

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Banking and Insurance Committee

BILL: CS/SB 1956

INTRODUCER: Banking and Insurance Committee and Senator Aronberg

SUBJECT: Land Trusts

DATE: April 20, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cibula</u>	<u>Maclure</u>	<u>JU</u>	Favorable
2.	<u>Knudson</u>	<u>Deffenbaugh</u>	<u>BI</u>	Fav/CS
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The Committee Substitute for Senate Bill 1956 revises s. 689.071, F.S., pertaining to land trusts. According to the Real Property, Probate, and Trust Law Section of The Florida Bar (RPPTL), this bill will modernize the statute and codify case law on land trusts. Most notably, the CS allows creditors to act as trustees, provides procedures for the appointment of a successor trustee, and clarifies the relationship between a trust, trustee, and trust beneficiaries.

This bill substantially amends the following sections of the Florida Statutes: 689.071 and 201.02

II. Present Situation:

Section 689.071, F.S., authorizes the ownership of property through land trusts.¹ A land trust is created when a recorded instrument, such as a deed or mortgage, transfers an interest in real property to a trustee without naming the trust beneficiaries.² The trustee has full legal and equitable title to the property and thus the full rights of ownership of the real property.³ However, “the rights, interests, powers and conveniences of fee ownership are retained and exercised by the beneficiary.”⁴ A person who deals with the trustee has no obligation to inquire into the trustee’s authority.⁵ The relationship between the trustee and the trust beneficiaries is governed by an unrecorded agreement.

¹ Land trusts are sometimes called “Illinois land trusts.” See, e.g., *Grammer v. Roman*, 174 So. 2d 443 (Fla. 2d DCA 1965).

² Section 689.071(1), F.S.

³ See *id.*; *Lawyers’ Title Guaranty Fund v. Koch*, 397 So. 2d 455, 457 (Fla. 1981).

⁴ Mitchell A. Sherman, *The Florida Land Trust: An Overview*, 6 Nova L. J. 489, 491 (1982).

⁵ Section 689.071(2), F.S.; *Grammer*, 174 So. 2d at 445.

The purpose of a Florida Land Trust is to provide developers with a method of doing business whereby a trust comprising certain real property is settled and its “trustee may convey freely without the joinder of spouse or beneficiaries,” may “deal with the trust property as if it were his own,” and third persons may “deal with the trustee without having to inquire into his authority.” Even with this authority, the trustee of a Florida Land Trust must still procure the permission and direction of the beneficiaries before conducting business and affecting the property of the trust. Although the real and personal property interests of a Florida Land Trust are divided between the trustee and beneficiary, a Florida Land Trust is essentially the same as an ordinary trust in terms of the duties, rights, and responsibilities of the trustee and beneficiary.⁶

The use of a land trust may have the following advantages:

- A developer may wish to use a land trust to secretly assemble large parcels for development.⁷
- A land trust might also be used by a person to keep his or her real estate ownership private.⁸
- Judgment creditors of a beneficiary are less able to disrupt the land trust compared to other more direct forms of real property ownership.⁹

Property owned by multiple persons through a land trust may be conveyed without having to obtain the signatures of all the owners.¹⁰

III. Effect of Proposed Changes:

This bill revises s. 689.071, F.S., pertaining to land trusts. According to the Real Property, Probate, and Trust Law Section of The Florida Bar (RPPTL), this bill will modernize the statute and codify case law on land trusts.¹¹ The changes made by the bill to s. 689.071, F.S., are described by subsection below:

Subsection (1) designates s. 689.071, F.S., as the “Florida Land Trust Act.”

Subsection (2) adds the definitions of terms used throughout s. 689.071, F.S.

Subsection (3) deletes a requirement that a trustee of a land trust be “qualified to act as a fiduciary.” The deleted language might have prevented creditors from acting as a trustee. According to the RPPTL, commercial banks may wish to serve as trustees of a land trust and lend funds to the trust.¹²

⁶ *Saber v. Slobodinsky*, 233 B.R. 547, 554 (S.D. Fla. 1999) (internal citations omitted).

⁷ Mitchell A. Sherman, *The Florida Land Trust: An Overview*, 6 Nova L. J. 489, 494 (1982).

⁸ *Id.*

⁹ *See id.* at 495.

¹⁰ *Id.* at 503.

¹¹ Real Property, Probate, and Trust Law Section of The Florida Bar, white paper on file with the staff of the Senate Committee on Banking and Insurance (undated).

¹² *Id.*

Subsection (4) makes technical changes.

Subsection (5) repeals references to dower and curtesy. References to dower and curtesy are not necessary because the Legislature repealed dower and curtesy under s. 732.111, F.S.

Subsections (6) and (7) make technical changes.

Subsection (8) clarifies the relationship between the trust, trustee, and the beneficiaries of a land trust. The subsection provides that:

- A beneficiary generally is not liable for the acts of a land trust.
- A beneficiary's interest in a land trust can be used as security.
- The power of direction of a land trust may be exercised by a person other than a beneficiary.
- A beneficiary's principal residence, if held in a land trust, is entitled to the homestead exemption, if the beneficiary qualifies for a homestead exemption under ch. 196, F.S.

Subsection (9) provides procedures for the appointment of a successor trustee of a land trust. Generally, when a successor trustee is appointed, the name of the trustee must be recorded in the county recorder's office.

Subsection (10) provides that a debt may be secured by a beneficial interest in a land trust. The subsection further provides that the creditor may also be the trustee.

Subsections (11) and (12) make technical changes.

The bill takes effect on October 1, 2006, is designed to clarify existing law, and applies to all land trusts created before or after the effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill appears to consolidate existing case law on land trusts and codify the case law in s. 689.071, F.S. Attorneys working with land trusts may be more reliant on s. 689.71, F.S., rather than case law.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
