independent escrow agent or trustee satisfying the
 4 requirements of subparagraph 4. that shall maintain separate
 5 books and records, in accordance with good accounting
 6 practices, for the timeshare plan in which timeshare licenses
 7 are to be sold. The books and records shall indicate each
 8 accommodation and facility that is subject to such a timeshare
 9 plan and each purchaser of a timeshare license in the
 10 timeshare plan.

11 2. Timeshare estates.--If the timeshare plan is one in
 12 which timeshare estates are to be sold and no cancellation or
 13 default has occurred, the escrow agent may release the
 14 escrowed funds or other property to or on the order of the
 15 developer upon presentation of:

16 a. An affidavit by the developer that all of the
 17 following conditions have been met:

- 18 (I) Expiration of the cancellation period.
- 19 (II) Completion of construction.
- 20 (III) Closing.

21 b. If the timeshare estate is sold by agreement for
 22 deed, a certified copy of the recorded nondisturbance and
 23 notice to creditors instrument, as described in this section.

24 c. Evidence that each accommodation and facility:

- 25 (I) Is free and clear of the claims of any
 26 interestholders, other than the claims of interestholders
 27 that, through a recorded instrument, are irrevocably made
 28 subject to the timeshare instrument and the use rights of
 29 purchasers made available through the timeshare instrument;

30 (II) Is the subject of a recorded nondisturbance and
 31 notice to creditors instrument that complies with subsection

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1 (3) and s. 721.17; or

2 (III) Has been transferred into a trust satisfying the
3 requirements of subparagraph 4.

4 d. Evidence that the timeshare estate:

5 (I) Is free and clear of the claims of any
6 interestholders, other than the claims of interestholders
7 that, through a recorded instrument, are irrevocably made
8 subject to the timeshare instrument and the use rights of
9 purchasers made available through the timeshare instrument; or

10 (II) Is the subject of a recorded nondisturbance and
11 notice to creditors instrument that complies with subsection
12 (3) and s. 721.17.

13 3. Personal property timeshare interests.--If the
14 timeshare plan is one in which personal property timeshare
15 interests are to be sold and no cancellation or default has
16 occurred, the escrow agent may release the escrowed funds or
17 other property to or on the order of the developer upon
18 presentation of:

19 a. An affidavit by the developer that all of the
20 following conditions have been met:

- 21 (I) Expiration of the cancellation period.
- 22 (II) Completion of construction.
- 23 (III) Closing.

24 b. If the personal property timeshare interest is sold
25 by agreement for transfer, evidence that the agreement for
26 transfer complies fully with s. 721.06 and this section.

27 c. Evidence that one of the following has occurred:

28 (I) Transfer by the owner of the underlying personal
29 property of legal title to the subject accommodations and
30 facilities or all use rights therein into a trust satisfying
31 the requirements of subparagraph 4.; or

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1 (II) Transfer by the owner of the underlying personal
 2 property of legal title to the subject accommodations and
 3 facilities or all use rights therein into an owners'
 4 association satisfying the requirements of subparagraph 5.

5 d. Evidence of compliance with the provisions of
 6 subparagraph 6., if required.

7 e. If a personal property timeshare plan is created
 8 with respect to accommodations and facilities that are located
 9 on or in an oceangoing vessel, including a "documented vessel"
 10 or a "foreign vessel," as defined and governed by 46 U.S.C.,
 11 chapter 301:

12 (I) In making the transfer required in
 13 sub-subparagraph c., the developer shall use as its transfer
 14 instrument a document that establishes and protects the
 15 continuance of the use rights in the subject accommodations
 16 and facilities in a manner that is enforceable by the trust or
 17 owners' association.

18 (II) The transfer instrument shall comply fully with
 19 the provisions of this chapter, shall be part of the timeshare
 20 instrument, and shall contain specific provisions that:

21 (A) Prohibit the vessel owner, the developer, any
 22 manager or operator of the vessel, the owners' association or
 23 the trustee, the managing entity, or any other person from
 24 incurring any liens against the vessel except for liens that
 25 are required for the operation and upkeep of the vessel,
 26 including liens for fuel expenditures, repairs, crews' wages,
 27 and salvage, and except as provided in sub-sub-subparagraphs
 28 4.b.(III) and 5.b.(III). All expenses, fees, and taxes
 29 properly incurred in connection with the creation,
 30 satisfaction, and discharge of any such permitted lien, or a
 31 prorated portion thereof if less than all of the

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1 accommodations on the vessel are subject to the timeshare
2 plan, shall be common expenses of the timeshare plan.

3 (B) Grant a lien against the vessel in favor of the
4 owners' association or trustee to secure the full and faithful
5 performance of the vessel owner and developer of all of their
6 obligations to the purchasers.

7 (C) Establish governing law in a jurisdiction that
8 recognizes and will enforce the timeshare instrument and the
9 laws of the jurisdiction of registry of the vessel.

10 (D) Require that a description of the use rights of
11 purchasers be posted and displayed on the vessel in a manner
12 that will give notice of such rights to any party examining
13 the vessel. This notice must identify the owners' association
14 or trustee and include a statement disclosing the limitation
15 on incurring liens against the vessel described in
16 sub-sub-sub-subparagraph (A).

17 (E) Include the nondisturbance and notice to creditors
18 instrument for the vessel owner and any other interestholders.

19 (F) The owners' association created under subparagraph
20 5. or trustee created under subparagraph 4. shall have access
21 to any certificates of classification in accordance with the
22 timeshare instrument.

23 (III) If the vessel is a foreign vessel, the vessel
24 must be registered in a jurisdiction that permits a filing
25 evidencing the use rights of purchasers in the subject
26 accommodations and facilities, offers protection for such use
27 rights against unfiled and inferior claims, and recognizes the
28 document or instrument creating such use rights as a lien
29 against the vessel.

30 (IV) In addition to the disclosures required by s.
31 721.07(5), the public offering statement and purchase contract

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1 must contain a disclosure in conspicuous type in substantially
2 the following form:

3
4 The laws of the State of Florida govern the offering of this
5 timeshare plan in this state. There are inherent risks in
6 purchasing a timeshare interest in this timeshare plan because
7 the accommodations and facilities of the timeshare plan are
8 located on a vessel that will sail into international waters
9 and into waters governed by many different jurisdictions.
10 Therefore, the laws of the State of Florida cannot fully
11 protect your purchase of an interest in this timeshare plan.
12 Specifically, management and operational issues may need to be
13 addressed in the jurisdiction in which the vessel is
14 registered, which is (insert jurisdiction in which vessel is
15 registered). Concerns of purchasers may be sent to (insert
16 name of applicable regulatory agency and address).

17 4. Trust.--

18 a. If the subject accommodations or facilities, or all
19 use rights therein, are to be transferred into a trust in
20 order to comply with this paragraph, such transfer shall take
21 place pursuant to this subparagraph.

22 b. Prior to the transfer by each interestholder of the
23 subject accommodations and facilities, or all use rights
24 therein, to a trust, any lien or other encumbrance against
25 such accommodations and facilities, or use rights therein,
26 shall be made subject to a nondisturbance and notice to
27 creditors instrument pursuant to subsection (3). No transfer
28 pursuant to this subparagraph shall become effective until the
29 trustee accepts such transfer and the responsibilities set
30 forth herein. A trust established pursuant to this
31 subparagraph shall comply with the following provisions:

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1 (I) The trustee shall be an individual or a business
 2 entity authorized and qualified to conduct trust business in
 3 this state. Any corporation authorized to do business in this
 4 state may act as trustee in connection with a timeshare plan
 5 pursuant to this chapter. The trustee must be independent from
 6 any developer or managing entity of the timeshare plan or any
 7 interestholder of any accommodation or facility of such plan.

8 (II) The trust shall be irrevocable so long as any
 9 purchaser has a right to occupy any portion of the timeshare
 10 property pursuant to the timeshare plan.

11 (III) The trustee shall not convey, hypothecate,
 12 mortgage, assign, lease, or otherwise transfer or encumber in
 13 any fashion any interest in or portion of the timeshare
 14 property with respect to which any purchaser has a right of
 15 use or occupancy unless the timeshare plan is terminated
 16 pursuant to the timeshare instrument, or such conveyance,
 17 hypothecation, mortgage, assignment, lease, transfer, or
 18 encumbrance is approved by a vote of two-thirds of all voting
 19 interests of the timeshare plan and such decision is declared
 20 by a court of competent jurisdiction to be in the best
 21 interests of the purchasers of the timeshare plan. The trustee
 22 shall notify the division in writing within 10 days after
 23 receiving notice of the filing of any petition relating to
 24 obtaining such a court order. The division shall have standing
 25 to advise the court of the division's interpretation of the
 26 statute as it relates to the petition.

27 (IV) All purchasers of the timeshare plan or the
 28 owners' association of the timeshare plan shall be the express
 29 beneficiaries of the trust. The trustee shall act as a
 30 fiduciary to the beneficiaries of the trust. The personal
 31 liability of the trustee shall be governed by ss. 736.08125,

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1 736.08163, 736.1013, and 736.1015 ~~s. 737.306~~. The agreement
 2 establishing the trust shall set forth the duties of the
 3 trustee. The trustee shall be required to furnish promptly to
 4 the division upon request a copy of the complete list of the
 5 names and addresses of the owners in the timeshare plan and a
 6 copy of any other books and records of the timeshare plan
 7 required to be maintained pursuant to s. 721.13 that are in
 8 the possession, custody, or control of the trustee. All
 9 expenses reasonably incurred by the trustee in the performance
 10 of its duties, together with any reasonable compensation of
 11 the trustee, shall be common expenses of the timeshare plan.

12 (V) The trustee shall not resign upon less than 90
 13 days' prior written notice to the managing entity and the
 14 division. No resignation shall become effective until a
 15 substitute trustee, approved by the division, is appointed by
 16 the managing entity and accepts the appointment.

17 (VI) The documents establishing the trust arrangement
 18 shall constitute a part of the timeshare instrument.

19 (VII) For trusts holding property in a timeshare plan
 20 located outside this state, the trust and trustee holding such
 21 property shall be deemed in compliance with the requirements
 22 of this subparagraph if such trust and trustee are authorized
 23 and qualified to conduct trust business under the laws of such
 24 jurisdiction and the agreement or law governing such trust
 25 arrangement provides substantially similar protections for the
 26 purchaser as are required in this subparagraph for trusts
 27 holding property in a timeshare plan in this state.

28 (VIII) The trustee shall have appointed a registered
 29 agent in this state for service of process. In the event such
 30 a registered agent is not appointed, service of process may be
 31 served pursuant to s. 721.265.

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1 5. Owners' association.--

2 a. If the subject accommodations or facilities, or all
3 use rights therein, are to be transferred into an owners'
4 association in order to comply with this paragraph, such
5 transfer shall take place pursuant to this subparagraph.

6 b. Prior to the transfer by each interestholder of the
7 subject accommodations and facilities, or all use rights
8 therein, to an owners' association, any lien or other
9 encumbrance against such accommodations and facilities, or use
10 rights therein, shall be made subject to a nondisturbance and
11 notice to creditors instrument pursuant to subsection (3). No
12 transfer pursuant to this subparagraph shall become effective
13 until the owners' association accepts such transfer and the
14 responsibilities set forth herein. An owners' association
15 established pursuant to this subparagraph shall comply with
16 the following provisions:

17 (I) The owners' association shall be a business entity
18 authorized and qualified to conduct business in this state.
19 Control of the board of directors of the owners' association
20 must be independent from any developer or managing entity of
21 the timeshare plan or any interestholder.

22 (II) The bylaws of the owners' association shall
23 provide that the corporation may not be voluntarily dissolved
24 without the unanimous vote of all owners of personal property
25 timeshare interests so long as any purchaser has a right to
26 occupy any portion of the timeshare property pursuant to the
27 timeshare plan.

28 (III) The owners' association shall not convey,
29 hypothecate, mortgage, assign, lease, or otherwise transfer or
30 encumber in any fashion any interest in or portion of the
31 timeshare property with respect to which any purchaser has a

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1 right of use or occupancy, unless the timeshare plan is
 2 terminated pursuant to the timeshare instrument, or unless
 3 such conveyance, hypothecation, mortgage, assignment, lease,
 4 transfer, or encumbrance is approved by a vote of two-thirds
 5 of all voting interests of the association and such decision
 6 is declared by a court of competent jurisdiction to be in the
 7 best interests of the purchasers of the timeshare plan. The
 8 owners' association shall notify the division in writing
 9 within 10 days after receiving notice of the filing of any
 10 petition relating to obtaining such a court order. The
 11 division shall have standing to advise the court of the
 12 division's interpretation of the statute as it relates to the
 13 petition.

14 (IV) All purchasers of the timeshare plan shall be
 15 members of the owners' association and shall be entitled to
 16 vote on matters requiring a vote of the owners' association as
 17 provided in this chapter or the timeshare instrument. The
 18 owners' association shall act as a fiduciary to the purchasers
 19 of the timeshare plan. The articles of incorporation
 20 establishing the owners' association shall set forth the
 21 duties of the owners' association. All expenses reasonably
 22 incurred by the owners' association in the performance of its
 23 duties, together with any reasonable compensation of the
 24 officers or directors of the owners' association, shall be
 25 common expenses of the timeshare plan.

26 (V) The documents establishing the owners' association
 27 shall constitute a part of the timeshare instrument.

28 (VI) For owners' associations holding property in a
 29 timeshare plan located outside this state, the owners'
 30 association holding such property shall be deemed in
 31 compliance with the requirements of this subparagraph if such

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1 owners' association is authorized and qualified to conduct
 2 owners' association business under the laws of such
 3 jurisdiction and the agreement or law governing such
 4 arrangement provides substantially similar protections for the
 5 purchaser as are required in this subparagraph for owners'
 6 associations holding property in a timeshare plan in this
 7 state.

8 (VII) The owners' association shall have appointed a
 9 registered agent in this state for service of process. In the
 10 event such a registered agent cannot be located, service of
 11 process may be made pursuant to s. 721.265.

12 6. Personal property subject to certificate of
 13 title.--If any personal property that is an accommodation or
 14 facility of a timeshare plan is subject to a certificate of
 15 title in this state pursuant to chapter 319 or chapter 328,
 16 the following notation must be made on such certificate of
 17 title pursuant to s. 319.27(1) or s. 328.15(1):

18
 19 The further transfer or encumbrance of the property subject to
 20 this certificate of title, or any lien or encumbrance thereon,
 21 is subject to the requirements of section 721.17, Florida
 22 Statutes, and the transferee or lienor agrees to be bound by
 23 all of the obligations set forth therein.

24 7. If the developer has previously provided a
 25 certified copy of any document required by this paragraph, she
 26 or he may for all subsequent disbursements substitute a true
 27 and correct copy of the certified copy, provided no changes to
 28 the document have been made or are required to be made.

29 8. In the event that use rights relating to an
 30 accommodation or facility are transferred into a trust
 31 pursuant to subparagraph 4. or into an owners' association

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1 pursuant to subparagraph 5., all other interestholders,
 2 including the owner of the underlying fee or underlying
 3 personal property, must execute a nondisturbance and notice to
 4 creditors instrument pursuant to subsection (3).

5 Section 26. Paragraph (e) of subsection (1) of section
 6 721.53, Florida Statutes, is amended to read:

7 721.53 Subordination instruments; alternate security
 8 arrangements.--

9 (1) With respect to each accommodation or facility of
 10 a multisite timeshare plan, the developer shall provide the
 11 division with satisfactory evidence that one of the following
 12 has occurred with respect to each interestholder prior to
 13 offering the accommodation or facility as a part of the
 14 multisite timeshare plan:

15 (e) The interestholder has transferred the subject
 16 accommodation or facility or all use rights therein to a trust
 17 that complies with this paragraph. Prior to such transfer, any
 18 lien or other encumbrance against such accommodation or
 19 facility shall be made subject to a nondisturbance and notice
 20 to creditors instrument pursuant to paragraph (a) or a
 21 subordination and notice to creditors instrument pursuant to
 22 paragraph (b). No transfer pursuant to this paragraph shall
 23 become effective until the trust accepts such transfer and the
 24 responsibilities set forth herein. A trust established
 25 pursuant to this paragraph shall comply with the following
 26 provisions:

27 1. The trustee shall be an individual or a business
 28 entity authorized and qualified to conduct trust business in
 29 this state. Any corporation authorized to do business in this
 30 state may act as trustee in connection with a timeshare plan
 31 pursuant to this chapter. The trustee must be independent from

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1 any developer or managing entity of the timeshare plan or any
 2 interestholder of any accommodation or facility of such plan.
 3 The same trustee may hold the accommodations and facilities,
 4 or use rights therein, for one or more of the component sites
 5 of the timeshare plan.

6 2. The trust shall be irrevocable so long as any
 7 purchaser has a right to occupy any portion of the timeshare
 8 property pursuant to the timeshare plan.

9 3. The trustee shall not convey, hypothecate,
 10 mortgage, assign, lease, or otherwise transfer or encumber in
 11 any fashion any interests in or portion of the timeshare
 12 property with respect to which any purchaser has a right of
 13 use or occupancy unless the timeshare plan is terminated
 14 pursuant to the timeshare instrument, or the timeshare
 15 property held in trust is deleted from a multisite timeshare
 16 plan pursuant to s. 721.552(3), or such conveyance,
 17 hypothecation, mortgage, assignment, lease, transfer, or
 18 encumbrance is approved by vote of two-thirds of all voting
 19 interests of the timeshare plan and such decision is declared
 20 by a court of competent jurisdiction to be in the best
 21 interests of the purchasers of the timeshare plan.

22 4. All purchasers of the timeshare plan or the owners'
 23 association of the timeshare plan shall be express
 24 beneficiaries of the trust. The trustee shall act as a
 25 fiduciary to the beneficiaries of the trust. The personal
 26 liability of the trustee shall be governed by ss. 736.08125,
 27 736.08163, 736.1013, and 736.1015 ~~s. 737.306~~. The agreement
 28 establishing the trust shall set forth the duties of the
 29 trustee. The trustee shall be required to furnish promptly to
 30 the division upon request a copy of the complete list of the
 31 names and addresses of the owners in the timeshare plan and a

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1 copy of any other books and records of the timeshare plan
 2 required to be maintained pursuant to s. 721.13 that are in
 3 the possession of the trustee. All expenses reasonably
 4 incurred by the trustee in the performance of its duties,
 5 together with any reasonable compensation of the trustee,
 6 shall be common expenses of the timeshare plan.

7 5. The trustee shall not resign upon less than 90
 8 days' prior written notice to the managing entity and the
 9 division. No resignation shall become effective until a
 10 substitute trustee, approved by the division, is appointed by
 11 the managing entity and accepts the appointment.

12 6. The documents establishing the trust arrangement
 13 shall constitute a part of the timeshare instrument.

14 7. For trusts holding property in component sites
 15 located outside this state, the trust holding such property
 16 shall be deemed in compliance with the requirements of this
 17 paragraph, if such trust is authorized and qualified to
 18 conduct trust business under the laws of such jurisdiction and
 19 the agreement or law governing such trust arrangement provides
 20 substantially similar protections for the purchaser as are
 21 required in this paragraph for trusts holding property in a
 22 component site located in this state.

23 8. The trustee shall have appointed a registered agent
 24 in this state for service of process. In the event such a
 25 registered agent is not appointed, service of process may be
 26 served pursuant to s. 721.265.

27 Section 27. Section 731.103, Florida Statutes, is
 28 amended to read:

29 731.103 Evidence as to death or status.--In
 30 proceedings under this code and under chapter 736, the ~~rules~~
 31 ~~of evidence in civil actions are applicable unless~~

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1 ~~specifically changed by the code. The~~ following additional
2 rules relating to determination of death and status are
3 applicable:

4 (1) An authenticated copy of a death certificate
5 issued by an official or agency of the place where the death
6 purportedly occurred is prima facie proof of the fact, place,
7 date, and time of death and the identity of the decedent.

8 (2) A copy of any record or report of a governmental
9 agency, domestic or foreign, that a person is alive, missing,
10 detained, or, from the facts related, presumed dead is prima
11 facie evidence of the status and of the dates, circumstances,
12 and places disclosed by the record or report.

13 (3) A person who is absent from the place of his or
14 her last known domicile for a continuous period of 5 years and
15 whose absence is not satisfactorily explained after diligent
16 search and inquiry is presumed to be dead. The person's death
17 is presumed to have occurred at the end of the period unless
18 there is evidence establishing that death occurred earlier.

19 Evidence showing that the absent person was exposed to a
20 specific peril of death may be a sufficient basis for the
21 court determining at any time after such exposure that he or
22 she died less than 5 years after the date on which his or her
23 absence commenced. A petition for this determination shall be
24 filed in the county in Florida where the decedent maintained
25 his or her domicile or in any county of this state if the
26 decedent was not a resident of Florida at the time his or her
27 absence commenced.

28 (4) This section does not preclude the establishment
29 of death by direct or circumstantial evidence prior to
30 expiration of the 5-year time period set forth in subsection
31 (3).

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1 Section 28. Section 731.1035, Florida Statutes, is
2 created to read:

3 731.1035 Applicable rules of evidence.--In proceedings
4 under this code, the rules of evidence in civil actions are
5 applicable unless specifically changed by the code.

6 Section 29. Section 731.201, Florida Statutes, is
7 amended to read:

8 731.201 General definitions.--Subject to additional
9 definitions in subsequent chapters that are applicable to
10 specific chapters or parts, and unless the context otherwise
11 requires, in this code, in s. 409.9101, and in chapters 736
12 ~~737~~, 738, 739, and 744, the term:

13 (1) "Authenticated," when referring to copies of
14 documents or judicial proceedings required to be filed with
15 the court under this code, means a certified copy or a copy
16 authenticated according to the Federal Rules of Civil
17 Procedure.

18 (2) "Beneficiary" means heir at law in an intestate
19 estate and devisee in a testate estate. The term "beneficiary"
20 does not apply to an heir at law or a devisee after that
21 person's interest in the estate has been satisfied. In the
22 case of a devise to an existing trust or trustee, or to a
23 trust or trustee described by will, the trustee is a
24 beneficiary of the estate. Except as otherwise provided in
25 this subsection, the beneficiary of the trust is not a
26 beneficiary of the estate of which that trust or the trustee
27 of that trust is a beneficiary. However, if each trustee is
28 also a personal representative of the estate, each qualified
29 beneficiary ~~the beneficiary or beneficiaries~~ of the trust as
30 defined in s. 736.0103(14) ~~737.303(4)(b)~~ shall be regarded as
31 a beneficiary of the estate.

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1 (3) "Child" includes a person entitled to take as a
 2 child under this code by intestate succession from the parent
 3 whose relationship is involved, and excludes any person who is
 4 only a stepchild, a foster child, a grandchild, or a more
 5 remote descendant.

6 (4) "Claim" means a liability of the decedent, whether
 7 arising in contract, tort, or otherwise, and funeral expense.
 8 The term does not include an expense of administration or
 9 estate, inheritance, succession, or other death taxes.

10 (5) "Clerk" means the clerk or deputy clerk of the
 11 court.

12 (6) "Court" means the circuit court.

13 (7) "Curator" means a person appointed by the court to
 14 take charge of the estate of a decedent until letters are
 15 issued.

16 (8) "Devise," when used as a noun, means a
 17 testamentary disposition of real or personal property and,
 18 when used as a verb, means to dispose of real or personal
 19 property by will or trust. The term includes "gift," "give,"
 20 "bequeath," "bequest," and "legacy." A devise is subject to
 21 charges for debts, expenses, and taxes as provided in this
 22 code, the will, or the trust.

23 (9) "Devisee" means a person designated in a will or
 24 trust to receive a devise. Except as otherwise provided in
 25 this subsection, in the case of a devise to an existing trust
 26 or trustee, or to a trust or trustee of a trust described by
 27 will, the trust or trustee, rather than the beneficiaries of
 28 the trust, is the devisee. However, if each trustee is also a
 29 personal representative of the estate, each qualified

30 beneficiary ~~the beneficiary or beneficiaries~~ of the trust as
 31 defined in s. 736.0103(14) ~~737.303(4)(b)~~ shall be regarded as

1 a devisee.

2 (10) "Distributee" means a person who has received
3 estate property from a personal representative or other
4 fiduciary other than as a creditor or purchaser. A
5 testamentary trustee is a distributee only to the extent of
6 distributed assets or increments to them remaining in the
7 trustee's hands. A beneficiary of a testamentary trust to whom
8 the trustee has distributed property received from a personal
9 representative is a distributee. For purposes of this
10 provision, "testamentary trustee" includes a trustee to whom
11 assets are transferred by will, to the extent of the devised
12 assets.

13 (11) "Domicile" means a person's usual place of
14 dwelling and shall be synonymous with residence.

15 (12) "Estate" means the property of a decedent that is
16 the subject of administration.

17 (13) "Exempt property" means the property of a
18 decedent's estate which is described in s. 732.402.

19 (14) "File" means to file with the court or clerk.

20 (15) "Foreign personal representative" means a
21 personal representative of another state or a foreign country.

22 (16) "Formal notice" means formal notice under the
23 Florida Probate Rules.

24 (17) "Grantor" means one who creates or adds to a
25 trust and includes "settlor" or "trustor" and a testator who
26 creates or adds to a trust.

27 (18) "Heirs" or "heirs at law" means those persons,
28 including the surviving spouse, who are entitled under the
29 statutes of intestate succession to the property of a
30 decedent.

31 (19) "Incompetent" means a minor or a person

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1 adjudicated incompetent.

2 (20) "Informal notice" or "notice" means informal
3 notice under the Florida Probate Rules.

4 (21) "Interested person" means any person who may
5 reasonably be expected to be affected by the outcome of the
6 particular proceeding involved. In any proceeding affecting
7 the estate or the rights of a beneficiary in the estate, the
8 personal representative of the estate shall be deemed to be an
9 interested person. In any proceeding affecting the expenses of
10 the administration and obligations of a decedent's estate, or
11 any claims described in s. 733.702(1), the trustee of a trust
12 described in s. 733.707(3) is an interested person in the
13 administration of the grantor's estate. The term does not
14 include a beneficiary who has received complete distribution.
15 The meaning, as it relates to particular persons, may vary
16 from time to time and must be determined according to the
17 particular purpose of, and matter involved in, any
18 proceedings.

19 (22) "Letters" means authority granted by the court to
20 the personal representative to act on behalf of the estate of
21 the decedent and refers to what has been known as letters
22 testamentary and letters of administration. All letters shall
23 be designated "letters of administration."

24 (23) "Other state" means any state of the United
25 States other than Florida and includes the District of
26 Columbia, the Commonwealth of Puerto Rico, and any territory
27 or possession subject to the legislative authority of the
28 United States.

29 (24) "Parent" excludes any person who is only a
30 stepparent, foster parent, or grandparent.

31 (25) "Personal representative" means the fiduciary

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1 appointed by the court to administer the estate and refers to
2 what has been known as an administrator, administrator cum
3 testamento annexo, administrator de bonis non, ancillary
4 administrator, ancillary executor, or executor.

5 (26) "Petition" means a written request to the court
6 for an order.

7 (27) "Power of appointment" means an authority, other
8 than as an incident of the beneficial ownership of property,
9 to designate recipients of beneficial interests in property.

10 ~~(28)(27)~~ "Probate of will" means all steps necessary
11 to establish the validity of a will and to admit a will to
12 probate.

13 ~~(29)(28)~~ "Property" means both real and personal
14 property or any interest in it and anything that may be the
15 subject of ownership.

16 ~~(30)(29)~~ "Protected homestead" means the property
17 described in s. 4(a)(1), Art. X of the State Constitution on
18 which at the death of the owner the exemption inures to the
19 owner's surviving spouse or heirs under s. 4(b), Art. X of the
20 State Constitution. For purposes of the code, real property
21 owned as tenants by the entirety is not protected homestead.

22 ~~(31)(30)~~ "Residence" means a person's place of
23 dwelling.

24 ~~(32)(31)~~ "Residuary devise" means a devise of the
25 assets of the estate which remain after the provision for any
26 devise which is to be satisfied by reference to a specific
27 property or type of property, fund, sum, or statutory amount.
28 If the will contains no devise which is to be satisfied by
29 reference to a specific property or type of property, fund,
30 sum, or statutory amount, "residuary devise" or "residue"
31 means a devise of all assets remaining after satisfying the

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1 obligations of the estate.

2 ~~(33)(32)~~ "Security" means a security as defined in s.
3 517.021.

4 ~~(34)(33)~~ "Security interest" means a security interest
5 as defined in s. 671.201.

6 ~~(35)(34)~~ "Trust" means an express trust, private or
7 charitable, with additions to it, wherever and however
8 created. It also includes a trust created or determined by a
9 judgment or decree under which the trust is to be administered
10 in the manner of an express trust. "Trust" excludes other
11 constructive trusts, and it excludes resulting trusts;
12 conservatorships; custodial arrangements pursuant to the
13 Florida Uniform Transfers to Minors Act; business trusts
14 providing for certificates to be issued to beneficiaries;
15 common trust funds; land trusts under s. 689.05; trusts
16 created by the form of the account or by the deposit agreement
17 at a financial institution; voting trusts; security
18 arrangements; liquidation trusts; trusts for the primary
19 purpose of paying debts, dividends, interest, salaries, wages,
20 profits, pensions, or employee benefits of any kind; and any
21 arrangement under which a person is nominee or escrowee for
22 another.

23 ~~(36)(35)~~ "Trustee" includes an original, additional,
24 surviving, or successor trustee, whether or not appointed or
25 confirmed by court.

26 ~~(37)(36)~~ "Will" means an instrument, including a
27 codicil, executed by a person in the manner prescribed by this
28 code, which disposes of the person's property on or after his
29 or her death and includes an instrument which merely appoints
30 a personal representative or revokes or revises another will.

31 Section 30. Paragraph (a) of subsection (1) and

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1 subsection (5) of section 731.303, Florida Statutes, are
2 amended to read:

3 731.303 Representation.--In the administration of or
4 in judicial proceedings involving estates of decedents or
5 trusts, the following apply:

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

8 (a)1. Orders binding the sole holder or all coholders
9 of a power of revocation or a general, special, or limited
10 power of appointment, including one in the form of a power of
11 amendment or revocation to the extent that the power has not
12 become unexercisable in fact, bind all persons to the extent
13 that their interests, as persons who may take by virtue of the
14 exercise or nonexercise of the power, are subject to the
15 power.

16 2. Subparagraph 1. does not apply to:

17 a. Any matter determined by the court to involve fraud
18 or bad faith by the trustee;

19 b. A power of a trustee to distribute trust property;
20 or

21 c. A power of appointment held by a person while the
22 person is the sole trustee.

23 (5) The holder of a power of appointment over property
24 not held in trust may represent and bind persons whose
25 interests, as permissible appointees, takers in default, or
26 otherwise, are subject to the power. Representation under this
27 subsection does not apply to:

28 (a) Any matter determined by the court to involve
29 fraud or bad faith by the trustee;

30 (b) A power of a trustee to distribute trust property;
31 or

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1 (c) A power of appointment held by a person while the
 2 person is the sole trustee ~~When a sole holder or coholder of a~~
 3 ~~general, special, or limited power of appointment, including~~
 4 ~~an exercisable power of amendment or revocation over property~~
 5 ~~in an estate or trust, is bound by:~~

6 ~~(a) Agreements, waivers, consents, or approvals; or~~

7 ~~(b) Accounts, trust accountings, or other written~~
 8 ~~reports that adequately disclose matters set forth therein,~~

9
 10 ~~then all persons who may take by virtue of, and whose~~
 11 ~~interests are subject to, the exercise or nonexercise of the~~
 12 ~~power are also bound, but only to the extent of their~~
 13 ~~interests which could otherwise be affected by the exercise or~~
 14 ~~nonexercise of the power.~~

15 Section 31. Subsection (5) of section 732.2075,
 16 Florida Statutes, is amended to read:

17 732.2075 Sources from which elective share payable;
 18 abatement.--

19 (5) Unless otherwise provided in the trust instrument
 20 or, in the decedent's will if there is no provision in the
 21 trust instrument, any amount to be satisfied from trust
 22 property shall be paid from the assets of the trust in the
 23 order provided for claims under s. 736.05053 ~~737.3054~~(2) and
 24 (3). A direction in the decedent's will is effective only for
 25 revocable trusts.

26 Section 32. Subsection (2) of section 732.513, Florida
 27 Statutes, is amended to read:

28 732.513 Devises to trustee.--

29 (2) The devise shall not be invalid for any or all of
 30 the following reasons:

31 (a) Because the trust is amendable or revocable, or

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1 both, by any person.

2 (b) Because the trust has been amended or revoked in
3 part after execution of the will or a codicil to it.

4 ~~(c) Because the trust instrument or any amendment to~~
5 ~~it was not executed in the manner required for wills.~~

6 ~~(c)(d)~~ Because the only res of the trust is the
7 possible expectancy of receiving, as a named beneficiary, a
8 devise under a will or death benefits as described in s.
9 733.808, and even though the testator or other person has
10 reserved any or all rights of ownership in the death benefit
11 policy, contract, or plan, including the right to change the
12 beneficiary.

13 ~~(d)(e)~~ Because of any of the provisions of s. 689.075.
14 Section 33. Section 732.603, Florida Statutes, is
15 amended to read:

16 (Substantial rewording of section. See
17 s. 732.603, F.S., for present text.)

18 732.603 Antilapse; deceased devisee; class gifts.--

19 (1) Unless a contrary intent appears in the will, if a
20 devisee who is a grandparent, or a descendant of a
21 grandparent, of the testator:

22 (a) Is dead at the time of the execution of the will;

23 (b) Fails to survive the testator; or

24 (c) Is required by the will or by operation of law to
25 be treated as having predeceased the testator,

26
27 a substitute gift is created in the devisee's surviving
28 descendants who take per stirpes the property to which the
29 devisee would have been entitled had the devisee survived the
30 testator.

31 (2) When a power of appointment is exercised by will,

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1 unless a contrary intent appears in the document creating the
 2 power of appointment or in the testator's will, if an
 3 appointee who is a grandparent, or a descendant of a
 4 grandparent, of the donor of the power:

5 (a) Is dead at the time of the execution of the will
 6 or the creation of the power;

7 (b) Fails to survive the testator; or

8 (c) Is required by the will, the document creating the
 9 power, or by operation of law to be treated as having
 10 predeceased the testator,

11
 12 a substitute gift is created in the appointee's surviving
 13 descendants who take per stirpes the property to which the
 14 appointee would have been entitled had the appointee survived
 15 the testator. Unless the language creating a power of
 16 appointment expressly excludes the substitution of the
 17 descendants of an object of a power for the object, a
 18 surviving descendant of a deceased object of a power of
 19 appointment may be substituted for the object whether or not
 20 the descendant is an object of the power.

21 (3) In the application of this section:

22 (a) Words of survivorship in a devise or appointment
 23 to an individual, such as "if he survives me," or to "my
 24 surviving children," are a sufficient indication of an intent
 25 contrary to the application of subsections (1) and (2). Words
 26 of survivorship used by the donor of the power in a power to
 27 appoint to an individual, such as the term "if he survives the
 28 donee," or in a power to appoint to the donee's "then
 29 surviving children," are a sufficient indication of an intent
 30 contrary to the application of subsection (2).

31 (b) The term:

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1 1. "Appointment" includes an alternative appointment
2 and an appointment in the form of a class gift.

3 2. "Appointee" includes:

4 a. A class member if the appointment is in the form of
5 a class gift.

6 b. An individual or class member who was deceased at
7 the time the testator executed his or her will as well as an
8 individual or class member who was then living but who failed
9 to survive the testator.

10 3. "Devise" also includes an alternative devise and a
11 devise in the form of a class gift.

12 4. "Devisee" also includes:

13 a. A class member if the devise is in the form of a
14 class gift.

15 b. An individual or class member who was deceased at
16 the time the testator executed his or her will as well as an
17 individual or class member who was then living but who failed
18 to survive the testator.

19 (4) This section applies only to outright devises and
20 appointments. Devises and appointments in trust, including to
21 a testamentary trust, are subject to s. 736.1106.

22 Section 34. Section 732.604, Florida Statutes, is
23 amended to read:

24 732.604 Failure of testamentary provision.--

25 (1) Except as provided in s. 732.603, if a devise
26 other than a residuary devise fails for any reason, it becomes
27 a part of the residue.

28 (2) Except as provided in s. 732.603, if the residue
29 is devised to two or more persons, the share of a residuary
30 devisee that fails for any reason ~~and the devise to one of the~~
31 ~~residuary devisees fails for any reason, that devise passes to~~

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1 the other residuary devisee, or to the other residuary
2 devisees in proportion to the ~~their~~ interests of each in the
3 remaining part of the residue.

4 Section 35. Section 732.611, Florida Statutes, is
5 amended to read:

6 732.611 Devises to multi-generation classes to be per
7 stirpes.--Unless the will provides otherwise, all devises to
8 descendants, issue, and other multi-generation classes shall
9 be per stirpes.

10 Section 36. Subsection (1) of section 733.212, Florida
11 Statutes, is amended to read:

12 733.212 Notice of administration; filing of
13 objections.--

14 (1) The personal representative shall promptly serve a
15 copy of the notice of administration on the following persons
16 who are known to the personal representative:

17 (a) The decedent's surviving spouse;

18 (b) Beneficiaries;

19 (c) The trustee of any trust described in s.

20 733.707(3) and each qualified beneficiary of the trust as
21 defined in s. 736.0103(14) ~~737.303(4)(b)~~, if each trustee is
22 also a personal representative of the estate; and

23 (d) Persons who may be entitled to exempt property

24
25 in the manner provided for service of formal notice, unless
26 served under s. 733.2123. The personal representative may
27 similarly serve a copy of the notice on any devisees under a
28 known prior will or heirs or others who claim or may claim an
29 interest in the estate.

30 Section 37. Subsection (1) of section 733.602, Florida
31 Statutes, is amended to read:

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1 733.602 General duties.--

2 (1) A personal representative is a fiduciary who shall
3 observe the standards of care applicable to trustees as
4 described by part VII of chapter 736 ~~s. 737.302~~. A personal
5 representative is under a duty to settle and distribute the
6 estate of the decedent in accordance with the terms of the
7 decedent's will and this code as expeditiously and efficiently
8 as is consistent with the best interests of the estate. A
9 personal representative shall use the authority conferred by
10 this code, the authority in the will, if any, and the
11 authority of any order of the court, for the best interests of
12 interested persons, including creditors.

13 Section 38. Subsection (4) of section 733.805, Florida
14 Statutes, is amended to read:

15 733.805 Order in which assets abate.--

16 (4) In determining the contribution required under s.
17 733.607(2), subsections (1)-(3) of this section and s.
18 736.05053 ~~737.3054~~(2) shall be applied as if the beneficiaries
19 of the estate and the beneficiaries of a trust described in s.
20 733.707(3), other than the estate or trust itself, were taking
21 under a common instrument.

22 Section 39. Paragraph (j) of subsection (1) of section
23 733.817, Florida Statutes, is amended to read:

24 733.817 Apportionment of estate taxes.--

25 (1) For purposes of this section:

26 (j) "Residuary devise" has the meaning set forth in s.
27 731.201~~(31)~~.

28 Section 40. Paragraphs (a) and (f) of subsection (8)
29 and paragraphs (a) and (d) of subsection (9) of section
30 738.104, Florida Statutes, are amended to read:

31 738.104 Trustee's power to adjust.--

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1 (8) With respect to a trust in existence on January 1,
2 2003:

3 (a) A trustee shall not have the power to adjust under
4 this section until the statement required in subsection (9) is
5 provided and either no objection is made or any objection
6 which is made has been terminated.

7 1. An objection is made if, within 60 days after the
8 date of the statement required in subsection (9), a super
9 majority of the eligible trust beneficiaries deliver to the
10 trustee a written objection to the application of this section
11 to such trust. An objection shall be deemed to be delivered to
12 the trustee on the date the objection is mailed to the mailing
13 address listed in the notice provided in subsection (9).

14 2. An objection is terminated upon the earlier of the
15 receipt of consent from a super majority of eligible trust
16 beneficiaries of the class that made the objection, or the
17 resolution of the objection pursuant to paragraph (c).

18 (f) The objection of a super majority of eligible
19 beneficiaries under this subsection shall be valid for a
20 period of 1 year after the date of the notice set forth in
21 subsection (9). Upon expiration of the objection, the trustee
22 may thereafter give a new notice under subsection (9).

23 (9)(a) A trustee of a trust in existence on January 1,
24 2003, that is not prohibited under subsection (3) from
25 exercising the power to adjust shall, any time prior to
26 initially exercising the power, provide to all eligible
27 ~~reasonably ascertainable current beneficiaries described in s.~~
28 ~~737.303(4)(b)1. and all reasonably ascertainable remainder~~
29 ~~beneficiaries described in s. 737.303(4)(b)2.~~ a statement
30 containing the following:

31 1. The name, telephone number, street address, and

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1 mailing address of the trustee and of any individuals who may
2 be contacted for further information;

3 2. A statement that unless a super majority of the
4 eligible beneficiaries objects to the application of this
5 section to the trust within 60 days after the date the
6 statement pursuant to this subsection was served, s. 738.104
7 shall apply to the trust; and

8 3. A statement that, if s. 738.104 applies to the
9 trust, the trustee will have the power to adjust between
10 income and principal and that such a power may have an effect
11 on the distributions to such beneficiary from the trust.

12 (d) For purposes of subsection (8) and this
13 subsection, the term:

14 1. "Eligible beneficiaries" means:

15 a. If at the time the determination is made there is
16 one or more beneficiaries described in s. 736.0103(14)(c), the
17 beneficiaries described in s. 736.0103(14)(a) and (c); or

18 b. If there is no beneficiary described in s.
19 736.0103(14)(c), the beneficiaries described in s.
20 736.0103(14)(a) and (b).

21 2. ~~A~~ "Super majority of the eligible trust
22 beneficiaries" means:

23 a. If at the time the determination is made there is
24 one or more beneficiaries described in s. 736.0103(14)(c), at
25 least two-thirds in interest of the ~~reasonably ascertainable~~
26 current beneficiaries described in s. 736.0103(14)(a)

27 ~~737.303(4)(b)1.~~ or two-thirds in interest of the ~~reasonably~~
28 ~~ascertainable remainder~~ beneficiaries described in s.
29 736.0103(14)(c) ~~737.303(4)(b)2.~~, if the interests of the

30 beneficiaries are reasonably ascertainable; otherwise, it
31 means two-thirds in number of either such class; or

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1 b. If there is no beneficiary described in s.
2 736.0103(14)(c), at least two-thirds in interest of the
3 beneficiaries described in s. 736.0103(14)(a) or two-thirds in
4 interest of the beneficiaries described in s. 736.0103(14)(b),
5 if the interests of the beneficiaries are reasonably
6 ascertainable, otherwise, two-thirds in number of either such
7 class.

8 Section 41. Subsection (4) of section 738.1041,
9 Florida Statutes, is amended to read:

10 738.1041 Total return unitrust.--

11 (4) All determinations made pursuant to
12 sub-subparagraph (2)(b)2.b. shall be conclusive if reasonable
13 and made in good faith. Such determination shall be
14 conclusively presumed to have been made reasonably and in good
15 faith unless proven otherwise in a proceeding commenced by or
16 on behalf of a person interested in the trust within the time
17 provided in s. 736.1008 ~~737.307~~. The burden will be on the
18 objecting interested party to prove that the determinations
19 were not made reasonably and in good faith.

20 Section 42. Subsection (5) of section 738.202, Florida
21 Statutes, is amended to read:

22 738.202 Distribution to residuary and remainder
23 beneficiaries.--

24 (5) The value of trust assets shall be determined on
25 an asset-by-asset basis and shall be conclusive if reasonable
26 and determined in good faith. Determinations based on
27 appraisals performed within 2 years before or after the
28 valuation date shall be presumed reasonable. The value of
29 trust assets shall be conclusively presumed to be reasonable
30 and determined in good faith unless proven otherwise in a
31 proceeding commenced by or on behalf of a person interested in

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1 the trust within the time provided in s. 736.1008 ~~737.307~~.

2 Section 43. Paragraph (a) of subsection (12) of
3 section 739.102, Florida Statutes, is amended to read:

4 739.102 Definitions.--As used in this chapter, the
5 term:

6 (12) "Trust" means:

7 (a) An express trust (including an honorary trust or a
8 trust under s. 736.0408 ~~737.116~~), charitable or noncharitable,
9 with additions thereto, whenever and however created; and

10

11 As used in this chapter, the term "trust" does not include a
12 constructive trust or a resulting trust.

13 Section 44. Paragraphs (b) and (f) of subsection (6)
14 of section 744.331, Florida Statutes, are amended to read:

15 744.331 Procedures to determine incapacity.--

16 (6) ORDER DETERMINING INCAPACITY.--If, after making
17 findings of fact on the basis of clear and convincing
18 evidence, the court finds that a person is incapacitated with
19 respect to the exercise of a particular right, or all rights,
20 the court shall enter a written order determining such
21 incapacity. A person is determined to be incapacitated only
22 with respect to those rights specified in the order.

23 (b) When an order determines that a person is
24 incapable of exercising delegable rights, the court must
25 consider and find whether there is an alternative to
26 guardianship which will sufficiently address the problems of
27 the incapacitated person. A guardian must be appointed to
28 exercise the incapacitated person's delegable rights unless
29 the court finds there is an alternative. A guardian may not be
30 appointed if the court finds there is an alternative to
31 guardianship which will sufficiently address the problems of

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1 ~~the incapacitated person. In any order declaring a person~~
 2 ~~incapacitated the court must find that alternatives to~~
 3 ~~guardianship were considered and that no alternative to~~
 4 ~~guardianship will sufficiently address the problems of the~~
 5 ~~ward.~~

6 (f) Upon the filing of a verified statement by an
 7 interested person stating:

8 1. That he or she has a good faith belief that the
 9 alleged incapacitated person's trust, trust amendment, or
 10 durable power of attorney is invalid; and

11 2. A reasonable factual basis for that belief,
 12
 13 the trust, trust amendment, or durable power of attorney shall
 14 not be deemed to be an alternative to the appointment of a
 15 guardian. The appointment of a guardian does not limit the
 16 court's power to determine that certain authority granted by a
 17 durable power of attorney is to remain exercisable by the
 18 attorney in fact. When an order is entered which determines
 19 ~~that a person is incapable of exercising delegable rights, a~~
 20 ~~guardian must be appointed to exercise those rights.~~

21 Section 45. Paragraph (a) of subsection (6) of section
 22 744.361, Florida Statutes, is amended to read:

23 744.361 Powers and duties of guardian.--

24 (6) A guardian who is given authority over any
 25 property of the ward shall:

26 (a) Protect and preserve the property and invest it
 27 prudently as provided in chapter 518 ~~defined in s. 737.302,~~
 28 apply it as provided in s. 744.397, and account for it
 29 faithfully.

30 Section 46. Subsections (11) and (18) of section
 31 744.441, Florida Statutes, are amended to read:

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1 744.441 Powers of guardian upon court approval.--After
 2 obtaining approval of the court pursuant to a petition for
 3 authorization to act, a plenary guardian of the property, or a
 4 limited guardian of the property within the powers granted by
 5 the order appointing the guardian or an approved annual or
 6 amended guardianship report, may:

7 (11) Prosecute or defend claims or proceedings in any
 8 jurisdiction for the protection of the estate and of the
 9 guardian in the performance of his or her duties. Before
 10 authorizing a guardian to bring an action described in s.
 11 736.0207, the court shall first find that the action appears
 12 to be in the ward's best interests during the ward's probable
 13 lifetime. If the court denies a request that a guardian be
 14 authorized to bring an action described in s. 736.0207, the
 15 court shall review the continued need for a guardian and the
 16 extent of the need for delegation of the ward's rights.

17 (18) When the ward's will evinces an objective to
 18 obtain a United States estate tax charitable deduction by use
 19 of a split interest trust (as that term is defined in s.
 20 736.1201 ~~737.501~~), but the maximum charitable deduction
 21 otherwise allowable will not be achieved in whole or in part,
 22 execute a codicil on the ward's behalf amending said will to
 23 obtain the maximum charitable deduction allowable without
 24 diminishing the aggregate value of the benefits of any
 25 beneficiary under such will.

26 Section 47. Section 744.462, Florida Statutes, is
 27 created to read:

28 744.462 Determination regarding alternatives to
 29 guardianship.--Any judicial determination concerning the
 30 validity of the ward's durable power of attorney, trust, or
 31 trust amendment shall be promptly reported in the guardianship

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1 proceeding by the guardian of the property. If the instrument
 2 has been judicially determined to be valid or if, after the
 3 appointment of a guardian, a petition is filed alleging that
 4 there is an alternative to guardianship which will
 5 sufficiently address the problems of the ward, the court shall
 6 review the continued need for a guardian and the extent of the
 7 need for delegation of the ward's rights.

8 Section 48. Sections 737.101, 737.105, 737.106,
 9 737.111, 737.115, 737.116, 737.201, 737.202, 737.203,
 10 737.2035, 737.204, 737.2041, 737.205, 737.206, 737.2065,
 11 737.207, 737.208, 737.209, 737.301, 737.302, 737.303,
 12 737.3035, 737.304, 737.305, 737.3053, 737.3054, 737.3055,
 13 737.306, 737.3061, 737.307, 737.308, 737.309, 737.401,
 14 737.402, 737.4025, 737.403, 737.4031, 737.4032, 737.4033,
 15 737.404, 737.405, 737.406, 737.501, 737.502, 737.503, 737.504,
 16 737.505, 737.506, 737.507, 737.508, 737.509, 737.510, 737.511,
 17 737.512, 737.6035, 737.621, 737.622, 737.623, 737.624,
 18 737.625, 737.626, and 737.627, Florida Statutes, are repealed.

19 Section 49. This act shall take effect July 1, 2007.

20
 21

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

23 And the title is amended as follows:

24 Delete everything before the enacting clause

25

26 and insert:

27 A bill to be entitled
 28 An act relating to the Florida Trust Code;
 29 creating parts I, II, III, IV, V, VI, VII,
 30 VIII, IX, X, XI, XII, and XIII of chapter 736,
 31 F.S.; providing a short title; providing

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1 general provisions and definitions; providing
2 for judicial proceedings; providing for
3 representations; providing for creation,
4 validity, modification, and termination of
5 trusts; providing for creditors' claims;
6 providing for spendthrift, discretionary, and
7 revocable trusts; providing for the office of
8 trustee; providing for powers and duties of the
9 trustee; providing for trust investments;
10 providing for liability of trustee and rights
11 of persons dealing with trustee; providing for
12 rules of construction; providing for charitable
13 trusts; providing miscellaneous provisions;
14 creating s. 518.117, F.S.; authorizing
15 investment of certain fiduciary funds by
16 certain fiduciaries; amending s. 660.25, F.S.;
17 providing a definition of the term "investment
18 instrument"; amending s. 660.417, F.S.;
19 revising provisions relating to investment of
20 fiduciary funds in investment instruments by
21 certain banks or trust companies; creating s.
22 689.175, F.S.; abolishing the worthier title
23 doctrine; providing construction of certain
24 instrument language; amending s. 731.103, F.S.;
25 correcting a cross-reference; providing
26 construction relating to establishment of death
27 by certain evidence under certain
28 circumstances; creating s. 731.1035, F.S.;
29 providing for application of rules of evidence
30 in civil actions to certain proceedings;
31 amending s. 731.201, F.S.; revising

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1 definitions; conforming terms and correcting
2 cross-references; amending s. 731.303, F.S.;
3 specifying nonapplication of certain orders
4 relating to powers of revocation and powers of
5 appointment; revising provisions relating to
6 representation by a holder of a power of
7 appointment; amending s. 732.513, F.S.;
8 deleting a ground protecting a devise's
9 validity; amending s. 732.603, F.S.; revising
10 provisions relating to antilapse, deceased
11 devisees, and class gifts; amending s. 744.331,
12 F.S.; revising provisions relating to orders
13 determining incapacity; amending s. 744.441,
14 F.S.; revising authority of certain guardians
15 to prosecute or defend claims or proceedings
16 for certain purposes; specifying duties of a
17 court; creating s. 744.462, F.S.; providing
18 requirements for judicial determinations
19 relating to alternatives to guardianship;
20 providing duties of a court; amending ss.
21 497.458, 607.0802, 617.0802, 660.46, 660.418,
22 689.071, 689.075, 709.08, 721.08, 721.53,
23 732.2075, 732.604, 732.611, 733.212, 733.602,
24 733.805, 733.817, 738.104, 738.1041, 738.202,
25 739.102, and 744.361, F.S., to conform terms
26 and correct cross-references; repealing ss.
27 737.101, 737.105, 737.106, 737.111, 737.115,
28 and 737.116, constituting part I of ch. 737,
29 F.S., relating to trust registration; repealing
30 ss. 737.201, 737.202, 737.203, 737.2035,
31 737.204, 737.2041, 737.205, 737.206, 737.2065,

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1 737.207, 737.208, and 737.209, constituting
2 part II of ch. 737, F.S., relating to
3 jurisdiction of courts; repealing ss. 737.301,
4 737.302, 737.303, 737.3035, 737.304, 737.305,
5 737.3053, 737.3054, 737.3055, 737.306,
6 737.3061, 737.307, 737.308, and 737.309,
7 constituting part III of ch. 737, F.S.,
8 relating to duties and liabilities of trustees;
9 repealing ss. 737.401, 737.402, 737.4025,
10 737.403, 737.4031, 737.4032, 737.4033, 737.404,
11 737.405, and 737.406, constituting part IV of
12 ch. 737, F.S., relating to powers of trustees;
13 repealing ss. 737.501, 737.502, 737.503,
14 737.504, 737.505, 737.506, 737.507, 737.508,
15 737.509, 737.510, 737.511, and 737.512,
16 constituting part V of ch. 737, F.S., relating
17 to charitable trusts; repealing ss. 737.6035,
18 737.621, 737.622, 737.623, 737.624, 737.625,
19 737.626, and 737.627, consisting of part VI of
20 ch. 737, F.S., relating to rules of
21 construction of trust administration; providing
22 an effective date.

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