

1 certain orders relating to powers of revocation
2 and powers of appointment; revising provisions
3 relating to representation by a holder of a
4 power of appointment; amending s. 732.513,
5 F.S.; deleting a ground protecting a devise's
6 validity; amending s. 732.603, F.S.; revising
7 provisions relating to antilapse, deceased
8 devisees, and class gifts; amending s. 744.331,
9 F.S.; revising provisions relating to orders
10 determining incapacity; amending s. 744.441,
11 F.S.; revising authority of certain guardians
12 to prosecute or defend claims or proceedings
13 for certain purposes; specifying duties of a
14 court; creating s. 744.462, F.S.; providing
15 requirements for judicial determinations
16 relating to alternatives to guardianship;
17 providing duties of a court; amending ss.
18 497.458, 607.0802, 617.0802, 660.25, 660.46,
19 660.418, 689.071, 689.075, 709.08, 721.08,
20 721.53, 732.2075, 732.604, 732.611, 733.212,
21 733.602, 733.805, 733.817, 738.104, 738.1041,
22 738.202, 739.102, and 744.361, F.S., to conform
23 terms and correct cross-references; repealing
24 ss. 737.101, 737.105, 737.106, 737.111,
25 737.115, and 737.116, constituting part I of
26 ch. 737, F.S., relating to trust registration;
27 repealing ss. 737.201, 737.202, 737.203,
28 737.2035, 737.204, 737.2041, 737.205, 737.206,
29 737.2065, 737.207, 737.208, and 737.209,
30 constituting part II of ch. 737, F.S., relating
31 to jurisdiction of courts; repealing ss.

1 737.301, 737.302, 737.303, 737.3035, 737.304,
2 737.305, 737.3053, 737.3054, 737.3055, 737.306,
3 737.3061, 737.307, 737.308, and 737.309,
4 constituting part III of ch. 737, F.S.,
5 relating to duties and liabilities of trustees;
6 repealing ss. 737.401, 737.402, 737.4025,
7 737.403, 737.4031, 737.4032, 737.4033, 737.404,
8 737.405, and 737.406, constituting part IV of
9 ch. 737, F.S., relating to powers of trustees;
10 repealing ss. 737.501, 737.502, 737.503,
11 737.504, 737.505, 737.506, 737.507, 737.508,
12 737.509, 737.510, 737.511, and 737.512,
13 constituting part V of ch. 737, F.S., relating
14 to charitable trusts; repealing ss. 737.6035,
15 737.621, 737.622, 737.623, 737.624, 737.625,
16 737.626, and 737.627, consisting of part VI of
17 ch. 737, F.S., relating to rules of
18 construction of trust administration; providing
19 an effective date.
20

21 Be It Enacted by the Legislature of the State of Florida:
22

23 Section 1. Part I of chapter 736, Florida Statutes,
24 consisting of sections 736.0101, 736.0102, 736.0103, 736.0104,
25 736.0105, 736.0106, 736.0107, 736.0108, 736.0109, 736.0110,
26 736.0111, and 736.0112, is created to read:
27

28 PART I

29 GENERAL PROVISIONS AND DEFINITIONS
30
31

1 736.0101 Short title.--This chapter may be cited as
2 the "Florida Trust Code" and for purposes of this chapter is
3 referred to as the "code."

4 736.0102 Scope.--This code applies to express trusts,
5 charitable or noncharitable, and trusts created pursuant to a
6 law, judgment, or decree which require the trust to be
7 administered in the manner of an express trust. This code does
8 not apply to constructive or resulting trusts;
9 conservatorships; custodial arrangements pursuant to the
10 Florida Uniform Transfers to Minors Act; business trusts
11 providing for certificates to be issued to beneficiaries;
12 common trust funds; land trusts under s. 689.05; trusts
13 created by the form of the account or by the deposit agreement
14 at a financial institution; voting trusts; security
15 arrangements; liquidation trusts; trusts for the primary
16 purpose of paying debts, dividends, interest, salaries, wages,
17 profits, pensions, or employee benefits of any kind; and any
18 arrangement under which a person is nominee or escrowee for
19 another.

20 736.0103 Definitions.--Unless the context otherwise
21 requires, in this code:

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

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

28 (3) "Beneficiary" means a person who:

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

31

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

3 (4) "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 (5) "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 (6) "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 (7) "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 (8) "Guardian of the property" means a person
18 appointed by the court to administer the estate of a minor or
19 incapacitated adult.

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

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

24 (11) "Person" means an individual; corporation;
25 business trust; estate; trust; partnership; limited liability
26 company; association; joint venture; government; governmental
27 subdivision, agency, or instrumentality; public corporation;
28 or any other legal or commercial entity.

29 (12) "Power of withdrawal" means a presently
30 exercisable general power of appointment other than a power:
31

1 (a) Exercisable by a trustee and limited by an
2 ascertainable standard; or

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

5 (13) "Property" means anything that may be the subject
6 of ownership, real or personal, legal or equitable, or any
7 interest therein.

8 (14) "Qualified beneficiary" means a living
9 beneficiary who, on the date the beneficiary's qualification
10 is determined:

11 (a) Is a distributee or permissible distributee of
12 trust income or principal;

13 (b) Would be a distributee or permissible distributee
14 of trust income or principal if the interests of the
15 distributees described in paragraph (a) terminated on that
16 date without causing the trust to terminate; or

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

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

23 (16) "Settlor" means a person, including a testator,
24 who creates or contributes property to a trust. If more than
25 one person creates or contributes property to a trust, each
26 person is a settlor of the portion of the trust property
27 attributable to that person's contribution except to the
28 extent another person has the power to revoke or withdraw that
29 portion.

30
31

1 (17) "Spendthrift provision" means a term of a trust
2 which restrains both voluntary and involuntary transfer of a
3 beneficiary's interest.

4 (18) "State" means any state of the United States and
5 includes the District of Columbia, the Commonwealth of Puerto
6 Rico, and any territory or possession subject to the
7 legislative authority of the United States.

8 (19) "Terms of a trust" means the manifestation of the
9 settlor's intent regarding a trust's provisions as expressed
10 in the trust instrument or as may be established by other
11 evidence that would be admissible in a judicial proceeding.

12 (20) "Trust instrument" means an instrument executed
13 by a settlor which contains terms of the trust, including any
14 amendments to the trust.

15 (21) "Trustee" means the original trustee and includes
16 any additional trustee, any successor trustee, and any
17 cotrustee.

18 736.0104 Knowledge.--

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

21 (a) Has actual knowledge of the fact;

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

23 or

24 (c) Has reason to know the fact from all the other
25 facts and circumstances known to the person at the time in
26 question.

27 (2) An organization that conducts activities through
28 employees has notice or knowledge of a fact involving a trust
29 only from the time the information was received by an employee
30 having responsibility to act on matters involving the trust,
31 or would have been brought to the employee's attention if the

1 organization had exercised reasonable diligence. An
2 organization exercises reasonable diligence if the
3 organization maintains reasonable routines for communicating
4 significant information to the employee having responsibility
5 to act on matters involving the trust and there is reasonable
6 compliance with the routines. Reasonable diligence does not
7 require an employee of the organization to communicate
8 information unless the communication is part of the
9 individual's regular duties or the individual knows a matter
10 involving the trust would be materially affected by the
11 information.

12 736.0105 Default and mandatory rules.--

13 (1) Except as otherwise provided in the terms of the
14 trust, this code governs the duties and powers of a trustee,
15 relations among trustees, and the rights and interests of a
16 beneficiary.

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

19 (a) The requirements for creating a trust.

20 (b) The duty of the trustee to act in good faith and
21 in accordance with the terms and purposes of the trust and the
22 interests of the beneficiaries.

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

27 (d) The periods of limitation for commencing a
28 judicial proceeding.

29 (e) The power of the court to take such action and
30 exercise such jurisdiction as may be necessary in the
31 interests of justice.

1 (f) The requirements under s. 736.0108(1) for the
2 designation of a principal place of administration of the
3 trust.

4 (g) The jurisdiction and venue provisions in ss.
5 736.0202, 736.0203, and 736.0204.

6 (h) The restrictions on the designation of
7 representative under s. 736.0306.

8 (i) The formalities required under s. 736.0403(2) for
9 the execution of a trust.

10 (j) The power of the court to modify or terminate a
11 trust under ss. 736.0410-736.04115, except as provided in s.
12 736.04115(3)(b), and under ss. 736.0413, 736.0415, and
13 736.0416.

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

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

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

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

23 (o) The right of a trustee under s. 736.0701 to
24 decline a trusteeship and the right of a trustee under s.
25 736.0705 to resign a trusteeship.

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

28 (q) The power of the court under s. 736.0708(2) to
29 adjust a trustee's compensation specified in the terms of the
30 trust which is unreasonably low or high.

31

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

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

8 (t) The duty under s. 736.0813(1)(e) to respond to the
9 request of a qualified beneficiary of an irrevocable trust for
10 relevant information about the assets and liabilities of the
11 trust and the particulars relating to trust administration.

12 (u) The effect of an exculpatory term under s.
13 736.1011.

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

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

18 736.0106 Common law of trusts; principles of
19 equity.--The common law of trusts and principles of equity
20 supplement this code, except to the extent modified by this
21 code or another law of this state.

22 736.0107 Governing law.--The meaning and effect of the
23 terms of a trust are determined by:

24 (1) The law of the jurisdiction designated in the
25 terms unless the designation of that jurisdiction's law is
26 contrary to a strong public policy of the jurisdiction having
27 the most significant relationship to the matter at issue; or

28 (2) The law of the jurisdiction having the most
29 significant relationship to the matter at issue in the absence
30 of a controlling designation in the terms of the trust.

31 736.0108 Principal place of administration.--

1 (1) Terms of a trust designating the principal place
2 of administration of the trust are valid only if there is a
3 sufficient connection with the designated jurisdiction.
4 Without precluding other means for establishing a sufficient
5 connection, terms of a trust designating the principal place
6 of administration are valid and controlling if:

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

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

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

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

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

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

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, its
6 administration, and the interests of the beneficiaries.

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 the United States.

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

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

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

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

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

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

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

1 on or before the date specified in the notice. The suspension
2 is effective until the lawsuit is dismissed or withdrawn.

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

7 736.0109 Methods and waiver of notice.--

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

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

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

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

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

25 736.0110 Others treated as qualified beneficiaries.--

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

31

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.

1 filing a complaint and shall be governed by the Florida Rules
2 of Civil Procedure.

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

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

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

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

12 (b) Appoint or remove a trustee;

13 (c) Review trustees' fees;

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

15 (e) Ascertain beneficiaries; determine any question
16 arising in the administration or distribution of any trust,
17 including questions of construction of trust instruments;
18 instruct trustees; and determine the existence or nonexistence
19 of any immunity, power, privilege, duty, or right;

20 (f) Obtain a declaration of rights; or

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

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

27 736.0202 Jurisdiction over trustee and beneficiary.--

28 (1) By accepting the trusteeship of a trust having its
29 principal place of administration in this state or by moving
30 the principal place of administration to this state, the
31

1 trustee submits personally to the jurisdiction of the courts
2 of this state regarding any matter involving the trust.

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

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

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

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

19 (1) Any county where the venue is proper under chapter
20 47;

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

23 (3) The county where the trust has its principal place
24 of administration.

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

1 administration. The court may condition a stay or dismissal of
2 a proceeding under this section on the consent of any party to
3 jurisdiction of the state where the trust is registered or has
4 its principal place of business, or the court may grant a
5 continuance or enter any other appropriate order.

6 736.0206 Proceedings for review of employment of
7 agents and review of compensation of trustee and employees of
8 trust.--

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

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

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

28 (4) Court proceedings to determine reasonable
29 compensation of a trustee or any person employed by a trustee,
30 if required, are a part of the trust administration process.
31 The costs, including attorney's fees, of the person assuming

1 the burden of proof of propriety of the employment and
2 reasonableness of the compensation shall be determined by the
3 court and paid from the assets of the trust unless the court
4 finds the compensation paid or requested to be substantially
5 unreasonable. The court shall direct from which part of the
6 trust assets the compensation shall be paid.

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

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

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

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

27 Section 3. Part III of chapter 736, Florida Statutes,
28 consisting of sections 736.0301, 736.0302, 736.0303, 736.0304,
29 736.0305, and 736.0306, is created to read:

30
31 PART III

1 (b) A power of a trustee to distribute trust property;
2 or

3 (c) A power of appointment held by a person while the
4 person is the sole trustee.

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

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

12 (2) An agent having authority to act with respect to
13 the particular question or dispute may represent and bind the
14 principal.

15 (3) A trustee may represent and bind the beneficiaries
16 of the trust.

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

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

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

31 736.0305 Appointment of representative.--

1 (1) If the court determines that an interest is not
2 represented under this part, or that the otherwise available
3 representation might be inadequate, the court may appoint a
4 representative to receive notice, give consent, and otherwise
5 represent, bind, and act on behalf of a minor, incapacitated,
6 or unborn individual, or a person whose identity or location
7 is unknown. If not precluded by a conflict of interest, a
8 representative may be appointed to represent several persons
9 or interests.

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

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

17 736.0306 Designated representative.--

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

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

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

29 (a) That person was named by the settlor; or
30
31

- 1 1. A charitable trust;
2 2. A trust for the care of an animal, as provided in
3 s. 736.0408; or
4 3. A trust for a noncharitable purpose, as provided in
5 s. 736.0409.
6 (d) The trustee has duties to perform.
7 (e) The same person is not the sole trustee and sole
8 beneficiary.
9 (2) A beneficiary is definite if the beneficiary can
10 be ascertained now or in the future, subject to any applicable
11 rule against perpetuities.
12 (3) A power of a trustee to select a beneficiary from
13 an indefinite class is valid. If the power is not exercised
14 within a reasonable time, the power fails and the property
15 subject to the power passes to the persons who would have
16 taken the property had the power not been conferred.
17 736.0403 Trusts created in other jurisdictions;
18 formalities required for revocable trusts.--
19 (1) A trust not created by will is validly created if
20 the creation of the trust complies with the law of the
21 jurisdiction in which the trust instrument was executed or the
22 law of the jurisdiction in which, at the time of creation, the
23 settlor was domiciled.
24 (2) Notwithstanding subsection (1):
25 (a) No trust or confidence of or in any messuages,
26 lands, tenements, or hereditaments shall arise or result
27 unless the trust complies with the provisions of s. 689.05.
28 (b) The testamentary aspects of a revocable trust,
29 executed by a settlor who is a domiciliary of this state at
30 the time of execution, are invalid unless the trust instrument
31 is executed by the settlor with the formalities required for

1 the execution of a will in this state. For purposes of this
2 subsection, the term "testamentary aspects" means those
3 provisions of the trust instrument which dispose of the trust
4 property on or after the death of the settlor other than to
5 the settlor's estate.

6 (3) This section does not apply to trusts established
7 as part of an employee annuity described in s. 403 of the
8 Internal Revenue Code of 1986, as amended, an individual
9 retirement account as described in s. 408 of the Internal
10 Revenue Code of 1986, as amended, a Keogh (HR-10) Plan, or a
11 retirement or other plan that is qualified under s. 401 of the
12 Internal Revenue Code of 1986, as amended.

13 (4) This section applies to trusts created on or after
14 July 1, 2007. Section 737.111, as in effect prior to the
15 effective date of this code, continues to apply to trusts
16 created before the effective date of this code.

17 736.0404 Trust purposes.--A trust may be created only
18 to the extent the purposes of the trust are lawful, not
19 contrary to public policy, and possible to achieve. A trust
20 and its terms must be for the benefit of its beneficiaries.

21 736.0405 Charitable purposes; enforcement.--

22 (1) A trust may be created for charitable purposes.
23 Charitable purposes include, but are not limited to, the
24 relief of poverty; the advancement of arts, sciences,
25 education, or religion; and the promotion of health,
26 governmental, or municipal purposes.

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

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

3 736.0406 Effect of fraud, duress, mistake, or undue
4 influence.--A trust is void if the creation of the trust is
5 procured by fraud, duress, mistake, or undue influence. Any
6 part of the trust is void if procured by such means, but the
7 remainder of the trust not procured by such means is valid if
8 the remainder is not invalid for other reasons.

9 736.0407 Evidence of oral trust.--Except as required
10 by s. 736.0403 or a law other than this code, a trust need not
11 be evidenced by a trust instrument but the creation of an oral
12 trust and its terms may be established only by clear and
13 convincing evidence.

14 736.0408 Trust for care of an animal.--

15 (1) A trust may be created to provide for the care of
16 an animal alive during the settlor's lifetime. The trust
17 terminates on the death of the animal or, if the trust was
18 created to provide for the care of more than one animal alive
19 during the settlor's lifetime, on the death of the last
20 surviving animal.

21 (2) A trust authorized by this section may be enforced
22 by a person appointed in the terms of the trust or, if no
23 person is appointed, by a person appointed by the court. A
24 person having an interest in the welfare of the animal may
25 request the court to appoint a person to enforce the trust or
26 to remove a person appointed.

27 (3) Property of a trust authorized by this section may
28 be applied only to the intended use of the property, except to
29 the extent the court determines that the value of the trust
30 property exceeds the amount required for the intended use.
31 Except as otherwise provided in the terms of the trust,

1 property not required for the intended use must be distributed
2 to the settlor, if then living, otherwise as part of the
3 settlor's estate.

4 736.0409 Noncharitable trust without ascertainable
5 beneficiary.--Except as otherwise provided in s. 736.0408 or
6 by another provision of law, the following rules apply:

7 (1) A trust may be created for a noncharitable purpose
8 without a definite or definitely ascertainable beneficiary or
9 for a noncharitable but otherwise valid purpose to be selected
10 by the trustee. The trust may not be enforced for more than 21
11 years.

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

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

23 736.0410 Modification or termination of trust;
24 proceedings for disapproval of nonjudicial acts.--

25 (1) In addition to the methods of termination
26 prescribed by ss. 736.04113-736.0414, a trust terminates to
27 the extent the trust expires or is revoked or is properly
28 distributed pursuant to the terms of the trust.

29 (2) A proceeding to disapprove a proposed modification
30 or termination under s. 736.0412 or a trust combination or
31

1 division under s. 736.0417 may be commenced by any
2 beneficiary.

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

6 736.04113 Judicial modification of irrevocable trust
7 when modification is not inconsistent with settlor's
8 purpose.--

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

13 (a) The purposes of the trust have been fulfilled or
14 have become illegal, impossible, wasteful, or impracticable to
15 fulfill;

16 (b) Because of circumstances not anticipated by the
17 settlor, compliance with the terms of the trust would defeat
18 or substantially impair the accomplishment of a material
19 purpose of the trust; or

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

21 (2) In modifying a trust under this section, a court
22 may:

23 (a) Amend or change the terms of the trust, including
24 terms governing distribution of the trust income or principal
25 or terms governing administration of the trust;

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

27 (c) Direct or permit the trustee to do acts that are
28 not authorized or that are prohibited by the terms of the
29 trust; or

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

1 (3) In exercising discretion to modify a trust under
2 this section:

3 (a) The court shall consider the terms and purposes of
4 the trust, the facts and circumstances surrounding the
5 creation of the trust, and extrinsic evidence relevant to the
6 proposed modification.

7 (b) The court shall consider spendthrift provisions as
8 a factor in making a decision but the court is not precluded
9 from modifying a trust because the trust contains spendthrift
10 provisions.

11 (4) 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.

14 736.04115 Judicial modification of irrevocable trust
15 when modification is in best interest of beneficiaries.--

16 (1) Without regard to the reasons for modification
17 provided in s. 736.04113, if compliance with the terms of a
18 trust is not in the best interests of the beneficiaries, upon
19 the application of a trustee or any qualified beneficiary, a
20 court may at any time modify a trust that is not then
21 revocable as provided in s. 736.04113(2).

22 (2) In exercising discretion to modify a trust under
23 this section:

24 (a) The court shall exercise discretion in a manner
25 that conforms to the extent possible with the intent of the
26 settlor, taking into account the current circumstances and
27 best interests of the beneficiaries.

28 (b) 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.

1 (c) 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 (3) This section shall not apply to:

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

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

8 1. Under the terms of the trust, all beneficial
9 interests in the trust must vest or terminate within the
10 period prescribed by the rule against perpetuities in s.
11 689.225(2), notwithstanding s. 689.225(2)(f).

12 2. The terms of the trust expressly prohibit judicial
13 modification.

14 (4) For purposes of subsection (3), a revocable trust
15 shall be treated as created when the right of revocation
16 terminates.

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

20 736.0412 Nonjudicial modification of irrevocable
21 trust.--

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

25 (2) Modification of a trust as authorized in this
26 section is not prohibited by a spendthrift clause or by a
27 provision in the trust instrument which prohibits amendment or
28 revocation of the trust.

29 (3) An agreement to modify a trust under this section
30 is binding on a beneficiary whose interest is represented by
31 another person under part III of this code.

1 (4) This section shall not apply to:
2 (a) Any trust created prior to January 1, 2001.
3 (b) Any trust created after December 31, 2000, if,
4 under the terms of the trust, all beneficial interests in the
5 trust must vest or terminate within the period prescribed by
6 the rule against perpetuities in s. 689.225(2),
7 notwithstanding s. 689.225(2)(f), unless the terms of the
8 trust expressly authorize nonjudicial modification.
9 (c) Any trust for which a charitable deduction is
10 allowed or allowable under the Internal Revenue Code until the
11 termination of all charitable interests in the trust.
12 (5) For purposes of subsection (4), a revocable trust
13 shall be treated as created when the right of revocation
14 terminates.
15 (6) The provisions of this section are in addition to,
16 and not in derogation of, rights under the common law to
17 modify, amend, terminate, or revoke trusts.
18 736.0413 Cy pres.--
19 (1) If a particular charitable purpose becomes
20 unlawful, impracticable, impossible to achieve, or wasteful,
21 the court may apply the doctrine of cy pres to modify or
22 terminate the trust by directing that the trust property be
23 applied or distributed, in whole or in part, in a manner
24 consistent with the settlor's charitable purposes.
25 (2) A proceeding to modify or terminate a trust under
26 this section may be commenced by a settlor, a trustee, or any
27 qualified beneficiary.
28 736.0414 Modification or termination of uneconomic
29 trust.--
30 (1) After notice to the qualified beneficiaries, the
31 trustee of a trust consisting of trust property having a total

1 value less than \$100,000 may terminate the trust if the
2 trustee concludes that the value of the trust property is
3 insufficient to justify the cost of administration.

4 (2) Upon application of a trustee or any qualified
5 beneficiary, the court may modify or terminate a trust or
6 remove the trustee and appoint a different trustee if the
7 court determines that the value of the trust property is
8 insufficient to justify the cost of administration.

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

16 (4) The existence of a spendthrift provision in the
17 trust does not make this section inapplicable unless the trust
18 instrument expressly provides that the trustee may not
19 terminate the trust pursuant to this section.

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

22 736.0415 Reformation to correct mistakes.--Upon
23 application of a settlor or any interested person, the court
24 may reform the terms of a trust, even if unambiguous, to
25 conform the terms to the settlor's intent if it is proved by
26 clear and convincing evidence that both the accomplishment of
27 the settlor's intent and the terms of the trust were affected
28 by a mistake of fact or law, whether in expression or
29 inducement. In determining the settlor's original intent, the
30 court may consider evidence relevant to the settlor's intent
31

1 even though the evidence contradicts an apparent plain meaning
2 of the trust instrument.

3 736.0416 Modification to achieve settlor's tax
4 objectives.--Upon application of any interested person, to
5 achieve the settlor's tax objectives the court may modify the
6 terms of a trust in a manner that is not contrary to the
7 settlor's probable intent. The court may provide that the
8 modification has retroactive effect.

9 736.0417 Combination and division of trusts.--

10 (1) After notice to the qualified beneficiaries, a
11 trustee may combine two or more trusts into a single trust or
12 divide a trust into two or more separate trusts, if the result
13 does not impair rights of any beneficiary or adversely affect
14 achievement of the purposes of the trusts or trust,
15 respectively.

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

26 Section 5. Part V of chapter 736, Florida Statutes,
27 consisting of sections 736.0501, 736.0502, 736.0503, 736.0504,
28 736.0505, 736.05053, 736.05055, 736.0506, and 736.0507, is
29 created to read:

30
31 PART V

1
2 CREDITORS' CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS

3
4 736.0501 Rights of beneficiary's creditor or
5 assignee.--To the extent a beneficiary's interest is not
6 subject to a spendthrift provision, the court may authorize a
7 creditor or assignee of the beneficiary to reach the
8 beneficiary's interest by attachment of present or future
9 distributions to or for the benefit of the beneficiary or by
10 other means. The court may limit the award to such relief as
11 is appropriate under the circumstances.

12 736.0502 Spendthrift provision.--

13 (1) A spendthrift provision is valid only if the
14 provision restrains both voluntary and involuntary transfer of
15 a beneficiary's interest. This subsection does not apply to
16 any trust in existence on July 1, 2007.

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

21 (3) A beneficiary may not transfer an interest in a
22 trust in violation of a valid spendthrift provision and,
23 except as otherwise provided in this part, a creditor or
24 assignee of the beneficiary may not reach the interest or a
25 distribution by the trustee before receipt of the interest or
26 distribution by the beneficiary.

27 (4) A valid spendthrift provision does not prevent the
28 appointment of interests through the exercise of a power of
29 appointment.

30 736.0503 Exceptions to spendthrift provision.--
31

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

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

6 (a) A beneficiary's child, spouse, or former spouse
7 who has a judgment or court order against the beneficiary for
8 support or maintenance.

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

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

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

25 736.0504 Discretionary trusts; effect of standard.--

26 (1) Whether or not a trust contains a spendthrift
27 provision, a creditor of a beneficiary may not compel a
28 distribution that is subject to the trustee's discretion, even
29 if:

30 (a) The discretion is expressed in the form of a
31 standard of distribution; or

1 **(b) The trustee has abused the discretion.**

2 **(2) If the trustee's discretion to make distributions**
3 **for the trustee's own benefit is limited by an ascertainable**
4 **standard, a creditor may not reach or compel distribution of**
5 **the beneficial interest except to the extent the interest**
6 **would be subject to the creditor's claim were the beneficiary**
7 **not acting as trustee.**

8 **(3) This section does not limit the right of a**
9 **beneficiary to maintain a judicial proceeding against a**
10 **trustee for an abuse of discretion or failure to comply with a**
11 **standard for distribution.**

12 **736.0505 Creditors' claims against settlor.--**

13 **(1) Whether or not the terms of a trust contain a**
14 **spendthrift provision, the following rules apply:**

15 **(a) During the lifetime of the settlor, the property**
16 **of a revocable trust is subject to claims of the settlor's**
17 **creditors.**

18 **(b) With respect to an irrevocable trust, a creditor**
19 **or assignee of the settlor may reach the maximum amount that**
20 **can be distributed to or for the settlor's benefit. If a trust**
21 **has more than one settlor, the amount the creditor or assignee**
22 **of a particular settlor may reach may not exceed the settlor's**
23 **interest in the portion of the trust attributable to that**
24 **settlor's contribution.**

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**

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), which 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.

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.**

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.--

1 a revocable trust, is the same as that required to make a
2 will.

3 736.0602 Revocation or amendment of revocable trust.--

4 (1) Unless the terms of a trust expressly provide that
5 the trust is irrevocable, the settlor may revoke or amend the
6 trust. This subsection does not apply to a trust created under
7 an instrument executed before July 1, 2007.

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

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

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

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

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

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

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

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

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

31

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

3 (5) A settlor's powers with respect to revocation,
4 amendment, or distribution of trust property may be exercised
5 by an agent under a power of attorney only as authorized by s.
6 709.08.

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

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

15 736.0603 Settlor's powers; powers of withdrawal.--

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

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

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

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

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

31

1 Section 7. Part VII of chapter 736, Florida Statutes,
2 consisting of sections 736.0701, 736.0702, 736.0703, 736.0704,
3 736.0705, 736.0706, 736.0707, 736.0708, and 736.0709, is
4 created to read:

5
6 PART VII
7 OFFICE OF TRUSTEE
8

9 736.0701 Accepting or declining trusteeship.--

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

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

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

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

24 (3) A person designated as trustee may, without
25 accepting the trusteeship:

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

29 (b) Inspect or investigate trust property to determine
30 potential liability under environmental or other law or for
31 any other purpose.

1 736.0702 Trustee's bond.--

2 (1) A trustee shall give bond to secure performance of
3 the trustee's duties only if the court finds that a bond is
4 needed to protect the interests of the beneficiaries or is
5 required by the terms of the trust and the court has not
6 dispensed with the requirement.

7 (2) The court may specify the amount of a bond, the
8 trustee's liabilities under the bond, and whether sureties are
9 necessary. The court may modify or terminate a bond at any
10 time.

11 736.0703 Cotrustees.--

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

14 (2) If a vacancy occurs in a cotrusteeship, the
15 remaining cotrustees or a majority of the remaining cotrustees
16 may act for the trust.

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

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

29 (5) A cotrustee may not delegate to another cotrustee
30 the performance of a function the settlor reasonably expected
31

1 the cotrustees to perform jointly. A cotrustee may revoke a
2 delegation previously made.

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

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

7 (a) Prevent a cotrustee from committing a breach of
8 trust.

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

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

14 736.0704 Vacancy in trusteeship; appointment of
15 successor.--

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

17 (a) A person designated as trustee declines the
18 trusteeship;

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

21 (c) A trustee resigns;

22 (d) A trustee is disqualified or removed;

23 (e) A trustee dies; or

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

25 (2) If one or more cotrustees remain in office, a
26 vacancy in a trusteeship need not be filled. A vacancy in a
27 trusteeship must be filled if the trust has no remaining
28 trustee.

29 (3) A vacancy in a trusteeship of a noncharitable
30 trust which is required to be filled must be filled in the
31 following order of priority:

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

3 (b) By a person appointed by unanimous agreement of
4 the qualified beneficiaries.

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

6 (4) A vacancy in a trusteeship of a charitable trust
7 which is required to be filled must be filled in the following
8 order of priority:

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

11 (b) By a person selected by unanimous agreement of the
12 charitable organizations expressly designated to receive
13 distributions under the terms of the trust.

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

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

19 736.0705 Resignation of trustee.--

20 (1) A trustee may resign:

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

23 (b) With the approval of the court.

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

27 (3) Any liability of a resigning trustee or of any
28 sureties on the trustee's bond for acts or omissions of the
29 trustee is not discharged or affected by the trustee's
30 resignation.

31 736.0706 Removal of trustee.--

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

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

5 (a) The trustee has committed a serious breach of
6 trust;

7 (b) The lack of cooperation among cotrustees
8 substantially impairs the administration of the trust;

9 (c) Due to the unfitness, unwillingness, or persistent
10 failure of the trustee to administer the trust effectively,
11 the court determines that removal of the trustee best serves
12 the interests of the beneficiaries; or

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

19 (3) Pending a final decision on a request to remove a
20 trustee, or in lieu of or in addition to removing a trustee,
21 the court may order such appropriate relief under s.
22 736.1001(2) as may be necessary to protect the trust property
23 or the interests of the beneficiaries.

24 736.0707 Delivery of property by former trustee.--

25 (1) Unless a cotrustee remains in office or the court
26 otherwise orders and until the trust property is delivered to
27 a successor trustee or other person entitled to the property,
28 a trustee who has resigned or been removed has the duties of a
29 trustee and the powers necessary to protect the trust
30 property.

31

1 (2) A trustee who has resigned or been removed shall
2 within a reasonable time deliver the trust property within the
3 trustee's possession to the cotrustee, successor trustee, or
4 other person entitled to the property, subject to the right of
5 the trustee to retain a reasonable reserve for the payment of
6 debts, expenses, and taxes. The provisions of this subsection
7 are in addition to and are not in derogation of the rights of
8 a removed or resigning trustee under the common law.

9 736.0708 Compensation of trustee.--

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

13 (2) If the terms of a trust specify the trustee's
14 compensation, the trustee is entitled to be compensated as
15 specified but the court may allow more or less compensation
16 if:

17 (a) The duties of the trustee are substantially
18 different from those contemplated when the trust was created;
19 or

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

22 (3) If the trustee has rendered other services in
23 connection with the administration of the trust, the trustee
24 shall also be allowed reasonable compensation for the other
25 services rendered in addition to reasonable compensation as
26 trustee.

27 736.0709 Reimbursement of expenses.--

28 (1) A trustee is entitled to be reimbursed out of the
29 trust property, with interest as appropriate, for reasonable
30 expenses that were properly incurred in the administration of
31 the trust.

- 1 (a) The transaction was authorized by the terms of the
2 trust;
- 3 (b) The transaction was approved by the court;
- 4 (c) The beneficiary did not commence a judicial
5 proceeding within the time allowed by s. 736.1008;
- 6 (d) The beneficiary consented to the trustee's
7 conduct, ratified the transaction, or released the trustee in
8 compliance with s. 736.1012;
- 9 (e) The transaction involves a contract entered into
10 or claim acquired by the trustee when that person had not
11 become or contemplated becoming trustee; or
- 12 (f) The transaction was consented to in writing by a
13 settlor of the trust while the trust was revocable.
- 14 (3) A sale, encumbrance, or other transaction
15 involving the investment or management of trust property is
16 presumed to be affected by a conflict between personal and
17 fiduciary interests if the sale, encumbrance, or other
18 transaction is entered into by the trustee with:
- 19 (a) The trustee's spouse;
- 20 (b) The trustee's descendants, siblings, parents, or
21 their spouses;
- 22 (c) An officer, director, employee, agent, or attorney
23 of the trustee; or
- 24 (d) A corporation or other person or enterprise in
25 which the trustee, or a person that owns a significant
26 interest in the trustee, has an interest that might affect the
27 trustee's best judgment.
- 28 (4) A transaction not concerning trust property in
29 which the trustee engages in the trustee's individual capacity
30 involves a conflict between personal and fiduciary interests
31

1 if the transaction concerns an opportunity properly belonging
2 to the trust.

3 (5) An investment by a trustee in securities of an
4 investment company or investment trust to which the trustee,
5 or an affiliate of the trustee, provides services in a
6 capacity other than as trustee is not presumed to be affected
7 by a conflict between personal and fiduciary interests if the
8 investment otherwise complies with chapter 518. In addition to
9 the trustee's compensation for acting as trustee, the trustee
10 may be compensated by the investment company or investment
11 trust for providing those services out of fees charged to the
12 trust. If the trustee receives compensation from the
13 investment company or investment trust for providing those
14 services, the trustee shall notify the qualified beneficiaries
15 at least annually.

16 (6) In voting shares of stock or in exercising powers
17 of control over similar interests in other forms of
18 enterprise, the trustee shall act in the best interests of the
19 beneficiaries. If the trust is the sole owner of a corporation
20 or other form of enterprise, the trustee shall elect or
21 appoint directors or other managers who will manage the
22 corporation or enterprise in the best interests of the
23 beneficiaries.

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

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

28 (b) A payment of reasonable compensation to the
29 trustee;

30 (c) A transaction between a trust and another trust,
31 the decedent's estate, or a guardian of the property of which

1 the trustee is a fiduciary or in which a beneficiary has an
2 interest;

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

5 (e) An advance by the trustee of money for the
6 protection of the trust.

7 (8) This section does not preclude the employment of
8 persons, including, but not limited to, attorneys,
9 accountants, investment advisers, or agents, even if they are
10 the trustee, an affiliate of the trustee, or otherwise
11 associated with the trustee, to advise or assist the trustee
12 in the exercise of any of the trustee's powers and to pay
13 reasonable compensation and costs incurred in connection with
14 such employment from the assets of the trust; to act without
15 independent investigation on their recommendations; and,
16 instead of acting personally, to employ one or more agents to
17 perform any act of administration, whether or not
18 discretionary.

19 (9) The court may appoint a special fiduciary to act
20 with respect to any proposed transaction that might violate
21 this section if entered into by the trustee.

22 (10) Payment of costs or attorney's fees incurred in
23 any trust proceeding from the assets of the trust may be made
24 by the trustee without the approval of any person and without
25 court authorization, except that court authorization shall be
26 required if an action has been filed or defense asserted
27 against the trustee based upon a breach of trust. Court
28 authorization is not required if the action or defense is
29 later withdrawn or dismissed by the party that is alleging a
30 breach of trust or resolved without a determination by the
31 court that the trustee has committed a breach of trust.

1 736.0803 Impartiality.--If a trust has two or more
2 beneficiaries, the trustee shall act impartially in
3 administering the trust property, giving due regard to the
4 beneficiaries' respective interests.

5 736.0804 Prudent administration.--A trustee shall
6 administer the trust as a prudent person would, by considering
7 the purposes, terms, distribution requirements, and other
8 circumstances of the trust. In satisfying this standard, the
9 trustee shall exercise reasonable care, skill, and caution.

10 736.0805 Expenses of administration.--In administering
11 a trust, the trustee shall only incur expenses that are
12 reasonable in relation to the trust property, the purposes of
13 the trust, and the skills of the trustee.

14 736.0806 Trustee's skills.--A trustee who has special
15 skills or expertise, or is named trustee in reliance on the
16 trustee's representation that the trustee has special skills
17 or expertise, shall use those special skills or expertise.

18 736.0807 Delegation by trustee.--

19 (1) A trustee may delegate duties and powers that a
20 prudent trustee of comparable skills could properly delegate
21 under the circumstances. The trustee shall exercise reasonable
22 care, skill, and caution in:

23 (a) Selecting an agent.

24 (b) Establishing the scope and terms of the
25 delegation, consistent with the purposes and terms of the
26 trust.

27 (c) Reviewing the agent's actions periodically, in
28 order to monitor the agent's performance and compliance with
29 the terms of the delegation.

30
31

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

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

7 (4) By accepting a delegation of powers or duties from
8 the trustee of a trust that is subject to the law of this
9 state, an agent submits to the jurisdiction of the courts of
10 this state.

11 736.0808 Powers to direct.--

12 (1) Subject to ss. 736.0403(2) and 736.0602(3)(a), the
13 trustee may follow a direction of the settlor which is
14 contrary to the terms of the trust while a trust is revocable.

15 (2) If the terms of a trust confer on a person other
16 than the settlor of a revocable trust, the power to direct
17 certain actions of the trustee, the trustee shall act in
18 accordance with an exercise of the power unless the attempted
19 exercise is manifestly contrary to the terms of the trust or
20 the trustee knows the attempted exercise would constitute a
21 serious breach of a fiduciary duty that the person holding the
22 power owes to the beneficiaries of the trust.

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

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

1 736.0809 Control and protection of trust property.--A
2 trustee shall take reasonable steps to take control of and
3 protect the trust property.

4 736.0810 Recordkeeping and identification of trust
5 property.--

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

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

10 (3) Except as otherwise provided in subsection (4), a
11 trustee shall cause the trust property to be designated so
12 that the interest of the trust, to the extent feasible,
13 appears in records maintained by a party other than a trustee
14 or beneficiary.

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

18 736.08105 Duty to ascertain marketable title of trust
19 real property.--A trustee holding title to real property
20 received from a settlor or estate shall not be required to
21 obtain title insurance or proof of marketable title until a
22 marketable title is required for a sale or conveyance of the
23 real property.

24 736.0811 Enforcement and defense of claims.--A trustee
25 shall take reasonable steps to enforce claims of the trust and
26 to defend claims against the trust.

27 736.0812 Collecting trust property.--A trustee shall
28 take reasonable steps to compel a former trustee or other
29 person to deliver trust property to the trustee and, except as
30 provided in s. 736.08125, to redress a breach of trust known
31 to the trustee to have been committed by a former trustee.

1 736.08125 Protection of successor trustees.--
2 (1) A successor trustee is not personally liable for
3 actions taken by any prior trustee, nor does any successor
4 trustee have a duty to institute any proceeding against any
5 prior trustee, or file any claim against any prior trustee's
6 estate, for any of the prior trustee's actions as trustee
7 under any of the following circumstances:
8 (a) As to a successor trustee who succeeds a trustee
9 who was also the settlor of a trust that was revocable during
10 the time that the settlor served as trustee;
11 (b) As to any beneficiary who has waived any
12 accounting required by s. 736.0813, but only as to the periods
13 included in the waiver;
14 (c) As to any beneficiary who has released the
15 successor trustee from the duty to institute any proceeding or
16 file any claim;
17 (d) As to any person who is not an eligible
18 beneficiary; or
19 (e) As to any eligible beneficiary:
20 1. If a supermajority of the eligible beneficiaries
21 have released the successor trustee;
22 2. If the eligible beneficiary has not delivered a
23 written request to the successor trustee to institute an
24 action or file a claim against the prior trustee within 6
25 months after the date of the successor trustee's acceptance of
26 the trust, if the successor trustee has notified the eligible
27 beneficiary in writing of acceptance by the successor trustee
28 in accordance with s. 736.0813(1)(a) and that writing advises
29 the beneficiary that, unless the beneficiary delivers the
30 written request within 6 months after the date of acceptance,
31

1 the right to proceed against the successor trustee will be
2 barred pursuant to this section; or
3 3. For any action or claim that the eligible
4 beneficiary is barred from bringing against the prior trustee.
5 (2) For the purposes of this section, the term:
6 (a) "Eligible beneficiaries" means:
7 1. At the time the determination is made, if there are
8 one or more beneficiaries as described in s. 736.0103(14)(c),
9 the beneficiaries described in s. 736.0103(14)(a) and (c); or
10 2. If there is no beneficiary as described in s.
11 736.0103(14)(c), the beneficiaries described in s.
12 736.0103(14)(a) and (b).
13 (b) "Supermajority of eligible beneficiaries" means at
14 least two-thirds in interest of the eligible beneficiaries if
15 the interests of the eligible beneficiaries are reasonably
16 ascertainable, otherwise, at least two-thirds in number of the
17 eligible beneficiaries.
18 (3) Nothing in this section affects any liability of
19 the prior trustee or the right of the successor trustee or any
20 beneficiary to pursue an action or claim against the prior
21 trustee.
22 736.0813 Duty to inform and account.--The trustee
23 shall keep the qualified beneficiaries of the trust reasonably
24 informed of the trust and its administration.
25 (1) The trustee's duty to inform and account includes,
26 but is not limited to, the following:
27 (a) Within 60 days after acceptance of the trust, the
28 trustee shall give notice to the qualified beneficiaries of
29 the acceptance of the trust and the full name and address of
30 the trustee.
31

1 (b) Within 60 days after the date the trustee acquires
2 knowledge of the creation of an irrevocable trust, or the date
3 the trustee acquires knowledge that a formerly revocable trust
4 has become irrevocable, whether by the death of the settlor or
5 otherwise, the trustee shall give notice to the qualified
6 beneficiaries of the trust's existence, the identity of the
7 settlor or settlors, the right to request a copy of the trust
8 instrument, and the right to accountings under this section.

9 (c) Upon reasonable request, the trustee shall provide
10 a qualified beneficiary with a complete copy of the trust
11 instrument.

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

16 (e) Upon reasonable request, the trustee shall provide
17 a qualified beneficiary with relevant information about the
18 assets and liabilities of the trust and the particulars
19 relating to administration.

20
21 Paragraphs (a) and (b) do not apply to an irrevocable trust
22 created before July 1, 2007, or to a revocable trust that
23 becomes irrevocable before July 1, 2007. Paragraph (a) does
24 not apply to a trustee who accepts a trusteeship before July
25 1, 2007.

26 (2) A qualified beneficiary may waive the trustee's
27 duty to account under paragraph (1)(d). A qualified
28 beneficiary may withdraw a waiver previously given. Waivers
29 and withdrawals of prior waivers under this subsection must be
30 in writing. Withdrawals of prior waivers are effective only
31 with respect to accountings for future periods.

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

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

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

9 736.08135 Trust accountings.--

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

15 (2)(a) The accounting must begin with a statement
16 identifying the trust, the trustee furnishing the accounting,
17 and the time period covered by the accounting.

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

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

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

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

10 (f) The trustee shall include in the final accounting
11 a plan of distribution for any undistributed assets shown on
12 the final accounting.

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

16 736.0814 Discretionary powers; tax savings.--

17 (1) Notwithstanding the breadth of discretion granted
18 to a trustee in the terms of the trust, including the use of
19 such terms as "absolute," "sole," or "uncontrolled," the
20 trustee shall exercise a discretionary power in good faith and
21 in accordance with the terms and purposes of the trust and the
22 interests of the beneficiaries. A court shall not determine
23 that a trustee abused its discretion merely because the court
24 would have exercised the discretion in a different manner or
25 would not have exercised the discretion.

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

30
31

1 (a) Make discretionary distributions of either
2 principal or income to or for the benefit of that trustee,
3 other than distributions subject to an ascertainable standard;

4 (b) Make discretionary allocations of receipts or
5 expenses as between principal and income, unless the trustee
6 acts in a fiduciary capacity whereby the trustee has no power
7 to enlarge or shift any beneficial interest except as an
8 incidental consequence of the discharge of the trustee's
9 fiduciary duties;

10 (c) Make discretionary distributions of either
11 principal or income to satisfy any of the trustee's legal
12 support obligations; or

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

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

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

20 (b) A power held by the settlor's spouse who is the
21 trustee of a trust for which a marital deduction, as defined
22 in s. 2056(a) or s. 2523(a) of the Internal Revenue Code of
23 1986, as amended, was previously allowed;

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

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

29 (4) A power whose exercise is limited or prohibited by
30 subsection (2) may be exercised by the remaining trustees
31 whose exercise of the power is not so limited or prohibited.

1 If there is no trustee qualified to exercise the power, on
2 petition by any qualified beneficiary, the court may appoint
3 an independent trustee with authority to exercise the power.

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

8 736.08147 Duty to distribute trust income.--If a will
9 or trust instrument granting income to the settlor's or
10 testator's spouse for life is silent as to the time of
11 distribution of income and the frequency of distributions, the
12 trustee shall distribute all net income, as defined in chapter
13 738, to the spouse no less frequently than annually. This
14 provision shall apply to any trust established before, on, or
15 after July 1, 2007, unless the trust instrument expressly
16 directs or permits net income to be distributed less
17 frequently than annually.

18 736.0815 General powers of trustee.--

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

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

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

23 1. All powers over the trust property which an
24 unmarried competent owner has over individually owned
25 property.

26 2. Any other powers appropriate to achieve the proper
27 investment, management, and distribution of the trust
28 property.

29 3. Any other powers conferred by this code.

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

1 736.0816 Specific powers of trustee.--Except as
2 limited or restricted by this code, a trustee may:

3 (1) Collect trust property and accept or reject
4 additions to the trust property from a settlor, including an
5 asset in which the trustee is personally interested, and hold
6 property in the name of a nominee or in other form without
7 disclosure of the trust so that title to the property may pass
8 by delivery but the trustee is liable for any act of the
9 nominee in connection with the property so held.

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

12 (3) Acquire an undivided interest in a trust asset,
13 including, but not limited to, a money market mutual fund,
14 mutual fund, or common trust fund, in which asset the trustee
15 holds an undivided interest in any trust capacity, including
16 any money market or other mutual fund from which the trustee
17 or any affiliate or associate of the trustee is entitled to
18 receive reasonable compensation for providing necessary
19 services as an investment adviser, portfolio manager, or
20 servicing agent. A trustee or affiliate or associate of the
21 trustee may receive compensation for such services in addition
22 to fees received for administering the trust, if such
23 compensation is fully disclosed in writing to all qualified
24 beneficiaries.

25 (4) Exchange, partition, or otherwise change the
26 character of trust property.

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

29 (6) Borrow money, with or without security, and
30 mortgage or pledge trust property for a period within or
31

1 extending beyond the duration of the trust and advance money
2 for the protection of the trust.

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

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

14 (a) Vote, or give proxies to vote, with or without
15 power of substitution, or enter into or continue a voting
16 trust agreement.

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

20 (c) Pay calls, assessments, and other sums chargeable
21 or accruing against the securities, and sell or exercise stock
22 subscription or conversion rights.

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

25 (9) With respect to an interest in real property,
26 construct, or make ordinary or extraordinary repairs to,
27 alterations to, or improvements in, buildings or other
28 structures, demolish improvements, raze existing or erect new
29 party walls or buildings, subdivide or develop land, dedicate
30 land to public use or grant public or private easements, and
31 make or vacate plats and adjust boundaries.

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

6 (11) Grant an option involving a sale, lease, or other
7 disposition of trust property or acquire an option for the
8 acquisition of property, including an option exercisable
9 beyond the duration of the trust, and exercise an option so
10 acquired.

11 (12) Insure the property of the trust against damage
12 or loss and insure the trustee, trustee's agents, and
13 beneficiaries against liability arising from the
14 administration of the trust.

15 (13) Abandon or decline to administer property of no
16 value or of insufficient value to justify the collection or
17 continued administration of such property.

18 (14) Pay or contest any claim, settle a claim by or
19 against the trust, and release, in whole or in part, a claim
20 belonging to the trust.

21 (15) Pay taxes, assessments, compensation of the
22 trustee and of employees and agents of the trust, and other
23 expenses incurred in the administration of the trust.

24 (16) Allocate items of income or expense to trust
25 income or principal, as provided by law.

26 (17) Exercise elections with respect to federal,
27 state, and local taxes.

28 (18) Select a mode of payment under any employee
29 benefit or retirement plan, annuity, or life insurance payable
30 to the trustee, exercise rights under such plan, annuity, or
31 insurance, including exercise of the right to indemnification

1 for expenses and against liabilities, and take appropriate
2 action to collect the proceeds.

3 (19) Make loans out of trust property, including, but
4 not limited to, loans to a beneficiary on terms and conditions
5 that are fair and reasonable under the circumstances, and the
6 trustee has a lien on future distributions for repayment of
7 those loans.

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

17 (21) Pay an amount distributable to a beneficiary who
18 is under a legal disability or who the trustee reasonably
19 believes is incapacitated, by paying the amount directly to
20 the beneficiary or applying the amount for the beneficiary's
21 benefit, or by:

22 (a) Paying the amount to the beneficiary's guardian of
23 the property or, if the beneficiary does not have a guardian
24 of the property, the beneficiary's guardian of the person;

25 (b) Paying the amount to the beneficiary's custodian
26 under a Uniform Transfers to Minors Act or custodial trustee
27 under a Uniform Custodial Trust Act, and, for that purpose,
28 creating a custodianship or custodial trust;

29 (c) Paying the amount to an adult relative or other
30 person having legal or physical care or custody of the
31 beneficiary, to be expended on the beneficiary's behalf, if

1 the trustee does not know of a guardian of the property,
2 guardian of the person, custodian, or custodial trustee; or

3 (d) Managing the amount as a separate fund on the
4 beneficiary's behalf, subject to the beneficiary's continuing
5 right to withdraw the distribution.

6 (22) On distribution of trust property or the division
7 or termination of a trust, make distributions in divided or
8 undivided interests, allocate particular assets in
9 proportionate or disproportionate shares, value the trust
10 property for those purposes, and adjust for resulting
11 differences in valuation.

12 (23) Prosecute or defend, including appeals, an
13 action, claim, or judicial proceeding in any jurisdiction to
14 protect trust property or the trustee in the performance of
15 the trustee's duties.

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

19 (25) On termination of the trust, exercise the powers
20 appropriate to wind up the administration of the trust and
21 distribute the trust property to the persons entitled to the
22 property, subject to the right of the trustee to retain a
23 reasonable reserve for the payment of debts, expenses, and
24 taxes.

25 736.08163 Powers of trustees relating to environmental
26 or human health laws or to trust property contaminated with
27 hazardous or toxic substances; liability.--

28 (1) From the creation of a trust until final
29 distribution of the assets from the trust, the trustee has,
30 without court authorization, the powers specified in
31 subsection (2).

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

3 (a) Inspect or investigate, or cause to be inspected
4 or investigated, property held by the trustee, including
5 interests in sole proprietorships, partnerships, or
6 corporations and any assets owned by any such business entity
7 for the purpose of determining compliance with an
8 environmental law affecting that property or to respond to an
9 actual or threatened violation of an environmental law
10 affecting that property;

11 (b) Take, on behalf of the trust, any action necessary
12 to prevent, abate, or otherwise remedy an actual or potential
13 violation of an environmental law affecting property held by
14 the trustee, before or after initiation of an enforcement
15 action by a governmental body;

16 (c) Refuse to accept property in trust if the trustee
17 determines that any property to be donated or conveyed to the
18 trustee is contaminated with a hazardous substance or is being
19 used or has been used for an activity directly or indirectly
20 involving a hazardous substance, which circumstance could
21 result in liability to the trust or trustee or otherwise
22 impair the value of the assets to be held;

23 (d) Settle or compromise at any time any claim against
24 the trust or trustee which may be asserted by a governmental
25 body or private party and which involves the alleged violation
26 of an environmental law affecting property of any trust over
27 which the trustee has responsibility;

28 (e) Disclaim any power granted by any document, law,
29 or rule of law that, in the sole judgment of the trustee, may
30 cause the trustee to incur personal liability, or the trust to
31 incur liability, under any environmental law;

1 (f) Decline to serve as a trustee, or having
2 undertaken to serve as a trustee, resign at any time, if the
3 trustee believes there is or may be a conflict of interest in
4 its fiduciary capacity and in its individual capacity because
5 of potential claims or liabilities that may be asserted
6 against the trustee on behalf of the trust by reason of the
7 type or condition of the assets held; or

8 (g) Charge against the income and principal of the
9 trust the cost of any inspection, investigation, review,
10 abatement, response, cleanup, or remedial action that this
11 section authorizes the trustee to take and, if the trust
12 terminates or closes or the trust property is transferred to
13 another trustee, hold assets sufficient to cover the cost of
14 cleaning up any known environmental problem.

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

20 (4) A trustee that acquires ownership or control of a
21 vessel or other property, without having owned, operated, or
22 materially participated in the management of that vessel or
23 property before assuming ownership or control as trustee, is
24 not considered an owner or operator for purposes of liability
25 under chapter 376, chapter 403, or any other environmental
26 law. A trustee that willfully, knowingly, or recklessly causes
27 or exacerbates a release or threatened release of a hazardous
28 substance is personally liable for the cost of the response,
29 to the extent that the release or threatened release is
30 attributable to the trustee's activities. This subsection does
31 not preclude the filing of claims against the assets that

1 constitute the trust held by the trustee or the filing of
2 actions against the trustee in its representative capacity and
3 in any such action, an award or judgment against the trustee
4 must be satisfied only from the assets of the trust.

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

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

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

17 736.08165 Administration pending outcome of contest or
18 other proceeding.--

19 (1) Pending the outcome of a proceeding filed to
20 determine the validity of all or part of a trust or the
21 beneficiaries of all or part of a trust, the trustee shall
22 proceed with the administration of the trust as if no
23 proceeding had been commenced, except no action may be taken
24 and no distribution may be made to a beneficiary in
25 contravention of the rights of those persons who may be
26 affected by the outcome of the proceeding.

27 (2) Upon motion of a party and after notice to
28 interested persons, a court, on good cause shown, may make an
29 exception to the prohibition under subsection (1) and
30 authorize the trustee to act or to distribute trust assets to
31 a beneficiary subject to any conditions the court, in the

1 court's discretion, may impose, including the posting of bond
2 by the beneficiary.

3 736.0817 Distribution on termination.--Upon the
4 occurrence of an event terminating or partially terminating a
5 trust, the trustee shall proceed expeditiously to distribute
6 the trust property to the persons entitled to the property,
7 subject to the right of the trustee to retain a reasonable
8 reserve for the payment of debts, expenses, and taxes. The
9 provisions of this section are in addition to and are not in
10 derogation of the rights of a trustee under the common law
11 with respect to final distribution of a trust.

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

14
15 PART IX

16 TRUST INVESTMENTS

17
18 736.0901 Applicability of chapter 518.--A trustee
19 shall invest trust property in accordance with chapter 518.

20 Section 10. Part X of chapter 736, Florida Statutes,
21 consisting of sections 736.1001, 736.1002, 736.1003, 736.1004,
22 736.1005, 736.1006, 736.1007, 736.1008, 736.1009, 736.1010,
23 736.1011, 736.1012, 736.1013, 736.1014, 736.1015, 736.1016,
24 736.1017, and 736.1018, is created to read:

25
26 PART X

27 LIABILITY OF TRUSTEE AND RIGHTS OF PERSONS DEALING WITH TRUSTEE

28
29 736.1001 Remedies for breach of trust.--

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

1 (2) To remedy a breach of trust that has occurred or
2 may occur, the court may:
3 (a) Compel the trustee to perform the trustee's
4 duties;
5 (b) Enjoin the trustee from committing a breach of
6 trust;
7 (c) Compel the trustee to redress a breach of trust by
8 paying money or restoring property or by other means;
9 (d) Order a trustee to account;
10 (e) Appoint a special fiduciary to take possession of
11 the trust property and administer the trust;
12 (f) Suspend the trustee;
13 (g) Remove the trustee as provided in s. 736.706;
14 (h) Reduce or deny compensation to the trustee;
15 (i) Subject to s. 736.1016, void an act of the
16 trustee, impose a lien or a constructive trust on trust
17 property, or trace trust property wrongfully disposed of and
18 recover the property or its proceeds; or
19 (j) Order any other appropriate relief.
20 (3) As an illustration of the remedies available to
21 the court and without limiting the court's discretion as
22 provided in subsection (2), if a breach of trust results in
23 the favoring of any beneficiary to the detriment of any other
24 beneficiary or consists of an abuse of the trustee's
25 discretion:
26 (a) To the extent the breach of trust has resulted in
27 a distribution to a beneficiary or a distribution which is too
28 small, the court may require the trustee to pay from the trust
29 to the beneficiary an amount the court determines will restore
30 the beneficiary, in whole or in part, to his or her
31 appropriate position.

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

9 **736.1002 Damages for breach of trust.--**

10 **(1) A trustee who commits a breach of trust is liable**
11 **for the greater of:**

12 **(a) The amount required to restore the value of the**
13 **trust property and trust distributions to what they would have**
14 **been if the breach had not occurred, including lost income,**
15 **capital gain, or appreciation that would have resulted from**
16 **proper administration; or**

17 **(b) The profit the trustee made by reason of the**
18 **breach.**

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

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

30 **(a) Their relative degrees of fault shall be the basis**
31 **for allocation of liability.**

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

3 **(c) Principles of equity applicable to contribution**
4 **generally shall apply.**

5 **(4) The right of contribution shall be enforced as**
6 **follows:**

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

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

15 **(c) If there is a judgment for breach of trust against**
16 **the liable person seeking contribution, any separate action by**
17 **that person to enforce contribution must be commenced within 1**
18 **year after the judgment has become final by lapse of time for**
19 **appeal or after appellate review.**

20 **(d) If there is no judgment for the breach of trust**
21 **against the liable person seeking contribution, the person's**
22 **right of contribution is barred unless the person has:**

23 **1. Discharged by payment the common liability within**
24 **the period of the statute of limitations applicable to the**
25 **beneficiary's right of action against the liable person and**
26 **the person has commenced an action for contribution within 1**
27 **year after payment; or**

28 **2. Agreed, while action is pending against the liable**
29 **person, to discharge the common liability and has within 1**
30 **year after the agreement paid the liability and commenced the**
31 **person's action for contribution.**

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

6 (6) The judgment of the court in determining the
7 liability of several defendants to the beneficiary for breach
8 of trust is binding upon such defendants in determining the
9 right of such defendants to contribution.

10 (7) Subsection (2) applies to all causes of action for
11 breach of trust pending on July 1, 2007, under which causes of
12 action the right of contribution among persons jointly and
13 severally liable is involved and to all causes of action filed
14 after July 1, 2007.

15 736.1003 Damages in absence of breach.--Absent a
16 breach of trust, a trustee is not liable to a beneficiary for
17 a loss or depreciation in the value of trust property or for
18 not having made a profit.

19 736.1004 Attorney's fees and costs.--

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

23 (b) In proceedings arising under ss.

24 736.0410-736.0417,

25
26 the court shall award taxable costs as in chancery actions,
27 including attorney's fees and guardian ad litem fees.

28 (2) When awarding taxable costs under this section,
29 including attorney's fees and guardian ad litem fees, the
30 court, in its discretion, may direct payment from a party's
31

1 interest, if any, in the trust or enter a judgment that may be
2 satisfied from other property of the party, or both.

3 736.1005 Attorney's fees for services to the trust.--

4 (1) Any attorney who has rendered services to a trust
5 may be awarded reasonable compensation from the trust. The
6 attorney may apply to the court for an order awarding
7 attorney's fees and, after notice and service on the trustee
8 and all beneficiaries entitled to an accounting under s.

9 736.0813, the court shall enter an order on the fee
10 application.

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

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

25 736.1006 Costs in trust proceedings.--

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

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

31 736.1007 Trustee's attorney's fees.--

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

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

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

27 (4) Ordinary services of the attorney in an initial
28 trust administration include legal advice and representation
29 concerning the trustee's duties relating to:

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

- 1 (b) Implementation of substitution of the successor
2 trustee.
- 3 (c) Persons who must or should be served with required
4 notices and the method and timing of such service.
- 5 (d) The obligation of a successor to require a former
6 trustee to provide an accounting.
- 7 (e) The trustee's duty to protect, insure, and manage
8 trust assets and the trustee's liability relating to these
9 duties.
- 10 (f) The trustee's duty regarding investments imposed
11 by the prudent investor rule.
- 12 (g) The trustee's obligation to inform and account to
13 beneficiaries and the method of satisfaction of such
14 obligations, the liability of the trust and trustee to the
15 settlor's creditors, and the advisability or necessity for
16 probate proceedings to bar creditors.
- 17 (h) Contributions due to the personal representative
18 of the settlor's estate for payment of expenses of
19 administration and obligations of the settlor's estate.
- 20 (i) Identifying tax returns required to be filed by
21 the trustee, the trustee's liability for payment of taxes, and
22 the due date of returns.
- 23 (j) Filing a nontaxable affidavit, if not filed by a
24 personal representative.
- 25 (k) Order of payment of expenses of administration of
26 the trust and order and priority of abatement of trust
27 distributions.
- 28 (l) Distribution of income or principal to
29 beneficiaries or funding of further trusts provided in the
30 governing instrument.
- 31

1 (m) Preparation of any legal documents required to
2 effect distribution.

3 (n) Fiduciary duties, avoidance of self-dealing,
4 conflicts of interest, duty of impartiality, and obligations
5 to beneficiaries.

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

12 (p) Procedures for the trustee's discharge from
13 liability for administration of the trust on termination or
14 resignation.

15 (5) In addition to the attorney's fees for ordinary
16 services, the attorney for the trustee shall be allowed
17 further reasonable compensation for any extraordinary service.
18 What constitutes an extraordinary service may vary depending
19 on many factors, including the size of the trust.

20 Extraordinary services may include, but are not limited to:

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

26 (b) Representation of the trustee in an audit or any
27 proceeding for adjustment, determination, or collection of any
28 taxes.

29 (c) Tax advice on postmortem tax planning, including,
30 but not limited to, disclaimer, renunciation of fiduciary
31 commission, alternate valuation date, allocation of

1 administrative expenses between tax returns, the QTIP or
2 reverse QTIP election, allocation of GST exemption,
3 qualification for Internal Revenue Code ss. 303 and 6166
4 privileges, deduction of last-illness expenses, distribution
5 planning, asset basis considerations, throwback rules,
6 handling income or deductions in respect of a decedent,
7 valuation discounts, special use and other valuation, handling
8 employee benefit or retirement proceeds, prompt-assessment
9 request, or request for release from personal liability for
10 payment of tax.

11 (d) Review of an estate tax return and preparation or
12 review of other tax returns required to be filed by the
13 trustee.

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

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

26 (g) Legal advice regarding carrying on of decedent's
27 business or conducting other commercial activity by the
28 trustee.

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

31

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

3 (j) Involvement in fiduciary, employee, or attorney
4 compensation disputes.

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

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

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

20 (b) The responsibilities assumed by, and potential
21 liabilities of, the attorney.

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

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

26 (e) The complexity or simplicity of the administration
27 and the novelty of issues presented.

28 (f) The attorney's participation in tax planning for
29 the estate, the trust, and the trust's beneficiaries and tax
30 return preparation or review and approval.

31

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

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

6 (i) Any other relevant factors.

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

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

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

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

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

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

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

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

26 (b) "Trust accounting" means an accounting that
27 adequately discloses the information required by and that
28 substantially complies with the standards set forth in s.
29 736.08135.

30 (c) "Limitation notice" means a written statement of
31 the trustee that an action by a beneficiary against the

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

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

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

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

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

1 (d) Received more than 10 days after the delivery of
2 the trust disclosure document but only if the limitation
3 notice references that trust disclosure document and:

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

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

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

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

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

28 736.1011 Exculpation of trustee.--

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

1 (a) Relieves the trustee of liability for breach of
2 trust committed in bad faith or with reckless indifference to
3 the purposes of the trust or the interests of the
4 beneficiaries; or

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

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

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

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

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

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

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

1 of administering the trust if the trustee in the contract
2 disclosed the fiduciary capacity.

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

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

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

18 736.1014 Limitations on actions against certain
19 trusts.--

20 (1) After the death of a settlor, no creditor of the
21 settlor may bring, maintain, or continue any direct action
22 against a trust described in s. 733.707(3), the trustee of the
23 trust, or any beneficiary of the trust which is dependent on
24 the individual liability of the settlor. Such claims and
25 causes of action against the settlor shall be presented and
26 enforced against the settlor's estate as provided in part VII
27 of chapter 733 and the personal representative of the
28 settlor's estate may obtain payment from the trustee of a
29 trust described in s. 733.707(3) as provided in ss.
30 733.607(2), 733.707(3), and 736.05053.

31

1 (2) This section does not preclude a direct action
2 against a trust described in s. 733.707(3), the trustee of the
3 trust, or a beneficiary of the trust which is not dependent on
4 the individual liability of the settlor.

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

9 736.1015 Interest as general partner.--

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

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

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

27 736.1016 Protection of person dealing with trustee.--

28 (1) A person other than a beneficiary who in good
29 faith assists a trustee or who in good faith and for value
30 deals with a trustee, without knowledge that the trustee is
31 exceeding or improperly exercising the trustee's powers, is

1 protected from liability as if the trustee properly exercised
2 the power.

3 (2) A person other than a beneficiary who in good
4 faith deals with a trustee is not required to inquire into the
5 extent of the trustee's powers or the propriety of their
6 exercise.

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

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

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

18 736.1017 Certification of trust.--

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

23 (a) The trust exists and the date the trust instrument
24 was executed.

25 (b) The identity of the settlor.

26 (c) The identity and address of the currently acting
27 trustee.

28 (d) The powers of the trustee.

29 (e) The revocability or irrevocability of the trust
30 and the identity of any person holding a power to revoke the
31 trust.

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

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

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

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

11 (4) A certification of trust need not contain the
12 dispositive terms of a trust.

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

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

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

30 (8) This section does not limit the right of a person
31 to obtain a copy of the trust instrument when required to be

1 furnished by law or in a judicial proceeding concerning the
2 trust.

3 736.1018 Improper distribution or payment; liability
4 of distributee.--Any person who received a distribution or was
5 paid improperly from a trust shall return the assets or funds
6 received and the income from those assets or interest on the
7 funds from the date of distribution or payment unless the
8 distribution or payment cannot be questioned because of
9 adjudication, estoppel, or limitations. If the person does not
10 have the assets or funds, the value of the assets or funds at
11 the date of disposition, income from the assets or funds, and
12 gain received by the person from the assets or funds shall be
13 returned.

14 Section 11. Part XI of chapter 736, Florida Statutes,
15 consisting of sections 736.1101, 736.1102, 736.1103, 736.1104,
16 736.1105, 736.1106, 736.1107, and 736.1108, is created to
17 read:

18
19 PART XI

20 RULES OF CONSTRUCTION

21
22 736.1101 Rules of construction; general
23 provisions.--Except as provided in s. 736.0105(2):

24 (1) The intent of the settlor as expressed in the
25 terms of the trust controls the legal effect of the
26 dispositions made in the trust.

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

30 736.1102 Construction of generic terms.--Adopted
31 persons and persons born out of wedlock are included in class

1 gift terminology and terms of relationship, in accordance with
2 rules for determining relationships for purposes of intestate
3 succession.

4 736.1103 Gifts to multigeneration classes to be per
5 stirpes.--Class gifts to descendants, issue, and other
6 multigeneration classes shall be per stirpes.

7 736.1104 Killer not entitled to receive property or
8 other benefits by reason of victim's death.--

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

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

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

1 administered and construed as if the settlor's spouse had died
2 on the date of the annulment or on entry of the judgment for
3 dissolution of marriage or divorce.

4 736.1106 Antilapse; survivorship with respect to
5 future interests under terms of inter vivos and testamentary
6 trusts; substitute takers.--

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

8 (a) "Beneficiary" means the beneficiary of a future
9 interest and includes a class member if the future interest is
10 in the form of a class gift.

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

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

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

24 (e) "Surviving beneficiary" or "surviving descendant"
25 means a beneficiary or a descendant who did not predecease the
26 distribution date or is not deemed to have predeceased the
27 distribution date by operation of law.

28 (2) A future interest under the terms of a trust is
29 contingent upon the beneficiary surviving the distribution
30 date. Unless a contrary intent appears in the trust
31 instrument, if a beneficiary of a future interest under the

1 terms of a trust fails to survive the distribution date, and
2 the deceased beneficiary leaves surviving descendants, a
3 substitute gift is created in the beneficiary's surviving
4 descendants. They take per stirpes the property to which the
5 beneficiary would have been entitled if the beneficiary had
6 survived the distribution date.

7 (3) In the application of this section:

8 (a) Words of survivorship attached to a future
9 interest are a sufficient indication of an intent contrary to
10 the application of this section.

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

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

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

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

30 (c) If no taker is produced by the application of
31 paragraph (a) or paragraph (b), the property passes to those

1 persons, including the state, and in such shares as would
2 succeed to the transferor's intestate estate under the
3 intestate succession law of the transferor's domicile if the
4 transferor died when the disposition is to take effect in
5 possession or enjoyment.

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

12 (5) This section applies to all trusts other than
13 trusts that were irrevocable before July 1, 2007.

14 736.1107 Change in securities; accessions;
15 nonademption.--A gift of specific securities, rather than
16 their equivalent value, entitles the beneficiary only to:

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

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

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

27 736.1108 Penalty clause for contest.--

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

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

5 Section 12. Part XII of chapter 736, Florida Statutes,
6 consisting of sections 736.1201, 736.1202, 736.1203, 736.1204,
7 736.1205, 736.1206, 736.1207, 736.1208, 736.1209, and
8 736.1210, is created to read:

9
10 PART XII

11 CHARITABLE TRUSTS

12
13 736.1201 Definitions.--As used in this part:

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

17 (2) "Internal Revenue Code" means the Internal Revenue
18 Code of 1986, as amended.

19 (3) "Private foundation trust" means a trust,
20 including a trust described in s. 4947(a)(1) of the Internal
21 Revenue Code, as defined in s. 509(a) of the Internal Revenue
22 Code.

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

26 (5) "State attorney" means the state attorney for the
27 judicial circuit of the principal place of administration of
28 the trust pursuant to s. 736.0108.

29 736.1202 Application of this part.--Except as
30 otherwise provided in the trust, the provisions of this part
31 apply to all private foundation trusts and split interest

1 trusts, whether created or established before or after
2 November 1, 1971, and to all trust assets acquired by the
3 trustee before or after November 1, 1971.

4 736.1203 Trustee of a private foundation trust or a
5 split interest trust.--Except as provided in s. 736.1205, the
6 trustee of a private foundation trust or a split interest
7 trust has the duties and powers conferred on the trustee by
8 this part.

9 736.1204 Powers and duties of trustee of a private
10 foundation trust or a split interest trust.--

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

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

18 (b) Deprive a donor of a trust asset or tax deduction
19 or credit; or

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

22
23 For purposes of this subsection, the term "tax" includes, but
24 is not limited to, any federal, state, or local excise,
25 income, gift, estate, or inheritance tax.

26 (2) Except as provided in s. 736.1205, a trustee of a
27 private foundation trust shall make distributions at such time
28 and in such manner as not to subject the trust to tax under s.
29 4942 of the Internal Revenue Code.

30 (3) Except as provided in subsection (4) and in s.
31 736.1205, a trustee of a private foundation trust, or a split

1 interest trust to the extent that the split interest trust is
2 subject to the provisions of s. 4947(a)(2) of the Internal
3 Revenue Code, in the exercise of the trustee's powers shall
4 not:
5 (a) Engage in any act of self-dealing as defined in s.
6 4941(d) of the Internal Revenue Code;
7 (b) Retain any excess business holdings as defined in
8 s. 4943(c) of the Internal Revenue Code;
9 (c) Make any investments in a manner that subjects the
10 foundation to tax under s. 4944 of the Internal Revenue Code;
11 or
12 (d) Make any taxable expenditures as defined in s.
13 4945(d) of the Internal Revenue Code.
14 (4) Paragraphs (3)(b) and (c) shall not apply to a
15 split interest trust if:
16 (a) All the interest from income, and none of the
17 remainder interest, of the trust is devoted solely to one or
18 more of the purposes described in s. 170(c)(2)(B) of the
19 Internal Revenue Code, and all amounts in the trust for which
20 a deduction was allowed under s. 170, s. 545(b)(2), s.
21 556(b)(2), s. 642(c), s. 2055, s. 2106(a)(2), or s. 2522 of
22 the Internal Revenue Code have an aggregate fair market value
23 of not more than 60 percent of the aggregate fair market value
24 of all amounts in the trust; or
25 (b) A deduction was allowed under s. 170, s.
26 545(b)(2), s. 556(b)(2), s. 642(c), s. 2055, s. 2106(a)(2), or
27 s. 2522 of the Internal Revenue Code for amounts payable under
28 the terms of the trust to every remainder beneficiary but not
29 to any income beneficiary.
30 736.1205 Notice that this part does not apply.--In the
31 case of a power to make distributions, if the trustee

1 determines that the governing instrument contains provisions
2 that are more restrictive than s. 736.1204(2), or if the trust
3 contains other powers, inconsistent with the provisions of s.
4 736.1204(3) which specifically direct acts by the trustee, the
5 trustee shall notify the state attorney when the trust becomes
6 subject to this part. Section 736.1204 does not apply to any
7 trust for which notice has been given pursuant to this section
8 unless the trust is amended to comply with the terms of this
9 part.

10 736.1206 Power to amend trust instrument.--

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

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

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

29 736.1208 Release; property and persons affected;
30 manner of effecting.--

31

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

5 (2) The release of a power to select charitable donees
6 may apply to all or any part of the property subject to the
7 power and may reduce or limit the charitable organizations, or
8 classes of charitable organizations, in whose favor the power
9 is exercisable.

10 (3) A release shall be effected by a duly acknowledged
11 written instrument signed by the trustee and delivered as
12 provided in subsection (4).

13 (4) Delivery of a release shall be accomplished as
14 follows:

15 (a) If the release is accomplished by specifying a
16 charitable organization or organizations as beneficiary or
17 beneficiaries of the trust, by delivery of a copy of the
18 release to each designated charitable organization.

19 (b) If the release is accomplished by reducing the
20 class of permissible charitable organizations, by delivery of
21 a copy of the release to the state attorney.

22 (5) If a release is accomplished by specifying a
23 public charitable organization or organizations as beneficiary
24 or beneficiaries of the trust, the trust at all times
25 thereafter shall be operated exclusively for the benefit of,
26 and be supervised by, the specified public charitable
27 organization or organizations.

28 736.1209 Election to come under this part.--With the
29 consent of that organization or organizations, a trustee of a
30 trust for the benefit of a public charitable organization or
31 organizations may come under s. 736.0838(5) by filing with the

1 state attorney an election, accompanied by the proof of
2 required consent. Thereafter the trust shall be subject to s.
3 736.1208(5).

4 736.1210 Interpretation.--This part shall be
5 interpreted to effectuate the intent of the state to preserve,
6 foster, and encourage gifts to, or for the benefit of,
7 charitable organizations.

8 Section 13. Part XIII of chapter 736, Florida
9 Statutes, consisting of sections 736.1301, 736.1302, and
10 736.1303, is created to read:

11
12 PART XIII
13 MISCELLANEOUS
14

15 736.1301 Electronic records and signatures.--Any
16 provisions of this code governing the legal effect, validity,
17 or enforceability of electronic records or electronic
18 signatures, and of contracts formed or performed with the use
19 of such records or signatures, are deemed to conform to the
20 requirements of s. 102 of the Electronic Signatures in Global
21 and National Commerce Act, 15 U.S.C. s. 7002, and supersede,
22 modify, and limit the requirements of the Electronic
23 Signatures in Global and National Commerce Act.

24 736.1302 Severability clause.--If any provision of
25 this code or its application to any person or circumstances is
26 held invalid, the invalidity does not affect other provisions
27 or applications of this code which can be given effect without
28 the invalid provision or application, and to this end the
29 provisions of this code are severable.

30 736.1303 Application to existing relationships.--
31

1 (1) Except as otherwise provided in this code, on July
2 1, 2007:

3 (a) This code applies to all trusts created before,
4 on, or after such date.

5 (b) This code applies to all judicial proceedings
6 concerning trusts commenced on or after such date.

7 (c) This code applies to judicial proceedings
8 concerning trusts commenced before such date, unless the court
9 finds that application of a particular provision of this code
10 would substantially interfere with the effective conduct of
11 the judicial proceedings or prejudice the rights of the
12 parties, in which case the particular provision of this code
13 does not apply and the superseded law applies.

14 (d) Any rule of construction or presumption provided
15 in this code applies to trust instruments executed before the
16 effective date of this code unless there is a clear indication
17 of a contrary intent in the terms of the trust.

18 (e) An act done before such date is not affected by
19 this code.

20 (2) If a right is acquired, extinguished, or barred on
21 the expiration of a prescribed period that has commenced to
22 run under any other law before July 1, 2007, that law
23 continues to apply to the right even if it has been repealed
24 or superseded.

25 Section 14. Paragraph (a) of subsection (5) of section
26 497.458, Florida Statutes, is amended to read:

27 497.458 Disposition of proceeds received on
28 contracts.--

29 (5) The trustee of the trust established pursuant to
30 this section shall only have the power to:

31

1 (a) Invest in investments as prescribed in s. 215.47
2 and exercise the powers set forth in part VIII of chapter 736
3 ~~part IV of chapter 737~~, provided that the licensing authority
4 may by order require the trustee to liquidate or dispose of
5 any investment within 30 days after such order, or within such
6 other times as the order may direct. The licensing authority
7 may issue such order if it determines that the investment
8 violates any provision of this chapter or is not in the best
9 interests of the preneed contract holders whose contracts are
10 secured by the trust funds.

11 Section 15. Subsection (2) of section 607.0802,
12 Florida Statutes, is amended to read:

13 607.0802 Qualifications of directors.--

14 (2) In the event that the eligibility to serve as a
15 member of the board of directors of a condominium association,
16 cooperative association, homeowners' association, or mobile
17 home owners' association is restricted to membership in such
18 association and membership is appurtenant to ownership of a
19 unit, parcel, or mobile home, a grantor of a trust described
20 in s. 733.707(3), or a qualified beneficiary as defined in s.
21 736.0103(14) ~~737.303(4)(b)~~ of a trust which owns a unit,
22 parcel, or mobile home shall be deemed a member of the
23 association and eligible to serve as a director of the
24 condominium association, cooperative association, homeowners'
25 association, or mobile home owners' association, provided that
26 said beneficiary occupies the unit, parcel, or mobile home.

27 Section 16. Subsection (2) of section 617.0802,
28 Florida Statutes, is amended to read:

29 617.0802 Qualifications of directors.--

30 (2) In the event that the eligibility to serve as a
31 member of the board of directors of a condominium association,

1 cooperative association, homeowners' association, or mobile
2 home owners' association is restricted to membership in such
3 association and membership is appurtenant to ownership of a
4 unit, parcel, or mobile home, a grantor of a trust described
5 in s. 733.707(3), or a qualified beneficiary as defined in s.
6 736.0103(14) ~~737.303(4)(b)~~ of a trust which owns a unit,
7 parcel, or mobile home shall be deemed a member of the
8 association and eligible to serve as a director of the
9 condominium association, cooperative association, homeowners'
10 association, or mobile home owners' association, provided that
11 said beneficiary occupies the unit, parcel, or mobile home.

12 Section 17. Subsection (6) of section 660.25, Florida
13 Statutes, is amended to read:

14 660.25 Definitions.--Subject to other definitions
15 contained in other sections of this code, and unless the
16 context otherwise requires, in this chapter:

17 (6) Terms used but not defined in this chapter, but
18 which are expressly defined in chapter 518, the financial
19 institutions codes, chapter 732, chapter 733, chapter 734,
20 chapter 735, chapter 736 ~~737~~, chapter 738, chapter 744, or
21 chapter 747, shall in this chapter, unless the context
22 otherwise requires, have the meanings ascribed to them in said
23 chapters; and references in any of said chapters to a "trust
24 company" or to "trust companies" shall include every trust
25 department as defined in s. 658.12.

26 Section 18. Paragraphs (a), (d), and (e) of subsection
27 (1) and subsections (2), (3), (9), and (10) of section 660.46,
28 Florida Statutes, are amended to read:

29 660.46 Substitution of fiduciaries.--

30 (1) The provisions of this section shall apply to the
31 transfer of fiduciary accounts by substitution, and for those

1 | purposes these provisions shall constitute alternative
2 | procedures to those provided or required by any other
3 | provisions of law relating to the transfer of fiduciary
4 | accounts or the substitution of persons acting or who are to
5 | act in a fiduciary capacity. In this section, and only for its
6 | purposes, the term:

7 | (a) "Limitation notice" has the meaning ascribed in s.
8 | 736.1008(4) ~~737.307(3)~~.

9 | (d) "Trust accounting" has the meaning ascribed in s.
10 | 736.08135 ~~737.3035~~.

11 | (e) "Trust disclosure document" has the meaning
12 | ascribed in s. 736.1008(4)(a) ~~737.307(2)~~.

13 | (2) Any original fiduciary and any proposed substitute
14 | fiduciary may, with respect to any fiduciary account or
15 | accounts which they shall mutually select, initiate
16 | proceedings by joining in the filing of a petition in the
17 | circuit court, requesting the substitution of the proposed
18 | substitute fiduciary for the original fiduciary as to such
19 | fiduciary account or accounts. The petition may be filed in
20 | the county in which the main office of the original fiduciary
21 | is located and, except to the extent inconsistent with the
22 | provisions of this section, shall be governed by the Florida
23 | Rules of Civil Procedure; however, if any fiduciary account is
24 | then the subject of a proceeding in a court in this state
25 | pursuant to the Florida Probate Code, the Florida Guardianship
26 | Law, chapter 736 ~~737~~, or chapter 747, the petition relating to
27 | such fiduciary account shall be filed in that proceeding and
28 | shall be governed by the procedural or other relevant rules
29 | applicable to such proceeding except to the extent
30 | inconsistent with the provisions of this section.

31 |

1 (3) Unless a waiver or consent shall be filed in the
2 proceedings as provided in subsection (4), the provisions of
3 s. 731.301(1) and (2) shall apply with respect to notice of
4 the proceedings to all persons who are then cofiduciaries with
5 the original fiduciary, other than a person joining as a
6 petitioner in the proceedings; to all persons named in the
7 governing instrument as substitutes or successors to the
8 fiduciary capacity of the original fiduciary; to the persons
9 then living who are entitled under the governing instrument to
10 appoint a substitute or successor to act in the fiduciary
11 capacity of the original fiduciary; to all vested
12 beneficiaries of the fiduciary account; and to all then-living
13 originators of the governing instrument. Unless a waiver or
14 consent shall be filed in the proceedings as provided in
15 subsection (4), the provisions of s. 731.301 shall apply with
16 respect to notice to all contingent beneficiaries of the
17 fiduciary account. Only the persons or classes of persons
18 described in the foregoing provisions of this subsection shall
19 be deemed to be interested persons for the purposes of this
20 section and the proceedings and notices provided for in this
21 section; and the provisions of ss. 731.301(3) and 731.303(3)
22 ~~and~~ (4) ~~and~~ ~~(5)~~, part III of chapter 736, relating to notice
23 requirements, the effect of notice, and representation of
24 interests, shall apply to the proceedings provided for in this
25 section.

26 (9) Unless previously or otherwise barred by
27 adjudication, waiver, consent, limitation, or the provisions
28 of subsection (8), an action for breach of trust or breach of
29 fiduciary duties or responsibilities against an original
30 fiduciary in whose place and stead another trust company or
31 trust department has been substituted pursuant to the

1 provisions of this section is barred for any beneficiary who
2 has received a trust disclosure document adequately disclosing
3 the matter unless a proceeding to assert the claim is
4 commenced within 6 months after receipt of the trust
5 disclosure document or the limitation notice that applies to
6 the trust disclosure document, whichever is received later. In
7 any event, and notwithstanding lack of adequate disclosure,
8 all claims against such original fiduciary which has complied
9 with the requirements of s. 736.1008 ~~issued a final trust~~
10 ~~disclosure document received by the beneficiary and has~~
11 ~~informed the beneficiary of the location and availability of~~
12 ~~records for his or her examination~~ are barred as provided in
13 chapter 95. Section 736.1008(4)(a) and (c) ~~737.307(2) and (3)~~
14 applies to this subsection.

15 (10) A beneficiary has received a final trust
16 disclosure document or a limitation notice if, when the
17 beneficiary is an adult, it is received by him or her or if,
18 when the beneficiary is a minor or a disabled person, it is
19 received by his or her representative as provided in part III
20 of chapter 736 defined in s. 731.303.

21 Section 19. Section 660.418, Florida Statutes, is
22 amended to read:

23 660.418 Investment of fiduciary funds in syndicate
24 securities.--Notwithstanding any other provision of law, any
25 financial institution with fiduciary powers may, in its
26 fiduciary capacity, purchase bonds or other securities
27 underwritten or otherwise distributed by the financial
28 institution or by a syndicate that includes the financial
29 institution, or an affiliate of the financial institution,
30 provided that such purchase is made through a licensed
31 securities dealer, is otherwise prudent, and is not prohibited

1 | by the instrument governing the fiduciary relationship and
2 | that disclosure is made at least annually to those persons
3 | entitled to a statement of accounts pursuant to s. 736.0813
4 | ~~737.303(4)~~ indicating that such securities have been or may be
5 | purchased. This section applies to purchases of bonds or other
6 | securities made at the time of the initial offering of such
7 | bonds or securities or at any time after such initial
8 | offering.

9 | Section 20. Subsection (5) of section 689.071, Florida
10 | Statutes, is amended to read:

11 | 689.071 Land trusts transferring interests in real
12 | estate; ownership vests in trustee.--

13 | (5) In addition to any other limitation on personal
14 | liability existing pursuant to statute or otherwise, the
15 | provisions of s. 736.1013 ~~737.306~~ apply to the trustee of a
16 | land trust created pursuant to this section.

17 | Section 21. Subsections (1) and (4) of section
18 | 689.075, Florida Statutes, are amended to read:

19 | 689.075 Inter vivos trusts; powers retained by
20 | settlor.--

21 | (1) A trust which is otherwise valid and which
22 | complies with s. 736.0403 ~~737.111~~, including, but not limited
23 | to, a trust the principal of which is composed of real
24 | property, intangible personal property, tangible personal
25 | property, the possible expectancy of receiving as a named
26 | beneficiary death benefits as described in s. 733.808, or any
27 | combination thereof, and which has been created by a written
28 | instrument shall not be held invalid or an attempted
29 | testamentary disposition for any one or more of the following
30 | reasons:
31 |

1 (a) Because the settlor or another person or both
2 possess the power to revoke, amend, alter, or modify the trust
3 in whole or in part;

4 (b) Because the settlor or another person or both
5 possess the power to appoint by deed or will the persons and
6 organizations to whom the income shall be paid or the
7 principal distributed;

8 (c) Because the settlor or another person or both
9 possess the power to add to, or withdraw from, the trust all
10 or any part of the principal or income at one time or at
11 different times;

12 (d) Because the settlor or another person or both
13 possess the power to remove the trustee or trustees and
14 appoint a successor trustee or trustees;

15 (e) Because the settlor or another person or both
16 possess the power to control the trustee or trustees in the
17 administration of the trust;

18 (f) Because the settlor has retained the right to
19 receive all or part of the income of the trust during her or
20 his life or for any part thereof; or

21 (g) Because the settlor is, at the time of the
22 execution of the instrument, or thereafter becomes, sole
23 trustee.

24 (4) This section shall be applicable to trusts
25 executed before or after July 1, 1969, by persons who are
26 living on or after said date. ~~However, the requirement of~~
27 ~~conformity with the formalities for the execution of wills as~~
28 ~~found in paragraph (1)(g) shall not be imposed upon any trust~~
29 ~~executed prior to July 1, 1969.~~

30 Section 22. Section 689.175, Florida Statutes, is
31 created to read:

1 689.175 Worthier title doctrine abolished.--The
2 doctrine of worthier title is abolished as a rule of law and
3 as a rule of construction. Language in a governing instrument
4 describing the beneficiaries of a disposition as the
5 transferor's "heirs," "heirs at law," "next of kin,"
6 "distributees," "relatives," or "family," or language of
7 similar import, does not create or presumptively create a
8 reversionary interest in the transferor.

9 Section 23. Subsection (8) of section 709.08, Florida
10 Statutes, is amended to read:

11 709.08 Durable power of attorney.--

12 (8) STANDARD OF CARE.--Except as otherwise provided in
13 paragraph (4)(e), an attorney in fact is a fiduciary who must
14 observe the standards of care applicable to trustees as
15 described in s. 736.0901 ~~737.302~~. The attorney in fact is not
16 liable to third parties for any act pursuant to the durable
17 power of attorney if the act was authorized at the time. If
18 the exercise of the power is improper, the attorney in fact is
19 liable to interested persons as described in s. 731.201 for
20 damage or loss resulting from a breach of fiduciary duty by
21 the attorney in fact to the same extent as the trustee of an
22 express trust.

23 Section 24. Paragraph (c) of subsection (2) of section
24 721.08, Florida Statutes, is amended to read:

25 721.08 Escrow accounts; nondisturbance instruments;
26 alternate security arrangements; transfer of legal title.--

27 (2) One hundred percent of all funds or other property
28 which is received from or on behalf of purchasers of the
29 timeshare plan or timeshare interest prior to the occurrence
30 of events required in this subsection shall be deposited
31 pursuant to an escrow agreement approved by the division. The

1 funds or other property may be released from escrow only as
2 follows:

3 (c) Compliance with conditions.--

4 1. Timeshare licenses.--If the timeshare plan is one
5 in which timeshare licenses are to be sold and no cancellation
6 or default has occurred, the escrow agent may release the
7 escrowed funds or other property to or on the order of the
8 developer upon presentation of:

9 a. An affidavit by the developer that all of the
10 following conditions have been met:

11 (I) Expiration of the cancellation period.

12 (II) Completion of construction.

13 (III) Closing.

14 (IV) Either:

15 (A) Execution, delivery, and recordation by each
16 interestholder of the nondisturbance and notice to creditors
17 instrument, as described in this section; or

18 (B) Transfer by the developer of legal title to the
19 subject accommodations and facilities, or all use rights
20 therein, into a trust satisfying the requirements of
21 subparagraph 4. and the execution, delivery, and recordation
22 by each other interestholder of the nondisturbance and notice
23 to creditors instrument, as described in this section.

24 b. A certified copy of each recorded nondisturbance
25 and notice to creditors instrument.

26 c. One of the following:

27 (I) A copy of a memorandum of agreement, as defined in
28 s. 721.05, together with satisfactory evidence that the
29 original memorandum of agreement has been irretrievably
30 delivered for recording to the appropriate official
31 responsible for maintaining the public records in the county

1 | in which the subject accommodations and facilities are
2 | located. The original memorandum of agreement must be recorded
3 | within 180 days after the date on which the purchaser executed
4 | her or his purchase agreement.

5 | (II) A notice delivered for recording to the
6 | appropriate official responsible for maintaining the public
7 | records in each county in which the subject accommodations and
8 | facilities are located notifying all persons of the identity
9 | of an independent escrow agent or trustee satisfying the
10 | requirements of subparagraph 4. that shall maintain separate
11 | books and records, in accordance with good accounting
12 | practices, for the timeshare plan in which timeshare licenses
13 | are to be sold. The books and records shall indicate each
14 | accommodation and facility that is subject to such a timeshare
15 | plan and each purchaser of a timeshare license in the
16 | timeshare plan.

17 | 2. Timeshare estates.--If the timeshare plan is one in
18 | which timeshare estates are to be sold and no cancellation or
19 | default has occurred, the escrow agent may release the
20 | escrowed funds or other property to or on the order of the
21 | developer upon presentation of:

22 | a. An affidavit by the developer that all of the
23 | following conditions have been met:

24 | (I) Expiration of the cancellation period.

25 | (II) Completion of construction.

26 | (III) Closing.

27 | b. If the timeshare estate is sold by agreement for
28 | deed, a certified copy of the recorded nondisturbance and
29 | notice to creditors instrument, as described in this section.

30 | c. Evidence that each accommodation and facility:
31 |

1 (I) Is free and clear of the claims of any
2 interestholders, other than the claims of interestholders
3 that, through a recorded instrument, are irrevocably made
4 subject to the timeshare instrument and the use rights of
5 purchasers made available through the timeshare instrument;

6 (II) Is the subject of a recorded nondisturbance and
7 notice to creditors instrument that complies with subsection
8 (3) and s. 721.17; or

9 (III) Has been transferred into a trust satisfying the
10 requirements of subparagraph 4.

11 d. Evidence that the timeshare estate:

12 (I) Is free and clear of the claims of any
13 interestholders, other than the claims of interestholders
14 that, through a recorded instrument, are irrevocably made
15 subject to the timeshare instrument and the use rights of
16 purchasers made available through the timeshare instrument; or

17 (II) Is the subject of a recorded nondisturbance and
18 notice to creditors instrument that complies with subsection
19 (3) and s. 721.17.

20 3. Personal property timeshare interests.--If the
21 timeshare plan is one in which personal property timeshare
22 interests are to be sold and no cancellation or default has
23 occurred, the escrow agent may release the escrowed funds or
24 other property to or on the order of the developer upon
25 presentation of:

26 a. An affidavit by the developer that all of the
27 following conditions have been met:

28 (I) Expiration of the cancellation period.

29 (II) Completion of construction.

30 (III) Closing.
31

1 b. If the personal property timeshare interest is sold
2 by agreement for transfer, evidence that the agreement for
3 transfer complies fully with s. 721.06 and this section.

4 c. Evidence that one of the following has occurred:

5 (I) Transfer by the owner of the underlying personal
6 property of legal title to the subject accommodations and
7 facilities or all use rights therein into a trust satisfying
8 the requirements of subparagraph 4.; or

9 (II) Transfer by the owner of the underlying personal
10 property of legal title to the subject accommodations and
11 facilities or all use rights therein into an owners'
12 association satisfying the requirements of subparagraph 5.

13 d. Evidence of compliance with the provisions of
14 subparagraph 6., if required.

15 e. If a personal property timeshare plan is created
16 with respect to accommodations and facilities that are located
17 on or in an oceangoing vessel, including a "documented vessel"
18 or a "foreign vessel," as defined and governed by 46 U.S.C.,
19 chapter 301:

20 (I) In making the transfer required in
21 sub-subparagraph c., the developer shall use as its transfer
22 instrument a document that establishes and protects the
23 continuance of the use rights in the subject accommodations
24 and facilities in a manner that is enforceable by the trust or
25 owners' association.

26 (II) The transfer instrument shall comply fully with
27 the provisions of this chapter, shall be part of the timeshare
28 instrument, and shall contain specific provisions that:

29 (A) Prohibit the vessel owner, the developer, any
30 manager or operator of the vessel, the owners' association or
31 the trustee, the managing entity, or any other person from

1 | incurring any liens against the vessel except for liens that
2 | are required for the operation and upkeep of the vessel,
3 | including liens for fuel expenditures, repairs, crews' wages,
4 | and salvage, and except as provided in sub-sub-subparagraphs
5 | 4.b.(III) and 5.b.(III). All expenses, fees, and taxes
6 | properly incurred in connection with the creation,
7 | satisfaction, and discharge of any such permitted lien, or a
8 | prorated portion thereof if less than all of the
9 | accommodations on the vessel are subject to the timeshare
10 | plan, shall be common expenses of the timeshare plan.

11 | (B) Grant a lien against the vessel in favor of the
12 | owners' association or trustee to secure the full and faithful
13 | performance of the vessel owner and developer of all of their
14 | obligations to the purchasers.

15 | (C) Establish governing law in a jurisdiction that
16 | recognizes and will enforce the timeshare instrument and the
17 | laws of the jurisdiction of registry of the vessel.

18 | (D) Require that a description of the use rights of
19 | purchasers be posted and displayed on the vessel in a manner
20 | that will give notice of such rights to any party examining
21 | the vessel. This notice must identify the owners' association
22 | or trustee and include a statement disclosing the limitation
23 | on incurring liens against the vessel described in
24 | sub-sub-sub-subparagraph (A).

25 | (E) Include the nondisturbance and notice to creditors
26 | instrument for the vessel owner and any other interestholders.

27 | (F) The owners' association created under subparagraph
28 | 5. or trustee created under subparagraph 4. shall have access
29 | to any certificates of classification in accordance with the
30 | timeshare instrument.

31 |

1 (III) If the vessel is a foreign vessel, the vessel
2 must be registered in a jurisdiction that permits a filing
3 evidencing the use rights of purchasers in the subject
4 accommodations and facilities, offers protection for such use
5 rights against unfiled and inferior claims, and recognizes the
6 document or instrument creating such use rights as a lien
7 against the vessel.

8 (IV) In addition to the disclosures required by s.
9 721.07(5), the public offering statement and purchase contract
10 must contain a disclosure in conspicuous type in substantially
11 the following form:

12
13 The laws of the State of Florida govern the offering of this
14 timeshare plan in this state. There are inherent risks in
15 purchasing a timeshare interest in this timeshare plan because
16 the accommodations and facilities of the timeshare plan are
17 located on a vessel that will sail into international waters
18 and into waters governed by many different jurisdictions.
19 Therefore, the laws of the State of Florida cannot fully
20 protect your purchase of an interest in this timeshare plan.
21 Specifically, management and operational issues may need to be
22 addressed in the jurisdiction in which the vessel is
23 registered, which is (insert jurisdiction in which vessel is
24 registered) . Concerns of
25 purchasers may be sent to (insert name of applicable
26 regulatory agency and address) .

27 4. Trust.--

28 a. If the subject accommodations or facilities, or all
29 use rights therein, are to be transferred into a trust in
30 order to comply with this paragraph, such transfer shall take
31 place pursuant to this subparagraph.

1 b. Prior to the transfer by each interestholder of the
2 subject accommodations and facilities, or all use rights
3 therein, to a trust, any lien or other encumbrance against
4 such accommodations and facilities, or use rights therein,
5 shall be made subject to a nondisturbance and notice to
6 creditors instrument pursuant to subsection (3). No transfer
7 pursuant to this subparagraph shall become effective until the
8 trustee accepts such transfer and the responsibilities set
9 forth herein. A trust established pursuant to this
10 subparagraph shall comply with the following provisions:

11 (I) The trustee shall be an individual or a business
12 entity authorized and qualified to conduct trust business in
13 this state. Any corporation authorized to do business in this
14 state may act as trustee in connection with a timeshare plan
15 pursuant to this chapter. The trustee must be independent from
16 any developer or managing entity of the timeshare plan or any
17 interestholder of any accommodation or facility of such plan.

18 (II) The trust shall be irrevocable so long as any
19 purchaser has a right to occupy any portion of the timeshare
20 property pursuant to the timeshare plan.

21 (III) The trustee shall not convey, hypothecate,
22 mortgage, assign, lease, or otherwise transfer or encumber in
23 any fashion any interest in or portion of the timeshare
24 property with respect to which any purchaser has a right of
25 use or occupancy unless the timeshare plan is terminated
26 pursuant to the timeshare instrument, or such conveyance,
27 hypothecation, mortgage, assignment, lease, transfer, or
28 encumbrance is approved by a vote of two-thirds of all voting
29 interests of the timeshare plan and such decision is declared
30 by a court of competent jurisdiction to be in the best
31 interests of the purchasers of the timeshare plan. The trustee

1 shall notify the division in writing within 10 days after
2 receiving notice of the filing of any petition relating to
3 obtaining such a court order. The division shall have standing
4 to advise the court of the division's interpretation of the
5 statute as it relates to the petition.

6 (IV) All purchasers of the timeshare plan or the
7 owners' association of the timeshare plan shall be the express
8 beneficiaries of the trust. The trustee shall act as a
9 fiduciary to the beneficiaries of the trust. The personal
10 liability of the trustee shall be governed by ss. 736.08125,
11 736.08163, 736.1013, and 736.1015 ~~s. 737.306~~. The agreement
12 establishing the trust shall set forth the duties of the
13 trustee. The trustee shall be required to furnish promptly to
14 the division upon request a copy of the complete list of the
15 names and addresses of the owners in the timeshare plan and a
16 copy of any other books and records of the timeshare plan
17 required to be maintained pursuant to s. 721.13 that are in
18 the possession, custody, or control of the trustee. All
19 expenses reasonably incurred by the trustee in the performance
20 of its duties, together with any reasonable compensation of
21 the trustee, shall be common expenses of the timeshare plan.

22 (V) The trustee shall not resign upon less than 90
23 days' prior written notice to the managing entity and the
24 division. No resignation shall become effective until a
25 substitute trustee, approved by the division, is appointed by
26 the managing entity and accepts the appointment.

27 (VI) The documents establishing the trust arrangement
28 shall constitute a part of the timeshare instrument.

29 (VII) For trusts holding property in a timeshare plan
30 located outside this state, the trust and trustee holding such
31 property shall be deemed in compliance with the requirements

1 of this subparagraph if such trust and trustee are authorized
2 and qualified to conduct trust business under the laws of such
3 jurisdiction and the agreement or law governing such trust
4 arrangement provides substantially similar protections for the
5 purchaser as are required in this subparagraph for trusts
6 holding property in a timeshare plan in this state.

7 (VIII) The trustee shall have appointed a registered
8 agent in this state for service of process. In the event such
9 a registered agent is not appointed, service of process may be
10 served pursuant to s. 721.265.

11 5. Owners' association.--

12 a. If the subject accommodations or facilities, or all
13 use rights therein, are to be transferred into an owners'
14 association in order to comply with this paragraph, such
15 transfer shall take place pursuant to this subparagraph.

16 b. Prior to the transfer by each interestholder of the
17 subject accommodations and facilities, or all use rights
18 therein, to an owners' association, any lien or other
19 encumbrance against such accommodations and facilities, or use
20 rights therein, shall be made subject to a nondisturbance and
21 notice to creditors instrument pursuant to subsection (3). No
22 transfer pursuant to this subparagraph shall become effective
23 until the owners' association accepts such transfer and the
24 responsibilities set forth herein. An owners' association
25 established pursuant to this subparagraph shall comply with
26 the following provisions:

27 (I) The owners' association shall be a business entity
28 authorized and qualified to conduct business in this state.
29 Control of the board of directors of the owners' association
30 must be independent from any developer or managing entity of
31 the timeshare plan or any interestholder.

1 (II) The bylaws of the owners' association shall
2 provide that the corporation may not be voluntarily dissolved
3 without the unanimous vote of all owners of personal property
4 timeshare interests so long as any purchaser has a right to
5 occupy any portion of the timeshare property pursuant to the
6 timeshare plan.

7 (III) The owners' association shall not convey,
8 hypothecate, mortgage, assign, lease, or otherwise transfer or
9 encumber in any fashion any interest in or portion of the
10 timeshare property with respect to which any purchaser has a
11 right of use or occupancy, unless the timeshare plan is
12 terminated pursuant to the timeshare instrument, or unless
13 such conveyance, hypothecation, mortgage, assignment, lease,
14 transfer, or encumbrance is approved by a vote of two-thirds
15 of all voting interests of the association and such decision
16 is declared by a court of competent jurisdiction to be in the
17 best interests of the purchasers of the timeshare plan. The
18 owners' association shall notify the division in writing
19 within 10 days after receiving notice of the filing of any
20 petition relating to obtaining such a court order. The
21 division shall have standing to advise the court of the
22 division's interpretation of the statute as it relates to the
23 petition.

24 (IV) All purchasers of the timeshare plan shall be
25 members of the owners' association and shall be entitled to
26 vote on matters requiring a vote of the owners' association as
27 provided in this chapter or the timeshare instrument. The
28 owners' association shall act as a fiduciary to the purchasers
29 of the timeshare plan. The articles of incorporation
30 establishing the owners' association shall set forth the
31 duties of the owners' association. All expenses reasonably

1 incurred by the owners' association in the performance of its
2 duties, together with any reasonable compensation of the
3 officers or directors of the owners' association, shall be
4 common expenses of the timeshare plan.

5 (V) The documents establishing the owners' association
6 shall constitute a part of the timeshare instrument.

7 (VI) For owners' associations holding property in a
8 timeshare plan located outside this state, the owners'
9 association holding such property shall be deemed in
10 compliance with the requirements of this subparagraph if such
11 owners' association is authorized and qualified to conduct
12 owners' association business under the laws of such
13 jurisdiction and the agreement or law governing such
14 arrangement provides substantially similar protections for the
15 purchaser as are required in this subparagraph for owners'
16 associations holding property in a timeshare plan in this
17 state.

18 (VII) The owners' association shall have appointed a
19 registered agent in this state for service of process. In the
20 event such a registered agent cannot be located, service of
21 process may be made pursuant to s. 721.265.

22 6. Personal property subject to certificate of
23 title.--If any personal property that is an accommodation or
24 facility of a timeshare plan is subject to a certificate of
25 title in this state pursuant to chapter 319 or chapter 328,
26 the following notation must be made on such certificate of
27 title pursuant to s. 319.27(1) or s. 328.15(1):

28
29 The further transfer or encumbrance of the property subject to
30 this certificate of title, or any lien or encumbrance thereon,
31 is subject to the requirements of section 721.17, Florida

1 Statutes, and the transferee or lienor agrees to be bound by
2 all of the obligations set forth therein.

3 7. If the developer has previously provided a
4 certified copy of any document required by this paragraph, she
5 or he may for all subsequent disbursements substitute a true
6 and correct copy of the certified copy, provided no changes to
7 the document have been made or are required to be made.

8 8. In the event that use rights relating to an
9 accommodation or facility are transferred into a trust
10 pursuant to subparagraph 4. or into an owners' association
11 pursuant to subparagraph 5., all other interestholders,
12 including the owner of the underlying fee or underlying
13 personal property, must execute a nondisturbance and notice to
14 creditors instrument pursuant to subsection (3).

15 Section 25. Paragraph (e) of subsection (1) of section
16 721.53, Florida Statutes, is amended to read:

17 721.53 Subordination instruments; alternate security
18 arrangements.--

19 (1) With respect to each accommodation or facility of
20 a multisite timeshare plan, the developer shall provide the
21 division with satisfactory evidence that one of the following
22 has occurred with respect to each interestholder prior to
23 offering the accommodation or facility as a part of the
24 multisite timeshare plan:

25 (e) The interestholder has transferred the subject
26 accommodation or facility or all use rights therein to a trust
27 that complies with this paragraph. Prior to such transfer, any
28 lien or other encumbrance against such accommodation or
29 facility shall be made subject to a nondisturbance and notice
30 to creditors instrument pursuant to paragraph (a) or a
31 subordination and notice to creditors instrument pursuant to

1 paragraph (b). No transfer pursuant to this paragraph shall
2 become effective until the trust accepts such transfer and the
3 responsibilities set forth herein. A trust established
4 pursuant to this paragraph shall comply with the following
5 provisions:

6 1. The trustee shall be an individual or a business
7 entity authorized and qualified to conduct trust business in
8 this state. Any corporation authorized to do business in this
9 state may act as trustee in connection with a timeshare plan
10 pursuant to this chapter. The trustee must be independent from
11 any developer or managing entity of the timeshare plan or any
12 interestholder of any accommodation or facility of such plan.
13 The same trustee may hold the accommodations and facilities,
14 or use rights therein, for one or more of the component sites
15 of the timeshare plan.

16 2. The trust shall be irrevocable so long as any
17 purchaser has a right to occupy any portion of the timeshare
18 property pursuant to the timeshare plan.

19 3. The trustee shall not convey, hypothecate,
20 mortgage, assign, lease, or otherwise transfer or encumber in
21 any fashion any interests in or portion of the timeshare
22 property with respect to which any purchaser has a right of
23 use or occupancy unless the timeshare plan is terminated
24 pursuant to the timeshare instrument, or the timeshare
25 property held in trust is deleted from a multisite timeshare
26 plan pursuant to s. 721.552(3), or such conveyance,
27 hypothecation, mortgage, assignment, lease, transfer, or
28 encumbrance is approved by vote of two-thirds of all voting
29 interests of the timeshare plan and such decision is declared
30 by a court of competent jurisdiction to be in the best
31 interests of the purchasers of the timeshare plan.

1 4. All purchasers of the timeshare plan or the owners'
2 association of the timeshare plan shall be express
3 beneficiaries of the trust. The trustee shall act as a
4 fiduciary to the beneficiaries of the trust. The personal
5 liability of the trustee shall be governed by ss. 736.08125,
6 736.08163, 736.1013, and 736.1015 ~~s. 737.306~~. The agreement
7 establishing the trust shall set forth the duties of the
8 trustee. The trustee shall be required to furnish promptly to
9 the division upon request a copy of the complete list of the
10 names and addresses of the owners in the timeshare plan and a
11 copy of any other books and records of the timeshare plan
12 required to be maintained pursuant to s. 721.13 that are in
13 the possession of the trustee. All expenses reasonably
14 incurred by the trustee in the performance of its duties,
15 together with any reasonable compensation of the trustee,
16 shall be common expenses of the timeshare plan.

17 5. The trustee shall not resign upon less than 90
18 days' prior written notice to the managing entity and the
19 division. No resignation shall become effective until a
20 substitute trustee, approved by the division, is appointed by
21 the managing entity and accepts the appointment.

22 6. The documents establishing the trust arrangement
23 shall constitute a part of the timeshare instrument.

24 7. For trusts holding property in component sites
25 located outside this state, the trust holding such property
26 shall be deemed in compliance with the requirements of this
27 paragraph, if such trust is authorized and qualified to
28 conduct trust business under the laws of such jurisdiction and
29 the agreement or law governing such trust arrangement provides
30 substantially similar protections for the purchaser as are
31

1 required in this paragraph for trusts holding property in a
2 component site located in this state.

3 8. The trustee shall have appointed a registered agent
4 in this state for service of process. In the event such a
5 registered agent is not appointed, service of process may be
6 served pursuant to s. 721.265.

7 Section 26. Section 731.103, Florida Statutes, is
8 amended to read:

9 731.103 Evidence as to death or status.--In
10 proceedings under this code and under chapter 736, the ~~rules~~
11 ~~of evidence in civil actions are applicable unless~~
12 ~~specifically changed by the code.~~ The following additional
13 rules relating to determination of death and status are
14 applicable:

15 (1) An authenticated copy of a death certificate
16 issued by an official or agency of the place where the death
17 purportedly occurred is prima facie proof of the fact, place,
18 date, and time of death and the identity of the decedent.

19 (2) A copy of any record or report of a governmental
20 agency, domestic or foreign, that a person is alive, missing,
21 detained, or, from the facts related, presumed dead is prima
22 facie evidence of the status and of the dates, circumstances,
23 and places disclosed by the record or report.

24 (3) A person who is absent from the place of his or
25 her last known domicile for a continuous period of 5 years and
26 whose absence is not satisfactorily explained after diligent
27 search and inquiry is presumed to be dead. The person's death
28 is presumed to have occurred at the end of the period unless
29 there is evidence establishing that death occurred earlier.
30 Evidence showing that the absent person was exposed to a
31 specific peril of death may be a sufficient basis for the

1 | court determining at any time after such exposure that he or
2 | she died less than 5 years after the date on which his or her
3 | absence commenced. A petition for this determination shall be
4 | filed in the county in Florida where the decedent maintained
5 | his or her domicile or in any county of this state if the
6 | decedent was not a resident of Florida at the time his or her
7 | absence commenced.

8 | (4) This section does not preclude the establishment
9 | of death by direct or circumstantial evidence prior to
10 | expiration of the 5-year time period set forth in subsection
11 | (3).

12 | Section 27. Section 731.1035, Florida Statutes, is
13 | created to read:

14 | 731.1035 Applicable rules of evidence.--In proceedings
15 | under this code, the rules of evidence in civil actions are
16 | applicable unless specifically changed by the code.

17 | Section 28. Section 731.201, Florida Statutes, is
18 | amended to read:

19 | 731.201 General definitions.--Subject to additional
20 | definitions in subsequent chapters that are applicable to
21 | specific chapters or parts, and unless the context otherwise
22 | requires, in this code, in s. 409.9101, and in chapters 736
23 | ~~737~~, 738, 739, and 744, the term:

24 | (1) "Authenticated," when referring to copies of
25 | documents or judicial proceedings required to be filed with
26 | the court under this code, means a certified copy or a copy
27 | authenticated according to the Federal Rules of Civil
28 | Procedure.

29 | (2) "Beneficiary" means heir at law in an intestate
30 | estate and devisee in a testate estate. The term "beneficiary"
31 | does not apply to an heir at law or a devisee after that

1 person's interest in the estate has been satisfied. In the
2 case of a devise to an existing trust or trustee, or to a
3 trust or trustee described by will, the trustee is a
4 beneficiary of the estate. Except as otherwise provided in
5 this subsection, the beneficiary of the trust is not a
6 beneficiary of the estate of which that trust or the trustee
7 of that trust is a beneficiary. However, if each trustee is
8 also a personal representative of the estate, each qualified
9 beneficiary ~~the beneficiary or beneficiaries~~ of the trust as
10 defined in s. 736.0103(14) ~~737.303(4)(b)~~ shall be regarded as
11 a beneficiary of the estate.

12 (3) "Child" includes a person entitled to take as a
13 child under this code by intestate succession from the parent
14 whose relationship is involved, and excludes any person who is
15 only a stepchild, a foster child, a grandchild, or a more
16 remote descendant.

17 (4) "Claim" means a liability of the decedent, whether
18 arising in contract, tort, or otherwise, and funeral expense.
19 The term does not include an expense of administration or
20 estate, inheritance, succession, or other death taxes.

21 (5) "Clerk" means the clerk or deputy clerk of the
22 court.

23 (6) "Court" means the circuit court.

24 (7) "Curator" means a person appointed by the court to
25 take charge of the estate of a decedent until letters are
26 issued.

27 (8) "Devise," when used as a noun, means a
28 testamentary disposition of real or personal property and,
29 when used as a verb, means to dispose of real or personal
30 property by will or trust. The term includes "gift," "give,"
31 "bequeath," "bequest," and "legacy." A devise is subject to

1 | charges for debts, expenses, and taxes as provided in this
2 | code, the will, or the trust.

3 | (9) "Devisee" means a person designated in a will or
4 | trust to receive a devise. Except as otherwise provided in
5 | this subsection, in the case of a devise to an existing trust
6 | or trustee, or to a trust or trustee of a trust described by
7 | will, the trust or trustee, rather than the beneficiaries of
8 | the trust, is the devisee. However, if each trustee is also a
9 | personal representative of the estate, each qualified
10 | beneficiary ~~the beneficiary or beneficiaries~~ of the trust as
11 | defined in s. 736.0103(14) ~~737.303(4)(b)~~ shall be regarded as
12 | a devisee.

13 | (10) "Distributee" means a person who has received
14 | estate property from a personal representative or other
15 | fiduciary other than as a creditor or purchaser. A
16 | testamentary trustee is a distributee only to the extent of
17 | distributed assets or increments to them remaining in the
18 | trustee's hands. A beneficiary of a testamentary trust to whom
19 | the trustee has distributed property received from a personal
20 | representative is a distributee. For purposes of this
21 | provision, "testamentary trustee" includes a trustee to whom
22 | assets are transferred by will, to the extent of the devised
23 | assets.

24 | (11) "Domicile" means a person's usual place of
25 | dwelling and shall be synonymous with residence.

26 | (12) "Estate" means the property of a decedent that is
27 | the subject of administration.

28 | (13) "Exempt property" means the property of a
29 | decedent's estate which is described in s. 732.402.

30 | (14) "File" means to file with the court or clerk.
31 |

1 (15) "Foreign personal representative" means a
2 personal representative of another state or a foreign country.

3 (16) "Formal notice" means formal notice under the
4 Florida Probate Rules.

5 (17) "Grantor" means one who creates or adds to a
6 trust and includes "settlor" or "trustor" and a testator who
7 creates or adds to a trust.

8 (18) "Heirs" or "heirs at law" means those persons,
9 including the surviving spouse, who are entitled under the
10 statutes of intestate succession to the property of a
11 decedent.

12 (19) "Incompetent" means a minor or a person
13 adjudicated incompetent.

14 (20) "Informal notice" or "notice" means informal
15 notice under the Florida Probate Rules.

16 (21) "Interested person" means any person who may
17 reasonably be expected to be affected by the outcome of the
18 particular proceeding involved. In any proceeding affecting
19 the estate or the rights of a beneficiary in the estate, the
20 personal representative of the estate shall be deemed to be an
21 interested person. In any proceeding affecting the expenses of
22 the administration and obligations of a decedent's estate, or
23 any claims described in s. 733.702(1), the trustee of a trust
24 described in s. 733.707(3) is an interested person in the
25 administration of the grantor's estate. The term does not
26 include a beneficiary who has received complete distribution.
27 The meaning, as it relates to particular persons, may vary
28 from time to time and must be determined according to the
29 particular purpose of, and matter involved in, any
30 proceedings.

31

1 (22) "Letters" means authority granted by the court to
2 the personal representative to act on behalf of the estate of
3 the decedent and refers to what has been known as letters
4 testamentary and letters of administration. All letters shall
5 be designated "letters of administration."

6 (23) "Other state" means any state of the United
7 States other than Florida and includes the District of
8 Columbia, the Commonwealth of Puerto Rico, and any territory
9 or possession subject to the legislative authority of the
10 United States.

11 (24) "Parent" excludes any person who is only a
12 stepparent, foster parent, or grandparent.

13 (25) "Personal representative" means the fiduciary
14 appointed by the court to administer the estate and refers to
15 what has been known as an administrator, administrator cum
16 testamento annexo, administrator de bonis non, ancillary
17 administrator, ancillary executor, or executor.

18 (26) "Petition" means a written request to the court
19 for an order.

20 (27) "Power of appointment" means an authority, other
21 than as an incident of the beneficial ownership of property,
22 to designate recipients of beneficial interests in property.

23 ~~(28)~~(27) "Probate of will" means all steps necessary
24 to establish the validity of a will and to admit a will to
25 probate.

26 ~~(29)~~(28) "Property" means both real and personal
27 property or any interest in it and anything that may be the
28 subject of ownership.

29 ~~(30)~~(29) "Protected homestead" means the property
30 described in s. 4(a)(1), Art. X of the State Constitution on
31 which at the death of the owner the exemption inures to the

1 owner's surviving spouse or heirs under s. 4(b), Art. X of the
2 State Constitution. For purposes of the code, real property
3 owned as tenants by the entirety is not protected homestead.

4 ~~(31)~~(30) "Residence" means a person's place of
5 dwelling.

6 ~~(32)~~(31) "Residuary devise" means a devise of the
7 assets of the estate which remain after the provision for any
8 devise which is to be satisfied by reference to a specific
9 property or type of property, fund, sum, or statutory amount.

10 If the will contains no devise which is to be satisfied by
11 reference to a specific property or type of property, fund,
12 sum, or statutory amount, "residuary devise" or "residue"
13 means a devise of all assets remaining after satisfying the
14 obligations of the estate.

15 ~~(33)~~(32) "Security" means a security as defined in s.
16 517.021.

17 ~~(34)~~(33) "Security interest" means a security interest
18 as defined in s. 671.201.

19 ~~(35)~~(34) "Trust" means an express trust, private or
20 charitable, with additions to it, wherever and however
21 created. It also includes a trust created or determined by a
22 judgment or decree under which the trust is to be administered
23 in the manner of an express trust. "Trust" excludes other
24 constructive trusts, and it excludes resulting trusts;
25 conservatorships; custodial arrangements pursuant to the
26 Florida Uniform Transfers to Minors Act; business trusts
27 providing for certificates to be issued to beneficiaries;
28 common trust funds; land trusts under s. 689.05; trusts
29 created by the form of the account or by the deposit agreement
30 at a financial institution; voting trusts; security
31 arrangements; liquidation trusts; trusts for the primary

1 | purpose of paying debts, dividends, interest, salaries, wages,
2 | profits, pensions, or employee benefits of any kind; and any
3 | arrangement under which a person is nominee or escrowee for
4 | another.

5 | ~~(36)~~~~(35)~~ "Trustee" includes an original, additional,
6 | surviving, or successor trustee, whether or not appointed or
7 | confirmed by court.

8 | ~~(37)~~~~(36)~~ "Will" means an instrument, including a
9 | codicil, executed by a person in the manner prescribed by this
10 | code, which disposes of the person's property on or after his
11 | or her death and includes an instrument which merely appoints
12 | a personal representative or revokes or revises another will.

13 | Section 29. Paragraph (a) of subsection (1) and
14 | subsection (5) of section 731.303, Florida Statutes, are
15 | amended to read:

16 | 731.303 Representation.--In the administration of or
17 | in judicial proceedings involving estates of decedents or
18 | trusts, the following apply:

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

21 | (a)1. Orders binding the sole holder or all coholders
22 | of a power of revocation or a general, special, or limited
23 | power of appointment, including one in the form of a power of
24 | amendment or revocation to the extent that the power has not
25 | become unexercisable in fact, bind all persons to the extent
26 | that their interests, as persons who may take by virtue of the
27 | exercise or nonexercise of the power, are subject to the
28 | power.

29 | 2. Subparagraph 1. does not apply to:

30 | a. Any matter determined by the court to involve fraud
31 | or bad faith by the trustee;

1 b. A power of a trustee to distribute trust property;
2 or

3 c. A power of appointment held by a person while the
4 person is the sole trustee.

5 (5) The holder of a power of appointment over property
6 not held in trust may represent and bind persons whose
7 interests, as permissible appointees, takers in default, or
8 otherwise, are subject to the power. Representation under this
9 subsection does not apply to:

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

12 (b) A power of a trustee to distribute trust property;
13 or

14 (c) A power of appointment held by a person while the
15 person is the sole trustee ~~When a sole holder or coholder of a~~
16 ~~general, special, or limited power of appointment, including~~
17 ~~an exercisable power of amendment or revocation over property~~
18 ~~in an estate or trust, is bound by:~~

19 ~~(a) Agreements, waivers, consents, or approvals; or~~

20 ~~(b) Accounts, trust accountings, or other written~~
21 ~~reports that adequately disclose matters set forth therein,~~

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

28 Section 30. Subsection (5) of section 732.2075,
29 Florida Statutes, is amended to read:

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

1 (5) Unless otherwise provided in the trust instrument
2 or, in the decedent's will if there is no provision in the
3 trust instrument, any amount to be satisfied from trust
4 property shall be paid from the assets of the trust in the
5 order provided for claims under s. 736.05053 ~~737.3054~~(2) and
6 (3). A direction in the decedent's will is effective only for
7 revocable trusts.

8 Section 31. Subsection (2) of section 732.513, Florida
9 Statutes, is amended to read:

10 732.513 Devises to trustee.--

11 (2) The devise shall not be invalid for any or all of
12 the following reasons:

13 (a) Because the trust is amendable or revocable, or
14 both, by any person.

15 (b) Because the trust has been amended or revoked in
16 part after execution of the will or a codicil to it.

17 ~~(c) Because the trust instrument or any amendment to~~
18 ~~it was not executed in the manner required for wills.~~

19 (c)(d) Because the only res of the trust is the
20 possible expectancy of receiving, as a named beneficiary, a
21 devise under a will or death benefits as described in s.
22 733.808, and even though the testator or other person has
23 reserved any or all rights of ownership in the death benefit
24 policy, contract, or plan, including the right to change the
25 beneficiary.

26 (d)(e) Because of any of the provisions of s. 689.075.

27 Section 32. Section 732.603, Florida Statutes, is
28 amended to read:

29 (Substantial rewording of section. See
30 s. 732.603, F.S., for present text.)

31 732.603 Antilapse; deceased devisee; class gifts.--

1 (1) Unless a contrary intent appears in the will, if a
2 devisee who is a grandparent, or a descendant of a
3 grandparent, of the testator:
4 (a) Is dead at the time of the execution of the will;
5 (b) Fails to survive the testator; or
6 (c) Is required by the will or by operation of law to
7 be treated as having predeceased the testator,
8
9 a substitute gift is created in the devisee's surviving
10 descendants who take per stirpes the property to which the
11 devisee would have been entitled had the devisee survived the
12 testator.
13 (2) When a power of appointment is exercised by will,
14 unless a contrary intent appears in the document creating the
15 power of appointment or in the testator's will, if an
16 appointee who is a grandparent, or a descendant of a
17 grandparent, of the donor of the power:
18 (a) Is dead at the time of the execution of the will
19 or the creation of the power;
20 (b) Fails to survive the testator; or
21 (c) Is required by the will, the document creating the
22 power, or by operation of law to be treated as having
23 predeceased the testator,
24
25 a substitute gift is created in the appointee's surviving
26 descendants who take per stirpes the property to which the
27 appointee would have been entitled had the appointee survived
28 the testator. Unless the language creating a power of
29 appointment expressly excludes the substitution of the
30 descendants of an object of a power for the object, a
31 surviving descendant of a deceased object of a power of

1 appointment may be substituted for the object whether or not
2 the descendant is an object of the power.

3 (3) In the application of this section:

4 (a) Words of survivorship in a devise or appointment
5 to an individual, such as "if he survives me," or to "my
6 surviving children," are a sufficient indication of an intent
7 contrary to the application of subsections (1) and (2). Words
8 of survivorship used by the donor of the power in a power to
9 appoint to an individual, such as "if he survives the donee,"
10 or in a power to appoint to the donee's "then surviving
11 children," are a sufficient indication of an intent contrary
12 to the application of subsection (2).

13 (b) The term:

14 1. "Appointment" includes an alternative appointment
15 and an appointment in the form of a class gift.

16 2. "Appointee" includes:

17 a. A class member if the appointment is in the form of
18 a class gift.

19 b. An individual or class member who was deceased at
20 the time the testator executed his or her will as well as an
21 individual or class member who was then living but who failed
22 to survive the testator.

23 3. "Devise" also includes an alternative devise and a
24 devise in the form of a class gift.

25 4. "Devisee" also includes:

26 a. A class member if the devise is in the form of a
27 class gift.

28 b. An individual or class member who was deceased at
29 the time the testator executed his or her will as well as an
30 individual or class member who was then living but who failed
31 to survive the testator.

1 (4) This section applies only to outright devises and
2 appointments. Devises and appointments in trust, including to
3 a testamentary trust, are subject to s. 736.1106.

4 Section 33. Section 732.604, Florida Statutes, is
5 amended to read:

6 732.604 Failure of testamentary provision.--

7 (1) Except as provided in s. 732.603, if a devise
8 other than a residuary devise fails for any reason, it becomes
9 a part of the residue.

10 (2) Except as provided in s. 732.603, if the residue
11 is devised to two or more persons, the share of a residuary
12 devisee that fails for any reason and the devise to one of the
13 residuary devisees fails for any reason, that devise passes to
14 the other residuary devisee, or to the other residuary
15 devisees in proportion to the their interests of each in the
16 remaining part of the residue.

17 Section 34. Section 732.611, Florida Statutes, is
18 amended to read:

19 732.611 Devises to multigeneration classes to be per
20 stirpes.--Unless the will provides otherwise, all devises to
21 descendants, issue, and other multigeneration classes shall be
22 per stirpes.

23 Section 35. Subsection (1) of section 733.212, Florida
24 Statutes, is amended to read:

25 733.212 Notice of administration; filing of
26 objections.--

27 (1) The personal representative shall promptly serve a
28 copy of the notice of administration on the following persons
29 who are known to the personal representative:

30 (a) The decedent's surviving spouse;

31 (b) Beneficiaries;

1 (c) The trustee of any trust described in s.
2 733.707(3) and each qualified beneficiary of the trust as
3 defined in s. 736.0103(14) ~~737.303(4)(b)~~, if each trustee is
4 also a personal representative of the estate; and

5 (d) Persons who may be entitled to exempt property
6
7 in the manner provided for service of formal notice, unless
8 served under s. 733.2123. The personal representative may
9 similarly serve a copy of the notice on any devisees under a
10 known prior will or heirs or others who claim or may claim an
11 interest in the estate.

12 Section 36. Subsection (1) of section 733.602, Florida
13 Statutes, is amended to read:

14 733.602 General duties.--

15 (1) A personal representative is a fiduciary who shall
16 observe the standards of care applicable to trustees as
17 described by part VII of chapter 736 ~~s. 737.302~~. A personal
18 representative is under a duty to settle and distribute the
19 estate of the decedent in accordance with the terms of the
20 decedent's will and this code as expeditiously and efficiently
21 as is consistent with the best interests of the estate. A
22 personal representative shall use the authority conferred by
23 this code, the authority in the will, if any, and the
24 authority of any order of the court, for the best interests of
25 interested persons, including creditors.

26 Section 37. Subsection (4) of section 733.805, Florida
27 Statutes, is amended to read:

28 733.805 Order in which assets abate.--

29 (4) In determining the contribution required under s.
30 733.607(2), subsections (1)-(3) of this section and s.
31 736.05053 ~~737.3054~~(2) shall be applied as if the beneficiaries

1 of the estate and the beneficiaries of a trust described in s.
2 733.707(3), other than the estate or trust itself, were taking
3 under a common instrument.

4 Section 38. Paragraph (j) of subsection (1) of section
5 733.817, Florida Statutes, is amended to read:

6 733.817 Apportionment of estate taxes.--

7 (1) For purposes of this section:

8 (j) "Residuary devise" has the meaning set forth in s.
9 731.201~~(31)~~.

10 Section 39. Paragraphs (a) and (f) of subsection (8)
11 and paragraphs (a) and (d) of subsection (9) of section
12 738.104, Florida Statutes, are amended to read:

13 738.104 Trustee's power to adjust.--

14 (8) With respect to a trust in existence on January 1,
15 2003:

16 (a) A trustee shall not have the power to adjust under
17 this section until the statement required in subsection (9) is
18 provided and either no objection is made or any objection
19 which is made has been terminated.

20 1. An objection is made if, within 60 days after the
21 date of the statement required in subsection (9), a super
22 majority of the eligible ~~trust~~ beneficiaries deliver to the
23 trustee a written objection to the application of this section
24 to such trust. An objection shall be deemed to be delivered to
25 the trustee on the date the objection is mailed to the mailing
26 address listed in the notice provided in subsection (9).

27 2. An objection is terminated upon the earlier of the
28 receipt of consent from a super majority of eligible ~~trust~~
29 beneficiaries of the class that made the objection, or the
30 resolution of the objection pursuant to paragraph (c).

31

1 (f) The objection of a super majority of eligible
2 beneficiaries under this subsection shall be valid for a
3 period of 1 year after the date of the notice set forth in
4 subsection (9). Upon expiration of the objection, the trustee
5 may thereafter give a new notice under subsection (9).

6 (9)(a) A trustee of a trust in existence on January 1,
7 2003, that is not prohibited under subsection (3) from
8 exercising the power to adjust shall, any time prior to
9 initially exercising the power, provide to all eligible
10 ~~reasonably ascertainable current beneficiaries described in s.~~
11 ~~737.303(4)(b)1. and all reasonably ascertainable remainder~~
12 ~~beneficiaries described in s. 737.303(4)(b)2.~~ a statement
13 containing the following:

14 1. The name, telephone number, street address, and
15 mailing address of the trustee and of any individuals who may
16 be contacted for further information;

17 2. A statement that unless a super majority of the
18 eligible beneficiaries objects to the application of this
19 section to the trust within 60 days after the date the
20 statement pursuant to this subsection was served, s. 738.104
21 shall apply to the trust; and

22 3. A statement that, if s. 738.104 applies to the
23 trust, the trustee will have the power to adjust between
24 income and principal and that such a power may have an effect
25 on the distributions to such beneficiary from the trust.

26 (d) For purposes of subsection (8) and this
27 subsection, the term:

28 1. "Eligible beneficiaries" means:

29 a. If at the time the determination is made there is
30 one or more beneficiaries described in s. 736.0103(14)(c), the
31 beneficiaries described in s. 736.0103(14)(a) and (c); or

1 b. If there is no beneficiary described in s.
2 736.0103(14)(c), the beneficiaries described in s.
3 736.0103(14)(a) and (b).

4 2. A "Super majority of the eligible trust
5 beneficiaries" means:

6 a. If at the time the determination is made there is
7 one or more beneficiaries described in s. 736.0103(14)(c), at
8 least two-thirds in interest of the ~~reasonably ascertainable~~
9 ~~current~~ beneficiaries described in s. 736.0103(14)(a)

10 ~~737.303(4)(b)1. or two-thirds in interest of the ~~reasonably~~~~
11 ~~ascertainable remainder~~ beneficiaries described in s.

12 736.0103(14)(c) ~~737.303(4)(b)2., if the interests of the~~
13 beneficiaries are reasonably ascertainable; otherwise, it
14 means two-thirds in number of either such class; or

15 b. If there is no beneficiary described in s.
16 736.0103(14)(c), at least two-thirds in interest of the
17 beneficiaries described in s. 736.0103(14)(a) or two-thirds in
18 interest of the beneficiaries described in s. 736.0103(14)(b),
19 if the interests of the beneficiaries are reasonably
20 ascertainable, otherwise, two-thirds in number of either such
21 class.

22 Section 40. Subsection (4) of section 738.1041,
23 Florida Statutes, is amended to read:

24 738.1041 Total return unitrust.--

25 (4) All determinations made pursuant to
26 sub-subparagraph (2)(b)2.b. shall be conclusive if reasonable
27 and made in good faith. Such determination shall be
28 conclusively presumed to have been made reasonably and in good
29 faith unless proven otherwise in a proceeding commenced by or
30 on behalf of a person interested in the trust within the time
31 provided in s. 736.1008 ~~737.307~~. The burden will be on the

1 objecting interested party to prove that the determinations
2 were not made reasonably and in good faith.

3 Section 41. Subsection (5) of section 738.202, Florida
4 Statutes, is amended to read:

5 738.202 Distribution to residuary and remainder
6 beneficiaries.--

7 (5) The value of trust assets shall be determined on
8 an asset-by-asset basis and shall be conclusive if reasonable
9 and determined in good faith. Determinations based on
10 appraisals performed within 2 years before or after the
11 valuation date shall be presumed reasonable. The value of
12 trust assets shall be conclusively presumed to be reasonable
13 and determined in good faith unless proven otherwise in a
14 proceeding commenced by or on behalf of a person interested in
15 the trust within the time provided in s. 736.1008 ~~737.307~~.

16 Section 42. Paragraph (a) of subsection (12) of
17 section 739.102, Florida Statutes, is amended to read:

18 739.102 Definitions.--As used in this chapter, the
19 term:

20 (12) "Trust" means:

21 (a) An express trust (including an honorary trust or a
22 trust under s. 736.0408 ~~737.116~~), charitable or noncharitable,
23 with additions thereto, whenever and however created; and
24

25 As used in this chapter, the term "trust" does not include a
26 constructive trust or a resulting trust.

27 Section 43. Paragraphs (b) and (f) of subsection (6)
28 of section 744.331, Florida Statutes, are amended to read:

29 744.331 Procedures to determine incapacity.--

30 (6) ORDER DETERMINING INCAPACITY.--If, after making
31 findings of fact on the basis of clear and convincing

1 evidence, the court finds that a person is incapacitated with
2 respect to the exercise of a particular right, or all rights,
3 the court shall enter a written order determining such
4 incapacity. A person is determined to be incapacitated only
5 with respect to those rights specified in the order.

6 (b) When an order determines that a person is
7 incapable of exercising delegable rights, the court must
8 consider and find whether there is an alternative to
9 guardianship which will sufficiently address the problems of
10 the incapacitated person. A guardian must be appointed to
11 exercise the incapacitated person's delegable rights unless
12 the court finds there is an alternative. A guardian may not be
13 appointed if the court finds there is an alternative to
14 guardianship which will sufficiently address the problems of
15 the incapacitated person. In any order declaring a person
16 incapacitated the court must find that alternatives to
17 guardianship were considered and that no alternative to
18 guardianship will sufficiently address the problems of the
19 ward.

20 (f) Upon the filing of a verified statement by an
21 interested person stating:

22 1. That he or she has a good faith belief that the
23 alleged incapacitated person's trust, trust amendment, or
24 durable power of attorney is invalid; and

25 2. A reasonable factual basis for that belief,
26
27 the trust, trust amendment, or durable power of attorney shall
28 not be deemed to be an alternative to the appointment of a
29 guardian. The appointment of a guardian does not limit the
30 court's power to determine that certain authority granted by a
31 durable power of attorney is to remain exercisable by the

1 ~~attorney in fact. When an order is entered which determines~~
2 ~~that a person is incapable of exercising delegable rights, a~~
3 ~~guardian must be appointed to exercise those rights.~~

4 Section 44. Paragraph (a) of subsection (6) of section
5 744.361, Florida Statutes, is amended to read:

6 744.361 Powers and duties of guardian.--

7 (6) A guardian who is given authority over any
8 property of the ward shall:

9 (a) Protect and preserve the property and invest it
10 prudently as provided in chapter 518 defined in s. 737.302,
11 apply it as provided in s. 744.397, and account for it
12 faithfully.

13 Section 45. Subsections (11) and (18) of section
14 744.441, Florida Statutes, are amended to read:

15 744.441 Powers of guardian upon court approval.--After
16 obtaining approval of the court pursuant to a petition for
17 authorization to act, a plenary guardian of the property, or a
18 limited guardian of the property within the powers granted by
19 the order appointing the guardian or an approved annual or
20 amended guardianship report, may:

21 (11) Prosecute or defend claims or proceedings in any
22 jurisdiction for the protection of the estate and of the
23 guardian in the performance of his or her duties. Before
24 authorizing a guardian to bring an action described in s.
25 736.0207, the court shall first find that the action appears
26 to be in the ward's best interests during the ward's probable
27 lifetime. If the court denies a request that a guardian be
28 authorized to bring an action described in s. 736.0207, the
29 court shall review the continued need for a guardian and the
30 extent of the need for delegation of the ward's rights.

31

1 (18) When the ward's will evinces an objective to
2 obtain a United States estate tax charitable deduction by use
3 of a split interest trust (as that term is defined in s.
4 736.1201 ~~737.501~~), but the maximum charitable deduction
5 otherwise allowable will not be achieved in whole or in part,
6 execute a codicil on the ward's behalf amending said will to
7 obtain the maximum charitable deduction allowable without
8 diminishing the aggregate value of the benefits of any
9 beneficiary under such will.

10 Section 46. Section 744.462, Florida Statutes, is
11 created to read:

12 744.462 Determination regarding alternatives to
13 guardianship.--Any judicial determination concerning the
14 validity of the ward's durable power of attorney, trust, or
15 trust amendment shall be promptly reported in the guardianship
16 proceeding by the guardian of the property. If the instrument
17 has been judicially determined to be valid or if, after the
18 appointment of a guardian, a petition is filed alleging that
19 there is an alternative to guardianship which will
20 sufficiently address the problems of the ward, the court shall
21 review the continued need for a guardian and the extent of the
22 need for delegation of the ward's rights.

23 Section 47. Sections 737.101, 737.105, 737.106,
24 737.111, 737.115, 737.116, 737.201, 737.202, 737.203,
25 737.2035, 737.204, 737.2041, 737.205, 737.206, 737.2065,
26 737.207, 737.208, 737.209, 737.301, 737.302, 737.303,
27 737.3035, 737.304, 737.305, 737.3053, 737.3054, 737.3055,
28 737.306, 737.3061, 737.307, 737.308, 737.309, 737.401,
29 737.402, 737.4025, 737.403, 737.4031, 737.4032, 737.4033,
30 737.404, 737.405, 737.406, 737.501, 737.502, 737.503, 737.504,
31 737.505, 737.506, 737.507, 737.508, 737.509, 737.510, 737.511,

1 737.512, 737.6035, 737.621, 737.622, 737.623, 737.624,
2 737.625, 737.626, and 737.627, Florida Statutes, are repealed.

3 Section 48. This act shall take effect July 1, 2007.
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