

1
2 An act relating to the Florida Trust Code;
3 creating parts I, II, III, IV, V, VI, VII,
4 VIII, IX, X, XI, XII, and XIII of chapter 736,
5 F.S.; providing a short title; providing
6 general provisions and definitions; providing
7 for judicial proceedings; providing for
8 representations; providing for creation,
9 validity, modification, and termination of
10 trusts; providing for creditors' claims;
11 providing for spendthrift, discretionary, and
12 revocable trusts; providing for the office of
13 trustee; providing for powers and duties of the
14 trustee; providing for trust investments;
15 providing for liability of trustee and rights
16 of persons dealing with trustee; providing for
17 rules of construction; providing for charitable
18 trusts; providing miscellaneous provisions;
19 creating s. 518.117, F.S.; authorizing
20 investment of certain fiduciary funds by
21 certain fiduciaries; amending s. 660.25, F.S.;
22 providing a definition of the term "investment
23 instrument"; amending s. 660.417, F.S.;
24 revising provisions relating to investment of
25 fiduciary funds in investment instruments by
26 certain banks or trust companies; creating s.
27 689.175, F.S.; abolishing the worthier title
28 doctrine; providing construction of certain
29 instrument language; amending s. 731.103, F.S.;
30 correcting a cross-reference; providing
31 construction relating to establishment of death

1 by certain evidence under certain
2 circumstances; creating s. 731.1035, F.S.;
3 providing for application of rules of evidence
4 in civil actions to certain proceedings;
5 amending s. 731.201, F.S.; revising
6 definitions; conforming terms and correcting
7 cross-references; amending s. 731.303, F.S.;
8 specifying nonapplication of certain orders
9 relating to powers of revocation and powers of
10 appointment; revising provisions relating to
11 representation by a holder of a power of
12 appointment; amending s. 732.513, F.S.;
13 deleting a ground protecting a devise's
14 validity; amending s. 732.603, F.S.; revising
15 provisions relating to antilapse, deceased
16 devisees, and class gifts; amending s. 744.331,
17 F.S.; revising provisions relating to orders
18 determining incapacity; amending s. 744.441,
19 F.S.; revising authority of certain guardians
20 to prosecute or defend claims or proceedings
21 for certain purposes; specifying duties of a
22 court; creating s. 744.462, F.S.; providing
23 requirements for judicial determinations
24 relating to alternatives to guardianship;
25 providing duties of a court; amending ss.
26 497.458, 607.0802, 617.0802, 660.46, 660.418,
27 689.071, 689.075, 709.08, 721.08, 721.53,
28 732.2075, 732.604, 732.611, 733.212, 733.602,
29 733.805, 733.817, 738.104, 738.1041, 738.202,
30 739.102, and 744.361, F.S., to conform terms
31 and correct cross-references; repealing ss.

1 | 737.101, 737.105, 737.106, 737.111, 737.115,
2 | and 737.116, constituting part I of ch. 737,
3 | F.S., relating to trust registration; repealing
4 | ss. 737.201, 737.202, 737.203, 737.2035,
5 | 737.204, 737.2041, 737.205, 737.206, 737.2065,
6 | 737.207, 737.208, and 737.209, constituting
7 | part II of ch. 737, F.S., relating to
8 | jurisdiction of courts; repealing ss. 737.301,
9 | 737.302, 737.303, 737.3035, 737.304, 737.305,
10 | 737.3053, 737.3054, 737.3055, 737.306,
11 | 737.3061, 737.307, 737.308, and 737.309,
12 | constituting part III of ch. 737, F.S.,
13 | relating to duties and liabilities of trustees;
14 | repealing ss. 737.401, 737.402, 737.4025,
15 | 737.403, 737.4031, 737.4032, 737.4033, 737.404,
16 | 737.405, and 737.406, constituting part IV of
17 | ch. 737, F.S., relating to powers of trustees;
18 | repealing ss. 737.501, 737.502, 737.503,
19 | 737.504, 737.505, 737.506, 737.507, 737.508,
20 | 737.509, 737.510, 737.511, and 737.512,
21 | constituting part V of ch. 737, F.S., relating
22 | to charitable trusts; repealing ss. 737.6035,
23 | 737.621, 737.622, 737.623, 737.624, 737.625,
24 | 737.626, and 737.627, consisting of part VI of
25 | ch. 737, F.S., relating to rules of
26 | construction of trust administration; providing
27 | an effective date.

28 |
29 | Be It Enacted by the Legislature of the State of Florida:
30 |
31 |

1 Section 1. Part I of chapter 736, Florida Statutes,
2 consisting of sections 736.0101, 736.0102, 736.0103, 736.0104,
3 736.0105, 736.0106, 736.0107, 736.0108, 736.0109, 736.0110,
4 736.0111, and 736.0112, is created to read:

5 PART I

6 GENERAL PROVISIONS AND DEFINITIONS

7
8 736.0101 Short title.--This chapter may be cited as
9 the "Florida Trust Code" and for purposes of this chapter is
10 referred to as the "code."

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

27 736.0103 Definitions.--Unless the context otherwise
28 requires, in this code:

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

31

1 (2) "Affiliate" means any person or entity that
2 directly or indirectly through one or more intermediaries owns
3 or controls, is owned or controlled by, or is under common
4 control or ownership with, the fiduciary. An affiliate may
5 include, but is not limited to, an investment adviser,
6 administrator, broker, transfer agent, placement agent,
7 servicing agent, registrar, custodian, underwriter, sponsor,
8 distributor, or manager.

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

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

14 (a) Has a present or future beneficial interest in a
15 trust, vested or contingent; or

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

18 (5) "Charitable trust" means a trust, or portion of a
19 trust, created for a charitable purpose as described in s.
20 736.0405(1).

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

24 (7) "General power of appointment" means a power of
25 appointment exercisable in favor of the holder of the power,
26 the power holder's creditors, the power holder's estate, or
27 the creditors of the power holder's estate.

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

- 1 (9) "Guardian of the property" means a person
2 appointed by the court to administer the estate of a minor or
3 incapacitated adult.
- 4 (10) "Interests of the beneficiaries" means the
5 beneficial interests provided in the terms of the trust.
- 6 (11) "Jurisdiction" with respect to a geographic area,
7 includes a state or country.
- 8 (12) "Power of withdrawal" means a presently
9 exercisable general power of appointment other than a power:
10 (a) Exercisable by a trustee and limited by an
11 ascertainable standard; or
12 (b) Exercisable by another person only upon consent of
13 the trustee or a person holding an adverse interest.
- 14 (13) "Property" means anything that may be the subject
15 of ownership, real or personal, legal or equitable, or any
16 interest therein.
- 17 (14) "Qualified beneficiary" means a living
18 beneficiary who, on the date the beneficiary's qualification
19 is determined:
20 (a) Is a distributee or permissible distributee of
21 trust income or principal;
22 (b) Would be a distributee or permissible distributee
23 of trust income or principal if the interests of the
24 distributees described in paragraph (a) terminated on that
25 date without causing the trust to terminate; or
26 (c) Would be a distributee or permissible distributee
27 of trust income or principal if the trust terminated in
28 accordance with its terms on that date.
- 29 (15) "Revocable," as applied to a trust, means
30 revocable by the settlor without the consent of the trustee or
31 a person holding an adverse interest.

1 (16) "Settlor" means a person, including a testator,
2 who creates or contributes property to a trust. If more than
3 one person creates or contributes property to a trust, each
4 person is a settlor of the portion of the trust property
5 attributable to that person's contribution except to the
6 extent another person has the power to revoke or withdraw that
7 portion.

8 (17) "Spendthrift provision" means a term of a trust
9 that restrains both voluntary and involuntary transfer of a
10 beneficiary's interest.

11 (18) "State" means any state of the United States and
12 includes the District of Columbia, the Commonwealth of Puerto
13 Rico, and any territory or possession subject to the
14 legislative authority of the United States.

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

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

22 (21) "Trustee" means the original trustee and includes
23 any additional trustee, any successor trustee, and any
24 cotrustee.

25 736.0104 Knowledge.--

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

28 (a) Has actual knowledge of the fact;

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

30 or

31

1 (c) Has reason to know the fact from all the other
2 facts and circumstances known to the person at the time in
3 question.

4 (2) An organization that conducts activities through
5 employees has notice or knowledge of a fact involving a trust
6 only from the time the information was received by an employee
7 having responsibility to act on matters involving the trust,
8 or would have been brought to the employee's attention if the
9 organization had exercised reasonable diligence. An
10 organization exercises reasonable diligence if the
11 organization maintains reasonable routines for communicating
12 significant information to the employee having responsibility
13 to act on matters involving the trust and there is reasonable
14 compliance with the routines. Reasonable diligence does not
15 require an employee of the organization to communicate
16 information unless the communication is part of the
17 individual's regular duties or the individual knows a matter
18 involving the trust would be materially affected by the
19 information.

20 736.0105 Default and mandatory rules.--

21 (1) Except as otherwise provided in the terms of the
22 trust, this code governs the duties and powers of a trustee,
23 relations among trustees, and the rights and interests of a
24 beneficiary.

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

27 (a) The requirements for creating a trust.

28 (b) The duty of the trustee to act in good faith and
29 in accordance with the terms and purposes of the trust and the
30 interests of the beneficiaries.

31

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

5 (d) The periods of limitation for commencing a
6 judicial proceeding.

7 (e) The power of the court to take such action and
8 exercise such jurisdiction as may be necessary in the
9 interests of justice.

10 (f) The requirements under s. 736.0108(1) for the
11 designation of a principal place of administration of the
12 trust.

13 (g) The jurisdiction and venue provisions in ss.
14 736.0202, 736.0203, and 736.0204.

15 (h) The restrictions on the designation of
16 representative under s. 736.0306.

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

19 (j) The power of the court to modify or terminate a
20 trust under ss. 736.0410-736.04115, except as provided in s.
21 736.04115(3)(b), and under ss. 736.0413, 736.0415, and
22 736.0416.

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

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

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

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

1 (o) The right of a trustee under s. 736.0701 to
2 decline a trusteeship and the right of a trustee under s.
3 736.0705 to resign a trusteeship.

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

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

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

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

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

20 (u) The effect of an exculpatory term under s.
21 736.1011.

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

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

26 736.0106 Common law of trusts; principles of
27 equity.--The common law of trusts and principles of equity
28 supplement this code, except to the extent modified by this
29 code or another law of this state.

30 736.0107 Governing law.--The meaning and effect of the
31 terms of a trust are determined by:

1 (1) The law of the jurisdiction designated in the
2 terms of the trust, provided there is a sufficient nexus to
3 the designated jurisdiction at the time of the creation of the
4 trust or during the trust administration, including, but not
5 limited to, the location of real property held by the trust or
6 the residence or location of an office of the settlor,
7 trustee, or any beneficiary; or

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

11
12 Notwithstanding subsection (1) or subsection (2), a
13 designation in the terms of a trust is not controlling as to
14 any matter for which the designation would be contrary to a
15 strong public policy of this state.

16 736.0108 Principal place of administration.--

17 (1) Terms of a trust designating the principal place
18 of administration of the trust are valid only if there is a
19 sufficient connection with the designated jurisdiction.
20 Without precluding other means for establishing a sufficient
21 connection, terms of a trust designating the principal place
22 of administration are valid and controlling if:

23 (a) A trustee's principal place of business is located
24 in or a trustee is a resident of the designated jurisdiction;
25 or

26 (b) All or part of the administration occurs in the
27 designated jurisdiction.

28 (2) Unless otherwise validly designated in the trust
29 instrument, the principal place of administration of a trust
30 is the trustee's usual place of business where the records
31 pertaining to the trust are kept or, if the trustee has no

1 place of business, the trustee's residence. In the case of
2 cotrustees, the principal place of administration is:

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

5 (b) The usual place of business or residence of the
6 individual trustee who is a professional fiduciary, if there
7 is only one such person and no corporate cotrustee; or
8 otherwise

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

11 (3) Notwithstanding any other provision of this
12 section, the principal place of administration of a trust, for
13 which a bank, association, or trust company organized under
14 the laws of this state or bank or savings association
15 organized under the laws of the United States with its main
16 office in this state has been appointed trustee, shall not be
17 moved or otherwise affected solely because the trustee engaged
18 in an interstate merger transaction with an out-of-state bank
19 pursuant to s. 658.2953 in which the out-of-state bank is the
20 resulting bank.

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

24 (5) Without precluding the right of the court to
25 order, approve, or disapprove a transfer, the trustee, in
26 furtherance of the duty prescribed by subsection (4), may
27 transfer the trust's principal place of administration to
28 another state or to a jurisdiction outside of the United
29 States.

30 (6) The trustee shall notify the qualified
31 beneficiaries of a proposed transfer of a trust's principal

1 place of administration not less than 60 days before
2 initiating the transfer. The notice of proposed transfer must
3 include:

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

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

8 (c) An explanation of the reasons for the proposed
9 transfer.

10 (d) The date on which the proposed transfer is
11 anticipated to occur.

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

15 (7) The authority of a trustee to act under this
16 section without court approval to transfer a trust's principal
17 place of administration is suspended if a qualified
18 beneficiary files a lawsuit objecting to the proposed transfer
19 on or before the date specified in the notice. The suspension
20 is effective until the lawsuit is dismissed or withdrawn.

21 (8) In connection with a transfer of the trust's
22 principal place of administration, the trustee may transfer
23 any of the trust property to a successor trustee designated in
24 the terms of the trust or appointed pursuant to s. 736.0704.

25 736.0109 Methods and waiver of notice.--

26 (1) Notice to a person under this code or the sending
27 of a document to a person under this code must be accomplished
28 in a manner reasonably suitable under the circumstances and
29 likely to result in receipt of the notice or document.
30 Permissible methods of notice or for sending a document
31 include first-class mail, personal delivery, delivery to the

1 person's last known place of residence or place of business,
2 or a properly directed facsimile or other electronic message.

3 (2) Notice otherwise required under this code or a
4 document otherwise required to be sent under this code need
5 not be provided to a person whose identity or location is
6 unknown to and not reasonably ascertainable by the trustee.

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

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

12 736.0110 Others treated as qualified beneficiaries.--

13 (1) A charitable organization expressly designated to
14 receive distributions under the terms of a charitable trust
15 has the rights of a qualified beneficiary under this code if
16 the charitable organization, on the date the charitable
17 organization's qualification is being determined:

18 (a) Is a distributee or permissible distributee of
19 trust income or principal;

20 (b) Would be a distributee or permissible distributee
21 of trust income or principal on termination of the interests
22 of other distributees or permissible distributees then
23 receiving or eligible to receive distributions; or

24 (c) Would be a distributee or permissible distributee
25 of trust income or principal if the trust terminated on that
26 date.

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

31

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

4 736.0111 Nonjudicial settlement agreements.--

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

8 (2) Except as otherwise provided in subsection (3),
9 interested persons may enter into a binding nonjudicial
10 settlement agreement with respect to any matter involving a
11 trust.

12 (3) A nonjudicial settlement agreement among the
13 trustee and trust beneficiaries is valid only to the extent
14 the terms and conditions could be properly approved by the
15 court. A nonjudicial settlement may not be used to produce a
16 result not authorized by other provisions of this code,
17 including, but not limited to, terminating or modifying a
18 trust in an impermissible manner.

19 (4) Matters that may be resolved by a nonjudicial
20 settlement agreement include:

21 (a) The interpretation or construction of the terms of
22 the trust.

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

24 (c) The direction to a trustee to refrain from
25 performing a particular act or the grant to a trustee of any
26 necessary or desirable power.

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

29 (e) The transfer of a trust's principal place of
30 administration.

31

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

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

5 736.0112 Qualification of foreign trustee.--Unless
6 otherwise doing business in this state, local qualification by
7 a foreign trustee is not required for the trustee to receive
8 distribution from a local estate. Nothing in this chapter
9 shall affect the provisions of s. 660.41.

10 Section 2. Part II of chapter 736, Florida Statutes,
11 consisting of sections 736.0201, 736.0202, 736.0203, 736.0204,
12 736.0205, 736.0206, and 736.0207, is created to read:

13 PART II

14 JUDICIAL PROCEEDINGS

15
16 736.0201 Role of court in trust proceedings.--

17 (1) Except as provided in subsection (5) and s.
18 736.0206, proceedings concerning trusts shall be commenced by
19 filing a complaint and shall be governed by the Florida Rules
20 of Civil Procedure.

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

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

26 (4) A judicial proceeding involving a trust may relate
27 to the validity, administration, or distribution of a trust,
28 including proceedings to:

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

30 (b) Appoint or remove a trustee;

31 (c) Review trustees' fees;

- 1 (d) Review and settle interim or final accounts;
2 (e) Ascertain beneficiaries; determine any question
3 arising in the administration or distribution of any trust,
4 including questions of construction of trust instruments;
5 instruct trustees; and determine the existence or nonexistence
6 of any immunity, power, privilege, duty, or right;
7 (f) Obtain a declaration of rights; or
8 (g) Determine any other matters involving trustees and
9 beneficiaries.
- 10 (5) A proceeding for the construction of a
11 testamentary trust may be filed in the probate proceeding for
12 the testator's estate. The proceeding shall be governed by the
13 Florida Probate Rules.
- 14 736.0202 Jurisdiction over trustee and beneficiary.--
15 (1) By accepting the trusteeship of a trust having its
16 principal place of administration in this state or by moving
17 the principal place of administration to this state, the
18 trustee submits personally to the jurisdiction of the courts
19 of this state regarding any matter involving the trust.
- 20 (2) With respect to their interests in the trust, the
21 beneficiaries of a trust having its principal place of
22 administration in this state are subject to the jurisdiction
23 of the courts of this state regarding any matter involving the
24 trust. By accepting a distribution from such a trust, the
25 recipient submits personally to the jurisdiction of the courts
26 of this state regarding any matter involving the distribution.
- 27 (3) This section does not preclude other methods of
28 obtaining jurisdiction over a trustee, beneficiary, or other
29 person receiving property from the trust.
30
31

1 736.0203 Subject-matter jurisdiction.--The circuit
2 court has original jurisdiction in this state of all
3 proceedings arising under this code.

4 736.0204 Venue.--Venue for actions and proceedings
5 concerning trusts, including those under s. 736.0201, may be
6 laid in:

7 (1) Any county where the venue is proper under chapter
8 47;

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

11 (3) The county where the trust has its principal place
12 of administration.

13 736.0205 Trust proceedings; dismissal of matters
14 relating to foreign trusts.--Over the objection of a party,
15 the court shall not entertain proceedings under s. 736.0201
16 for a trust registered, or having its principal place of
17 administration, in another state unless all interested parties
18 could not be bound by litigation in the courts of the state
19 where the trust is registered or has its principal place of
20 administration. The court may condition a stay or dismissal of
21 a proceeding under this section on the consent of any party to
22 jurisdiction of the state where the trust is registered or has
23 its principal place of business, or the court may grant a
24 continuance or enter any other appropriate order.

25 736.0206 Proceedings for review of employment of
26 agents and review of compensation of trustee and employees of
27 trust.--

28 (1) After notice to all interested persons, the court
29 may review the propriety of the employment by a trustee of any
30 person, including any attorney, auditor, investment adviser,
31 or other specialized agent or assistant, and the

1 reasonableness of any compensation paid to that person or to
2 the trustee.

3 (2) If the settlor's estate is being probated, and the
4 settlor's trust or the trustee of the settlor's trust is a
5 beneficiary under the settlor's will, the trustee, any person
6 employed by the trustee, or any interested person may have the
7 propriety of employment and the reasonableness of the
8 compensation of the trustee or any person employed by the
9 trustee determined in the probate proceeding.

10 (3) The burden of proof of the propriety of the
11 employment and the reasonableness of the compensation shall be
12 on the trustee and the person employed by the trustee. Any
13 person who is determined to have received excessive
14 compensation from a trust for services rendered may be ordered
15 to make appropriate refunds.

16 (4) Court proceedings to determine reasonable
17 compensation of a trustee or any person employed by a trustee,
18 if required, are a part of the trust administration process.
19 The costs, including attorney's fees, of the person assuming
20 the burden of proof of propriety of the employment and
21 reasonableness of the compensation shall be determined by the
22 court and paid from the assets of the trust unless the court
23 finds the compensation paid or requested to be substantially
24 unreasonable. The court shall direct from which part of the
25 trust assets the compensation shall be paid.

26 (5) The court may determine reasonable compensation
27 for a trustee or any person employed by a trustee without
28 receiving expert testimony. Any party may offer expert
29 testimony after notice to interested persons. If expert
30 testimony is offered, a reasonable expert witness fee shall be
31 awarded by the court and paid from the assets of the trust.

1 The court shall direct from which part of the trust assets the
2 fee shall be paid.

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

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

10 736.0207 Trust contests.--An action to contest the
11 validity of all or part of a trust may not be commenced until
12 the trust becomes irrevocable, except this section does not
13 prohibit such action by the guardian of the property of an
14 incapacitated settlor.

15 Section 3. Part III of chapter 736, Florida Statutes,
16 consisting of sections 736.0301, 736.0302, 736.0303, 736.0304,
17 736.0305, and 736.0306, is created to read:

18 PART III

19 REPRESENTATION

20
21 736.0301 Representation; basic effect.--

22 (1) Notice, information, accountings, or reports given
23 to a person who may represent and bind another person under
24 this part may serve as a substitute for and have the same
25 effect as notice, information, accountings, or reports given
26 directly to the other person.

27 (2) Actions taken by a person who represents the
28 interests of another person under this part are binding on the
29 person whose interests are represented to the same extent as
30 if the actions had been taken by the person whose interests
31 are represented.

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

5 (4) A trustee is not liable for giving notice,
6 information, accountings, or reports to a beneficiary who is
7 represented by another person under this part and nothing in
8 this part prohibits the trustee from giving notice,
9 information, accountings, or reports to the person
10 represented.

11 736.0302 Representation by holder of power of
12 appointment.--

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

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

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

19 (b) A power of a trustee to distribute trust property;
20 or

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

23 736.0303 Representation by fiduciaries and
24 parents.--To the extent there is no conflict of interest
25 between the representative and the person represented or among
26 those being represented with respect to a particular question
27 or dispute:

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

30
31

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

4 (3) A trustee may represent and bind the beneficiaries
5 of the trust.

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

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

11 736.0304 Representation by person having substantially
12 identical interest.--Unless otherwise represented, a minor,
13 incapacitated, or unborn individual, or a person whose
14 identity or location is unknown and not reasonably
15 ascertainable, may be represented by and bound by another
16 person having a substantially identical interest with respect
17 to the particular question or dispute, but only to the extent
18 there is no conflict of interest between the representative
19 and the person represented.

20 736.0305 Appointment of representative.--

21 (1) If the court determines that an interest is not
22 represented under this part, or that the otherwise available
23 representation might be inadequate, the court may appoint a
24 representative to receive notice, give consent, and otherwise
25 represent, bind, and act on behalf of a minor, incapacitated,
26 or unborn individual, or a person whose identity or location
27 is unknown. If not precluded by a conflict of interest, a
28 representative may be appointed to represent several persons
29 or interests.

30 (2) A representative may act on behalf of the
31 individual represented with respect to any matter arising

1 under this code, whether or not a judicial proceeding
2 concerning the trust is pending.

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

6 736.0306 Designated representative.--

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

10 (2) Except as otherwise provided in this code, a
11 person designated, as provided in subsection (1) may not
12 represent and bind a beneficiary while that person is serving
13 as trustee.

14 (3) Except as otherwise provided in this code, a
15 person designated, as provided in subsection (1) may not
16 represent and bind another beneficiary if the person
17 designated also is a beneficiary, unless:

18 (a) That person was named by the settlor; or

19 (b) That person is the beneficiary's spouse or a
20 grandparent or descendant of a grandparent of the beneficiary
21 or the beneficiary's spouse.

22 (4) No person designated, as provided in subsection
23 (1) is liable to the beneficiary whose interests are
24 represented, or to anyone claiming through that beneficiary,
25 for any actions or omissions to act made in good faith.

26 Section 4. Part IV of chapter 736, Florida Statutes,
27 consisting of sections 736.0401, 736.0402, 736.0403, 736.0404,
28 736.0405, 736.0406, 736.0407, 736.0408, 736.0409, 736.0410,
29 736.04113, 736.04115, 736.0412, 736.0413, 736.0414, 736.0415,
30 736.0416, and 736.0417, is created to read:

31 PART IV

1 CREATION, VALIDITY, MODIFICATION, AND TERMINATION

2

3 736.0401 Methods of creating trust.--A trust may be
4 created by:

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

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

10 (3) Exercise of a power of appointment in favor of a
11 trustee.

12 736.0402 Requirements for creation.--

13 (1) A trust is created only if:

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

15 (b) The settlor indicates an intent to create the
16 trust.

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

18 1. A charitable trust;

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

21 3. A trust for a noncharitable purpose, as provided in
22 s. 736.0409.

23 (d) The trustee has duties to perform.

24 (e) The same person is not the sole trustee and sole
25 beneficiary.

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

29 (3) A power of a trustee to select a beneficiary from
30 an indefinite class is valid. If the power is not exercised
31 within a reasonable time, the power fails and the property

1 subject to the power passes to the persons who would have
2 taken the property had the power not been conferred.

3 736.0403 Trusts created in other jurisdictions;
4 formalities required for revocable trusts.--

5 (1) A trust not created by will is validly created if
6 the creation of the trust complies with the law of the
7 jurisdiction in which the trust instrument was executed or the
8 law of the jurisdiction in which, at the time of creation, the
9 settlor was domiciled.

10 (2) Notwithstanding subsection (1):

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

14 (b) The testamentary aspects of a revocable trust,
15 executed by a settlor who is a domiciliary of this state at
16 the time of execution, are invalid unless the trust instrument
17 is executed by the settlor with the formalities required for
18 the execution of a will in this state. For purposes of this
19 subsection, the term "testamentary aspects" means those
20 provisions of the trust instrument that dispose of the trust
21 property on or after the death of the settlor other than to
22 the settlor's estate.

23 (3) Paragraph (2)(b) does not apply to trusts
24 established as part of an employee annuity described in s. 403
25 of the Internal Revenue Code of 1986, as amended, an
26 individual retirement account as described in s. 408 of the
27 Internal Revenue Code of 1986, as amended, a Keogh (HR-10)
28 Plan, or a retirement or other plan that is qualified under s.
29 401 of the Internal Revenue Code of 1986, as amended.

30 (4) Paragraph (2)(b) applies to trusts created on or
31 after the effective date of this code. Section 737.111, as in

1 effect prior to the effective date of this code, continues to
2 apply to trusts created before the effective date of this
3 code.

4 736.0404 Trust purposes.--A trust may be created only
5 to the extent the purposes of the trust are lawful, not
6 contrary to public policy, and possible to achieve. A trust
7 and its terms must be for the benefit of its beneficiaries.

8 736.0405 Charitable purposes; enforcement.--

9 (1) A trust may be created for charitable purposes.
10 Charitable purposes include, but are not limited to, the
11 relief of poverty; the advancement of arts, sciences,
12 education, or religion; and the promotion of health,
13 governmental, or municipal purposes.

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

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

21 736.0406 Effect of fraud, duress, mistake, or undue
22 influence.--A trust is void if the creation of the trust is
23 procured by fraud, duress, mistake, or undue influence. Any
24 part of the trust is void if procured by such means, but the
25 remainder of the trust not procured by such means is valid if
26 the remainder is not invalid for other reasons.

27 736.0407 Evidence of oral trust.--Except as required
28 by s. 736.0403 or a law other than this code, a trust need not
29 be evidenced by a trust instrument but the creation of an oral
30 trust and its terms may be established only by clear and
31 convincing evidence.

1 736.0408 Trust for care of an animal.--

2 (1) A trust may be created to provide for the care of
3 an animal alive during the settlor's lifetime. The trust
4 terminates on the death of the animal or, if the trust was
5 created to provide for the care of more than one animal alive
6 during the settlor's lifetime, on the death of the last
7 surviving animal.

8 (2) A trust authorized by this section may be enforced
9 by a person appointed in the terms of the trust or, if no
10 person is appointed, by a person appointed by the court. A
11 person having an interest in the welfare of the animal may
12 request the court to appoint a person to enforce the trust or
13 to remove a person appointed.

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

22 736.0409 Noncharitable trust without ascertainable
23 beneficiary.--Except as otherwise provided in s. 736.0408 or
24 by another provision of law, the following rules apply:

25 (1) A trust may be created for a noncharitable purpose
26 without a definite or definitely ascertainable beneficiary or
27 for a noncharitable but otherwise valid purpose to be selected
28 by the trustee. The trust may not be enforced for more than 21
29 years.

30

31

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

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

12 736.0410 Modification or termination of trust;
13 proceedings for disapproval of nonjudicial acts.--

14 (1) In addition to the methods of termination
15 prescribed by ss. 736.04113-736.0414, a trust terminates to
16 the extent the trust expires or is revoked or is properly
17 distributed pursuant to the terms of the trust.

18 (2) A proceeding to disapprove a proposed modification
19 or termination under s. 736.0412 or a trust combination or
20 division under s. 736.0417 may be commenced by any
21 beneficiary.

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

25 736.04113 Judicial modification of irrevocable trust
26 when modification is not inconsistent with settlor's
27 purpose.--

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

1 (a) The purposes of the trust have been fulfilled or
2 have become illegal, impossible, wasteful, or impracticable to
3 fulfill;

4 (b) Because of circumstances not anticipated by the
5 settlor, compliance with the terms of the trust would defeat
6 or substantially impair the accomplishment of a material
7 purpose of the trust; or

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

9 (2) In modifying a trust under this section, a court
10 may:

11 (a) Amend or change the terms of the trust, including
12 terms governing distribution of the trust income or principal
13 or terms governing administration of the trust;

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

15 (c) Direct or permit the trustee to do acts that are
16 not authorized or that are prohibited by the terms of the
17 trust; or

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

20 (3) In exercising discretion to modify a trust under
21 this section:

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

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

30

31

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

4 736.04115 Judicial modification of irrevocable trust
5 when modification is in best interest of beneficiaries.--

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

12 (2) In exercising discretion to modify a trust under
13 this section:

14 (a) The court shall exercise discretion in a manner
15 that conforms to the extent possible with the intent of the
16 settlor, taking into account the current circumstances and
17 best interests of the beneficiaries.

18 (b) The court shall consider the terms and purposes of
19 the trust, the facts and circumstances surrounding the
20 creation of the trust, and extrinsic evidence relevant to the
21 proposed modification.

22 (c) The court shall consider spendthrift provisions as
23 a factor in making a decision but the court is not precluded
24 from modifying a trust because the trust contains spendthrift
25 provisions.

26 (3) This section shall not apply to:

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

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

29 1. Under the terms of the trust, all beneficial
30 interests in the trust must vest or terminate within the
31

1 period prescribed by the rule against perpetuities in s.
2 689.225(2), notwithstanding s. 689.225(2)(f).

3 2. The terms of the trust expressly prohibit judicial
4 modification.

5 (4) For purposes of subsection (3), a revocable trust
6 shall be treated as created when the right of revocation
7 terminates.

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

11 736.0412 Nonjudicial modification of irrevocable
12 trust.--

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

16 (2) Modification of a trust as authorized in this
17 section is not prohibited by a spendthrift clause or by a
18 provision in the trust instrument that prohibits amendment or
19 revocation of the trust.

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

23 (4) This section shall not apply to:

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

25 (b) Any trust created after December 31, 2000, if,
26 under the terms of the trust, all beneficial interests in the
27 trust must vest or terminate within the period prescribed by
28 the rule against perpetuities in s. 689.225(2),
29 notwithstanding s. 689.225(2)(f), unless the terms of the
30 trust expressly authorize nonjudicial modification.

31

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

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

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

10 736.0413 Cy pres.--

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

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

20 736.0414 Modification or termination of uneconomic
21 trust.--

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

27 (2) Upon application of a trustee or any qualified
28 beneficiary, the court may modify or terminate a trust or
29 remove the trustee and appoint a different trustee if the
30 court determines that the value of the trust property is
31 insufficient to justify the cost of administration.

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

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

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

14 736.0415 Reformation to correct mistakes.--Upon
15 application of a settlor or any interested person, the court
16 may reform the terms of a trust, even if unambiguous, to
17 conform the terms to the settlor's intent if it is proved by
18 clear and convincing evidence that both the accomplishment of
19 the settlor's intent and the terms of the trust were affected
20 by a mistake of fact or law, whether in expression or
21 inducement. In determining the settlor's original intent, the
22 court may consider evidence relevant to the settlor's intent
23 even though the evidence contradicts an apparent plain meaning
24 of the trust instrument.

25 736.0416 Modification to achieve settlor's tax
26 objectives.--Upon application of any interested person, to
27 achieve the settlor's tax objectives the court may modify the
28 terms of a trust in a manner that is not contrary to the
29 settlor's probable intent. The court may provide that the
30 modification has retroactive effect.

31 736.0417 Combination and division of trusts.--

1 736.0502 Spendthrift provision.--

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

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

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

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

19 736.0503 Exceptions to spendthrift provision.--

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

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

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

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

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

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

13 736.0504 Discretionary trusts; effect of standard.--

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

18 (a) The discretion is expressed in the form of a
19 standard of distribution; or

20 (b) The trustee has abused the discretion.

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

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

31 736.0505 Creditors' claims against settlor.--

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

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

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

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

23 (2) For purposes of this section:

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

28 (b) Upon the lapse, release, or waiver of the power,
29 the holder is treated as the settlor of the trust only to the
30 extent the value of the property affected by the lapse,
31

1 release, or waiver exceeds the greater of the amount specified
2 in:

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

5
6 of the Internal Revenue Code of 1986, as amended.

7 736.05053 Trustee's duty to pay expenses and
8 obligations of settlor's estate.--

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

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

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

31

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

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

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

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

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

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

25 PART VI

26 REVOCABLE TRUSTS

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

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 the effective date of this code.

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

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

10 736.0703 Cotrustees.--

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

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

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

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

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

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

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

5 (a) Prevent a cotrustee from committing a breach of
6 trust.

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

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

12 736.0704 Vacancy in trusteeship; appointment of
13 successor.--

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

15 (a) A person designated as trustee declines the
16 trusteeship;

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

19 (c) A trustee resigns;

20 (d) A trustee is disqualified or removed;

21 (e) A trustee dies; or

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

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

27 (3) A vacancy in a trusteeship of a noncharitable
28 trust that is required to be filled must be filled in the
29 following order of priority:

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

1 (b) By a person appointed by unanimous agreement of
2 the qualified beneficiaries.

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

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

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

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

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

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

17 736.0705 Resignation of trustee.--

18 (1) A trustee may resign:

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

21 (b) With the approval of the court.

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

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

29 736.0706 Removal of trustee.--
30
31

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

4 Section 8. Part VIII of chapter 736, Florida Statutes,
5 consisting of sections 736.0801, 736.0802, 736.0803, 736.0804,
6 736.0805, 736.0806, 736.0807, 736.0808, 736.0809, 736.0810,
7 736.08105, 736.0811, 736.0812, 736.08125, 736.0813, 736.08135,
8 736.0814, 736.08147, 736.0815, 736.0816, 736.08163, 736.08165,
9 and 736.0817, is created to read:

10 PART VIII

11 DUTIES AND POWERS OF TRUSTEE

12
13 736.0801 Duty to administer trust.--Upon acceptance of
14 a trusteeship, the trustee shall administer the trust in good
15 faith, in accordance with its terms and purposes and the
16 interests of the beneficiaries, and in accordance with this
17 code.

18 736.0802 Duty of loyalty.--

19 (1) As between a trustee and the beneficiaries, a
20 trustee shall administer the trust solely in the interests of
21 the beneficiaries.

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

30 (a) The transaction was authorized by the terms of the
31 trust;

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

1 (5)(a) An investment by a trustee authorized by lawful
2 authority to engage in trust business, as defined in s.
3 658.12(20), in investment instruments, as defined in s.
4 660.25(6), that are owned or controlled by the trustee or its
5 affiliate, or from which the trustee or its affiliate receives
6 compensation for providing services in a capacity other than
7 as trustee, is not presumed to be affected by a conflict
8 between personal and fiduciary interests provided the
9 investment otherwise complies with chapters 518 and 660 and
10 the trustee complies with the disclosure requirements of this
11 subsection.

12 (b) A trustee who invests trust funds in investment
13 instruments that are owned or controlled by the trustee or its
14 affiliate shall disclose the following to all qualified
15 beneficiaries:

16 1. Notice that the trustee has invested trust funds in
17 investment instruments owned or controlled by the trustee or
18 its affiliate.

19 2. The identity of the investment instruments.

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

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

31

1 (d) Disclosure required by this subsection shall be
2 made at least annually unless there has been no change in the
3 method or increase in the rate at which such compensation is
4 calculated since the most recent disclosure. The disclosure
5 may be given in a trust disclosure document as defined in s.
6 736.1008, in a copy of the prospectus for the investment
7 instrument, in any other written disclosure prepared for the
8 investment instrument under applicable federal or state law,
9 or in a written summary that includes all compensation
10 received or to be received by the trustee and any affiliate of
11 the trustee and an explanation of the manner in which such
12 compensation is calculated, either as a percentage of the
13 assets invested or by some other method.

14 (e) This subsection shall apply as follows:

15 1. This subsection does not apply to qualified
16 investment instruments or to a trust for which a right of
17 revocation exists.

18 2. For investment instruments other than qualified
19 investment instruments, paragraphs (a), (b), (c), and (d)
20 shall apply to irrevocable trusts created on or after July 1,
21 2007, which expressly authorize the trustee, by specific
22 reference to this subsection, to invest in investment
23 instruments owned or controlled by the trustee or its
24 affiliate.

25 3. For investment instruments other than qualified
26 investment instruments, paragraphs (a), (b), (c), and (d)
27 shall apply to irrevocable trusts not described in
28 subparagraph 2. only as follows:

29 a. Such paragraphs shall not apply until 60 days after
30 the statement required in paragraph (f) is provided and no
31

1 objection is made or any objection which is made has been
2 terminated.

3 (I) An objection is made if, within 60 days after the
4 date of the statement required in paragraph (f), a super
5 majority of the eligible beneficiaries deliver to the trustee
6 written objections to the application of this subsection to
7 such trust. An objection shall be deemed to be delivered to
8 the trustee on the date the objection is mailed to the mailing
9 address listed in the notice provided in paragraph (f).

10 (II) An objection is terminated upon the earlier of
11 the receipt of consent from a super majority of eligible
12 beneficiaries of the class that made the objection or the
13 resolution of the objection pursuant to this subparagraph.

14 (III) If an objection is delivered to the trustee, the
15 trustee may petition the court for an order overruling the
16 objection and authorizing the trustee to make investments
17 under this subsection. The burden shall be on the trustee to
18 show good cause for the relief sought.

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

24 (V) The court may award costs and attorney's fees
25 relating to any petition under this subparagraph in the same
26 manner as in chancery actions. When costs and attorney's fees
27 are to be paid out of the trust, the court, in its discretion,
28 may direct from which part of the trust such costs and fees
29 shall be paid.

30 b. The objection of a super majority of eligible
31 beneficiaries under this subparagraph may thereafter be

1 removed by the written consent of a super majority of the
2 class or classes of those eligible beneficiaries that made the
3 objection.

4 (f)1. Any time prior to initially investing in any
5 investment instrument described in this subsection other than
6 a qualified investment instrument, the trustee of a trust
7 described in subparagraph (e)3. shall provide to all qualified
8 beneficiaries a statement containing the following:

9 a. The name, telephone number, street address, and
10 mailing address of the trustee and of any individuals who may
11 be contacted for further information.

12 b. A statement that, unless a super majority of the
13 eligible beneficiaries objects to the application of this
14 subsection to the trust within 60 days after the date the
15 statement pursuant to this subsection was delivered, this
16 subsection shall apply to the trust.

17 c. A statement that, if this subsection applies to the
18 trust, the trustee will have the right to make investments in
19 investment instruments, as defined in s. 660.25(6), which are
20 owned or controlled by the trustee or its affiliate, or from
21 which the trustee or its affiliate receives compensation for
22 providing services in a capacity other than as trustee, and
23 that the trustee or its affiliate may receive fees in addition
24 to the trustee's compensation for administering the trust.

25
26 A statement by the trustee is not delivered if the statement
27 is accompanied by another written communication other than a
28 written communication by the trustee that refers only to the
29 statement.

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

31 a. "Eligible beneficiaries" means:

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

4 (II) If there is no beneficiary described in s.
5 736.0103(14)(c), the beneficiaries described in s.
6 736.0103(14)(a) and (b).

7 b. "Super majority of the eligible beneficiaries"
8 means:

9 (I) If at the time the determination is made there are
10 one or more beneficiaries as described in s. 736.0103(14)(c),
11 at least two-thirds in interest of the beneficiaries described
12 in s. 736.0103(14)(a) or two-thirds in interest of the
13 beneficiaries described in s. 736.0103(14)(c), if the
14 interests of the beneficiaries are reasonably ascertainable;
15 otherwise, two-thirds in number of either such class; or

16 (II) If there is no beneficiary as described in s.
17 736.0103(14)(c), at least two-thirds in interest of the
18 beneficiaries described in s. 736.0103(14)(a) or two-thirds in
19 interest of the beneficiaries described in s. 736.0103(14)(b),
20 if the interests of the beneficiaries are reasonably
21 ascertainable; otherwise, two-thirds in number of either such
22 class.

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

26 d. An irrevocable trust is created upon execution of
27 the trust instrument. If a trust that was revocable when
28 created thereafter becomes irrevocable, the irrevocable trust
29 is created when the right of revocation terminates.

30 (g) Nothing in this chapter is intended to create or
31 imply a duty for the trustee to seek the application of this

1 subsection to invest in investment instruments described in
2 paragraph (a), and no inference of impropriety may be made as
3 a result of a trustee electing not to invest trust assets in
4 investment instruments described in paragraph (a).

5 (6) In voting shares of stock or in exercising powers
6 of control over similar interests in other forms of
7 enterprise, the trustee shall act in the best interests of the
8 beneficiaries. If the trust is the sole owner of a corporation
9 or other form of enterprise, the trustee shall elect or
10 appoint directors or other managers who will manage the
11 corporation or enterprise in the best interests of the
12 beneficiaries.

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

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

17 (b) A payment of reasonable compensation to the
18 trustee;

19 (c) A transaction between a trust and another trust,
20 the decedent's estate, or a guardian of the property of which
21 the trustee is a fiduciary or in which a beneficiary has an
22 interest;

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

25 (e) An advance by the trustee of money for the
26 protection of the trust.

27 (8) This section does not preclude the employment of
28 persons, including, but not limited to, attorneys,
29 accountants, investment advisers, or agents, even if they are
30 the trustee, an affiliate of the trustee, or otherwise
31 associated with the trustee, to advise or assist the trustee

1 in the exercise of any of the trustee's powers and to pay
2 reasonable compensation and costs incurred in connection with
3 such employment from the assets of the trust; to act without
4 independent investigation on their recommendations; and,
5 instead of acting personally, to employ one or more agents to
6 perform any act of administration, whether or not
7 discretionary.

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

11 (10) Payment of costs or attorney's fees incurred in
12 any trust proceeding from the assets of the trust may be made
13 by the trustee without the approval of any person and without
14 court authorization, except that court authorization shall be
15 required if an action has been filed or defense asserted
16 against the trustee based upon a breach of trust. Court
17 authorization is not required if the action or defense is
18 later withdrawn or dismissed by the party that is alleging a
19 breach of trust or resolved without a determination by the
20 court that the trustee has committed a breach of trust.

21 736.0803 Impartiality.--If a trust has two or more
22 beneficiaries, the trustee shall act impartially in
23 administering the trust property, giving due regard to the
24 beneficiaries' respective interests.

25 736.0804 Prudent administration.--A trustee shall
26 administer the trust as a prudent person would, by considering
27 the purposes, terms, distribution requirements, and other
28 circumstances of the trust. In satisfying this standard, the
29 trustee shall exercise reasonable care, skill, and caution.

30 736.0805 Expenses of administration.--In administering
31 a trust, the trustee shall only incur expenses that are

1 reasonable in relation to the trust property, the purposes of
2 the trust, and the skills of the trustee.

3 736.0806 Trustee's skills.--A trustee who has special
4 skills or expertise, or is named trustee in reliance on the
5 trustee's representation that the trustee has special skills
6 or expertise, shall use those special skills or expertise.

7 736.0807 Delegation by trustee.--

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

12 (a) Selecting an agent.

13 (b) Establishing the scope and terms of the
14 delegation, consistent with the purposes and terms of the
15 trust.

16 (c) Reviewing the agent's actions periodically, in
17 order to monitor the agent's performance and compliance with
18 the terms of the delegation.

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

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

25 (4) By accepting a delegation of powers or duties from
26 the trustee of a trust that is subject to the law of this
27 state, an agent submits to the jurisdiction of the courts of
28 this state.

29 736.0808 Powers to direct.--
30
31

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

4 (2) If the terms of a trust confer on a person other
5 than the settlor of a revocable trust, the power to direct
6 certain actions of the trustee, the trustee shall act in
7 accordance with an exercise of the power unless the attempted
8 exercise is manifestly contrary to the terms of the trust or
9 the trustee knows the attempted exercise would constitute a
10 serious breach of a fiduciary duty that the person holding the
11 power owes to the beneficiaries of the trust.

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

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

21 736.0809 Control and protection of trust property.--A
22 trustee shall take reasonable steps to take control of and
23 protect the trust property.

24 736.0810 Recordkeeping and identification of trust
25 property.--

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

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

30 (3) Except as otherwise provided in subsection (4), a
31 trustee shall cause the trust property to be designated so

1 that the interest of the trust, to the extent feasible,
2 appears in records maintained by a party other than a trustee
3 or beneficiary.

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

7 736.08105 Duty to ascertain marketable title of trust
8 real property.--A trustee holding title to real property
9 received from a settlor or estate shall not be required to
10 obtain title insurance or proof of marketable title until a
11 marketable title is required for a sale or conveyance of the
12 real property.

13 736.0811 Enforcement and defense of claims.--A trustee
14 shall take reasonable steps to enforce claims of the trust and
15 to defend claims against the trust.

16 736.0812 Collecting trust property.--A trustee shall
17 take reasonable steps to compel a former trustee or other
18 person to deliver trust property to the trustee and, except as
19 provided in s. 736.08125, to redress a breach of trust known
20 to the trustee to have been committed by a former trustee.

21 736.08125 Protection of successor trustees.--

22 (1) A successor trustee is not personally liable for
23 actions taken by any prior trustee, nor does any successor
24 trustee have a duty to institute any proceeding against any
25 prior trustee, or file any claim against any prior trustee's
26 estate, for any of the prior trustee's actions as trustee
27 under any of the following circumstances:

28 (a) As to a successor trustee who succeeds a trustee
29 who was also the settlor of a trust that was revocable during
30 the time that the settlor served as trustee;

31

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

4 (c) As to any beneficiary who has released the
5 successor trustee from the duty to institute any proceeding or
6 file any claim;

7 (d) As to any person who is not an eligible
8 beneficiary; or

9 (e) As to any eligible beneficiary:

10 1. If a supermajority of the eligible beneficiaries
11 have released the successor trustee;

12 2. If the eligible beneficiary has not delivered a
13 written request to the successor trustee to institute an
14 action or file a claim against the prior trustee within 6
15 months after the date of the successor trustee's acceptance of
16 the trust, if the successor trustee has notified the eligible
17 beneficiary in writing of acceptance by the successor trustee
18 in accordance with 736.0813(1)(a) and that writing advises the
19 beneficiary that, unless the beneficiary delivers the written
20 request within 6 months after the date of acceptance, the
21 right to proceed against the successor trustee will be barred
22 pursuant to this section; or

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

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

26 (a) "Eligible beneficiaries" means:

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

30
31

1 2. If there is no beneficiary as described in s.
2 736.0103(14)(c), the beneficiaries described in s.
3 736.0103(14)(a) and (b).

4 (b) "Supermajority of eligible beneficiaries" means at
5 least two-thirds in interest of the eligible beneficiaries if
6 the interests of the eligible beneficiaries are reasonably
7 ascertainable, otherwise, at least two-thirds in number of the
8 eligible beneficiaries.

9 (3) Nothing in this section affects any liability of
10 the prior trustee or the right of the successor trustee or any
11 beneficiary to pursue an action or claim against the prior
12 trustee.

13 736.0813 Duty to inform and account.--The trustee
14 shall keep the qualified beneficiaries of the trust reasonably
15 informed of the trust and its administration.

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

18 (a) Within 60 days after acceptance of the trust, the
19 trustee shall give notice to the qualified beneficiaries of
20 the acceptance of the trust and the full name and address of
21 the trustee.

22 (b) Within 60 days after the date the trustee acquires
23 knowledge of the creation of an irrevocable trust, or the date
24 the trustee acquires knowledge that a formerly revocable trust
25 has become irrevocable, whether by the death of the settlor or
26 otherwise, the trustee shall give notice to the qualified
27 beneficiaries of the trust's existence, the identity of the
28 settlor or settlors, the right to request a copy of the trust
29 instrument, and the right to accountings under this section.

30
31

1 (c) Upon reasonable request, the trustee shall provide
2 a qualified beneficiary with a complete copy of the trust
3 instrument.

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

8 (e) Upon reasonable request, the trustee shall provide
9 a qualified beneficiary with relevant information about the
10 assets and liabilities of the trust and the particulars
11 relating to administration.

12
13 Paragraphs (a) and (b) do not apply to an irrevocable trust
14 created before the effective date of this code, or to a
15 revocable trust that becomes irrevocable before the effective
16 date of this code. Paragraph (a) does not apply to a trustee
17 who accepts a trusteeship before the effective date of this
18 code.

19 (2) A qualified beneficiary may waive the trustee's
20 duty to account under paragraph (1)(d). A qualified
21 beneficiary may withdraw a waiver previously given. Waivers
22 and withdrawals of prior waivers under this subsection must be
23 in writing. Withdrawals of prior waivers are effective only
24 with respect to accountings for future periods.

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

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

31

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

3 736.08135 Trust accountings.--

4 (1) A trust accounting must be a reasonably
5 understandable report from the date of the last accounting or,
6 if none, from the date on which the trustee became
7 accountable, that adequately discloses the information
8 required in subsection (2).

9 (2)(a) The accounting must begin with a statement
10 identifying the trust, the trustee furnishing the accounting,
11 and the time period covered by the accounting.

12 (b) The accounting must show all cash and property
13 transactions and all significant transactions affecting
14 administration during the accounting period, including
15 compensation paid to the trustee and the trustee's agents.
16 Gains and losses realized during the accounting period and all
17 receipts and disbursements must be shown.

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

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

31

1 (e) The accounting must reflect the allocation of
2 receipts, disbursements, accruals, or allowances between
3 income and principal when the allocation affects the interest
4 of any beneficiary of the trust.

5 (f) The trustee shall include in the final accounting
6 a plan of distribution for any undistributed assets shown on
7 the final accounting.

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

11 736.0814 Discretionary powers; tax savings.--

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

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

25 (a) Make discretionary distributions of either
26 principal or income to or for the benefit of that trustee,
27 except to provide for that trustee's health, education,
28 maintenance, or support as described under ss. 2041 and 2514
29 of the Internal Revenue Code;

30 (b) Make discretionary allocations of receipts or
31 expenses as between principal and income, unless the trustee

1 acts in a fiduciary capacity whereby the trustee has no power
2 to enlarge or shift any beneficial interest except as an
3 incidental consequence of the discharge of the trustee's
4 fiduciary duties;

5 (c) Make discretionary distributions of either
6 principal or income to satisfy any of the trustee's legal
7 support obligations; or

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

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

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

15 (b) A power held by the settlor's spouse who is the
16 trustee of a trust for which a marital deduction, as defined
17 in s. 2056(a) or s. 2523(a) of the Internal Revenue Code of
18 1986, as amended, was previously allowed;

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

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

24 (4) A power whose exercise is limited or prohibited by
25 subsection (2) may be exercised by the remaining trustees
26 whose exercise of the power is not so limited or prohibited.
27 If there is no trustee qualified to exercise the power, on
28 petition by any qualified beneficiary, the court may appoint
29 an independent trustee with authority to exercise the power.

30 (5) A person who has the right to remove or to replace
31 a trustee does not possess nor may that person be deemed to

1 possess, by virtue of having that right, the powers of the
2 trustee that is subject to removal or to replacement.

3 736.08147 Duty to distribute trust income.--If a will
4 or trust instrument granting income to the settlor's or
5 testator's spouse for life is silent as to the time of
6 distribution of income and the frequency of distributions, the
7 trustee shall distribute all net income, as defined in chapter
8 738, to the spouse no less frequently than annually. This
9 provision shall apply to any trust established before, on, or
10 after July 1, 2007, unless the trust instrument expressly
11 directs or permits net income to be distributed less
12 frequently than annually.

13 736.0815 General powers of trustee.--

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

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

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

18 1. All powers over the trust property that an
19 unmarried competent owner has over individually owned
20 property.

21 2. Any other powers appropriate to achieve the proper
22 investment, management, and distribution of the trust
23 property.

24 3. Any other powers conferred by this code.

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

27 736.0816 Specific powers of trustee.--Except as
28 limited or restricted by this code, a trustee may:

29 (1) Collect trust property and accept or reject
30 additions to the trust property from a settlor, including an
31 asset in which the trustee is personally interested, and hold

1 property in the name of a nominee or in other form without
2 disclosure of the trust so that title to the property may pass
3 by delivery but the trustee is liable for any act of the
4 nominee in connection with the property so held.

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

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

20 (4) Exchange, partition, or otherwise change the
21 character of trust property.

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

24 (6) Borrow money, with or without security, and
25 mortgage or pledge trust property for a period within or
26 extending beyond the duration of the trust and advance money
27 for the protection of the trust.

28 (7) With respect to an interest in a proprietorship,
29 partnership, limited liability company, business trust,
30 corporation, or other form of business or enterprise, continue
31 the business or other enterprise and take any action that may

1 be taken by shareholders, members, or property owners,
2 including, but not limited to, merging, dissolving, or
3 otherwise changing the form of business organization or
4 contributing additional capital.

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

8 (a) Vote, or give proxies to vote, with or without
9 power of substitution, or enter into or continue a voting
10 trust agreement.

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

14 (c) Pay calls, assessments, and other sums chargeable
15 or accruing against the securities, and sell or exercise stock
16 subscription or conversion rights.

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

19 (9) With respect to an interest in real property,
20 construct, or make ordinary or extraordinary repairs to,
21 alterations to, or improvements in, buildings or other
22 structures, demolish improvements, raze existing or erect new
23 party walls or buildings, subdivide or develop land, dedicate
24 land to public use or grant public or private easements, and
25 make or vacate plats and adjust boundaries.

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

31

- 1 (11) Grant an option involving a sale, lease, or other
2 disposition of trust property or acquire an option for the
3 acquisition of property, including an option exercisable
4 beyond the duration of the trust, and exercise an option so
5 acquired.
- 6 (12) Insure the property of the trust against damage
7 or loss and insure the trustee, trustee's agents, and
8 beneficiaries against liability arising from the
9 administration of the trust.
- 10 (13) Abandon or decline to administer property of no
11 value or of insufficient value to justify the collection or
12 continued administration of such property.
- 13 (14) Pay or contest any claim, settle a claim by or
14 against the trust, and release, in whole or in part, a claim
15 belonging to the trust.
- 16 (15) Pay taxes, assessments, compensation of the
17 trustee and of employees and agents of the trust, and other
18 expenses incurred in the administration of the trust.
- 19 (16) Allocate items of income or expense to trust
20 income or principal, as provided by law.
- 21 (17) Exercise elections with respect to federal,
22 state, and local taxes.
- 23 (18) Select a mode of payment under any employee
24 benefit or retirement plan, annuity, or life insurance payable
25 to the trustee, exercise rights under such plan, annuity, or
26 insurance, including exercise of the right to indemnification
27 for expenses and against liabilities, and take appropriate
28 action to collect the proceeds.
- 29 (19) Make loans out of trust property, including, but
30 not limited to, loans to a beneficiary on terms and conditions
31 that are fair and reasonable under the circumstances, and the

1 trustee has a lien on future distributions for repayment of
2 those loans.

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

12 (21) Pay an amount distributable to a beneficiary who
13 is under a legal disability or who the trustee reasonably
14 believes is incapacitated, by paying the amount directly to
15 the beneficiary or applying the amount for the beneficiary's
16 benefit, or by:

17 (a) Paying the amount to the beneficiary's guardian of
18 the property or, if the beneficiary does not have a guardian
19 of the property, the beneficiary's guardian of the person;

20 (b) Paying the amount to the beneficiary's custodian
21 under a Uniform Transfers to Minors Act or custodial trustee
22 under a Uniform Custodial Trust Act, and, for that purpose,
23 creating a custodianship or custodial trust;

24 (c) Paying the amount to an adult relative or other
25 person having legal or physical care or custody of the
26 beneficiary, to be expended on the beneficiary's behalf, if
27 the trustee does not know of a guardian of the property,
28 guardian of the person, custodian, or custodial trustee; or

29 (d) Managing the amount as a separate fund on the
30 beneficiary's behalf, subject to the beneficiary's continuing
31 right to withdraw the distribution.

1 (22) On distribution of trust property or the division
2 or termination of a trust, make distributions in divided or
3 undivided interests, allocate particular assets in
4 proportionate or disproportionate shares, value the trust
5 property for those purposes, and adjust for resulting
6 differences in valuation.

7 (23) Prosecute or defend, including appeals, an
8 action, claim, or judicial proceeding in any jurisdiction to
9 protect trust property or the trustee in the performance of
10 the trustee's duties.

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

14 (25) On termination of the trust, exercise the powers
15 appropriate to wind up the administration of the trust and
16 distribute the trust property to the persons entitled to the
17 property, subject to the right of the trustee to retain a
18 reasonable reserve for the payment of debts, expenses, and
19 taxes.

20 736.08163 Powers of trustees relating to environmental
21 or human health laws or to trust property contaminated with
22 hazardous or toxic substances; liability.--

23 (1) From the creation of a trust until final
24 distribution of the assets from the trust, the trustee has,
25 without court authorization, the powers specified in
26 subsection (2).

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

29 (a) Inspect or investigate, or cause to be inspected
30 or investigated, property held by the trustee, including
31 interests in sole proprietorships, partnerships, or

1 corporations and any assets owned by any such business entity
2 for the purpose of determining compliance with an
3 environmental law affecting that property or to respond to an
4 actual or threatened violation of an environmental law
5 affecting that property;

6 (b) Take, on behalf of the trust, any action necessary
7 to prevent, abate, or otherwise remedy an actual or potential
8 violation of an environmental law affecting property held by
9 the trustee, before or after initiation of an enforcement
10 action by a governmental body;

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

18 (d) Settle or compromise at any time any claim against
19 the trust or trustee that may be asserted by a governmental
20 body or private party that involves the alleged violation of
21 an environmental law affecting property of any trust over
22 which the trustee has responsibility;

23 (e) Disclaim any power granted by any document, law,
24 or rule of law that, in the sole judgment of the trustee, may
25 cause the trustee to incur personal liability, or the trust to
26 incur liability, under any environmental law;

27 (f) Decline to serve as a trustee, or having
28 undertaken to serve as a trustee, resign at any time, if the
29 trustee believes there is or may be a conflict of interest in
30 its fiduciary capacity and in its individual capacity because
31 of potential claims or liabilities that may be asserted

1 against the trustee on behalf of the trust by reason of the
2 type or condition of the assets held; or

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

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

15 (4) A trustee that acquires ownership or control of a
16 vessel or other property, without having owned, operated, or
17 materially participated in the management of that vessel or
18 property before assuming ownership or control as trustee, is
19 not considered an owner or operator for purposes of liability
20 under chapter 376, chapter 403, or any other environmental
21 law. A trustee that willfully, knowingly, or recklessly causes
22 or exacerbates a release or threatened release of a hazardous
23 substance is personally liable for the cost of the response,
24 to the extent that the release or threatened release is
25 attributable to the trustee's activities. This subsection does
26 not preclude the filing of claims against the assets that
27 constitute the trust held by the trustee or the filing of
28 actions against the trustee in its representative capacity and
29 in any such action, an award or judgment against the trustee
30 must be satisfied only from the assets of the trust.

31

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

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

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

13 736.08165 Administration pending outcome of contest or
14 other proceeding.--

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

23 (2) Upon motion of a party and after notice to
24 interested persons, a court, on good cause shown, may make an
25 exception to the prohibition under subsection (1) and
26 authorize the trustee to act or to distribute trust assets to
27 a beneficiary subject to any conditions the court, in the
28 court's discretion, may impose, including the posting of bond
29 by the beneficiary.

30 736.0817 Distribution on termination.--Upon the
31 occurrence of an event terminating or partially terminating a

1 trust, the trustee shall proceed expeditiously to distribute
2 the trust property to the persons entitled to the property,
3 subject to the right of the trustee to retain a reasonable
4 reserve for the payment of debts, expenses, and taxes. The
5 provisions of this section are in addition to and are not in
6 derogation of the rights of a trustee under the common law
7 with respect to final distribution of a trust.

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

10 PART IX

11 TRUST INVESTMENTS

12
13 736.0901 Applicability of chapter 518.--A trustee
14 shall invest trust property in accordance with chapter 518.

15 Section 10. Part X of chapter 736, Florida Statutes,
16 consisting of sections 736.1001, 736.1002, 736.1003, 736.1004,
17 736.1005, 736.1006, 736.1007, 736.1008, 736.1009, 736.1010,
18 736.1011, 736.1012, 736.1013, 736.1014, 736.1015, 736.1016,
19 736.1017, and 736.1018, is created to read:

20 PART X

21 LIABILITY OF TRUSTEE AND RIGHTS OF PERSONS DEALING WITH TRUSTEE

22
23 736.1001 Remedies for breach of trust.--

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

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

28 (a) Compel the trustee to perform the trustee's
29 duties;

30 (b) Enjoin the trustee from committing a breach of
31 trust;

- 1 (c) Compel the trustee to redress a breach of trust by
2 paying money or restoring property or by other means;
- 3 (d) Order a trustee to account;
- 4 (e) Appoint a special fiduciary to take possession of
5 the trust property and administer the trust;
- 6 (f) Suspend the trustee;
- 7 (g) Remove the trustee as provided in s. 736.706;
- 8 (h) Reduce or deny compensation to the trustee;
- 9 (i) Subject to s. 736.1016, void an act of the
10 trustee, impose a lien or a constructive trust on trust
11 property, or trace trust property wrongfully disposed of and
12 recover the property or its proceeds; or
- 13 (j) Order any other appropriate relief.
- 14 (3) As an illustration of the remedies available to
15 the court and without limiting the court's discretion as
16 provided in subsection (2), if a breach of trust results in
17 the favoring of any beneficiary to the detriment of any other
18 beneficiary or consists of an abuse of the trustee's
19 discretion:
- 20 (a) To the extent the breach of trust has resulted in
21 no distribution to a beneficiary or a distribution that is too
22 small, the court may require the trustee to pay from the trust
23 to the beneficiary an amount the court determines will restore
24 the beneficiary, in whole or in part, to his or her
25 appropriate position.
- 26 (b) To the extent the breach of trust has resulted in
27 a distribution to a beneficiary that is too large, the court
28 may restore the beneficiaries, the trust, or both, in whole or
29 in part, to their appropriate positions by requiring the
30 trustee to withhold an amount from one or more future
31 distributions to the beneficiary who received the distribution

1 that was too large or by requiring that beneficiary to return
2 some or all of the distribution to the trust.

3 736.1002 Damages for breach of trust.--

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

6 (a) The amount required to restore the value of the
7 trust property and trust distributions to what they would have
8 been if the breach had not occurred, including lost income,
9 capital gain, or appreciation that would have resulted from
10 proper administration; or

11 (b) The profit the trustee made by reason of the
12 breach.

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

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

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

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

28 (c) Principles of equity applicable to contribution
29 generally shall apply.

30 (4) The right of contribution shall be enforced as
31 follows:

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

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

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

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

17 1. Discharged by payment the common liability within
18 the period of the statute of limitations applicable to the
19 beneficiary's right of action against the liable person and
20 the person has commenced an action for contribution within 1
21 year after payment, or

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

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

31

1 (6) The judgment of the court in determining the
2 liability of several defendants to the beneficiary for breach
3 of trust is binding upon such defendants in determining the
4 right of such defendants to contribution.

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

10 736.1003 Damages in absence of breach.--Absent a
11 breach of trust, a trustee is not liable to a beneficiary for
12 a loss or depreciation in the value of trust property or for
13 not having made a profit.

14 736.1004 Attorney's fees and costs.--

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

18 (b) In proceedings arising under ss.

19 736.0410-736.0417,

20
21 the court shall award taxable costs as in chancery actions,
22 including attorney fees and guardian ad litem fees.

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

28 736.1005 Attorney's fees for services to the trust.--

29 (1) Any attorney who has rendered services to a trust
30 may be awarded reasonable compensation from the trust. The
31 attorney may apply to the court for an order awarding

1 attorney's fees and, after notice and service on the trustee
2 and all beneficiaries entitled to an accounting under s.
3 736.0813, the court shall enter an order on the fee
4 application.

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

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

19 736.1006 Costs in trust proceedings.--

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

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

25 736.1007 Trustee's attorney's fees.--

26 (1) If the trustee of a revocable trust retains an
27 attorney to render legal services in connection with the
28 initial administration of the trust, the attorney is entitled
29 to reasonable compensation for those legal services, payable
30 from the assets of the trust without court order. The trustee
31 and the attorney may agree to compensation that is determined

1 in a manner or amount other than the manner or amount provided
2 in this section. The agreement is not binding on a person who
3 bears the impact of the compensation unless that person is a
4 party to or otherwise consents to be bound by the agreement.
5 The agreement may provide that the trustee is not individually
6 liable for the attorney's fees and costs.

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

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

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

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

26 (b) Implementation of substitution of the successor
27 trustee.

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

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

- 1 (e) The trustee's duty to protect, insure, and manage
2 trust assets and the trustee's liability relating to these
3 duties.
- 4 (f) The trustee's duty regarding investments imposed
5 by the prudent investor rule.
- 6 (g) The trustee's obligation to inform and account to
7 beneficiaries and the method of satisfaction of such
8 obligations, the liability of the trust and trustee to the
9 settlor's creditors, and the advisability or necessity for
10 probate proceedings to bar creditors.
- 11 (h) Contributions due to the personal representative
12 of the settlor's estate for payment of expenses of
13 administration and obligations of the settlor's estate.
- 14 (i) Identifying tax returns required to be filed by
15 the trustee, the trustee's liability for payment of taxes, and
16 the due date of returns.
- 17 (j) Filing a nontaxable affidavit, if not filed by a
18 personal representative.
- 19 (k) Order of payment of expenses of administration of
20 the trust and order and priority of abatement of trust
21 distributions.
- 22 (l) Distribution of income or principal to
23 beneficiaries or funding of further trusts provided in the
24 governing instrument.
- 25 (m) Preparation of any legal documents required to
26 effect distribution.
- 27 (n) Fiduciary duties, avoidance of self-dealing,
28 conflicts of interest, duty of impartiality, and obligations
29 to beneficiaries.
- 30 (o) If there is a conflict of interest between a
31 trustee who is a beneficiary and other beneficiaries of the

1 trust, advice to the trustee on limitations of certain
2 authority of the trustee regarding discretionary distributions
3 or exercise of certain powers and alternatives for appointment
4 of an independent trustee and appropriate procedures.

5 (p) Procedures for the trustee's discharge from
6 liability for administration of the trust on termination or
7 resignation.

8 (5) In addition to the attorney's fees for ordinary
9 services, the attorney for the trustee shall be allowed
10 further reasonable compensation for any extraordinary service.
11 What constitutes an extraordinary service may vary depending
12 on many factors, including the size of the trust.

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

14 (a) Involvement in a trust contest, trust
15 construction, a proceeding for determination of beneficiaries,
16 a contested claim, elective share proceedings, apportionment
17 of estate taxes, or other adversary proceedings or litigation
18 by or against the trust.

19 (b) Representation of the trustee in an audit or any
20 proceeding for adjustment, determination, or collection of any
21 taxes.

22 (c) Tax advice on postmortem tax planning, including,
23 but not limited to, disclaimer, renunciation of fiduciary
24 commission, alternate valuation date, allocation of
25 administrative expenses between tax returns, the QTIP or
26 reverse QTIP election, allocation of GST exemption,
27 qualification for Internal Revenue Code ss. 303 and 6166
28 privileges, deduction of last illness expenses, distribution
29 planning, asset basis considerations, throwback rules,
30 handling income or deductions in respect of a decedent,
31 valuation discounts, special use and other valuation, handling

- 1 employee benefit or retirement proceeds, prompt assessment
2 request, or request for release from personal liability for
3 payment of tax.
- 4 (d) Review of an estate tax return and preparation or
5 review of other tax returns required to be filed by the
6 trustee.
- 7 (e) Preparation of decedent's federal estate tax
8 return. If this return is prepared by the attorney, a fee of
9 one-half of 1 percent up to a value of \$10 million and
10 one-fourth of 1 percent on the value in excess of \$10 million,
11 of the gross estate as finally determined for federal estate
12 tax purposes, is presumed to be reasonable compensation for
13 the attorney for this service. These fees shall include
14 services for routine audit of the return, not beyond the
15 examining agent level, if required.
- 16 (f) Purchase, sale, lease, or encumbrance of real
17 property by the trustee or involvement in zoning, land use,
18 environmental, or other similar matters.
- 19 (g) Legal advice regarding carrying on of decedent's
20 business or conducting other commercial activity by the
21 trustee.
- 22 (h) Legal advice regarding claims for damage to the
23 environment or related procedures.
- 24 (i) Legal advice regarding homestead status of trust
25 real property or proceedings involving the status.
- 26 (j) Involvement in fiduciary, employee, or attorney
27 compensation disputes.
- 28 (k) Considerations of special valuation of trust
29 assets, including discounts for blockage, minority interests,
30 lack of marketability, and environmental liability.
31

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

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

13 (b) The responsibilities assumed by, and potential
14 liabilities of, the attorney.

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

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

19 (e) The complexity or simplicity of the administration
20 and the novelty of issues presented.

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

24 (g) The nature of the trust assets, the expenses of
25 administration, and the claims payable by the trust and the
26 compensation paid to other professionals and fiduciaries.

27 (h) Any delay in payment of the compensation after the
28 services were furnished.

29 (i) Any other relevant factors.

30 (7) The court may determine reasonable attorney's
31 compensation without receiving expert testimony. Any party may

1 offer expert testimony after notice to interested persons. If
2 expert testimony is offered, an expert witness fee may be
3 awarded by the court and paid from the assets of the trust.
4 The court shall direct from what part of the trust the fee is
5 to be paid.

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

18 (9) Court proceedings to determine compensation, if
19 required, are a part of the trust administration process and
20 the costs, including fees for the trustee's attorney, shall be
21 determined by the court and paid from the assets of the trust
22 unless the court finds the attorney's fees request to be
23 substantially unreasonable. The court shall direct from what
24 part of the trust the fees are to be paid.

25 (10) As used in this section, the term "initial trust
26 administration" means administration of a revocable trust
27 during the period that begins with the death of the settlor
28 and ends on the final distribution of trust assets outright or
29 to continuing trusts created under the trust agreement but, if
30 an estate tax return is required, not until after issuance of
31 an estate tax closing letter or other evidence of termination

1 of the estate tax proceeding. This initial period is not
2 intended to include continued regular administration of the
3 trust.

4 736.1008 Limitations on proceedings against
5 trustees.--

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

9 (a) All matters adequately disclosed in a trust
10 disclosure document issued by the trustee, with the
11 limitations period beginning on the date of receipt of
12 adequate disclosure.

13 (b) All matters not adequately disclosed in a trust
14 disclosure document if the trustee has issued a final trust
15 accounting and has given written notice to the beneficiary of
16 the availability of the trust records for examination and that
17 any claims with respect to matters not adequately disclosed
18 may be barred unless an action is commenced within the
19 applicable limitations period provided in chapter 95. The
20 limitations period begins on the date of receipt of the final
21 trust accounting and notice.

22 (2) Unless sooner barred by adjudication, consent, or
23 limitations, a beneficiary is barred from bringing an action
24 against a trustee for breach of trust with respect to a matter
25 that was adequately disclosed in a trust disclosure document
26 unless a proceeding to assert the claim is commenced within 6
27 months after receipt from the trustee of the trust disclosure
28 document or a limitation notice that applies to that
29 disclosure document, whichever is received later.

30 (3) When a trustee has not issued a final trust
31 accounting or has not given written notice to the beneficiary

1 of the availability of the trust records for examination and
2 that claims with respect to matters not adequately disclosed
3 may be barred, a claim against the trustee for breach of trust
4 based on a matter not adequately disclosed in a trust
5 disclosure document accrues when the beneficiary has actual
6 knowledge of the trustee's repudiation of the trust or adverse
7 possession of trust assets, and is barred as provided in
8 chapter 95.

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

10 (a) "Trust disclosure document" means a trust
11 accounting or any other written report of the trustee. A trust
12 disclosure document adequately discloses a matter if the
13 document provides sufficient information so that a beneficiary
14 knows of a claim or reasonably should have inquired into the
15 existence of a claim with respect to that matter.

16 (b) "Trust accounting" means an accounting that
17 adequately discloses the information required by and that
18 substantially complies with the standards set forth in s.
19 736.08135.

20 (c) "Limitation notice" means a written statement of
21 the trustee that an action by a beneficiary against the
22 trustee for breach of trust based on any matter adequately
23 disclosed in a trust disclosure document may be barred unless
24 the action is commenced within 6 months after receipt of the
25 trust disclosure document or receipt of a limitation notice
26 that applies to that trust disclosure document, whichever is
27 later. A limitation notice may but is not required to be in
28 the following form: "An action for breach of trust based on
29 matters disclosed in a trust accounting or other written
30 report of the trustee may be subject to a 6-month statute of
31 limitations from the receipt of the trust accounting or other

1 written report. If you have questions, please consult your
2 attorney."

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

6 (a) Contained as a part of the trust disclosure
7 document or as a part of another trust disclosure document
8 received within 1 year prior to the receipt of the latter
9 trust disclosure document;

10 (b) Accompanied concurrently by the trust disclosure
11 document or by another trust disclosure document that was
12 received within 1 year prior to the receipt of the latter
13 trust disclosure document;

14 (c) Delivered separately within 10 days after the
15 delivery of the trust disclosure document or of another trust
16 disclosure document that was received within 1 year prior to
17 the receipt of the latter trust disclosure document. For
18 purposes of this paragraph, a limitation notice is not
19 delivered separately if the notice is accompanied by another
20 written communication, other than a written communication that
21 refers only to the limitation notice; or

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

25 1. Offers to provide to the beneficiary on request
26 another copy of that trust disclosure document if the document
27 was received by the beneficiary within 1 year prior to receipt
28 of the limitation notice; or

29 2. Is accompanied by another copy of that trust
30 disclosure document if the trust disclosure document was
31

1 received by the beneficiary 1 year or more prior to the
2 receipt of the limitation notice.

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

7 736.1009 Reliance on trust instrument.--A trustee who
8 acts in reasonable reliance on the terms of the trust as
9 expressed in the trust instrument is not liable to a
10 beneficiary for a breach of trust to the extent the breach
11 resulted from the reliance.

12 736.1010 Event affecting administration or
13 distribution.--If the happening of an event, including
14 marriage, divorce, performance of educational requirements, or
15 death, affects the administration or distribution of a trust,
16 a trustee who has exercised reasonable care to ascertain the
17 happening of the event is not liable for a loss resulting from
18 the trustee's lack of knowledge.

19 736.1011 Exculpation of trustee.--

20 (1) A term of a trust relieving a trustee of liability
21 for breach of trust is unenforceable to the extent that the
22 term:

23 (a) Relieves the trustee of liability for breach of
24 trust committed in bad faith or with reckless indifference to
25 the purposes of the trust or the interests of the
26 beneficiaries; or

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

30 (2) An exculpatory term drafted or caused to be
31 drafted by the trustee is invalid as an abuse of a fiduciary

1 or confidential relationship unless the trustee proves that
2 the exculpatory term is fair under the circumstances and that
3 the term's existence and contents were adequately communicated
4 directly to the settlor.

5 736.1012 Beneficiary's consent, release, or
6 ratification.--A trustee is not liable to a beneficiary for
7 breach of trust if the beneficiary consented to the conduct
8 constituting the breach, released the trustee from liability
9 for the breach, or ratified the transaction constituting the
10 breach, unless:

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

13 (2) At the time of the consent, release, or
14 ratification, the beneficiary did not know of the
15 beneficiary's rights or of the material facts relating to the
16 breach.

17 736.1013 Limitation on personal liability of
18 trustee.--

19 (1) Except as otherwise provided in the contract, a
20 trustee is not personally liable on a contract properly
21 entered into in the trustee's fiduciary capacity in the course
22 of administering the trust if the trustee in the contract
23 disclosed the fiduciary capacity.

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

28 (3) A claim based on a contract entered into by a
29 trustee in the trustee's fiduciary capacity, on an obligation
30 arising from ownership or control of trust property, or on a
31 tort committed in the course of administering a trust may be

1 asserted in a judicial proceeding against the trustee in the
2 trustee's fiduciary capacity, whether or not the trustee is
3 personally liable for the claim.

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

8 736.1014 Limitations on actions against certain
9 trusts.--

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

21 (2) This section does not preclude a direct action
22 against a trust described in s. 733.707(3), the trustee of the
23 trust, or a beneficiary of the trust that is not dependent on
24 the individual liability of the settlor.

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

29 736.1015 Interest as general partner.--

30 (1) Unless personal liability is imposed in the
31 contract, a trustee who holds an interest as a general partner

1 in a general or limited partnership is not personally liable
2 on a contract entered into by the partnership after the
3 trust's acquisition of the interest if the fiduciary capacity
4 was disclosed in the contract or in a statement previously
5 filed pursuant to a Uniform Partnership Act or Uniform Limited
6 Partnership Act.

7 (2) A trustee who holds an interest as a general
8 partner is not personally liable for torts committed by the
9 partnership or for obligations arising from ownership or
10 control of the interest unless the trustee is personally at
11 fault.

12 (3) If the trustee of a revocable trust holds an
13 interest as a general partner, the settlor is personally
14 liable for contracts and other obligations of the partnership
15 as if the settlor were a general partner.

16 736.1016 Protection of person dealing with trustee.--

17 (1) A person other than a beneficiary who in good
18 faith assists a trustee or who in good faith and for value
19 deals with a trustee, without knowledge that the trustee is
20 exceeding or improperly exercising the trustee's powers, is
21 protected from liability as if the trustee properly exercised
22 the power.

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

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

29 (4) A person other than a beneficiary who in good
30 faith assists a former trustee or who in good faith and for
31 value deals with a former trustee, without knowledge that the

1 trusteeship has terminated, is protected from liability as if
2 the former trustee were still a trustee.

3 (5) Comparable protective provisions of other laws
4 relating to commercial transactions or transfer of securities
5 by fiduciaries prevail over the protection provided by this
6 section.

7 736.1017 Certification of trust.--

8 (1) Instead of furnishing a copy of the trust
9 instrument to a person other than a beneficiary, the trustee
10 may furnish to the person a certification of trust containing
11 the following information:

12 (a) The trust exists and the date the trust instrument
13 was executed.

14 (b) The identity of the settlor.

15 (c) The identity and address of the currently acting
16 trustee.

17 (d) The powers of the trustee.

18 (e) The revocability or irrevocability of the trust
19 and the identity of any person holding a power to revoke the
20 trust.

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

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

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

27 (3) A certification of trust must state that the trust
28 has not been revoked, modified, or amended in any manner that
29 would cause the representations contained in the certification
30 of trust to be incorrect.

31

1 (4) A certification of trust need not contain the
2 dispositive terms of a trust.

3 (5) A recipient of a certification of trust may
4 require the trustee to furnish copies of any excerpts from the
5 original trust instrument and later amendments that designate
6 the trustee and confer upon the trustee the power to act in
7 the pending transaction.

8 (6) A person who acts in reliance on a certification
9 of trust without knowledge that the representations contained
10 in the certification are incorrect is not liable to any person
11 for so acting and may assume without inquiry the existence of
12 the facts contained in the certification. Knowledge of the
13 terms of the trust may not be inferred solely from the fact
14 that a copy of all or part of the trust instrument is held by
15 the person relying on the certification.

16 (7) A person who in good faith enters into a
17 transaction in reliance on a certification of trust may
18 enforce the transaction against the trust property as if the
19 representations contained in the certification were correct.

20 (8) This section does not limit the right of a person
21 to obtain a copy of the trust instrument when required to be
22 furnished by law or in a judicial proceeding concerning the
23 trust.

24 736.1018 Improper distribution or payment; liability
25 of distributee.--Any person who received a distribution or was
26 paid improperly from a trust shall return the assets or funds
27 received and the income from those assets or interest on the
28 funds from the date of distribution or payment unless the
29 distribution or payment cannot be questioned because of
30 adjudication, estoppel, or limitations. If the person does not
31 have the assets or funds, the value of the assets or funds at

1 the date of disposition, income from the assets or funds, and
2 gain received by the person from the assets or funds shall be
3 returned.

4 Section 11. Part XI of chapter 736, Florida Statutes,
5 consisting of sections 736.1101, 736.1102, 736.1103, 736.1104,
6 736.1105, 736.1106, 736.1107, and 736.1108, is created to
7 read:

8 PART XI

9 RULES OF CONSTRUCTION

10
11 736.1101 Rules of construction; general
12 provisions.--Except as provided in s. 736.0105(2):

13 (1) The intent of the settlor as expressed in the
14 terms of the trust controls the legal effect of the
15 dispositions made in the trust.

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

19 736.1102 Construction of generic terms.--Adopted
20 persons and persons born out of wedlock are included in class
21 gift terminology and terms of relationship, in accordance with
22 rules for determining relationships for purposes of intestate
23 succession.

24 736.1103 Gifts to multi-generation classes to be per
25 stirpes.--Class gifts to descendants, issue, and other
26 multi-generation classes shall be per stirpes.

27 736.1104 Killer not entitled to receive property or
28 other benefits by reason of victim's death.--

29 (1) A beneficiary of a trust who unlawfully and
30 intentionally kills or unlawfully and intentionally
31 participates in procuring the death of the settlor or another

1 person on whose death such beneficiary's interest depends, is
2 not entitled to any trust interest, including homestead,
3 dependent on the victim's death and such interest shall
4 devolve as though the killer had predeceased the victim.

5 (2) A final judgment of conviction of murder in any
6 degree is conclusive for the purposes of this section. In the
7 absence of a murder conviction in any degree, the court may
8 determine by the greater weight of the evidence whether the
9 killing was unlawful and intentional for purposes of this
10 section.

11 736.1105 Dissolution of marriage; effect on revocable
12 trust.--Unless the trust instrument or the judgment for
13 dissolution of marriage or divorce expressly provides
14 otherwise, if a revocable trust is executed by a husband or
15 wife as settlor prior to annulment of the marriage or entry of
16 a judgment for dissolution of marriage or divorce of the
17 settlor from the settlor's spouse, any provision of the trust
18 that affects the settlor's spouse will become void upon
19 annulment of the marriage or entry of the judgment of
20 dissolution of marriage or divorce and any such trust shall be
21 administered and construed as if the settlor's spouse had died
22 on the date of the annulment or on entry of the judgment for
23 dissolution of marriage or divorce.

24 736.1106 Antilapse; survivorship with respect to
25 future interests under terms of inter vivos and testamentary
26 trusts; substitute takers.--

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

28 (a) "Beneficiary" means the beneficiary of a future
29 interest and includes a class member if the future interest is
30 in the form of a class gift.

31

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

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

8 (d) "Future interest under the terms of a trust" means
9 a future interest created by an inter vivos or testamentary
10 transfer to an existing trust or creating a trust or by an
11 exercise of a power of appointment to an existing trust
12 directing the continuance of an existing trust, designating a
13 beneficiary of an existing trust, or creating a trust.

14 (e) "Surviving beneficiary" or "surviving descendant"
15 means a beneficiary or a descendant who did not predecease the
16 distribution date or is not deemed to have predeceased the
17 distribution date by operation of law.

18 (2) A future interest under the terms of a trust is
19 contingent upon the beneficiary surviving the distribution
20 date. Unless a contrary intent appears in the trust
21 instrument, if a beneficiary of a future interest under the
22 terms of a trust fails to survive the distribution date, and
23 the deceased beneficiary leaves surviving descendants, a
24 substitute gift is created in the beneficiary's surviving
25 descendants. They take per stirpes the property to which the
26 beneficiary would have been entitled if the beneficiary had
27 survived the distribution date.

28 (3) In the application of this section:

29 (a) Words of survivorship attached to a future
30 interest are a sufficient indication of an intent contrary to
31 the application of this section.

1 (b) A residuary clause in a will is not a sufficient
2 indication of an intent contrary to the application of this
3 section, whether or not the will specifically provides that
4 lapsed or failed devises are to pass under the residuary
5 clause.

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

9 (a) If the future interest was created by the exercise
10 of a power of appointment, the property passes under the
11 donor's gift-in-default clause, if any, which clause is
12 treated as creating a future interest under the terms of a
13 trust.

14 (b) If no taker is produced by the application of
15 paragraph (a) and the trust was created in a nonresiduary
16 devise or appointment in the transferor's will, the property
17 passes under the residuary clause in the transferor's will.
18 For purposes of this section, the residuary clause is treated
19 as creating a future interest under the terms of a trust.

20 (c) If no taker is produced by the application of
21 paragraph (a) or paragraph (b), the property passes to those
22 persons, including the state, and in such shares as would
23 succeed to the transferor's intestate estate under the
24 intestate succession law of the transferor's domicile if the
25 transferor died when the disposition is to take effect in
26 possession or enjoyment.

27
28 For purposes of paragraphs (b) and (c), the term "transferor"
29 with respect to a future interest created by the exercise of a
30 power of appointment, means the donor if the power was a

31

1 nongeneral power and the donee if the power was a general
2 power.

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

6 736.1107 Change in securities; accessions;
7 nonademption.--A gift of specific securities, rather than
8 their equivalent value, entitles the beneficiary only to:

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

12 (2) Any additional or other securities of the same
13 issuer held by the trust estate because of action initiated by
14 the issuer, excluding any acquired by exercise of purchase
15 options.

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

19 736.1108 Penalty clause for contest.--

20 (1) A provision in a trust instrument purporting to
21 penalize any interested person for contesting the trust
22 instrument or instituting other proceedings relating to a
23 trust estate or trust assets is unenforceable.

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

28 Section 12. Part XII of chapter 736, Florida Statutes,
29 consisting of sections 736.1201, 736.1202, 736.1203, 736.1204,
30 736.1205, 736.1206, 736.1207, 736.1208, 736.1209, and
31 736.1210, is created to read:

1 736.1204 Powers and duties of trustee of a private
2 foundation trust or a split interest trust.--

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

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

10 (b) Deprive a donor of a trust asset or tax deduction
11 or credit; or

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

14
15 For purposes of this subsection, the term "tax" includes, but
16 is not limited to, any federal, state, or local excise,
17 income, gift, estate, or inheritance tax.

18 (2) Except as provided in s. 736.1205, a trustee of a
19 private foundation trust shall make distributions at such time
20 and in such manner as not to subject the trust to tax under s.
21 4942 of the Internal Revenue Code.

22 (3) Except as provided in subsection (4) and in s.
23 736.1205, a trustee of a private foundation trust, or a split
24 interest trust to the extent that the split interest trust is
25 subject to the provisions of s. 4947(a)(2) of the Internal
26 Revenue Code, in the exercise of the trustee's powers shall
27 not:

28 (a) Engage in any act of self-dealing as defined in s.
29 4941(d) of the Internal Revenue Code;

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

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

4 (d) Make any taxable expenditures as defined in s.
5 4945(d) of the Internal Revenue Code.

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

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

17 (b) A deduction was allowed under s. 170, s.
18 545(b)(2), s. 556(b)(2), s. 642(c), s. 2055, s. 2106(a)(2), or
19 s. 2522 of the Internal Revenue Code for amounts payable under
20 the terms of the trust to every remainder beneficiary but not
21 to any income beneficiary.

22 736.1205 Notice that this part does not apply.--In the
23 case of a power to make distributions, if the trustee
24 determines that the governing instrument contains provisions
25 that are more restrictive than s. 736.1204(2), or if the trust
26 contains other powers, inconsistent with the provisions of s.
27 736.1204(3) that specifically direct acts by the trustee, the
28 trustee shall notify the state attorney when the trust becomes
29 subject to this part. Section 736.1204 does not apply to any
30 trust for which notice has been given pursuant to this section

31

1 unless the trust is amended to comply with the terms of this
2 part.

3 736.1206 Power to amend trust instrument.--

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

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

15 736.1207 Power of court to permit deviation.--This
16 part does not affect the power of a court to relieve a trustee
17 from any restrictions on the powers and duties that are placed
18 on the trustee by the governing instrument or applicable law
19 for cause shown and on complaint of the trustee, state
20 attorney, or an affected beneficiary and notice to the
21 affected parties.

22 736.1208 Release; property and persons affected;
23 manner of effecting.--

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

28 (2) The release of a power to select charitable donees
29 may apply to all or any part of the property subject to the
30 power and may reduce or limit the charitable organizations, or

31

1 classes of charitable organizations, in whose favor the power
2 is exercisable.

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

6 (4) Delivery of a release shall be accomplished as
7 follows:

8 (a) If the release is accomplished by specifying a
9 charitable organization or organizations as beneficiary or
10 beneficiaries of the trust, by delivery of a copy of the
11 release to each designated charitable organization.

12 (b) If the release is accomplished by reducing the
13 class of permissible charitable organizations, by delivery of
14 a copy of the release to the state attorney.

15 (5) If a release is accomplished by specifying a
16 public charitable organization or organizations as beneficiary
17 or beneficiaries of the trust, the trust at all times
18 thereafter shall be operated exclusively for the benefit of,
19 and be supervised by, the specified public charitable
20 organization or organizations.

21 736.1209 Election to come under this part.--With the
22 consent of that organization or organizations, a trustee of a
23 trust for the benefit of a public charitable organization or
24 organizations may come under s. 736.0838(5) by filing with the
25 state attorney an election, accompanied by the proof of
26 required consent. Thereafter the trust shall be subject to s.
27 736.1208(5).

28 736.1210 Interpretation.--This part shall be
29 interpreted to effectuate the intent of the state to preserve,
30 foster, and encourage gifts to, or for the benefit of,
31 charitable organizations.

1 Section 13. Part XIII of chapter 736, Florida
2 Statutes, consisting of sections 736.1301, 736.1302, and
3 736.1303, is created to read:

4 PART XIII

5 MISCELLANEOUS

6
7 736.1301 Electronic records and signatures.--Any
8 provisions of this code governing the legal effect, validity,
9 or enforceability of electronic records or electronic
10 signatures, and of contracts formed or performed with the use
11 of such records or signatures, are deemed to conform to the
12 requirements of s. 102 of the Electronic Signatures in Global
13 and National Commerce Act, 15 U.S.C. s. 7002, and supersede,
14 modify, and limit the requirements of the Electronic
15 Signatures in Global and National Commerce Act.

16 736.1302 Severability clause.--If any provision of
17 this code or its application to any person or circumstances is
18 held invalid, the invalidity does not affect other provisions
19 or applications of this code that can be given effect without
20 the invalid provision or application, and to this end the
21 provisions of this code are severable.

22 736.1303 Application to existing relationships.--

23 (1) Except as otherwise provided in this code, on July
24 1, 2007:

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

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

29 (c) This code applies to judicial proceedings
30 concerning trusts commenced before such date, unless the court
31 finds that application of a particular provision of this code

1 would substantially interfere with the effective conduct of
2 the judicial proceedings or prejudice the rights of the
3 parties, in which case the particular provision of this code
4 does not apply and the superseded law applies.

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

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

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

16 Section 14. Paragraph (a) of subsection (5) of section
17 497.458, Florida Statutes, is amended to read:

18 497.458 Disposition of proceeds received on
19 contracts.--

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

22 (a) Invest in investments as prescribed in s. 215.47
23 and exercise the powers set forth in part VIII of chapter 736
24 ~~part IV of chapter 737~~, provided that the licensing authority
25 may by order require the trustee to liquidate or dispose of
26 any investment within 30 days after such order, or within such
27 other times as the order may direct. The licensing authority
28 may issue such order if it determines that the investment
29 violates any provision of this chapter or is not in the best
30 interests of the preneed contract holders whose contracts are
31 secured by the trust funds.

1 Section 15. Section 518.117, Florida Statutes, is
2 created to read:

3 518.117 Permissible investments of fiduciary funds.--A
4 fiduciary that is authorized by lawful authority to engage in
5 trust business as defined in s. 658.12(20) may invest
6 fiduciary funds in accordance with s. 660.417 so long as the
7 investment otherwise complies with this chapter.

8 Section 16. Subsection (2) of section 607.0802,
9 Florida Statutes, is amended to read:

10 607.0802 Qualifications of directors.--

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

24 Section 17. Subsection (6) of section 660.25, Florida
25 Statutes, renumbered as subsection (7) and amended, and a new
26 subsection (6) is added to that section, to read:

27 660.25 Definitions.--Subject to other definitions
28 contained in other sections of this code, and unless the
29 context otherwise requires, in this chapter:

30 (6) "Investment instrument" means any security as
31 defined in s. 2(a)(1) of the Securities Act of 1933; any

1 security of an open-end or closed-end management investment
2 company or investment trust registered under the Investment
3 Company Act of 1940, 15 U.S.C. ss. 80a-1 et seq., as amended;
4 any contract of sale of a commodity for future delivery within
5 the meaning of s. 2(i) of the Commodity Exchange Act; or any
6 other interest in securities, including, but not limited to,
7 shares or interests in a private investment fund, including,
8 but not limited to, a private investment fund organized as a
9 limited partnership, a limited liability company, a statutory
10 or common law business trust, a statutory trust, or a real
11 estate investment trust, a joint venture, or any other general
12 or limited partnership; derivatives or other interests of any
13 nature in securities such as options, options on futures, and
14 variable forward contracts; mutual funds; common trust funds;
15 money market funds; hedge funds; private equity or venture
16 capital funds; insurance contracts; and other entities or
17 vehicles investing in securities or interests in securities
18 whether registered or otherwise.

19 ~~(7)(6)~~ Terms used but not defined in this chapter, but
20 which are expressly defined in chapter 518, the financial
21 institutions codes, chapter 732, chapter 733, chapter 734,
22 chapter 735, chapter ~~736~~ ~~737~~, chapter 738, chapter 744, or
23 chapter 747, shall in this chapter, unless the context
24 otherwise requires, have the meanings ascribed to them in said
25 chapters; and references in any of said chapters to a "trust
26 company" or to "trust companies" shall include every trust
27 department as defined in s. 658.12.

28 Section 18. Section 660.417, Florida Statutes, is
29 amended to read:
30
31

1 660.417 Investment of fiduciary funds in investment
2 instruments into mutual fund accounts; permissible activity
3 under certain circumstances; limitations.--

4 (1) In addition to other investments authorized by law
5 for the investment of funds held by a fiduciary, or by the
6 instrument governing the fiduciary relationship, ~~and~~
7 ~~notwithstanding any other provision of law~~, a bank or trust
8 company acting as a fiduciary, agent or otherwise may, in the
9 exercise of its investment discretion or at the direction of
10 another person authorized to direct investment of funds held
11 by the bank or trust company as fiduciary, invest and reinvest
12 in investment instruments ~~the securities of an open end or~~
13 ~~closed end management investment company or investment trust~~
14 ~~registered under the Investment Company Act of 1940, 15 U.S.C.~~
15 ~~ss. 80a-1 et seq., as amended~~, so long as the ~~portfolio of~~
16 ~~such~~ investment instruments consist ~~company or investment~~
17 ~~trust consists~~ substantially of investments not prohibited by
18 the governing instrument.

19 (2) The fact that such bank or trust company or an
20 affiliate of the bank or trust company provides services with
21 respect to the investment instruments ~~company or investment~~
22 ~~trust~~ such as that of an investment adviser, administrator,
23 broker, custodian, transfer agent, placement agent, servicing
24 agent, registrar, underwriter, sponsor, distributor, or
25 manager or in any other capacity, ~~otherwise~~ and is receiving
26 reasonable compensation for those services, shall not preclude
27 such bank or trust company from investing or reinvesting in
28 investment instruments ~~the securities of the open end or~~
29 ~~closed end management investment trust registered under the~~
30 ~~Investment Company Act of 1940, 15 U.S.C. ss. 80a-1 et seq.,~~
31 ~~as amended~~. However, with respect to any funds so invested,

1 the basis (expressed as a percentage of asset value or
2 otherwise) upon which such compensation is calculated shall be
3 disclosed (by prospectus, account statement or otherwise) to
4 all persons to whom statements of such account are rendered.

5 (3) The fact that such bank or trust company or an
6 affiliate of the bank or trust company owns or controls
7 investment instruments shall not preclude the bank or trust
8 company acting as a fiduciary from investing or reinvesting in
9 such investment instruments, provided such investment
10 instruments:

11 (a) Are held for sale by the bank or trust company or
12 by an affiliate of the bank or trust company in the ordinary
13 course of its business of providing investment services to its
14 customers and do not include any such interests held by the
15 bank or trust company or by an affiliate of the bank or trust
16 company for its own account.

17 (b) Are sold primarily to accounts for which the bank
18 or trust company is not acting as a fiduciary upon terms that
19 are not more favorable to the buyer than the terms upon which
20 they are sold to accounts for which the bank or trust company
21 is acting as a fiduciary.

22 Section 19. Paragraphs (a), (d), and (e) of subsection
23 (1) and subsections (2), (3), (9), and (10) of section 660.46,
24 Florida Statutes, are amended to read:

25 660.46 Substitution of fiduciaries.--

26 (1) The provisions of this section shall apply to the
27 transfer of fiduciary accounts by substitution, and for those
28 purposes these provisions shall constitute alternative
29 procedures to those provided or required by any other
30 provisions of law relating to the transfer of fiduciary
31 accounts or the substitution of persons acting or who are to

1 act in a fiduciary capacity. In this section, and only for its
2 purposes, the term:

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

5 (d) "Trust accounting" has the meaning ascribed in s.
6 736.08135 ~~737.3035~~.

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

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

27 (3) Unless a waiver or consent shall be filed in the
28 proceedings as provided in subsection (4), the provisions of
29 s. 731.301(1) and (2) shall apply with respect to notice of
30 the proceedings to all persons who are then cofiduciaries with
31 the original fiduciary, other than a person joining as a

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

21 (9) Unless previously or otherwise barred by
22 adjudication, waiver, consent, limitation, or the provisions
23 of subsection (8), an action for breach of trust or breach of
24 fiduciary duties or responsibilities against an original
25 fiduciary in whose place and stead another trust company or
26 trust department has been substituted pursuant to the
27 provisions of this section is barred for any beneficiary who
28 has received a trust disclosure document adequately disclosing
29 the matter unless a proceeding to assert the claim is
30 commenced within 6 months after receipt of the trust
31 disclosure document or the limitation notice that applies to

1 the trust disclosure document, whichever is received later. In
2 any event, and notwithstanding lack of adequate disclosure,
3 all claims against such original fiduciary which has complied
4 with the requirements of s. 736.1008 ~~issued a final trust~~
5 ~~disclosure document received by the beneficiary and has~~
6 ~~informed the beneficiary of the location and availability of~~
7 ~~records for his or her examination~~ are barred as provided in
8 chapter 95. Section 736.1008(4)(a) and (c) ~~737.307(2) and (3)~~
9 applies to this subsection.

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

16 Section 20. Section 660.418, Florida Statutes, is
17 amended to read:

18 660.418 Investment of fiduciary funds in syndicate
19 securities.--Notwithstanding any other provision of law, any
20 financial institution with fiduciary powers may, in its
21 fiduciary capacity, purchase bonds or other securities
22 underwritten or otherwise distributed by the financial
23 institution or by a syndicate that includes the financial
24 institution, or an affiliate of the financial institution,
25 provided that such purchase is made through a licensed
26 securities dealer, is otherwise prudent, and is not prohibited
27 by the instrument governing the fiduciary relationship and
28 that disclosure is made at least annually to those persons
29 entitled to a statement of accounts pursuant to s. 736.0813
30 ~~737.303(4)~~ indicating that such securities have been or may be
31 purchased. This section applies to purchases of bonds or other

1 securities made at the time of the initial offering of such
2 bonds or securities or at any time after such initial
3 offering.

4 Section 21. Subsection (5) of section 689.071, Florida
5 Statutes, is amended to read:

6 689.071 Land trusts transferring interests in real
7 estate; ownership vests in trustee.--

8 (5) In addition to any other limitation on personal
9 liability existing pursuant to statute or otherwise, the
10 provisions of s. 736.1013 ~~737.306~~ apply to the trustee of a
11 land trust created pursuant to this section.

12 Section 22. Subsections (1) and (4) of section
13 689.075, Florida Statutes, are amended to read:

14 689.075 Inter vivos trusts; powers retained by
15 settlor.--

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

26 (a) Because the settlor or another person or both
27 possess the power to revoke, amend, alter, or modify the trust
28 in whole or in part;

29 (b) Because the settlor or another person or both
30 possess the power to appoint by deed or will the persons and
31

1 organizations to whom the income shall be paid or the
2 principal distributed;

3 (c) Because the settlor or another person or both
4 possess the power to add to, or withdraw from, the trust all
5 or any part of the principal or income at one time or at
6 different times;

7 (d) Because the settlor or another person or both
8 possess the power to remove the trustee or trustees and
9 appoint a successor trustee or trustees;

10 (e) Because the settlor or another person or both
11 possess the power to control the trustee or trustees in the
12 administration of the trust;

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

16 (g) Because the settlor is, at the time of the
17 execution of the instrument, or thereafter becomes, sole
18 trustee.

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

25 Section 23. Section 689.175, Florida Statutes, is
26 created to read:

27 689.175 Worthier title doctrine abolished.--The
28 doctrine of worthier title is abolished as a rule of law and
29 as a rule of construction. Language in a governing instrument
30 describing the beneficiaries of a disposition as the
31 transferor's "heirs," "heirs at law," "next of kin,"

1 "distributees," "relatives," or "family," or language of
2 similar import, does not create or presumptively create a
3 reversionary interest in the transferor.

4 Section 24. Subsection (8) of section 709.08, Florida
5 Statutes, is amended to read:

6 709.08 Durable power of attorney.--

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

18 Section 25. Paragraph (c) of subsection (2) of section
19 721.08, Florida Statutes, is amended to read:

20 721.08 Escrow accounts; nondisturbance instruments;
21 alternate security arrangements; transfer of legal title.--

22 (2) One hundred percent of all funds or other property
23 which is received from or on behalf of purchasers of the
24 timeshare plan or timeshare interest prior to the occurrence
25 of events required in this subsection shall be deposited
26 pursuant to an escrow agreement approved by the division. The
27 funds or other property may be released from escrow only as
28 follows:

29 (c) Compliance with conditions.--

30 1. Timeshare licenses.--If the timeshare plan is one
31 in which timeshare licenses are to be sold and no cancellation

1 or default has occurred, the escrow agent may release the
2 escrowed funds or other property to or on the order of the
3 developer upon presentation of:

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

6 (I) Expiration of the cancellation period.

7 (II) Completion of construction.

8 (III) Closing.

9 (IV) Either:

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

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

19 b. A certified copy of each recorded nondisturbance
20 and notice to creditors instrument.

21 c. One of the following:

22 (I) A copy of a memorandum of agreement, as defined in
23 s. 721.05, together with satisfactory evidence that the
24 original memorandum of agreement has been irretrievably
25 delivered for recording to the appropriate official
26 responsible for maintaining the public records in the county
27 in which the subject accommodations and facilities are
28 located. The original memorandum of agreement must be recorded
29 within 180 days after the date on which the purchaser executed
30 her or his purchase agreement.

31

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

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

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

20 (I) Expiration of the cancellation period.

21 (II) Completion of construction.

22 (III) Closing.

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

26 c. Evidence that each accommodation and facility:

27 (I) Is free and clear of the claims of any
28 interestholders, other than the claims of interestholders
29 that, through a recorded instrument, are irrevocably made
30 subject to the timeshare instrument and the use rights of
31 purchasers made available through the timeshare instrument;

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

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

6 d. Evidence that the timeshare estate:

7 (I) Is free and clear of the claims of any
8 interestholders, other than the claims of interestholders
9 that, through a recorded instrument, are irrevocably made
10 subject to the timeshare instrument and the use rights of
11 purchasers made available through the timeshare instrument; or

12 (II) Is the subject of a recorded nondisturbance and
13 notice to creditors instrument that complies with subsection
14 (3) and s. 721.17.

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

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

23 (I) Expiration of the cancellation period.

24 (II) Completion of construction.

25 (III) Closing.

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

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

30 (I) Transfer by the owner of the underlying personal
31 property of legal title to the subject accommodations and

1 facilities or all use rights therein into a trust satisfying
2 the requirements of subparagraph 4.; or

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

7 d. Evidence of compliance with the provisions of
8 subparagraph 6., if required.

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

14 (I) In making the transfer required in
15 sub-subparagraph c., the developer shall use as its transfer
16 instrument a document that establishes and protects the
17 continuance of the use rights in the subject accommodations
18 and facilities in a manner that is enforceable by the trust or
19 owners' association.

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

23 (A) Prohibit the vessel owner, the developer, any
24 manager or operator of the vessel, the owners' association or
25 the trustee, the managing entity, or any other person from
26 incurring any liens against the vessel except for liens that
27 are required for the operation and upkeep of the vessel,
28 including liens for fuel expenditures, repairs, crews' wages,
29 and salvage, and except as provided in sub-sub-subparagraphs
30 4.b.(III) and 5.b.(III). All expenses, fees, and taxes
31 properly incurred in connection with the creation,

1 satisfaction, and discharge of any such permitted lien, or a
2 prorated portion thereof if less than all of the
3 accommodations on the vessel are subject to the timeshare
4 plan, shall be common expenses of the timeshare plan.

5 (B) Grant a lien against the vessel in favor of the
6 owners' association or trustee to secure the full and faithful
7 performance of the vessel owner and developer of all of their
8 obligations to the purchasers.

9 (C) Establish governing law in a jurisdiction that
10 recognizes and will enforce the timeshare instrument and the
11 laws of the jurisdiction of registry of the vessel.

12 (D) Require that a description of the use rights of
13 purchasers be posted and displayed on the vessel in a manner
14 that will give notice of such rights to any party examining
15 the vessel. This notice must identify the owners' association
16 or trustee and include a statement disclosing the limitation
17 on incurring liens against the vessel described in
18 sub-sub-sub-subparagraph (A).

19 (E) Include the nondisturbance and notice to creditors
20 instrument for the vessel owner and any other interestholders.

21 (F) The owners' association created under subparagraph
22 5. or trustee created under subparagraph 4. shall have access
23 to any certificates of classification in accordance with the
24 timeshare instrument.

25 (III) If the vessel is a foreign vessel, the vessel
26 must be registered in a jurisdiction that permits a filing
27 evidencing the use rights of purchasers in the subject
28 accommodations and facilities, offers protection for such use
29 rights against unfiled and inferior claims, and recognizes the
30 document or instrument creating such use rights as a lien
31 against the vessel.

1 (IV) In addition to the disclosures required by s.
2 721.07(5), the public offering statement and purchase contract
3 must contain a disclosure in conspicuous type in substantially
4 the following form:

5
6 The laws of the State of Florida govern the offering of this
7 timeshare plan in this state. There are inherent risks in
8 purchasing a timeshare interest in this timeshare plan because
9 the accommodations and facilities of the timeshare plan are
10 located on a vessel that will sail into international waters
11 and into waters governed by many different jurisdictions.
12 Therefore, the laws of the State of Florida cannot fully
13 protect your purchase of an interest in this timeshare plan.
14 Specifically, management and operational issues may need to be
15 addressed in the jurisdiction in which the vessel is
16 registered, which is (insert jurisdiction in which vessel is
17 registered). Concerns of purchasers may be sent to (insert
18 name of applicable regulatory agency and address).

19 4. Trust.--

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

24 b. Prior to the transfer by each interestholder of the
25 subject accommodations and facilities, or all use rights
26 therein, to a trust, any lien or other encumbrance against
27 such accommodations and facilities, or use rights therein,
28 shall be made subject to a nondisturbance and notice to
29 creditors instrument pursuant to subsection (3). No transfer
30 pursuant to this subparagraph shall become effective until the
31 trustee accepts such transfer and the responsibilities set

1 forth herein. A trust established pursuant to this
2 subparagraph shall comply with the following provisions:

3 (I) The trustee shall be an individual or a business
4 entity authorized and qualified to conduct trust business in
5 this state. Any corporation authorized to do business in this
6 state may act as trustee in connection with a timeshare plan
7 pursuant to this chapter. The trustee must be independent from
8 any developer or managing entity of the timeshare plan or any
9 interestholder of any accommodation or facility of such plan.

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

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

29 (IV) All purchasers of the timeshare plan or the
30 owners' association of the timeshare plan shall be the express
31 beneficiaries of the trust. The trustee shall act as a

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

14 (V) The trustee shall not resign upon less than 90
15 days' prior written notice to the managing entity and the
16 division. No resignation shall become effective until a
17 substitute trustee, approved by the division, is appointed by
18 the managing entity and accepts the appointment.

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

21 (VII) For trusts holding property in a timeshare plan
22 located outside this state, the trust and trustee holding such
23 property shall be deemed in compliance with the requirements
24 of this subparagraph if such trust and trustee are authorized
25 and qualified to conduct trust business under the laws of such
26 jurisdiction and the agreement or law governing such trust
27 arrangement provides substantially similar protections for the
28 purchaser as are required in this subparagraph for trusts
29 holding property in a timeshare plan in this state.

30 (VIII) The trustee shall have appointed a registered
31 agent in this state for service of process. In the event such

1 a registered agent is not appointed, service of process may be
2 served pursuant to s. 721.265.

3 5. Owners' association.--

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

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

19 (I) The owners' association shall be a business entity
20 authorized and qualified to conduct business in this state.
21 Control of the board of directors of the owners' association
22 must be independent from any developer or managing entity of
23 the timeshare plan or any interestholder.

24 (II) The bylaws of the owners' association shall
25 provide that the corporation may not be voluntarily dissolved
26 without the unanimous vote of all owners of personal property
27 timeshare interests so long as any purchaser has a right to
28 occupy any portion of the timeshare property pursuant to the
29 timeshare plan.

30 (III) The owners' association shall not convey,
31 hypothecate, mortgage, assign, lease, or otherwise transfer or

1 | encumber in any fashion any interest in or portion of the
2 | timeshare property with respect to which any purchaser has a
3 | right of use or occupancy, unless the timeshare plan is
4 | terminated pursuant to the timeshare instrument, or unless
5 | such conveyance, hypothecation, mortgage, assignment, lease,
6 | transfer, or encumbrance is approved by a vote of two-thirds
7 | of all voting interests of the association and such decision
8 | is declared by a court of competent jurisdiction to be in the
9 | best interests of the purchasers of the timeshare plan. The
10 | owners' association shall notify the division in writing
11 | within 10 days after receiving notice of the filing of any
12 | petition relating to obtaining such a court order. The
13 | division shall have standing to advise the court of the
14 | division's interpretation of the statute as it relates to the
15 | petition.

16 | (IV) All purchasers of the timeshare plan shall be
17 | members of the owners' association and shall be entitled to
18 | vote on matters requiring a vote of the owners' association as
19 | provided in this chapter or the timeshare instrument. The
20 | owners' association shall act as a fiduciary to the purchasers
21 | of the timeshare plan. The articles of incorporation
22 | establishing the owners' association shall set forth the
23 | duties of the owners' association. All expenses reasonably
24 | incurred by the owners' association in the performance of its
25 | duties, together with any reasonable compensation of the
26 | officers or directors of the owners' association, shall be
27 | common expenses of the timeshare plan.

28 | (V) The documents establishing the owners' association
29 | shall constitute a part of the timeshare instrument.

30 | (VI) For owners' associations holding property in a
31 | timeshare plan located outside this state, the owners'

1 association holding such property shall be deemed in
2 compliance with the requirements of this subparagraph if such
3 owners' association is authorized and qualified to conduct
4 owners' association business under the laws of such
5 jurisdiction and the agreement or law governing such
6 arrangement provides substantially similar protections for the
7 purchaser as are required in this subparagraph for owners'
8 associations holding property in a timeshare plan in this
9 state.

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

14 6. Personal property subject to certificate of
15 title.--If any personal property that is an accommodation or
16 facility of a timeshare plan is subject to a certificate of
17 title in this state pursuant to chapter 319 or chapter 328,
18 the following notation must be made on such certificate of
19 title pursuant to s. 319.27(1) or s. 328.15(1):

20
21 The further transfer or encumbrance of the property subject to
22 this certificate of title, or any lien or encumbrance thereon,
23 is subject to the requirements of section 721.17, Florida
24 Statutes, and the transferee or lienor agrees to be bound by
25 all of the obligations set forth therein.

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

31

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

8 Section 26. Paragraph (e) of subsection (1) of section
9 721.53, Florida Statutes, is amended to read:

10 721.53 Subordination instruments; alternate security
11 arrangements.--

12 (1) With respect to each accommodation or facility of
13 a multisite timeshare plan, the developer shall provide the
14 division with satisfactory evidence that one of the following
15 has occurred with respect to each interestholder prior to
16 offering the accommodation or facility as a part of the
17 multisite timeshare plan:

18 (e) The interestholder has transferred the subject
19 accommodation or facility or all use rights therein to a trust
20 that complies with this paragraph. Prior to such transfer, any
21 lien or other encumbrance against such accommodation or
22 facility shall be made subject to a nondisturbance and notice
23 to creditors instrument pursuant to paragraph (a) or a
24 subordination and notice to creditors instrument pursuant to
25 paragraph (b). No transfer pursuant to this paragraph shall
26 become effective until the trust accepts such transfer and the
27 responsibilities set forth herein. A trust established
28 pursuant to this paragraph shall comply with the following
29 provisions:

30 1. The trustee shall be an individual or a business
31 entity authorized and qualified to conduct trust business in

1 | this state. Any corporation authorized to do business in this
2 | state may act as trustee in connection with a timeshare plan
3 | pursuant to this chapter. The trustee must be independent from
4 | any developer or managing entity of the timeshare plan or any
5 | interestholder of any accommodation or facility of such plan.
6 | The same trustee may hold the accommodations and facilities,
7 | or use rights therein, for one or more of the component sites
8 | of the timeshare plan.

9 | 2. The trust shall be irrevocable so long as any
10 | purchaser has a right to occupy any portion of the timeshare
11 | property pursuant to the timeshare plan.

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

25 | 4. All purchasers of the timeshare plan or the owners'
26 | association of the timeshare plan shall be express
27 | beneficiaries of the trust. The trustee shall act as a
28 | fiduciary to the beneficiaries of the trust. The personal
29 | liability of the trustee shall be governed by ss. 736.08125,
30 | 736.08163, 736.1013, and 736.1015 ~~s. 737.306~~. The agreement
31 | establishing the trust shall set forth the duties of the

1 trustee. The trustee shall be required to furnish promptly to
2 the division upon request a copy of the complete list of the
3 names and addresses of the owners in the timeshare plan and a
4 copy of any other books and records of the timeshare plan
5 required to be maintained pursuant to s. 721.13 that are in
6 the possession of the trustee. All expenses reasonably
7 incurred by the trustee in the performance of its duties,
8 together with any reasonable compensation of the trustee,
9 shall be common expenses of the timeshare plan.

10 5. The trustee shall not resign upon less than 90
11 days' prior written notice to the managing entity and the
12 division. No resignation shall become effective until a
13 substitute trustee, approved by the division, is appointed by
14 the managing entity and accepts the appointment.

15 6. The documents establishing the trust arrangement
16 shall constitute a part of the timeshare instrument.

17 7. For trusts holding property in component sites
18 located outside this state, the trust holding such property
19 shall be deemed in compliance with the requirements of this
20 paragraph, if such trust is authorized and qualified to
21 conduct trust business under the laws of such jurisdiction and
22 the agreement or law governing such trust arrangement provides
23 substantially similar protections for the purchaser as are
24 required in this paragraph for trusts holding property in a
25 component site located in this state.

26 8. The trustee shall have appointed a registered agent
27 in this state for service of process. In the event such a
28 registered agent is not appointed, service of process may be
29 served pursuant to s. 721.265.

30 Section 27. Section 731.103, Florida Statutes, is
31 amended to read:

1 731.103 Evidence as to death or status.--In
2 proceedings under this code and under chapter 736, the ~~rules~~
3 ~~of evidence in civil actions are applicable unless~~
4 ~~specifically changed by the code.~~ The following additional
5 rules relating to determination of death and status are
6 applicable:

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

11 (2) A copy of any record or report of a governmental
12 agency, domestic or foreign, that a person is alive, missing,
13 detained, or, from the facts related, presumed dead is prima
14 facie evidence of the status and of the dates, circumstances,
15 and places disclosed by the record or report.

16 (3) A person who is absent from the place of his or
17 her last known domicile for a continuous period of 5 years and
18 whose absence is not satisfactorily explained after diligent
19 search and inquiry is presumed to be dead. The person's death
20 is presumed to have occurred at the end of the period unless
21 there is evidence establishing that death occurred earlier.
22 Evidence showing that the absent person was exposed to a
23 specific peril of death may be a sufficient basis for the
24 court determining at any time after such exposure that he or
25 she died less than 5 years after the date on which his or her
26 absence commenced. A petition for this determination shall be
27 filed in the county in Florida where the decedent maintained
28 his or her domicile or in any county of this state if the
29 decedent was not a resident of Florida at the time his or her
30 absence commenced.
31

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

5 Section 28. Section 731.1035, Florida Statutes, is
6 created to read:

7 731.1035 Applicable rules of evidence.--In proceedings
8 under this code, the rules of evidence in civil actions are
9 applicable unless specifically changed by the code.

10 Section 29. Section 731.201, Florida Statutes, is
11 amended to read:

12 731.201 General definitions.--Subject to additional
13 definitions in subsequent chapters that are applicable to
14 specific chapters or parts, and unless the context otherwise
15 requires, in this code, in s. 409.9101, and in chapters 736
16 ~~737~~, 738, 739, and 744, the term:

17 (1) "Authenticated," when referring to copies of
18 documents or judicial proceedings required to be filed with
19 the court under this code, means a certified copy or a copy
20 authenticated according to the Federal Rules of Civil
21 Procedure.

22 (2) "Beneficiary" means heir at law in an intestate
23 estate and devisee in a testate estate. The term "beneficiary"
24 does not apply to an heir at law or a devisee after that
25 person's interest in the estate has been satisfied. In the
26 case of a devise to an existing trust or trustee, or to a
27 trust or trustee described by will, the trustee is a
28 beneficiary of the estate. Except as otherwise provided in
29 this subsection, the beneficiary of the trust is not a
30 beneficiary of the estate of which that trust or the trustee
31 of that trust is a beneficiary. However, if each trustee is

1 also a personal representative of the estate, each qualified
2 beneficiary ~~the beneficiary or beneficiaries~~ of the trust as
3 defined in s. 736.0103(14) ~~737.303(4)(b)~~ shall be regarded as
4 a beneficiary of the estate.

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

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

14 (5) "Clerk" means the clerk or deputy clerk of the
15 court.

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

17 (7) "Curator" means a person appointed by the court to
18 take charge of the estate of a decedent until letters are
19 issued.

20 (8) "Devise," when used as a noun, means a
21 testamentary disposition of real or personal property and,
22 when used as a verb, means to dispose of real or personal
23 property by will or trust. The term includes "gift," "give,"
24 "bequeath," "bequest," and "legacy." A devise is subject to
25 charges for debts, expenses, and taxes as provided in this
26 code, the will, or the trust.

27 (9) "Devisee" means a person designated in a will or
28 trust to receive a devise. Except as otherwise provided in
29 this subsection, in the case of a devise to an existing trust
30 or trustee, or to a trust or trustee of a trust described by
31 will, the trust or trustee, rather than the beneficiaries of

1 the trust, is the devisee. However, if each trustee is also a
2 personal representative of the estate, each qualified
3 beneficiary ~~the beneficiary or beneficiaries~~ of the trust as
4 defined in s. 736.0103(14) ~~737.303(4)(b)~~ shall be regarded as
5 a devisee.

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

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

19 (12) "Estate" means the property of a decedent that is
20 the subject of administration.

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

23 (14) "File" means to file with the court or clerk.

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

26 (16) "Formal notice" means formal notice under the
27 Florida Probate Rules.

28 (17) "Grantor" means one who creates or adds to a
29 trust and includes "settlor" or "trustor" and a testator who
30 creates or adds to a trust.

31

1 (18) "Heirs" or "heirs at law" means those persons,
2 including the surviving spouse, who are entitled under the
3 statutes of intestate succession to the property of a
4 decedent.

5 (19) "Incompetent" means a minor or a person
6 adjudicated incompetent.

7 (20) "Informal notice" or "notice" means informal
8 notice under the Florida Probate Rules.

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

24 (22) "Letters" means authority granted by the court to
25 the personal representative to act on behalf of the estate of
26 the decedent and refers to what has been known as letters
27 testamentary and letters of administration. All letters shall
28 be designated "letters of administration."

29 (23) "Other state" means any state of the United
30 States other than Florida and includes the District of
31 Columbia, the Commonwealth of Puerto Rico, and any territory

1 or possession subject to the legislative authority of the
2 United States.

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

5 (25) "Personal representative" means the fiduciary
6 appointed by the court to administer the estate and refers to
7 what has been known as an administrator, administrator cum
8 testamento annexo, administrator de bonis non, ancillary
9 administrator, ancillary executor, or executor.

10 (26) "Petition" means a written request to the court
11 for an order.

12 (27) "Power of appointment" means an authority, other
13 than as an incident of the beneficial ownership of property,
14 to designate recipients of beneficial interests in property.

15 ~~(28)(27)~~ "Probate of will" means all steps necessary
16 to establish the validity of a will and to admit a will to
17 probate.

18 ~~(29)(28)~~ "Property" means both real and personal
19 property or any interest in it and anything that may be the
20 subject of ownership.

21 ~~(30)(29)~~ "Protected homestead" means the property
22 described in s. 4(a)(1), Art. X of the State Constitution on
23 which at the death of the owner the exemption inures to the
24 owner's surviving spouse or heirs under s. 4(b), Art. X of the
25 State Constitution. For purposes of the code, real property
26 owned as tenants by the entirety is not protected homestead.

27 ~~(31)(30)~~ "Residence" means a person's place of
28 dwelling.

29 ~~(32)(31)~~ "Residuary devise" means a devise of the
30 assets of the estate which remain after the provision for any
31 devise which is to be satisfied by reference to a specific

1 | property or type of property, fund, sum, or statutory amount.
2 | If the will contains no devise which is to be satisfied by
3 | reference to a specific property or type of property, fund,
4 | sum, or statutory amount, "residuary devise" or "residue"
5 | means a devise of all assets remaining after satisfying the
6 | obligations of the estate.

7 | ~~(33)~~(32) "Security" means a security as defined in s.
8 | 517.021.

9 | ~~(34)~~(33) "Security interest" means a security interest
10 | as defined in s. 671.201.

11 | ~~(35)~~(34) "Trust" means an express trust, private or
12 | charitable, with additions to it, wherever and however
13 | created. It also includes a trust created or determined by a
14 | judgment or decree under which the trust is to be administered
15 | in the manner of an express trust. "Trust" excludes other
16 | constructive trusts, and it excludes resulting trusts;
17 | conservatorships; custodial arrangements pursuant to the
18 | Florida Uniform Transfers to Minors Act; business trusts
19 | providing for certificates to be issued to beneficiaries;
20 | common trust funds; land trusts under s. 689.05; trusts
21 | created by the form of the account or by the deposit agreement
22 | at a financial institution; voting trusts; security
23 | arrangements; liquidation trusts; trusts for the primary
24 | purpose of paying debts, dividends, interest, salaries, wages,
25 | profits, pensions, or employee benefits of any kind; and any
26 | arrangement under which a person is nominee or escrowee for
27 | another.

28 | ~~(36)~~(35) "Trustee" includes an original, additional,
29 | surviving, or successor trustee, whether or not appointed or
30 | confirmed by court.

31 |

1 ~~(37)(36)~~ "Will" means an instrument, including a
2 codicil, executed by a person in the manner prescribed by this
3 code, which disposes of the person's property on or after his
4 or her death and includes an instrument which merely appoints
5 a personal representative or revokes or revises another will.

6 Section 30. Paragraph (a) of subsection (1) and
7 subsection (5) of section 731.303, Florida Statutes, are
8 amended to read:

9 731.303 Representation.--In the administration of or
10 in judicial proceedings involving estates of decedents or
11 trusts, the following apply:

12 (1) Persons are bound by orders binding others in the
13 following cases:

14 (a)1. Orders binding the sole holder or all coholders
15 of a power of revocation or a general, special, or limited
16 power of appointment, including one in the form of a power of
17 amendment or revocation to the extent that the power has not
18 become unexercisable in fact, bind all persons to the extent
19 that their interests, as persons who may take by virtue of the
20 exercise or nonexercise of the power, are subject to the
21 power.

22 2. Subparagraph 1. does not apply to:

23 a. Any matter determined by the court to involve fraud
24 or bad faith by the trustee;

25 b. A power of a trustee to distribute trust property;
26 or

27 c. A power of appointment held by a person while the
28 person is the sole trustee.

29 (5) The holder of a power of appointment over property
30 not held in trust may represent and bind persons whose
31 interests, as permissible appointees, takers in default, or

1 otherwise, are subject to the power. Representation under this
2 subsection does not apply to:

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

5 (b) A power of a trustee to distribute trust property;
6 or

7 (c) A power of appointment held by a person while the
8 person is the sole trustee ~~When a sole holder or coholder of a~~
9 ~~general, special, or limited power of appointment, including~~
10 ~~an exercisable power of amendment or revocation over property~~
11 ~~in an estate or trust, is bound by:~~

12 ~~(a) Agreements, waivers, consents, or approvals; or~~

13 ~~(b) Accounts, trust accountings, or other written~~
14 ~~reports that adequately disclose matters set forth therein,~~

15
16 ~~then all persons who may take by virtue of, and whose~~
17 ~~interests are subject to, the exercise or nonexercise of the~~
18 ~~power are also bound, but only to the extent of their~~
19 ~~interests which could otherwise be affected by the exercise or~~
20 ~~nonexercise of the power.~~

21 Section 31. Subsection (5) of section 732.2075,
22 Florida Statutes, is amended to read:

23 732.2075 Sources from which elective share payable;
24 abatement.--

25 (5) Unless otherwise provided in the trust instrument
26 or, in the decedent's will if there is no provision in the
27 trust instrument, any amount to be satisfied from trust
28 property shall be paid from the assets of the trust in the
29 order provided for claims under s. 736.05053 ~~737.3054~~(2) and
30 (3). A direction in the decedent's will is effective only for
31 revocable trusts.

1 Section 32. Subsection (2) of section 732.513, Florida
2 Statutes, is amended to read:

3 732.513 Devises to trustee.--

4 (2) The devise shall not be invalid for any or all of
5 the following reasons:

6 (a) Because the trust is amendable or revocable, or
7 both, by any person.

8 (b) Because the trust has been amended or revoked in
9 part after execution of the will or a codicil to it.

10 ~~(c) Because the trust instrument or any amendment to
11 it was not executed in the manner required for wills.~~

12 (c)(d) Because the only res of the trust is the
13 possible expectancy of receiving, as a named beneficiary, a
14 devise under a will or death benefits as described in s.
15 733.808, and even though the testator or other person has
16 reserved any or all rights of ownership in the death benefit
17 policy, contract, or plan, including the right to change the
18 beneficiary.

19 ~~(d)(e)~~ Because of any of the provisions of s. 689.075.

20 Section 33. Section 732.603, Florida Statutes, is
21 amended to read:

22 (Substantial rewording of section. See
23 s. 732.603, F.S., for present text.)

24 732.603 Antilapse; deceased devisee; class gifts.--

25 (1) Unless a contrary intent appears in the will, if a
26 devisee who is a grandparent, or a descendant of a
27 grandparent, of the testator:

28 (a) Is dead at the time of the execution of the will;

29 (b) Fails to survive the testator; or

30 (c) Is required by the will or by operation of law to
31 be treated as having predeceased the testator,

1
2 a substitute gift is created in the devisee's surviving
3 descendants who take per stirpes the property to which the
4 devisee would have been entitled had the devisee survived the
5 testator.

6 (2) When a power of appointment is exercised by will,
7 unless a contrary intent appears in the document creating the
8 power of appointment or in the testator's will, if an
9 appointee who is a grandparent, or a descendant of a
10 grandparent, of the donor of the power:

11 (a) Is dead at the time of the execution of the will
12 or the creation of the power;

13 (b) Fails to survive the testator; or

14 (c) Is required by the will, the document creating the
15 power, or by operation of law to be treated as having
16 predeceased the testator,

17
18 a substitute gift is created in the appointee's surviving
19 descendants who take per stirpes the property to which the
20 appointee would have been entitled had the appointee survived
21 the testator. Unless the language creating a power of
22 appointment expressly excludes the substitution of the
23 descendants of an object of a power for the object, a
24 surviving descendant of a deceased object of a power of
25 appointment may be substituted for the object whether or not
26 the descendant is an object of the power.

27 (3) In the application of this section:

28 (a) Words of survivorship in a devise or appointment
29 to an individual, such as "if he survives me," or to "my
30 surviving children," are a sufficient indication of an intent
31 contrary to the application of subsections (1) and (2). Words

1 of survivorship used by the donor of the power in a power to
2 appoint to an individual, such as the term "if he survives the
3 donee," or in a power to appoint to the donee's "then
4 surviving children," are a sufficient indication of an intent
5 contrary to the application of subsection (2).

6 (b) The term:

7 1. "Appointment" includes an alternative appointment
8 and an appointment in the form of a class gift.

9 2. "Appointee" includes:

10 a. A class member if the appointment is in the form of
11 a class gift.

12 b. An individual or class member who was deceased at
13 the time the testator executed his or her will as well as an
14 individual or class member who was then living but who failed
15 to survive the testator.

16 3. "Devise" also includes an alternative devise and a
17 devise in the form of a class gift.

18 4. "Devisee" also includes:

19 a. A class member if the devise is in the form of a
20 class gift.

21 b. An individual or class member who was deceased at
22 the time the testator executed his or her will as well as an
23 individual or class member who was then living but who failed
24 to survive the testator.

25 (4) This section applies only to outright devises and
26 appointments. Devises and appointments in trust, including to
27 a testamentary trust, are subject to s. 736.1106.

28 Section 34. Section 732.604, Florida Statutes, is
29 amended to read:

30 732.604 Failure of testamentary provision.--
31

1 (1) Except as provided in s. 732.603, if a devise
2 other than a residuary devise fails for any reason, it becomes
3 a part of the residue.

4 (2) Except as provided in s. 732.603, if the residue
5 is devised to two or more persons, the share of a residuary
6 devisee that fails for any reason ~~and the devise to one of the~~
7 ~~residuary devisees fails for any reason, that devise~~ passes to
8 the other residuary devisee, or to the other residuary
9 devisees in proportion to the their interests of each in the
10 remaining part of the residue.

11 Section 35. Section 732.611, Florida Statutes, is
12 amended to read:

13 732.611 Devises to multi-generation classes to be per
14 stirpes.--Unless the will provides otherwise, all devises to
15 descendants, issue, and other multi-generation classes shall
16 be per stirpes.

17 Section 36. Subsection (1) of section 733.212, Florida
18 Statutes, is amended to read:

19 733.212 Notice of administration; filing of
20 objections.--

21 (1) The personal representative shall promptly serve a
22 copy of the notice of administration on the following persons
23 who are known to the personal representative:

24 (a) The decedent's surviving spouse;

25 (b) Beneficiaries;

26 (c) The trustee of any trust described in s.

27 733.707(3) and each qualified beneficiary of the trust as
28 defined in s. 736.0103(14) ~~737.303(4)(b)~~, if each trustee is
29 also a personal representative of the estate; and

30 (d) Persons who may be entitled to exempt property

31

1 in the manner provided for service of formal notice, unless
2 served under s. 733.2123. The personal representative may
3 similarly serve a copy of the notice on any devisees under a
4 known prior will or heirs or others who claim or may claim an
5 interest in the estate.

6 Section 37. Subsection (1) of section 733.602, Florida
7 Statutes, is amended to read:

8 733.602 General duties.--

9 (1) A personal representative is a fiduciary who shall
10 observe the standards of care applicable to trustees as
11 described by part VII of chapter 736 ~~s. 737.302~~. A personal
12 representative is under a duty to settle and distribute the
13 estate of the decedent in accordance with the terms of the
14 decedent's will and this code as expeditiously and efficiently
15 as is consistent with the best interests of the estate. A
16 personal representative shall use the authority conferred by
17 this code, the authority in the will, if any, and the
18 authority of any order of the court, for the best interests of
19 interested persons, including creditors.

20 Section 38. Subsection (4) of section 733.805, Florida
21 Statutes, is amended to read:

22 733.805 Order in which assets abate.--

23 (4) In determining the contribution required under s.
24 733.607(2), subsections (1)-(3) of this section and s.
25 736.05053 ~~737.3054~~(2) shall be applied as if the beneficiaries
26 of the estate and the beneficiaries of a trust described in s.
27 733.707(3), other than the estate or trust itself, were taking
28 under a common instrument.

29 Section 39. Paragraph (j) of subsection (1) of section
30 733.817, Florida Statutes, is amended to read:

31 733.817 Apportionment of estate taxes.--

1 (1) For purposes of this section:

2 (j) "Residuary devise" has the meaning set forth in s.
3 731.201~~(31)~~.

4 Section 40. Paragraphs (a) and (f) of subsection (8)
5 and paragraphs (a) and (d) of subsection (9) of section
6 738.104, Florida Statutes, are amended to read:

7 738.104 Trustee's power to adjust.--

8 (8) With respect to a trust in existence on January 1,
9 2003:

10 (a) A trustee shall not have the power to adjust under
11 this section until the statement required in subsection (9) is
12 provided and either no objection is made or any objection
13 which is made has been terminated.

14 1. An objection is made if, within 60 days after the
15 date of the statement required in subsection (9), a super
16 majority of the eligible trust beneficiaries deliver to the
17 trustee a written objection to the application of this section
18 to such trust. An objection shall be deemed to be delivered to
19 the trustee on the date the objection is mailed to the mailing
20 address listed in the notice provided in subsection (9).

21 2. An objection is terminated upon the earlier of the
22 receipt of consent from a super majority of eligible trust
23 beneficiaries of the class that made the objection, or the
24 resolution of the objection pursuant to paragraph (c).

25 (f) The objection of a super majority of eligible
26 beneficiaries under this subsection shall be valid for a
27 period of 1 year after the date of the notice set forth in
28 subsection (9). Upon expiration of the objection, the trustee
29 may thereafter give a new notice under subsection (9).

30 (9)(a) A trustee of a trust in existence on January 1,
31 2003, that is not prohibited under subsection (3) from

1 exercising the power to adjust shall, any time prior to
2 initially exercising the power, provide to all eligible
3 ~~reasonably ascertainable current beneficiaries described in s.~~
4 ~~737.303(4)(b)1. and all reasonably ascertainable remainder~~
5 ~~beneficiaries described in s. 737.303(4)(b)2.~~ a statement
6 containing the following:

7 1. The name, telephone number, street address, and
8 mailing address of the trustee and of any individuals who may
9 be contacted for further information;

10 2. A statement that unless a super majority of the
11 eligible beneficiaries objects to the application of this
12 section to the trust within 60 days after the date the
13 statement pursuant to this subsection was served, s. 738.104
14 shall apply to the trust; and

15 3. A statement that, if s. 738.104 applies to the
16 trust, the trustee will have the power to adjust between
17 income and principal and that such a power may have an effect
18 on the distributions to such beneficiary from the trust.

19 (d) For purposes of subsection (8) and this
20 subsection, the term:

21 1. "Eligible beneficiaries" means:

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

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

28 2. ~~A~~ "Super majority of the eligible trust
29 beneficiaries" means:

30 a. If at the time the determination is made there is
31 one or more beneficiaries described in s. 736.0103(14)(c), at

1 least two-thirds in interest of the ~~reasonably ascertainable~~
2 ~~current~~ beneficiaries described in s. 736.0103(14)(a)
3 ~~737.303(4)(b)1.~~ or two-thirds in interest of the ~~reasonably~~
4 ~~ascertainable remainder~~ beneficiaries described in s.
5 736.0103(14)(c) ~~737.303(4)(b)2.~~, if the interests of the
6 beneficiaries are reasonably ascertainable; otherwise, it
7 means two-thirds in number of either such class; or
8 b. If there is no beneficiary described in s.
9 736.0103(14)(c), at least two-thirds in interest of the
10 beneficiaries described in s. 736.0103(14)(a) or two-thirds in
11 interest of the beneficiaries described in s. 736.0103(14)(b),
12 if the interests of the beneficiaries are reasonably
13 ascertainable, otherwise, two-thirds in number of either such
14 class.

15 Section 41. Subsection (4) of section 738.1041,
16 Florida Statutes, is amended to read:

17 738.1041 Total return unitrust.--

18 (4) All determinations made pursuant to
19 sub-subparagraph (2)(b)2.b. shall be conclusive if reasonable
20 and made in good faith. Such determination shall be
21 conclusively presumed to have been made reasonably and in good
22 faith unless proven otherwise in a proceeding commenced by or
23 on behalf of a person interested in the trust within the time
24 provided in s. 736.1008 ~~737.307~~. The burden will be on the
25 objecting interested party to prove that the determinations
26 were not made reasonably and in good faith.

27 Section 42. Subsection (5) of section 738.202, Florida
28 Statutes, is amended to read:

29 738.202 Distribution to residuary and remainder
30 beneficiaries.--

31

1 (5) The value of trust assets shall be determined on
2 an asset-by-asset basis and shall be conclusive if reasonable
3 and determined in good faith. Determinations based on
4 appraisals performed within 2 years before or after the
5 valuation date shall be presumed reasonable. The value of
6 trust assets shall be conclusively presumed to be reasonable
7 and determined in good faith unless proven otherwise in a
8 proceeding commenced by or on behalf of a person interested in
9 the trust within the time provided in s. 736.1008 ~~737.307~~.

10 Section 43. Paragraph (a) of subsection (12) of
11 section 739.102, Florida Statutes, is amended to read:

12 739.102 Definitions.--As used in this chapter, the
13 term:

14 (12) "Trust" means:

15 (a) An express trust (including an honorary trust or a
16 trust under s. 736.0408 ~~737.116~~), charitable or noncharitable,
17 with additions thereto, whenever and however created; and

18
19 As used in this chapter, the term "trust" does not include a
20 constructive trust or a resulting trust.

21 Section 44. Paragraphs (b) and (f) of subsection (6)
22 of section 744.331, Florida Statutes, are amended to read:

23 744.331 Procedures to determine incapacity.--

24 (6) ORDER DETERMINING INCAPACITY.--If, after making
25 findings of fact on the basis of clear and convincing
26 evidence, the court finds that a person is incapacitated with
27 respect to the exercise of a particular right, or all rights,
28 the court shall enter a written order determining such
29 incapacity. A person is determined to be incapacitated only
30 with respect to those rights specified in the order.

31

1 (b) When an order determines that a person is
2 incapable of exercising delegable rights, the court must
3 consider and find whether there is an alternative to
4 guardianship which will sufficiently address the problems of
5 the incapacitated person. A guardian must be appointed to
6 exercise the incapacitated person's delegable rights unless
7 the court finds there is an alternative. A guardian may not be
8 appointed if the court finds there is an alternative to
9 guardianship which will sufficiently address the problems of
10 the incapacitated person. In any order declaring a person
11 incapacitated the court must find that alternatives to
12 guardianship were considered and that no alternative to
13 guardianship will sufficiently address the problems of the
14 ward.

15 (f) Upon the filing of a verified statement by an
16 interested person stating:

17 1. That he or she has a good faith belief that the
18 alleged incapacitated person's trust, trust amendment, or
19 durable power of attorney is invalid; and

20 2. A reasonable factual basis for that belief,
21
22 the trust, trust amendment, or durable power of attorney shall
23 not be deemed to be an alternative to the appointment of a
24 guardian. The appointment of a guardian does not limit the
25 court's power to determine that certain authority granted by a
26 durable power of attorney is to remain exercisable by the
27 attorney in fact. When an order is entered which determines
28 that a person is incapable of exercising delegable rights, a
29 guardian must be appointed to exercise those rights.

30 Section 45. Paragraph (a) of subsection (6) of section
31 744.361, Florida Statutes, is amended to read:

1 744.361 Powers and duties of guardian.--

2 (6) A guardian who is given authority over any
3 property of the ward shall:

4 (a) Protect and preserve the property and invest it
5 prudently as provided in chapter 518 ~~defined in s. 737.302,~~
6 apply it as provided in s. 744.397, and account for it
7 faithfully.

8 Section 46. Subsections (11) and (18) of section
9 744.441, Florida Statutes, are amended to read:

10 744.441 Powers of guardian upon court approval.--After
11 obtaining approval of the court pursuant to a petition for
12 authorization to act, a plenary guardian of the property, or a
13 limited guardian of the property within the powers granted by
14 the order appointing the guardian or an approved annual or
15 amended guardianship report, may:

16 (11) Prosecute or defend claims or proceedings in any
17 jurisdiction for the protection of the estate and of the
18 guardian in the performance of his or her duties. Before
19 authorizing a guardian to bring an action described in s.
20 736.0207, the court shall first find that the action appears
21 to be in the ward's best interests during the ward's probable
22 lifetime. If the court denies a request that a guardian be
23 authorized to bring an action described in s. 736.0207, the
24 court shall review the continued need for a guardian and the
25 extent of the need for delegation of the ward's rights.

26 (18) When the ward's will evinces an objective to
27 obtain a United States estate tax charitable deduction by use
28 of a split interest trust (as that term is defined in s.
29 736.1201 ~~737.501~~), but the maximum charitable deduction
30 otherwise allowable will not be achieved in whole or in part,
31 execute a codicil on the ward's behalf amending said will to

1 obtain the maximum charitable deduction allowable without
2 diminishing the aggregate value of the benefits of any
3 beneficiary under such will.

4 Section 47. Section 744.462, Florida Statutes, is
5 created to read:

6 744.462 Determination regarding alternatives to
7 guardianship.--Any judicial determination concerning the
8 validity of the ward's durable power of attorney, trust, or
9 trust amendment shall be promptly reported in the guardianship
10 proceeding by the guardian of the property. If the instrument
11 has been judicially determined to be valid or if, after the
12 appointment of a guardian, a petition is filed alleging that
13 there is an alternative to guardianship which will
14 sufficiently address the problems of the ward, the court shall
15 review the continued need for a guardian and the extent of the
16 need for delegation of the ward's rights.

17 Section 48. Sections 737.101, 737.105, 737.106,
18 737.111, 737.115, 737.116, 737.201, 737.202, 737.203,
19 737.2035, 737.204, 737.2041, 737.205, 737.206, 737.2065,
20 737.207, 737.208, 737.209, 737.301, 737.302, 737.303,
21 737.3035, 737.304, 737.305, 737.3053, 737.3054, 737.3055,
22 737.306, 737.3061, 737.307, 737.308, 737.309, 737.401,
23 737.402, 737.4025, 737.403, 737.4031, 737.4032, 737.4033,
24 737.404, 737.405, 737.406, 737.501, 737.502, 737.503, 737.504,
25 737.505, 737.506, 737.507, 737.508, 737.509, 737.510, 737.511,
26 737.512, 737.6035, 737.621, 737.622, 737.623, 737.624,
27 737.625, 737.626, and 737.627, Florida Statutes, are repealed.

28 Section 49. This act shall take effect July 1, 2007.
29
30
31