

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 for which such trustee serves as
9 trustee.

10 (c) "Holder of the power of direction" means any
11 person or entity having the authority to direct the trustee to
12 convey property or interests, execute a mortgage, distribute
13 proceeds of a sale or financing, and execute documents
14 incidental to the administration of a land trust.

15 (d) "Land trust" is not the creation of an entity, but
16 means any express written agreement or arrangement by which a
17 use, confidence, or trust is declared of any land, or of any
18 charge upon land, for the use or benefit of any beneficiary,
19 under which the title to real property, both legal and
20 equitable, is held by a trustee, subject only to the execution
21 of the trust, which may be enforced by the beneficiaries.

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

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 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 in such property ~~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 being
3 a beneficiary, under a judgment, decree, or order of court or
4 in any other manner for a debt, obligation, or liability of
5 the land trust.

6 (b) Any beneficiary acting under the trust agreement
7 of a land trust is not liable to the land trust's 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) A 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 in
21 which 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. Parties dealing with the trustee are not required
25 to inquire into the terms of the unrecorded trust agreement.

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

1 power of direction, unless provided otherwise in the land
2 trust agreement, is conferred upon the holders of the power
3 for the use and benefit of all holders of any beneficial
4 interest in the land trust. In the absence of a provision in
5 the land trust agreement to the contrary, the power of
6 direction shall be in accordance with the percentage of
7 individual ownership. In exercising the power of direction,
8 the holders of the power of direction are presumed to act in a
9 fiduciary capacity for the benefit of all holders of any
10 beneficial interest in the trust, unless otherwise provided in
11 the land trust agreement. A beneficial interest is
12 indefeasible, and the power of direction may not be exercised
13 so as to alter, amend, revoke, terminate, defeat, or otherwise
14 affect or change the enjoyment 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 recorded deed of
20 conveyance on a trustee to sell, lease, encumber, or otherwise
21 dispose of property described in the deed is effective, and a
22 person dealing with the trustee is not required to inquire any
23 further into the right of the trustee to act or the
24 disposition of any proceeds.

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

29 (9) SUCCESSOR TRUSTEE.--
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1 (a) The provisions of s. 737.309 relating to the
2 resignation of a trustee do not apply to the appointment of a
3 successor trustee under this section.

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

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

25 (c) If the recorded instrument is silent as to the
26 appointment of a successor trustee or trustees but an
27 unrecorded land trust agreement provides for the appointment
28 of a successor trustee or trustees in the event of the death,
29 incapacity, resignation, or termination due to dissolution of
30 the land trustee, upon the appointment of any successor
31 trustee pursuant to the terms of the unrecorded land trust

1 agreement, each successor trustee shall file a declaration of
2 appointment of a successor trustee in the office of the
3 recorder of deeds in the county in which the trust property is
4 located. The declaration must be signed by both the former
5 trustee and each successor trustee, must be acknowledged in
6 the manner provided for acknowledgment of deeds, and must
7 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 the successor trustee.

11 4. A statement of resignation by the former trustee
12 and a statement of acceptance of appointment by each successor
13 trustee.

14 5. A statement that each successor trustee was duly
15 appointed under the terms of the unrecorded land trust
16 agreement.

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18 If the appointment of any successor trustee is due to the
19 death or incapacity of the former trustee, the declaration
20 need not be signed by the former trustee and a copy of the
21 death certificate or a statement that the former trustee is
22 incapacitated or unable to serve must be attached to or
23 included in the declaration, as applicable.

24 (d) If the recorded instrument provides for the
25 appointment of any successor trustee and any successor trustee
26 is appointed in accordance with the recorded instrument, no
27 additional declarations of appointment of any successor
28 trustee are required under this section.

29 (e) Each successor land trustee appointed is fully
30 vested with all the estate, properties, rights, powers,
31 trusts, duties, and obligations of the predecessor land

1 trustee, except that any successor land trustee is not under
2 any duty to inquire into the acts or omissions of a
3 predecessor trustee and is not liable for any act or failure
4 to act of a predecessor trustee. A person dealing with any
5 successor trustee pursuant to a declaration filed under this
6 section is not obligated to inquire into or ascertain the
7 authority of the successor trustee to act within or exercise
8 the powers granted under the recorded instruments or any
9 unrecorded declarations or agreements.

10 (f) A land trust agreement may provide that the
11 trustee, when directed to do so by the beneficiaries of the
12 land trust or legal representatives of the beneficiaries, may
13 convey the trust property directly to another trustee on
14 behalf of the beneficiaries or others named by the
15 beneficiaries.

16 (10) TRUSTEE AS CREDITOR.--

17 (a) If a debt is secured by a security interest in a
18 beneficial interest in a land trust or by a mortgage on land
19 trust property, the validity or enforceability of the debt,
20 security interest, or mortgage and the rights, remedies,
21 powers, and duties of the creditor with respect to the debt or
22 the security are not affected by the fact that the creditor
23 and the trustee are the same person or entity, and the
24 creditor may extend credit, obtain any necessary security
25 interest or mortgage, and acquire and deal with the property
26 comprising the security as though the creditor were not the
27 trustee.

28 (b) A trustee of a land trust does not breach a
29 fiduciary duty to the beneficiaries, and it is not evidence of
30 a breach of any fiduciary duty owed by the trustee to the
31 beneficiaries for a trustee to be or become a secured or

1 unsecured creditor of the land trust, the beneficiary of the
2 land trust, or a third party whose debt to such creditor is
3 guaranteed by a beneficiary of the land trust.

4 ~~(11)(6)~~ REMEDIAL ACT.--This act is remedial in nature
5 and shall be given a liberal interpretation to effectuate the
6 intent and purposes hereinabove expressed.

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

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

12 201.02 Tax on deeds and other instruments relating to
13 real property or interests in real property.--

14 (4) The tax imposed by subsection (1) shall also be
15 payable upon documents which convey or transfer, pursuant to
16 s. 689.071, any beneficial interest in lands, tenements, or
17 other real property, or any interest therein, even though such
18 interest may be designated as personal property,
19 notwithstanding the provisions of s. 689.071~~(6)(4)~~. The tax
20 shall be paid upon execution of any such document.

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

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

25
26 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
27 COMMITTEE SUBSTITUTE FOR
Senate Bill 1956

- 28
29 1. Requires that the beneficiary of a land trust qualify for
30 a homestead exemption under ch. 196, F.S., in order for
31 property held in a land trust to qualify for a homestead
exemption.
2. Requires a land trust to be a written agreement.