

Bill No. SB 1956

Barcode 270888

CHAMBER ACTION

Senate

House

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The Committee on Banking and Insurance (Campbell) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Section 689.071, Florida Statutes, is amended to read:

689.071 Florida Land Trust Act ~~trusts transferring interests in real estate; ownership vests in trustee.--~~

(1) SHORT TITLE.--This section may be cited as the "Florida Land Trust Act."

(2) DEFINITIONS.--As used in this section, the term:

(a) "Beneficial interest" means any interest, vested or contingent and regardless of how small or minimal such interest may be, in a land trust which is held by a beneficiary.

(b) "Beneficiary" means any person or entity having a beneficial interest in a land trust. A trustee may be a beneficiary of the land trust for which such trustee serves as

1 trustee.

2 (c) "Holder of the power of direction" means any
3 person or entity having the authority to direct the trustee to
4 convey property or interests, execute a mortgage, distribute
5 proceeds of a sale or financing, and execute documents
6 incidental to the administration of a land trust.

7 (d) "Land trust" is not the creation of an entity, but
8 means any express written agreement or arrangement by which a
9 use, confidence, or trust is declared of any land, or of any
10 charge upon land, for the use or benefit of any beneficiary,
11 under which the title to real property, both legal and
12 equitable, is held by a trustee, subject only to the execution
13 of the trust, which may be enforced by the beneficiaries.

14 (e) "Trustee" means the person or entity designated in
15 a trust instrument to hold legal and equitable title to
16 property of a land trust.

17 (3)(1) OWNERSHIP VESTS IN TRUSTEE.--Every conveyance,
18 deed, mortgage, lease assignment, or other instrument
19 heretofore or hereafter made, hereinafter referred to as "the
20 recorded instrument," transferring any interest in real
21 property in this state, including, but not limited to, a
22 leasehold or mortgagee interest, to any person or any,
23 corporation, bank, trust company, or other entity duly formed
24 under the laws of its state of qualification ~~qualified to act~~
25 ~~as a fiduciary in this state~~, in which recorded instrument the
26 person, corporation, bank, trust company, or other entity is
27 designated "trustee," or "as trustee," without therein naming
28 the beneficiaries of such trust, whether or not reference is
29 made in the recorded instrument to any separate collateral
30 unrecorded declarations or agreements, is effective to vest,
31 and is hereby declared to have vested, in such trustee full

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1 rights of ownership over the real property or interest
 2 therein, with full power and authority as granted and provided
 3 in the recorded instrument to deal in and with the property or
 4 interest therein or any part thereof; provided, the recorded
 5 instrument confers on the trustee the power and authority
 6 either to protect, conserve and to sell, or to lease, or to
 7 encumber, or otherwise to manage and dispose of the real
 8 property described in the recorded instrument.

9 ~~(4)(2)~~ NO DUTY TO INQUIRE.--Any grantee, mortgagee,
 10 lessee, transferee, assignee, or person obtaining
 11 satisfactions or releases or otherwise in any way dealing with
 12 the trustee with respect to the real property or any interest
 13 in such property ~~properties~~ held in trust under the recorded
 14 instrument, as hereinabove provided for, is not obligated to
 15 inquire into the identification or status of any named or
 16 unnamed beneficiaries, or their heirs or assigns to whom a
 17 trustee may be accountable under the terms of the recorded
 18 instrument, or under any unrecorded separate declarations or
 19 agreements collateral to the recorded instrument, whether or
 20 not such declarations or agreements are referred to therein;
 21 or to inquire into or ascertain the authority of such trustee
 22 to act within and exercise the powers granted under the
 23 recorded instrument; or to inquire into the adequacy or
 24 disposition of any consideration, if any is paid or delivered
 25 to such trustee in connection with any interest so acquired
 26 from such trustee; or to inquire into any of the provisions of
 27 any such unrecorded declarations or agreements.

28 ~~(5)(3)~~ BENEFICIARY CLAIMS.--All persons dealing with
 29 the trustee under the recorded instrument as hereinabove
 30 provided take any interest transferred by the trustee
 31 thereunder, within the power and authority as granted and

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1 provided therein, free and clear of the claims of all the
 2 named or unnamed beneficiaries of such trust, and of any
 3 unrecorded declarations or agreements collateral thereto
 4 whether referred to in the recorded instrument or not, and of
 5 anyone claiming by, through, or under such beneficiaries.
 6 ~~However, this section does not prevent including, and without~~
 7 ~~limiting the foregoing to, any claim arising out of any dower~~
 8 ~~or curtesy interest of the spouse of any beneficiary thereof;~~
 9 ~~provided, nothing herein contained prevents a beneficiary of~~
 10 any such unrecorded collateral declarations or agreements from
 11 enforcing the terms thereof against the trustee.

12 ~~(6)(4)~~ PERSONAL PROPERTY.--In all cases in which the
 13 recorded instrument, as hereinabove provided, contains a
 14 provision defining and declaring the interests of
 15 beneficiaries thereunder to be personal property only, such
 16 provision shall be controlling for all purposes when such
 17 determination becomes an issue under the laws or in the courts
 18 of this state.

19 ~~(7)(5)~~ TRUSTEE LIABILITY.--In addition to any other
 20 limitation on personal liability existing pursuant to statute
 21 or otherwise, the provisions of s. 737.306 apply to the
 22 trustee of a land trust created pursuant to this section.

23 (8) LAND TRUST BENEFICIARIES.--

24 (a) Except as provided in this section, the
 25 beneficiaries of a land trust are not liable, solely by being
 26 a beneficiary, under a judgment, decree, or order of court or
 27 in any other manner for a debt, obligation, or liability of
 28 the land trust.

29 (b) Any beneficiary acting under the trust agreement
 30 of a land trust is not liable to the land trust's trustee or
 31 to any other beneficiary for the beneficiary's good faith

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1 reliance on the provisions of the trust agreement.

2 (c) Chapter 679 applies to the perfection of any
3 security interest in a beneficial interest in a land trust.
4 The perfection of a security interest in a beneficial interest
5 in a land trust does not impair or diminish the authority of
6 the trustee under the recorded instrument, and parties dealing
7 with the trustee are not required to inquire into the terms of
8 the unrecorded trust agreement.

9 (d) A beneficiary's duties and liabilities may be
10 expanded or restricted in a trust agreement or beneficiary
11 agreement.

12 (e) Any subsequent document appearing of record in
13 which a beneficiary of a trust transfers or encumbers the
14 beneficial interest in the trust does not diminish or impair
15 the authority of the trustee under the terms of the recorded
16 instrument. Parties dealing with the trustee are not required
17 to inquire into the terms of the unrecorded trust agreement.

18 (f) An unrecorded trust agreement giving rise to a
19 recorded instrument for a land trust may provide that one or
20 more persons or entities have the power to direct the trustee
21 to convey property or interests, execute a mortgage,
22 distribute proceeds of a sale or financing, and execute
23 documents incidental to administration of the land trust. The
24 power of direction, unless provided otherwise in the land
25 trust agreement, is conferred upon the holders of the power
26 for the use and benefit of all holders of any beneficial
27 interest in the land trust. In the absence of a provision in
28 the land trust agreement to the contrary, the power of
29 direction shall be in accordance with the percentage of
30 individual ownership. In exercising the power of direction,
31 the holders of the power of direction are presumed to act in a

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1 fiduciary capacity for the benefit of all holders of any
 2 beneficial interest in the trust, unless otherwise provided in
 3 the land trust agreement. A beneficial interest is
 4 indefeasible, and the power of direction may not be exercised
 5 so as to alter, amend, revoke, terminate, defeat, or otherwise
 6 affect or change the enjoyment of any beneficial interest.

7 (g) A trust relating to real estate does not fail, and
 8 any use relating to real estate may not be defeated, because
 9 beneficiaries are not specified by name in the recorded deed
 10 of conveyance to the trustee or because duties are not imposed
 11 upon the trustee. The power conferred by any recorded deed of
 12 conveyance on a trustee to sell, lease, encumber, or otherwise
 13 dispose of property described in the deed is effective, and a
 14 person dealing with the trustee is not required to inquire any
 15 further into the right of the trustee to act or the
 16 disposition of any proceeds.

17 (h) The principal residence of a beneficiary shall be
 18 entitled to the homestead tax exemption even if the homestead
 19 is held by a trustee in a land trust, provided the beneficiary
 20 qualifies for the homestead exemption under chapter 196.

21 (9) SUCCESSOR TRUSTEE.--

22 (a) The provisions of s. 737.309 relating to the
 23 resignation of a trustee do not apply to the appointment of a
 24 successor trustee under this section.

25 (b) If the recorded instrument and the unrecorded land
 26 trust agreement are silent as to the appointment of a
 27 successor trustee in the event of the death, incapacity,
 28 resignation, or termination due to dissolution of a land
 29 trustee or if a land trustee is unable to serve as trustee,
 30 one or more persons or entities having the power of direction
 31 of the land trust agreement may appoint a successor trustee or

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1 trustees of the land trust by filing a declaration of
 2 appointment of a successor trustee or trustees in the office
 3 of the recorder of deeds in the county in which the trust
 4 property is located. The declaration must be signed by a
 5 beneficiary or beneficiaries of the trust and by each
 6 successor trustee, must be acknowledged in the manner provided
 7 for acknowledgment of deeds, and must contain:

- 8 1. The legal description of the trust property.
- 9 2. The name and address of the former trustee.
- 10 3. The name and address of each successor trustee.
- 11 4. A statement that each successor trustee has been
 12 appointed by one or more persons or entities having the power
 13 of direction of the land trust, together with an acceptance of
 14 appointment by each successor trustee.

15 (c) If the recorded instrument is silent as to the
 16 appointment of a successor trustee or trustees but an
 17 unrecorded land trust agreement provides for the appointment
 18 of a successor trustee or trustees in the event of the death,
 19 incapacity, resignation, or termination due to dissolution of
 20 the land trustee, upon the appointment of any successor
 21 trustee pursuant to the terms of the unrecorded land trust
 22 agreement, each successor trustee shall file a declaration of
 23 appointment of a successor trustee in the office of the
 24 recorder of deeds in the county in which the trust property is
 25 located. The declaration must be signed by both the former
 26 trustee and each successor trustee, must be acknowledged in
 27 the manner provided for acknowledgment of deeds, and must
 28 contain:

- 29 1. The legal description of the trust property.
- 30 2. The name and address of the former trustee.
- 31 3. The name and address of the successor trustee.

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1 4. A statement of resignation by the former trustee
2 and a statement of acceptance of appointment by each successor
3 trustee.

4 5. A statement that each successor trustee was duly
5 appointed under the terms of the unrecorded land trust
6 agreement.

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8 If the appointment of any successor trustee is due to the
9 death or incapacity of the former trustee, the declaration
10 need not be signed by the former trustee and a copy of the
11 death certificate or a statement that the former trustee is
12 incapacitated or unable to serve must be attached to or
13 included in the declaration, as applicable.

14 (d) If the recorded instrument provides for the
15 appointment of any successor trustee and any successor trustee
16 is appointed in accordance with the recorded instrument, no
17 additional declarations of appointment of any successor
18 trustee are required under this section.

19 (e) Each successor land trustee appointed is fully
20 vested with all the estate, properties, rights, powers,
21 trusts, duties, and obligations of the predecessor land
22 trustee, except that any successor land trustee is not under
23 any duty to inquire into the acts or omissions of a
24 predecessor trustee and is not liable for any act or failure
25 to act of a predecessor trustee. A person dealing with any
26 successor trustee pursuant to a declaration filed under this
27 section is not obligated to inquire into or ascertain the
28 authority of the successor trustee to act within or exercise
29 the powers granted under the recorded instruments or any
30 unrecorded declarations or agreements.

31 (f) A land trust agreement may provide that the

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1 trustee, when directed to do so by the beneficiaries of the
 2 land trust or legal representatives of the beneficiaries, may
 3 convey the trust property directly to another trustee on
 4 behalf of the beneficiaries or others named by the
 5 beneficiaries.

6 (10) TRUSTEE AS CREDITOR.--

7 (a) If a debt is secured by a security interest in a
 8 beneficial interest in a land trust or by a mortgage on land
 9 trust property, the validity or enforceability of the debt,
 10 security interest, or mortgage and the rights, remedies,
 11 powers, and duties of the creditor with respect to the debt or
 12 the security are not affected by the fact that the creditor
 13 and the trustee are the same person or entity, and the
 14 creditor may extend credit, obtain any necessary security
 15 interest or mortgage, and acquire and deal with the property
 16 comprising the security as though the creditor were not the
 17 trustee.

18 (b) A trustee of a land trust does not breach a
 19 fiduciary duty to the beneficiaries, and it is not evidence of
 20 a breach of any fiduciary duty owed by the trustee to the
 21 beneficiaries for a trustee to be or become a secured or
 22 unsecured creditor of the land trust, the beneficiary of the
 23 land trust, or a third party whose debt to such creditor is
 24 guaranteed by a beneficiary of the land trust.

25 (11)(6) REMEDIAL ACT.--This act is remedial in nature
 26 and shall be given a liberal interpretation to effectuate the
 27 intent and purposes hereinabove expressed.

28 (12)(7) EXCLUSION.--This act does not apply to any
 29 deed, mortgage, or other instrument to which s. 689.07
 30 applies.

31 Section 2. Subsection (4) of section 201.02, Florida

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1 Statutes, is amended to read:

2 201.02 Tax on deeds and other instruments relating to
3 real property or interests in real property.--

4 (4) The tax imposed by subsection (1) shall also be
5 payable upon documents which convey or transfer, pursuant to
6 s. 689.071, any beneficial interest in lands, tenements, or
7 other real property, or any interest therein, even though such
8 interest may be designated as personal property,
9 notwithstanding the provisions of s. 689.071(6)(4). The tax
10 shall be paid upon execution of any such document.

11 Section 3. This act is intended to clarify existing
12 law and applies to all land trusts whether created before, on,
13 or after October 1, 2006.

14 Section 4. This act shall take effect October 1, 2006.

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17 ===== T I T L E A M E N D M E N T =====

18 And the title is amended as follows:

19 Delete everything before the enacting clause

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21 and insert:

22 A bill to be entitled
23 An act relating to land trusts; amending s.
24 689.071, F.S.; providing a short title;
25 providing definitions; revising provisions
26 relating to land trust transfers of real
27 property and vesting of ownership in a trustee;
28 deleting a requirement that a trustee be
29 qualified to act as a fiduciary; deleting
30 obsolete references to "dower" and "curtesy";
31 specifying rights, liabilities, and duties of

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1 land trust beneficiaries; providing that the
2 principal residence of a beneficiary which is
3 held in a land trust is entitled to the
4 homestead tax exemption under certain
5 circumstances; providing for the appointment of
6 successor trustees; providing requirements for
7 declarations of appointment; providing that a
8 trustee of a land trust may be a creditor of
9 the trust or of a trust beneficiary; amending
10 s. 201.02, F.S.; conforming a cross-reference;
11 providing application; providing an effective
12 date.

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