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2 An act relating to land trusts; amending s.  
3 689.071, F.S.; providing a short title;  
4 providing definitions; revising provisions  
5 relating to land trust transfers of real  
6 property and vesting of ownership in a trustee;  
7 deleting a requirement that a trustee be  
8 qualified to act as a fiduciary; deleting  
9 obsolete references to "dower" and "curtesy";  
10 specifying rights, liabilities, and duties of  
11 land trust beneficiaries; providing that the  
12 principal residence of a beneficiary which is  
13 held in a land trust is entitled to the  
14 homestead tax exemption under certain  
15 circumstances; providing for the appointment of  
16 successor trustees; providing requirements for  
17 declarations of appointment; providing that a  
18 trustee of a land trust may be a creditor of  
19 the trust or of a trust beneficiary; amending  
20 s. 201.02, F.S.; conforming a cross-reference;  
21 providing application; providing an effective  
22 date.

23  
24 Be It Enacted by the Legislature of the State of Florida:

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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 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.

17  
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.  
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