

By Senator Aronberg

27-912A-06

1                               A bill to be entitled

2           An act relating to land trusts; amending s.

3           689.071, F.S.; creating the Florida Land Trust

4           Act; providing definitions; deleting a

5           requirement that a land trustee be qualified to

6           act as a fiduciary; deleting obsolete

7           references to "dower" and "curtesy"; providing

8           certain rights, liabilities, and duties of land

9           trust beneficiaries; providing that the

10          principal residence of a beneficiary which is

11          held in a land trust may be entitled to the

12          homestead tax exemption; providing for the

13          appointment of successor trustees; providing

14          requirements for declarations of appointment;

15          providing that a trustee of a land trust may

16          also be a creditor of the trust or of a

17          beneficiary of the trust; amending s. 201.02,

18          F.S., relating to the tax on deeds and other

19          instruments; conforming a cross-reference;

20          providing for applicability of the act to all

21          land trusts whenever created; providing an

22          effective date.

24 Be It Enacted by the Legislature of the State of Florida:

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

28           689.071 Florida Land Trust Act ~~trusts transferring~~  
29 ~~interests in real estate; ownership vests in trustee.--~~

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

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

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

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

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

17           (d) "Holders of the power of direction" means the  
18 persons or entities having the authority to direct the trustee  
19 to convey, execute a mortgage, distribute proceeds of sale or  
20 financing, and execute documents incidental to the execution  
21 of a land trust.

22           (e) "Trustee" means the person or entity designated in  
23 a trust instrument to hold legal and equitable title to the  
24 land trust property.

25           (3)(1) OWNERSHIP VESTS IN TRUSTEE.--Every conveyance,  
26 deed, mortgage, lease assignment, or other instrument  
27 heretofore or hereafter made, hereinafter referred to as "the  
28 recorded instrument," transferring any interest in real  
29 property in this state, including, but not limited to, a  
30 leasehold or mortgagee interest, to any person or to any  
31 corporation, bank, trust company, or other entity duly formed

1 under the laws of its state of qualification ~~qualified to act~~  
2 ~~as a fiduciary in this state~~, in which recorded instrument the  
3 person, corporation, bank, trust company, or other entity is  
4 designated "trustee," or "as trustee," without therein naming  
5 the beneficiaries of such trust, whether or not reference is  
6 made in the recorded instrument to any separate collateral  
7 unrecorded declarations or agreements, is effective to vest,  
8 and is hereby declared to have vested, in such trustee full  
9 rights of ownership over the real property or interest  
10 therein, with full power and authority as granted and provided  
11 in the recorded instrument to deal in and with the property or  
12 interest therein or any part thereof; provided, the recorded  
13 instrument confers on the trustee the power and authority  
14 ~~either~~ to protect, conserve and to sell, or to lease, or to  
15 encumber, or otherwise to manage and dispose of the real  
16 property described in the recorded instrument.

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

1 disposition of any consideration, if any is paid or delivered  
2 to such trustee in connection with any interest so acquired  
3 from such trustee; or to inquire into any of the provisions of  
4 any such unrecorded declarations or agreements.

5 ~~(5)(3)~~ BENEFICIARY CLAIMS.--All persons dealing with  
6 the trustee under the recorded instrument as hereinabove  
7 provided take any interest transferred by the trustee  
8 thereunder, within the power and authority as granted and  
9 provided therein, free and clear of the claims of all the  
10 named or unnamed beneficiaries of such trust, and of any  
11 unrecorded declarations or agreements collateral thereto  
12 whether referred to in the recorded instrument or not, and of  
13 anyone claiming by, through, or under such beneficiaries.  
14 ~~However, this section does not prevent including, and without~~  
15 ~~limiting the foregoing to, any claim arising out of any dower~~  
16 ~~or curtesy interest of the spouse of any beneficiary thereof;~~  
17 ~~provided, nothing herein contained prevents~~ a beneficiary of  
18 any such unrecorded collateral declarations or agreements from  
19 enforcing the terms thereof against the trustee.

20 ~~(6)(4)~~ PERSONAL PROPERTY.--In all cases in which the  
21 recorded instrument, as hereinabove provided, contains a  
22 provision defining and declaring the interests of  
23 beneficiaries thereunder to be personal property only, such  
24 provision shall be controlling for all purposes when such  
25 determination becomes an issue under the laws or in the courts  
26 of this state.

27 ~~(7)(5)~~ TRUSTEE LIABILITY.--In addition to any other  
28 limitation on personal liability existing pursuant to statute  
29 or otherwise, the provisions of s. 737.306 apply to the  
30 trustee of a land trust created pursuant to this section.

31 (8) LAND TRUST BENEFICIARIES.--

1           (a) Except as provided in this section, the  
2 beneficiaries of a land trust are not liable, solely by reason  
3 of being a beneficiary, under a judgment, decree, or order of  
4 court or in any other manner for a debt, obligation, or  
5 liability of the land trust.

6           (b) Any such beneficiary acting under the trust  
7 agreement of a land trust is not liable to the land trustee or  
8 to any other beneficiary for the beneficiary's good-faith  
9 reliance on the provisions of the trust agreement.

10           (c) Chapter 679 applies to the perfection of any  
11 security interest in a beneficial interest in a land trust.  
12 The perfection of a security interest in a beneficial interest  
13 in a land trust does not impair or diminish the authority of  
14 the trustee under the recorded instrument, and parties dealing  
15 with the trustee are not required to inquire into the terms of  
16 the unrecorded trust agreement.

17           (d) The beneficiary's duties and liabilities may be  
18 expanded or restricted in a trust agreement or beneficiary  
19 agreement.

20           (e) Any subsequent document appearing of record  
21 whereby a beneficiary of a trust transfers or encumbers the  
22 beneficial interest in the trust does not diminish or impair  
23 the authority of the trustee under the terms of the recorded  
24 instrument, and parties dealing with the trustee are not  
25 required to inquire into the terms of the unrecorded trust  
26 agreement.

27           (f) The unrecorded trust agreement underlying the  
28 recorded instrument may provide that one or more persons or  
29 entities have the power to direct the trustee to convey,  
30 execute a mortgage, distribute proceeds of sale or financing,  
31 and execute documents incidental to the land trust. The power

1 of direction, unless provided otherwise in the land trust  
2 agreement, is conferred upon the holders thereof for the use  
3 and benefit of all of the holders of the beneficial interest  
4 in the land trust. In the absence of a provision in the land  
5 trust agreement to the contrary, the power of direction shall  
6 be in accordance with the percentage of individual ownership.  
7 In exercising the power of direction, the holders of the power  
8 of direction are presumed to act in a fiduciary capacity for  
9 the benefit of all holders of the beneficial interest in the  
10 trust, unless otherwise provided in the land trust agreement.  
11 The beneficial interest is indefeasible and the power of  
12 direction may not be exercised so as to alter, amend, revoke,  
13 terminate, defeat, or otherwise affect or change the enjoyment  
14 of any beneficial interest.

15 (g) A trust relating to real estate does not fail and  
16 any use relating to real estate may not be defeated because  
17 beneficiaries are not specified by name in the recorded deed  
18 of conveyance to the trustee or because duties are not imposed  
19 upon the trustee. The power conferred by any such instrument  
20 on a trustee to sell, lease, encumber, or otherwise dispose of  
21 property therein described is effective and a person dealing  
22 with such a trustee is not required to make further inquiry as  
23 to the right of such trustee to act and such person is not  
24 required to inquire as to the disposition of any proceeds.

25 (h) The principal residence of a beneficiary may be  
26 entitled to the homestead tax exemption even if such homestead  
27 is held by a trustee in a land trust.

28 (9) SUCCESSOR TRUSTEE.--

29 (a) The provisions of s. 737.309 regarding the  
30 resignation of a trustee do not apply regarding the  
31 appointment of a successor trustee under this section.

1           (b) If both the recorded instrument and the unrecorded  
2 land trust agreement are silent as to the appointment of a  
3 successor trustee in the event of the death, resignation, or  
4 termination due to dissolution of a land trustee, or if a  
5 trustee is unable to serve, then one or more persons or  
6 entities having the power of direction of the land trust  
7 agreement may appoint a successor or successors to the trust  
8 property by filing a declaration of appointment of a successor  
9 trustee in the office of the recorder in the county in which  
10 the trust property is located. The declaration must be signed  
11 by a beneficiary or beneficiaries of the trust and by the  
12 successor trustee, must be acknowledged in the manner provided  
13 for acknowledgment of deeds, and must contain:

- 14           1. The legal description of the trust property;
- 15           2. The name and address of the former trustee;
- 16           3. The name and address of the successor trustee; and
- 17           4. A statement that the successor trustee has been  
18 appointed by one or more persons or entities having the power  
19 of direction of the land trust, together with an acceptance of  
20 appointment by the successor trustee.

21           (c) If the recorded instrument is silent as to the  
22 appointment of a successor trustee but an unrecorded land  
23 trust agreement provides for the appointment of a successor  
24 trustee, then upon the appointment of a successor trustee  
25 pursuant to the terms of the unrecorded land trust agreement,  
26 the successor trustee shall file a declaration of appointment  
27 of a successor trustee in the office of the recorder in the  
28 county in which the trust property is located. The declaration  
29 must be signed by both the former trustee and the successor  
30 trustee, must be acknowledged in the manner provided for  
31 acknowledgment of deeds, and must contain:

- 1           1. The legal description of the trust property;  
2           2. The name and address of the former trustee;  
3           3. The name and address of the successor trustee;  
4           4. A statement of resignation by the former trustee  
5 and a statement of acceptance of appointment by the successor  
6 trustee; and  
7           5. A statement that the successor trustee was duly  
8 appointed under the terms of the unrecorded land trust  
9 agreement.

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

17           (d) If the recorded instrument provides for the  
18 appointment of a successor trustee and a successor trustee is  
19 appointed in accordance with the recorded instrument, no  
20 additional declarations of appointment of a successor trustee  
21 are required under this section.

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



1 the powers granted under the recorded instruments or any  
2 unrecorded declarations or agreements.

3 (f) A land trust agreement may provide that the  
4 trustee, when directed to do so by the beneficiaries of the  
5 land trust or their legal representatives, may convey the  
6 trust property directly to another trustee on behalf of the  
7 beneficiaries or others named by the beneficiaries.

8 (10) TRUSTEE AS CREDITOR.--

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

19 (b) The fact that a trustee of a land trust is or  
20 becomes a secured or unsecured creditor of the land trust, the  
21 beneficiary of the land trust, or a third party whose debt to  
22 such creditor is guaranteed by a beneficiary of the land trust  
23 is not a breach of a fiduciary duty and may not be deemed  
24 evidence of a breach of any fiduciary duty owed by the trustee  
25 to the beneficiaries.

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

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

1 Section 2. Subsection (4) of section 201.02, Florida  
2 Statutes, is amended to read:

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

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

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

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

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17  
18 SENATE SUMMARY

19 Creates the Florida Land Trust Act. Deletes a requirement  
20 that a land trustee be qualified to act as a fiduciary.  
21 Deletes obsolete provisions. Provides for the rights,  
22 liabilities, and duties of land trust beneficiaries.  
23 Provides that the principal residence of a beneficiary  
24 which is held in a land trust qualifies for the homestead  
25 tax exemption. Provides for appointing successor trustees  
26 and specifies requirements for the declaration of  
27 appointment. Provides that a trustee of a land trust may  
28 also be a creditor of such trust or a beneficiary of the  
29 trust. Provides for applicability of the act. (See bill  
30 for details.)  
31