

1 A bill to be entitled
2 An act relating to the Florida Trust Code; creating parts
3 I, II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, and XIII
4 of chapter 736, F.S.; providing a short title; providing
5 general provisions and definitions; providing for judicial
6 proceedings; providing for representations; providing for
7 creation, validity, modification, and termination of
8 trusts; providing for creditors' claims; providing for
9 spendthrift, discretionary, and revocable trusts;
10 providing for the office of trustee; providing for powers
11 and duties of the trustee; providing for trust
12 investments; providing for liability of trustee and rights
13 of persons dealing with trustee; providing for rules of
14 construction; providing for charitable trusts; providing
15 miscellaneous provisions; creating s. 689.175, F.S.;
16 abolishing the worthier title doctrine; providing
17 construction of certain instrument language; amending s.
18 731.103, F.S.; correcting a cross-reference; providing
19 construction relating to establishment of death by certain
20 evidence under certain circumstances; creating s.
21 731.1035, F.S.; providing for application of rules of
22 evidence in civil actions to certain proceedings; amending
23 s. 731.201, F.S.; revising definitions; conforming terms
24 and correcting cross-references; amending s. 731.303,
25 F.S.; specifying nonapplication of certain orders relating
26 to powers of revocation and powers of appointment;
27 revising provisions relating to representation by a holder
28 of a power of appointment; amending s. 732.513, F.S.;

29 deleting a ground protecting a devise's validity; amending
 30 s. 732.603, F.S.; revising provisions relating to
 31 antilapse, deceased devisees, and class gifts; amending s.
 32 744.331, F.S.; revising provisions relating to orders
 33 determining incapacity; amending s. 744.441, F.S.;
 34 revising authority of certain guardians to prosecute or
 35 defend claims or proceedings for certain purposes;
 36 specifying duties of a court; creating s. 744.462, F.S.;
 37 providing requirements for judicial determinations
 38 relating to alternatives to guardianship; providing duties
 39 of a court; amending ss. 497.458, 607.0802, 617.0802,
 40 660.25, 660.46, 660.418, 689.071, 689.075, 709.08, 721.08,
 41 721.53, 732.2075, 732.604, 732.611, 733.212, 733.602,
 42 733.805, 733.817, 738.104, 738.1041, 738.202, 739.102, and
 43 744.361, F.S., to conform terms and correct cross-
 44 references; repealing ss. 737.101, 737.105, 737.106,
 45 737.111, 737.115, and 737.116, constituting part I of ch.
 46 737, F.S., relating to trust registration; repealing ss.
 47 737.201, 737.202, 737.203, 737.2035, 737.204, 737.2041,
 48 737.205, 737.206, 737.2065, 737.207, 737.208, and 737.209,
 49 constituting part II of ch. 737, F.S., relating to
 50 jurisdiction of courts; repealing ss. 737.301, 737.302,
 51 737.303, 737.3035, 737.304, 737.305, 737.3053, 737.3054,
 52 737.3055, 737.306, 737.3061, 737.307, 737.308, and
 53 737.309, constituting part III of ch. 737, F.S., relating
 54 to duties and liabilities of trustees; repealing ss.
 55 737.401, 737.402, 737.4025, 737.403, 737.4031, 737.4032,
 56 737.4033, 737.404, 737.405, and 737.406, constituting part

57 IV of ch. 737, F.S., relating to powers of trustees;
 58 repealing ss. 737.501, 737.502, 737.503, 737.504, 737.505,
 59 737.506, 737.507, 737.508, 737.509, 737.510, 737.511, and
 60 737.512, constituting part V of ch. 737, F.S., relating to
 61 charitable trusts; repealing ss. 737.6035, 737.621,
 62 737.622, 737.623, 737.624, 737.625, 737.626, and 737.627,
 63 consisting of part VI of ch. 737, F.S., relating to rules
 64 of construction of trust administration; providing an
 65 effective date.

66
 67 Be It Enacted by the Legislature of the State of Florida:

68
 69 Section 1. Part I of chapter 736, Florida Statutes,
 70 consisting of sections 736.0101, 736.0102, 736.0103, 736.0104,
 71 736.0105, 736.0106, 736.0107, 736.0108, 736.0109, 736.0110,
 72 736.0111, and 736.0112, is created to read:

73
 74 PART I

75 GENERAL PROVISIONS AND DEFINITIONS

76
 77 736.0101 Short title.--This chapter may be cited as the
 78 "Florida Trust Code" and for purposes of this chapter is
 79 referred to as the "code."

80 736.0102 Scope.--This code applies to express trusts,
 81 charitable or noncharitable, and trusts created pursuant to a
 82 law, judgment, or decree that requires the trust to be
 83 administered in the manner of an express trust. This code does
 84 not apply to constructive or resulting trusts; conservatorships;

85 custodial arrangements pursuant to the Florida Uniform Transfers
 86 to Minors Act; business trusts providing for certificates to be
 87 issued to beneficiaries; common trust funds; land trusts under
 88 s. 689.05; trusts created by the form of the account or by the
 89 deposit agreement at a financial institution; voting trusts;
 90 security arrangements; liquidation trusts; trusts for the
 91 primary purpose of paying debts, dividends, interest, salaries,
 92 wages, profits, pensions, or employee benefits of any kind; and
 93 any arrangement under which a person is nominee or escrowee for
 94 another.

95 736.0103 Definitions.--Unless the context otherwise
 96 requires, in this code:

97 (1) "Action," with respect to an act of a trustee,
 98 includes a failure to act.

99 (2) "Ascertainable standard" means a standard relating to
 100 an individual's health, education, support, or maintenance
 101 within the meaning of s. 2041(b)(1)(A) or s. 2514(c)(1) of the
 102 Internal Revenue Code of 1986, as amended.

103 (3) "Beneficiary" means a person who:

104 (a) Has a present or future beneficial interest in a
 105 trust, vested or contingent; or

106 (b) Holds a power of appointment over trust property in a
 107 capacity other than that of trustee.

108 (4) "Charitable trust" means a trust, or portion of a
 109 trust, created for a charitable purpose as described in s.
 110 736.0405(1).

111 (5) "Environmental law" means a federal, state, or local
 112 law, rule, regulation, or ordinance that relates to protection
 113 of the environment or human health.

114 (6) "General power of appointment" means a power of
 115 appointment exercisable in favor of the holder of the power, the
 116 power holder's creditors, the power holder's estate, or the
 117 creditors of the power holder's estate.

118 (7) "Guardian of the person" means a person appointed by
 119 the court to make decisions regarding the support, care,
 120 education, health, and welfare of a minor or an incapacitated
 121 adult. The term does not include a guardian ad litem.

122 (8) "Guardian of the property" means a person appointed by
 123 the court to administer the estate of a minor or incapacitated
 124 adult.

125 (9) "Interests of the beneficiaries" means the beneficial
 126 interests provided in the terms of the trust.

127 (10) "Jurisdiction" with respect to a geographic area,
 128 includes a state or country.

129 (11) "Person" means an individual; corporation; business
 130 trust; estate; trust; partnership; limited liability company;
 131 association; joint venture; government; governmental
 132 subdivision, agency, or instrumentality; public corporation; or
 133 any other legal or commercial entity.

134 (12) "Power of withdrawal" means a presently exercisable
 135 general power of appointment other than a power:

136 (a) Exercisable by a trustee and limited by an
 137 ascertainable standard; or

138 (b) Exercisable by another person only upon consent of the
 139 trustee or a person holding an adverse interest.

140 (13) "Property" means anything that may be the subject of
 141 ownership, real or personal, legal or equitable, or any interest
 142 therein.

143 (14) "Qualified beneficiary" means a living beneficiary
 144 who, on the date the beneficiary's qualification is determined:

145 (a) Is a distributee or permissible distributee of trust
 146 income or principal;

147 (b) Would be a distributee or permissible distributee of
 148 trust income or principal if the interests of the distributees
 149 described in paragraph (a) terminated on that date without
 150 causing the trust to terminate; or

151 (c) Would be a distributee or permissible distributee of
 152 trust income or principal if the trust terminated in accordance
 153 with its terms on that date.

154 (15) "Revocable," as applied to a trust, means revocable
 155 by the settlor without the consent of the trustee or a person
 156 holding an adverse interest.

157 (16) "Settlor" means a person, including a testator, who
 158 creates or contributes property to a trust. If more than one
 159 person creates or contributes property to a trust, each person
 160 is a settlor of the portion of the trust property attributable
 161 to that person's contribution except to the extent another
 162 person has the power to revoke or withdraw that portion.

163 (17) "Spendthrift provision" means a term of a trust that
 164 restrains both voluntary and involuntary transfer of a
 165 beneficiary's interest.

166 (18) "State" means any state of the United States and
 167 includes the District of Columbia, the Commonwealth of Puerto
 168 Rico, and any territory or possession subject to the legislative
 169 authority of the United States.

170 (19) "Terms of a trust" means the manifestation of the
 171 settlor's intent regarding a trust's provisions as expressed in
 172 the trust instrument or as may be established by other evidence
 173 that would be admissible in a judicial proceeding.

174 (20) "Trust instrument" means an instrument executed by a
 175 settlor that contains terms of the trust, including any
 176 amendments to the trust.

177 (21) "Trustee" means the original trustee and includes any
 178 additional trustee, any successor trustee, and any cotrustee.

179 736.0104 Knowledge.--

180 (1) Subject to subsection (2), a person has knowledge of a
 181 fact if the person:

182 (a) Has actual knowledge of the fact;

183 (b) Has received a notice or notification of the fact; or

184 (c) Has reason to know the fact from all the other facts
 185 and circumstances known to the person at the time in question.

186 (2) An organization that conducts activities through
 187 employees has notice or knowledge of a fact involving a trust
 188 only from the time the information was received by an employee
 189 having responsibility to act on matters involving the trust, or
 190 would have been brought to the employee's attention if the
 191 organization had exercised reasonable diligence. An organization
 192 exercises reasonable diligence if the organization maintains
 193 reasonable routines for communicating significant information to

194 the employee having responsibility to act on matters involving
195 the trust and there is reasonable compliance with the routines.
196 Reasonable diligence does not require an employee of the
197 organization to communicate information unless the communication
198 is part of the individual's regular duties or the individual
199 knows a matter involving the trust would be materially affected
200 by the information.

201 736.0105 Default and mandatory rules.--

202 (1) Except as otherwise provided in the terms of the
203 trust, this code governs the duties and powers of a trustee,
204 relations among trustees, and the rights and interests of a
205 beneficiary.

206 (2) The terms of a trust prevail over any provision of
207 this code except:

208 (a) The requirements for creating a trust.

209 (b) The duty of the trustee to act in good faith and in
210 accordance with the terms and purposes of the trust and the
211 interests of the beneficiaries.

212 (c) The requirement that a trust and its terms be for the
213 benefit of the trust's beneficiaries, and that the trust have a
214 purpose that is lawful, not contrary to public policy, and
215 possible to achieve.

216 (d) The periods of limitation for commencing a judicial
217 proceeding.

218 (e) The power of the court to take such action and
219 exercise such jurisdiction as may be necessary in the interests
220 of justice.

221 (f) The requirements under s. 736.0108(1) for the
 222 designation of a principal place of administration of the trust.

223 (g) The jurisdiction and venue provisions in ss. 736.0202,
 224 736.0203, and 736.0204.

225 (h) The restrictions on the designation of representative
 226 under s. 736.0306.

227 (i) The formalities required under s. 736.0403(2) for the
 228 execution of a trust.

229 (j) The power of the court to modify or terminate a trust
 230 under ss. 736.0410-736.04115, except as provided in s.
 231 736.04115(3)(b), and under ss. 736.0413, 736.0415, and 736.0416.

232 (k) The ability to modify a trust under s. 736.0412,
 233 except as provided in s. 736.0412(4)(b).

234 (l) The effect of a spendthrift provision and the rights
 235 of certain creditors and assignees to reach a trust as provided
 236 in part V.

237 (m) The trustee's duty under s. 736.05053 to pay expenses
 238 and obligations of the settlor's estate.

239 (n) The trustee's duty under s. 736.05055 to file a notice
 240 of trust at the settlor's death.

241 (o) The right of a trustee under s. 736.0701 to decline a
 242 trusteeship and the right of a trustee under s. 736.0705 to
 243 resign a trusteeship.

244 (p) The power of the court under s. 736.0702 to require,
 245 dispense with, modify, or terminate a bond.

246 (q) The power of the court under s. 736.0708(2) to adjust
 247 a trustee's compensation specified in the terms of the trust
 248 that is unreasonably low or high.

249 (r) The duty under s. 736.0813(1)(a) and (b) to notify
 250 qualified beneficiaries of an irrevocable trust of the existence
 251 of the trust, of the identity of the trustee, and of their
 252 rights to trust accountings.

253 (s) The duty under s. 736.0813(1)(c) and (d) to provide a
 254 complete copy of the trust instrument and to account to
 255 qualified beneficiaries.

256 (t) The duty under s. 736.0813(1)(e) to respond to the
 257 request of a qualified beneficiary of an irrevocable trust for
 258 relevant information about the assets and liabilities of the
 259 trust and the particulars relating to trust administration.

260 (u) The effect of an exculpatory term under s. 736.1011.

261 (v) The rights under ss. 736.1013-736.1017 of a person
 262 other than a trustee or beneficiary.

263 (w) The effect of a penalty clause for contesting a trust
 264 under s. 736.1108.

265 736.0106 Common law of trusts; principles of equity.--The
 266 common law of trusts and principles of equity supplement this
 267 code, except to the extent modified by this code or another law
 268 of this state.

269 736.0107 Governing law.--The meaning and effect of the
 270 terms of a trust are determined by:

271 (1) The law of the jurisdiction designated in the terms
 272 unless the designation of that jurisdiction's law is contrary to
 273 a strong public policy of the jurisdiction having the most
 274 significant relationship to the matter at issue; or

275 (2) The law of the jurisdiction having the most
 276 significant relationship to the matter at issue in the absence
 277 of a controlling designation in the terms of the trust.

278 736.0108 Principal place of administration.--

279 (1) Terms of a trust designating the principal place of
 280 administration of the trust are valid only if there is a
 281 sufficient connection with the designated jurisdiction. Without
 282 precluding other means for establishing a sufficient connection,
 283 terms of a trust designating the principal place of
 284 administration are valid and controlling if:

285 (a) A trustee's principal place of business is located in
 286 or a trustee is a resident of the designated jurisdiction; or

287 (b) All or part of the administration occurs in the
 288 designated jurisdiction.

289 (2) Unless otherwise validly designated in the trust
 290 instrument, the principal place of administration of a trust is
 291 the trustee's usual place of business where the records
 292 pertaining to the trust are kept or, if the trustee has no place
 293 of business, the trustee's residence. In the case of cotrustees,
 294 the principal place of administration is:

295 (a) The usual place of business of the corporate trustee,
 296 if there is only one corporate cotrustee;

297 (b) The usual place of business or residence of the
 298 individual trustee who is a professional fiduciary, if there is
 299 only one such person and no corporate cotrustee; or otherwise

300 (c) The usual place of business or residence of any of the
 301 cotrustees as agreed on by the cotrustees.

302 (3) Notwithstanding any other provision of this section,
303 the principal place of administration of a trust, for which a
304 bank, association, or trust company organized under the laws of
305 this state or bank or savings association organized under the
306 laws of the United States with its main office in this state has
307 been appointed trustee, shall not be moved or otherwise affected
308 solely because the trustee engaged in an interstate merger
309 transaction with an out-of-state bank pursuant to s. 658.2953 in
310 which the out-of-state bank is the resulting bank.

311 (4) A trustee is under a continuing duty to administer the
312 trust at a place appropriate to its purposes, its
313 administration, and the interests of the beneficiaries.

314 (5) Without precluding the right of the court to order,
315 approve, or disapprove a transfer, the trustee, in furtherance
316 of the duty prescribed by subsection (4), may transfer the
317 trust's principal place of administration to another state or to
318 a jurisdiction outside of the United States.

319 (6) The trustee shall notify the qualified beneficiaries
320 of a proposed transfer of a trust's principal place of
321 administration not less than 60 days before initiating the
322 transfer. The notice of proposed transfer must include:

323 (a) The name of the jurisdiction to which the principal
324 place of administration is to be transferred.

325 (b) The address and telephone number at the new location
326 at which the trustee can be contacted.

327 (c) An explanation of the reasons for the proposed
328 transfer.

329 (d) The date on which the proposed transfer is anticipated
 330 to occur.

331 (e) The date, not less than 60 days after the notice is
 332 provided, by which the qualified beneficiary must notify the
 333 trustee of an objection to the proposed transfer.

334 (7) The authority of a trustee to act under this section
 335 without court approval to transfer a trust's principal place of
 336 administration is suspended if a qualified beneficiary files a
 337 lawsuit objecting to the proposed transfer on or before the date
 338 specified in the notice. The suspension is effective until the
 339 lawsuit is dismissed or withdrawn.

340 (8) In connection with a transfer of the trust's principal
 341 place of administration, the trustee may transfer any of the
 342 trust property to a successor trustee designated in the terms of
 343 the trust or appointed pursuant to s. 736.0704.

344 736.0109 Methods and waiver of notice.--

345 (1) Notice to a person under this code or the sending of a
 346 document to a person under this code must be accomplished in a
 347 manner reasonably suitable under the circumstances and likely to
 348 result in receipt of the notice or document. Permissible methods
 349 of notice or for sending a document include first-class mail,
 350 personal delivery, delivery to the person's last known place of
 351 residence or place of business, or a properly directed facsimile
 352 or other electronic message.

353 (2) Notice otherwise required under this code or a
 354 document otherwise required to be sent under this code need not
 355 be provided to a person whose identity or location is unknown to
 356 and not reasonably ascertainable by the trustee.

357 (3) Notice under this code or the sending of a document
 358 under this code may be waived by the person to be notified or to
 359 whom the document is to be sent.

360 (4) Notice of a judicial proceeding must be given as
 361 provided in the Florida Rules of Civil Procedure.

362 736.0110 Others treated as qualified beneficiaries.--

363 (1) A charitable organization expressly designated to
 364 receive distributions under the terms of a charitable trust has
 365 the rights of a qualified beneficiary under this code if the
 366 charitable organization, on the date the charitable
 367 organization's qualification is being determined:

368 (a) Is a distributee or permissible distributee of trust
 369 income or principal;

370 (b) Would be a distributee or permissible distributee of
 371 trust income or principal on termination of the interests of
 372 other distributees or permissible distributees then receiving or
 373 eligible to receive distributions; or

374 (c) Would be a distributee or permissible distributee of
 375 trust income or principal if the trust terminated on that date.

376 (2) A person appointed to enforce a trust created for the
 377 care of an animal or another noncharitable purpose as provided
 378 in s. 736.0408 or s. 736.0409 has the rights of a qualified
 379 beneficiary under this code.

380 (3) The Attorney General may assert the rights of a
 381 qualified beneficiary with respect to a charitable trust having
 382 its principal place of administration in this state.

383 736.0111 Nonjudicial settlement agreements.--

384 (1) For purposes of this section, the term "interested
 385 persons" means persons whose interest would be affected by a
 386 settlement agreement.

387 (2) Except as otherwise provided in subsection (3),
 388 interested persons may enter into a binding nonjudicial
 389 settlement agreement with respect to any matter involving a
 390 trust.

391 (3) A nonjudicial settlement agreement among the trustee
 392 and trust beneficiaries is valid only to the extent the terms
 393 and conditions could be properly approved by the court. A
 394 nonjudicial settlement may not be used to produce a result not
 395 authorized by other provisions of this code, including, but not
 396 limited to, terminating or modifying a trust in an impermissible
 397 manner.

398 (4) Matters that may be resolved by a nonjudicial
 399 settlement agreement include:

400 (a) The interpretation or construction of the terms of the
 401 trust.

402 (b) The approval of a trustee's report or accounting.

403 (c) The direction to a trustee to refrain from performing
 404 a particular act or the grant to a trustee of any necessary or
 405 desirable power.

406 (d) The resignation or appointment of a trustee and the
 407 determination of a trustee's compensation.

408 (e) The transfer of a trust's principal place of
 409 administration.

410 (f) The liability of a trustee for an action relating to
 411 the trust.

412 (5) Any interested person may request the court to approve
 413 or disapprove a nonjudicial settlement agreement.

414 736.0112 Qualification of foreign trustee.--Unless
 415 otherwise doing business in this state, local qualification by a
 416 foreign trustee is not required for the trustee to receive
 417 distribution from a local estate. Nothing in this chapter shall
 418 affect the provisions of s. 660.41.

419 Section 2. Part II of chapter 736, Florida Statutes,
 420 consisting of sections 736.0201, 736.0202, 736.0203, 736.0204,
 421 736.0205, 736.0206, and 736.0207, is created to read:

422
 423 PART II

424 JUDICIAL PROCEEDINGS

425
 426 736.0201 Role of court in trust proceedings.--

427 (1) Except as provided in subsection (5) and s. 736.0206,
 428 proceedings concerning trusts shall be commenced by filing a
 429 complaint and shall be governed by the Florida Rules of Civil
 430 Procedure.

431 (2) The court may intervene in the administration of a
 432 trust to the extent the court's jurisdiction is invoked by an
 433 interested person or as provided by law.

434 (3) A trust is not subject to continuing judicial
 435 supervision unless ordered by the court.

436 (4) A judicial proceeding involving a trust may relate to
 437 the validity, administration, or distribution of a trust,
 438 including proceedings to:

439 (a) Determine the validity of all or part of a trust;

- 440 (b) Appoint or remove a trustee;
- 441 (c) Review trustees' fees;
- 442 (d) Review and settle interim or final accounts;
- 443 (e) Ascertain beneficiaries; determine any question
 444 arising in the administration or distribution of any trust,
 445 including questions of construction of trust instruments;
 446 instruct trustees; and determine the existence or nonexistence
 447 of any immunity, power, privilege, duty, or right;
- 448 (f) Obtain a declaration of rights; or
- 449 (g) Determine any other matters involving trustees and
 450 beneficiaries.

451 (5) A proceeding for the construction of a testamentary
 452 trust may be filed in the probate proceeding for the testator's
 453 estate. The proceeding shall be governed by the Florida Probate
 454 Rules.

455 736.0202 Jurisdiction over trustee and beneficiary.--

456 (1) By accepting the trusteeship of a trust having its
 457 principal place of administration in this state or by moving the
 458 principal place of administration to this state, the trustee
 459 submits personally to the jurisdiction of the courts of this
 460 state regarding any matter involving the trust.

461 (2) With respect to their interests in the trust, the
 462 beneficiaries of a trust having its principal place of
 463 administration in this state are subject to the jurisdiction of
 464 the courts of this state regarding any matter involving the
 465 trust. By accepting a distribution from such a trust, the
 466 recipient submits personally to the jurisdiction of the courts
 467 of this state regarding any matter involving the distribution.

468 (3) This section does not preclude other methods of
469 obtaining jurisdiction over a trustee, beneficiary, or other
470 person receiving property from the trust.

471 736.0203 Subject-matter jurisdiction.--The circuit court
472 has original jurisdiction in this state of all proceedings
473 arising under this code.

474 736.0204 Venue.--Venue for actions and proceedings
475 concerning trusts, including those under s. 736.0201, may be
476 laid in:

477 (1) Any county where the venue is proper under chapter 47;

478 (2) Any county where the beneficiary suing or being sued
479 resides or has its principal place of business; or

480 (3) The county where the trust has its principal place of
481 administration.

482 736.0205 Trust proceedings; dismissal of matters relating
483 to foreign trusts.--Over the objection of a party, the court
484 shall not entertain proceedings under s. 736.0201 for a trust
485 registered, or having its principal place of administration, in
486 another state unless all interested parties could not be bound
487 by litigation in the courts of the state where the trust is
488 registered or has its principal place of administration. The
489 court may condition a stay or dismissal of a proceeding under
490 this section on the consent of any party to jurisdiction of the
491 state where the trust is registered or has its principal place
492 of business, or the court may grant a continuance or enter any
493 other appropriate order.

494 736.0206 Proceedings for review of employment of agents
495 and review of compensation of trustee and employees of trust.--

496 (1) After notice to all interested persons, the court may
 497 review the propriety of the employment by a trustee of any
 498 person, including any attorney, auditor, investment adviser, or
 499 other specialized agent or assistant, and the reasonableness of
 500 any compensation paid to that person or to the trustee.

501 (2) If the settlor's estate is being probated, and the
 502 settlor's trust or the trustee of the settlor's trust is a
 503 beneficiary under the settlor's will, the trustee, any person
 504 employed by the trustee, or any interested person may have the
 505 propriety of employment and the reasonableness of the
 506 compensation of the trustee or any person employed by the
 507 trustee determined in the probate proceeding.

508 (3) The burden of proof of the propriety of the employment
 509 and the reasonableness of the compensation shall be on the
 510 trustee and the person employed by the trustee. Any person who
 511 is determined to have received excessive compensation from a
 512 trust for services rendered may be ordered to make appropriate
 513 refunds.

514 (4) Court proceedings to determine reasonable compensation
 515 of a trustee or any person employed by a trustee, if required,
 516 are a part of the trust administration process. The costs,
 517 including attorney's fees, of the person assuming the burden of
 518 proof of propriety of the employment and reasonableness of the
 519 compensation shall be determined by the court and paid from the
 520 assets of the trust unless the court finds the compensation paid
 521 or requested to be substantially unreasonable. The court shall
 522 direct from which part of the trust assets the compensation
 523 shall be paid.

524 (5) The court may determine reasonable compensation for a
 525 trustee or any person employed by a trustee without receiving
 526 expert testimony. Any party may offer expert testimony after
 527 notice to interested persons. If expert testimony is offered, a
 528 reasonable expert witness fee shall be awarded by the court and
 529 paid from the assets of the trust. The court shall direct from
 530 which part of the trust assets the fee shall be paid.

531 (6) Persons given notice as provided in this section shall
 532 be bound by all orders entered on the complaint.

533 (7) In a proceeding pursuant to subsection (2), the
 534 petitioner may serve formal notice as provided in the Florida
 535 Probate Rules, and such notice shall be sufficient for the court
 536 to acquire jurisdiction over the person receiving the notice to
 537 the extent of the person's interest in the trust.

538 736.0207 Trust contests.--An action to contest the
 539 validity of all or part of a trust may not be commenced until
 540 the trust becomes irrevocable, except this section does not
 541 prohibit such action by the guardian of the property of an
 542 incapacitated settlor.

543 Section 3. Part III of chapter 736, Florida Statutes,
 544 consisting of sections 736.0301, 736.0302, 736.0303, 736.0304,
 545 736.0305, and 736.0306, is created to read:

547 PART III
 548 REPRESENTATION

549
 550 736.0301 Representation; basic effect.--

551 (1) Notice, information, accountings, or reports given to
 552 a person who may represent and bind another person under this
 553 part may serve as a substitute for and have the same effect as
 554 notice, information, accountings, or reports given directly to
 555 the other person.

556 (2) Actions taken by a person who represents the interests
 557 of another person under this part are binding on the person
 558 whose interests are represented to the same extent as if the
 559 actions had been taken by the person whose interests are
 560 represented.

561 (3) Except as otherwise provided in s. 736.0602, a person
 562 under this part who represents a settlor lacking capacity may
 563 receive notice and give a binding consent on the settlor's
 564 behalf.

565 (4) A trustee is not liable for giving notice,
 566 information, accountings, or reports to a beneficiary who is
 567 represented by another person under this part and nothing in
 568 this part prohibits the trustee from giving notice, information,
 569 accountings, or reports to the person represented.

570 736.0302 Representation by holder of power of
 571 appointment.--

572 (1) The holder of a power of appointment may represent and
 573 bind persons whose interests, as permissible appointees, takers
 574 in default, or otherwise, are subject to the power.

575 (2) Subsection (1) does not apply to:

576 (a) Any matter determined by the court to involve fraud or
 577 bad faith by the trustee;

578 (b) A power of a trustee to distribute trust property; or

579 (c) A power of appointment held by a person while the
 580 person is the sole trustee.

581 736.0303 Representation by fiduciaries and parents.--To
 582 the extent there is no conflict of interest between the
 583 representative and the person represented or among those being
 584 represented with respect to a particular question or dispute:

585 (1) A guardian of the property may represent and bind the
 586 estate that the guardian of the property controls.

587 (2) An agent having authority to act with respect to the
 588 particular question or dispute may represent and bind the
 589 principal.

590 (3) A trustee may represent and bind the beneficiaries of
 591 the trust.

592 (4) A personal representative of a decedent's estate may
 593 represent and bind persons interested in the estate.

594 (5) A parent may represent and bind the parent's unborn
 595 child, or the parent's minor child if a guardian of the property
 596 for the minor child has not been appointed.

597 736.0304 Representation by person having substantially
 598 identical interest.--Unless otherwise represented, a minor,
 599 incapacitated, or unborn individual, or a person whose identity
 600 or location is unknown and not reasonably ascertainable, may be
 601 represented by and bound by another person having a
 602 substantially identical interest with respect to the particular
 603 question or dispute, but only to the extent there is no conflict
 604 of interest between the representative and the person
 605 represented.

606 736.0305 Appointment of representative.--

607 (1) If the court determines that an interest is not
 608 represented under this part, or that the otherwise available
 609 representation might be inadequate, the court may appoint a
 610 representative to receive notice, give consent, and otherwise
 611 represent, bind, and act on behalf of a minor, incapacitated, or
 612 unborn individual, or a person whose identity or location is
 613 unknown. If not precluded by a conflict of interest, a
 614 representative may be appointed to represent several persons or
 615 interests.

616 (2) A representative may act on behalf of the individual
 617 represented with respect to any matter arising under this code,
 618 whether or not a judicial proceeding concerning the trust is
 619 pending.

620 (3) In making decisions, a representative may consider
 621 general benefits accruing to the living members of the
 622 represented individual's family.

623 736.0306 Designated representative.--

624 (1) If authorized in the trust instrument, one or more
 625 persons may be designated to represent and bind a beneficiary
 626 and receive any notice, information, accounting, or report.

627 (2) Except as otherwise provided in this code, a person
 628 designated, as provided in subsection (1) may not represent and
 629 bind a beneficiary while that person is serving as trustee.

630 (3) Except as otherwise provided in this code, a person
 631 designated, as provided in subsection (1) may not represent and
 632 bind another beneficiary if the person designated also is a
 633 beneficiary, unless:

634 (a) That person was named by the settlor; or

635 (b) That person is the beneficiary's spouse or a
 636 grandparent or descendant of a grandparent of the beneficiary or
 637 the beneficiary's spouse.

638 (4) No person designated, as provided in subsection (1) is
 639 liable to the beneficiary whose interests are represented, or to
 640 anyone claiming through that beneficiary, for any actions or
 641 omissions to act made in good faith.

642 Section 4. Part IV of chapter 736, Florida Statutes,
 643 consisting of sections 736.0401, 736.0402, 736.0403, 736.0404,
 644 736.0405, 736.0406, 736.0407, 736.0408, 736.0409, 736.0410,
 645 736.04113, 736.04115, 736.0412, 736.0413, 736.0414, 736.0415,
 646 736.0416, and 736.0417, is created to read:

647
 648 PART IV

649 CREATION, VALIDITY, MODIFICATION, AND TERMINATION

650
 651 736.0401 Methods of creating trust.--A trust may be
 652 created by:

653 (1) Transfer of property to another person as trustee
 654 during the settlor's lifetime or by will or other disposition
 655 taking effect on the settlor's death;

656 (2) Declaration by the owner of property that the owner
 657 holds identifiable property as trustee; or

658 (3) Exercise of a power of appointment in favor of a
 659 trustee.

660 736.0402 Requirements for creation.--

661 (1) A trust is created only if:

662 (a) The settlor has capacity to create a trust.

663 (b) The settlor indicates an intent to create the trust.

664 (c) The trust has a definite beneficiary or is:

665 1. A charitable trust;

666 2. A trust for the care of an animal, as provided in s.

667 736.0408; or

668 3. A trust for a noncharitable purpose, as provided in s.

669 736.0409.

670 (d) The trustee has duties to perform.

671 (e) The same person is not the sole trustee and sole
 672 beneficiary.

673 (2) A beneficiary is definite if the beneficiary can be
 674 ascertained now or in the future, subject to any applicable rule
 675 against perpetuities.

676 (3) A power of a trustee to select a beneficiary from an
 677 indefinite class is valid. If the power is not exercised within
 678 a reasonable time, the power fails and the property subject to
 679 the power passes to the persons who would have taken the
 680 property had the power not been conferred.

681 736.0403 Trusts created in other jurisdictions;
 682 formalities required for revocable trusts.--

683 (1) A trust not created by will is validly created if the
 684 creation of the trust complies with the law of the jurisdiction
 685 in which the trust instrument was executed or the law of the
 686 jurisdiction in which, at the time of creation, the settlor was
 687 domiciled.

688 (2) Notwithstanding subsection (1):

689 (a) No trust or confidence of or in any messuages, lands,
690 tenements, or hereditaments shall arise or result unless the
691 trust complies with the provisions of s. 689.05.

692 (b) The testamentary aspects of a revocable trust,
693 executed by a settlor who is a domiciliary of this state at the
694 time of execution, are invalid unless the trust instrument is
695 executed by the settlor with the formalities required for the
696 execution of a will in this state. For purposes of this
697 subsection, the term "testamentary aspects" means those
698 provisions of the trust instrument that dispose of the trust
699 property on or after the death of the settlor other than to the
700 settlor's estate.

701 (3) This section does not apply to trusts established as
702 part of an employee annuity described in s. 403 of the Internal
703 Revenue Code of 1986, as amended, an individual retirement
704 account as described in s. 408 of the Internal Revenue Code of
705 1986, as amended, a Keogh (HR-10) Plan, or a retirement or other
706 plan that is qualified under s. 401 of the Internal Revenue Code
707 of 1986, as amended.

708 (4) This section applies to trusts created on or after the
709 effective date of this code. Section 737.111, as in effect prior
710 to the effective date of this code, continues to apply to trusts
711 created before the effective date of this code.

712 736.0404 Trust purposes.--A trust may be created only to
713 the extent the purposes of the trust are lawful, not contrary to
714 public policy, and possible to achieve. A trust and its terms
715 must be for the benefit of its beneficiaries.

716 736.0405 Charitable purposes; enforcement.--

717 (1) A trust may be created for charitable purposes.
718 Charitable purposes include, but are not limited to, the relief
719 of poverty; the advancement of arts, sciences, education, or
720 religion; and the promotion of health, governmental, or
721 municipal purposes.

722 (2) If the terms of a charitable trust do not indicate a
723 particular charitable purpose or beneficiary, the court may
724 select one or more charitable purposes or beneficiaries. The
725 selection must be consistent with the settlor's intent to the
726 extent such intent can be ascertained.

727 (3) The settlor of a charitable trust, among others, has
728 standing to enforce the trust.

729 736.0406 Effect of fraud, duress, mistake, or undue
730 influence.--A trust is void if the creation of the trust is
731 procured by fraud, duress, mistake, or undue influence. Any part
732 of the trust is void if procured by such means, but the
733 remainder of the trust not procured by such means is valid if
734 the remainder is not invalid for other reasons.

735 736.0407 Evidence of oral trust.--Except as required by s.
736 736.0403 or a law other than this code, a trust need not be
737 evidenced by a trust instrument but the creation of an oral
738 trust and its terms may be established only by clear and
739 convincing evidence.

740 736.0408 Trust for care of an animal.--

741 (1) A trust may be created to provide for the care of an
742 animal alive during the settlor's lifetime. The trust terminates
743 on the death of the animal or, if the trust was created to

744 provide for the care of more than one animal alive during the
 745 settlor's lifetime, on the death of the last surviving animal.

746 (2) A trust authorized by this section may be enforced by
 747 a person appointed in the terms of the trust or, if no person is
 748 appointed, by a person appointed by the court. A person having
 749 an interest in the welfare of the animal may request the court
 750 to appoint a person to enforce the trust or to remove a person
 751 appointed.

752 (3) Property of a trust authorized by this section may be
 753 applied only to the intended use of the property, except to the
 754 extent the court determines that the value of the trust property
 755 exceeds the amount required for the intended use. Except as
 756 otherwise provided in the terms of the trust, property not
 757 required for the intended use must be distributed to the
 758 settlor, if then living, otherwise as part of the settlor's
 759 estate.

760 736.0409 Noncharitable trust without ascertainable
 761 beneficiary.--Except as otherwise provided in s. 736.0408 or by
 762 another provision of law, the following rules apply:

763 (1) A trust may be created for a noncharitable purpose
 764 without a definite or definitely ascertainable beneficiary or
 765 for a noncharitable but otherwise valid purpose to be selected
 766 by the trustee. The trust may not be enforced for more than 21
 767 years.

768 (2) A trust authorized by this section may be enforced by
 769 a person appointed in the terms of the trust or, if no person is
 770 appointed, by a person appointed by the court.

771 (3) Property of a trust authorized by this section may be
 772 applied only to the intended use of the property, except to the
 773 extent the court determines that the value of the trust property
 774 exceeds the amount required for the intended use. Except as
 775 otherwise provided in the terms of the trust, property not
 776 required for the intended use must be distributed to the
 777 settlor, if then living, otherwise as part of the settlor's
 778 estate.

779 736.0410 Modification or termination of trust; proceedings
 780 for disapproval of nonjudicial acts.--

781 (1) In addition to the methods of termination prescribed
 782 by ss. 736.04113-736.0414, a trust terminates to the extent the
 783 trust expires or is revoked or is properly distributed pursuant
 784 to the terms of the trust.

785 (2) A proceeding to disapprove a proposed modification or
 786 termination under s. 736.0412 or a trust combination or division
 787 under s. 736.0417 may be commenced by any beneficiary.

788 (3) A proceeding to disapprove a proposed termination
 789 under s. 736.0414(1) may be commenced by any qualified
 790 beneficiary.

791 736.04113 Judicial modification of irrevocable trust when
 792 modification is not inconsistent with settlor's purpose.--

793 (1) Upon the application of a trustee of the trust or any
 794 qualified beneficiary, a court at any time may modify the terms
 795 of a trust that is not then revocable in the manner provided in
 796 subsection (2), if:

797 (a) The purposes of the trust have been fulfilled or have
 798 become illegal, impossible, wasteful, or impracticable to
 799 fulfill;

800 (b) Because of circumstances not anticipated by the
 801 settlor, compliance with the terms of the trust would defeat or
 802 substantially impair the accomplishment of a material purpose of
 803 the trust; or

804 (c) A material purpose of the trust no longer exists.

805 (2) In modifying a trust under this section, a court may:

806 (a) Amend or change the terms of the trust, including
 807 terms governing distribution of the trust income or principal or
 808 terms governing administration of the trust;

809 (b) Terminate the trust in whole or in part;

810 (c) Direct or permit the trustee to do acts that are not
 811 authorized or that are prohibited by the terms of the trust; or

812 (d) Prohibit the trustee from performing acts that are
 813 permitted or required by the terms of the trust.

814 (3) In exercising discretion to modify a trust under this
 815 section:

816 (a) The court shall consider the terms and purposes of the
 817 trust, the facts and circumstances surrounding the creation of
 818 the trust, and extrinsic evidence relevant to the proposed
 819 modification.

820 (b) The court shall consider spendthrift provisions as a
 821 factor in making a decision but the court is not precluded from
 822 modifying a trust because the trust contains spendthrift
 823 provisions.

824 (4) The provisions of this section are in addition to, and
 825 not in derogation of, rights under the common law to modify,
 826 amend, terminate, or revoke trusts.

827 736.04115 Judicial modification of irrevocable trust when
 828 modification is in best interest of beneficiaries.--

829 (1) Without regard to the reasons for modification
 830 provided in s. 736.04113, if compliance with the terms of a
 831 trust is not in the best interests of the beneficiaries, upon
 832 the application of a trustee or any qualified beneficiary, a
 833 court may at any time modify a trust that is not then revocable
 834 as provided in s. 736.04113(2).

835 (2) In exercising discretion to modify a trust under this
 836 section:

837 (a) The court shall exercise discretion in a manner that
 838 conforms to the extent possible with the intent of the settlor,
 839 taking into account the current circumstances and best interests
 840 of the beneficiaries.

841 (b) The court shall consider the terms and purposes of the
 842 trust, the facts and circumstances surrounding the creation of
 843 the trust, and extrinsic evidence relevant to the proposed
 844 modification.

845 (c) The court shall consider spendthrift provisions as a
 846 factor in making a decision but the court is not precluded from
 847 modifying a trust because the trust contains spendthrift
 848 provisions.

849 (3) This section shall not apply to:

850 (a) Any trust created prior to January 1, 2001.

851 (b) Any trust created after December 31, 2000, if:

852 1. Under the terms of the trust, all beneficial interests
853 in the trust must vest or terminate within the period prescribed
854 by the rule against perpetuities in s. 689.225(2),
855 notwithstanding s. 689.225(2)(f).

856 2. The terms of the trust expressly prohibit judicial
857 modification.

858 (4) For purposes of subsection (3), a revocable trust
859 shall be treated as created when the right of revocation
860 terminates.

861 (5) The provisions of this section are in addition to, and
862 not in derogation of, rights under the common law to modify,
863 amend, terminate, or revoke trusts.

864 736.0412 Nonjudicial modification of irrevocable trust.--

865 (1) After the settlor's death, a trust may be modified at
866 any time as provided in s. 736.04113(2) upon the unanimous
867 agreement of the trustee and all qualified beneficiaries.

868 (2) Modification of a trust as authorized in this section
869 is not prohibited by a spendthrift clause or by a provision in
870 the trust instrument that prohibits amendment or revocation of
871 the trust.

872 (3) An agreement to modify a trust under this section is
873 binding on a beneficiary whose interest is represented by
874 another person under part III of this code.

875 (4) This section shall not apply to:

876 (a) Any trust created prior to January 1, 2001.

877 (b) Any trust created after December 31, 2000, if, under
878 the terms of the trust, all beneficial interests in the trust
879 must vest or terminate within the period prescribed by the rule

880 against perpetuities in s. 689.225(2), notwithstanding s.
881 689.225(2)(f), unless the terms of the trust expressly authorize
882 nonjudicial modification.

883 (c) Any trust for which a charitable deduction is allowed
884 or allowable under the Internal Revenue Code until the
885 termination of all charitable interests in the trust.

886 (5) For purposes of subsection (4), a revocable trust
887 shall be treated as created when the right of revocation
888 terminates.

889 (6) The provisions of this section are in addition to, and
890 not in derogation of, rights under the common law to modify,
891 amend, terminate, or revoke trusts.

892 736.0413 Cy pres.--

893 (1) If a particular charitable purpose becomes unlawful,
894 impracticable, impossible to achieve, or wasteful, the court may
895 apply the doctrine of cy pres to modify or terminate the trust
896 by directing that the trust property be applied or distributed,
897 in whole or in part, in a manner consistent with the settlor's
898 charitable purposes.

899 (2) A proceeding to modify or terminate a trust under this
900 section may be commenced by a settlor, a trustee, or any
901 qualified beneficiary.

902 736.0414 Modification or termination of uneconomic
903 trust.--

904 (1) After notice to the qualified beneficiaries, the
905 trustee of a trust consisting of trust property having a total
906 value less than \$100,000 may terminate the trust if the trustee

907 concludes that the value of the trust property is insufficient
 908 to justify the cost of administration.

909 (2) Upon application of a trustee or any qualified
 910 beneficiary, the court may modify or terminate a trust or remove
 911 the trustee and appoint a different trustee if the court
 912 determines that the value of the trust property is insufficient
 913 to justify the cost of administration.

914 (3) Upon termination of a trust under this section, the
 915 trustee shall distribute the trust property in a manner
 916 consistent with the purposes of the trust. The trustee may enter
 917 into agreements or make such other provisions that the trustee
 918 deems necessary or appropriate to protect the interests of the
 919 beneficiaries and the trustee and to carry out the intent and
 920 purposes of the trust.

921 (4) The existence of a spendthrift provision in the trust
 922 does not make this section inapplicable unless the trust
 923 instrument expressly provides that the trustee may not terminate
 924 the trust pursuant to this section.

925 (5) This section does not apply to an easement for
 926 conservation or preservation.

927 736.0415 Reformation to correct mistakes.--Upon
 928 application of a settlor or any interested person, the court may
 929 reform the terms of a trust, even if unambiguous, to conform the
 930 terms to the settlor's intent if it is proved by clear and
 931 convincing evidence that both the accomplishment of the
 932 settlor's intent and the terms of the trust were affected by a
 933 mistake of fact or law, whether in expression or inducement. In
 934 determining the settlor's original intent, the court may

935 consider evidence relevant to the settlor's intent even though
 936 the evidence contradicts an apparent plain meaning of the trust
 937 instrument.

938 736.0416 Modification to achieve settlor's tax
 939 objectives.--Upon application of any interested person, to
 940 achieve the settlor's tax objectives the court may modify the
 941 terms of a trust in a manner that is not contrary to the
 942 settlor's probable intent. The court may provide that the
 943 modification has retroactive effect.

944 736.0417 Combination and division of trusts.--

945 (1) After notice to the qualified beneficiaries, a trustee
 946 may combine two or more trusts into a single trust or divide a
 947 trust into two or more separate trusts, if the result does not
 948 impair rights of any beneficiary or adversely affect achievement
 949 of the purposes of the trusts or trust, respectively.

950 (2) Subject to the terms of the trust, the trustee may
 951 take into consideration differences in federal tax attributes
 952 and other pertinent factors in administering the trust property
 953 of any separate account or trust, in making applicable tax
 954 elections, and in making distributions. A separate trust created
 955 by severance must be treated as a separate trust for all
 956 purposes from the date on which the severance is effective. The
 957 effective date of the severance may be retroactive to a date
 958 before the date on which the trustee exercises such power.

959 Section 5. Part V of chapter 736, Florida Statutes,
 960 consisting of sections 736.0501, 736.0502, 736.0503, 736.0504,
 961 736.0505, 736.05053, 736.05055, 736.0506, and 736.0507, is
 962 created to read:

PART V

CREDITORS' CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS

736.0501 Rights of beneficiary's creditor or assignee.--To the extent a beneficiary's interest is not subject to a spendthrift provision, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or by other means. The court may limit the award to such relief as is appropriate under the circumstances.

736.0502 Spendthrift provision.--

(1) A spendthrift provision is valid only if the provision restrains both voluntary and involuntary transfer of a beneficiary's interest. This subsection does not apply to any trust in existence on the effective date of this code.

(2) A term of a trust providing that the interest of a beneficiary is held subject to a spendthrift trust, or words of similar import, is sufficient to restrain both voluntary and involuntary transfer of the beneficiary's interest.

(3) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and, except as otherwise provided in this part, a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before receipt of the interest or distribution by the beneficiary.

990 (4) A valid spendthrift provision does not prevent the
 991 appointment of interests through the exercise of a power of
 992 appointment.

993 736.0503 Exceptions to spendthrift provision.--

994 (1) As used in this section, the term "child" includes any
 995 person for whom an order or judgment for child support has been
 996 entered in this or any other state.

997 (2) To the extent provided in subsection (3), a
 998 spendthrift provision is unenforceable against:

999 (a) A beneficiary's child, spouse, or former spouse who
 1000 has a judgment or court order against the beneficiary for
 1001 support or maintenance.

1002 (b) A judgment creditor who has provided services for the
 1003 protection of a beneficiary's interest in the trust.

1004 (c) A claim of this state or the United States to the
 1005 extent a law of this state or a federal law so provides.

1006 (3) Except as otherwise provided in this subsection, a
 1007 claimant against which a spendthrift provision may not be
 1008 enforced may obtain from a court, or pursuant to the Uniform
 1009 Interstate Family Support Act, an order attaching present or
 1010 future distributions to or for the benefit of the beneficiary.
 1011 The court may limit the award to such relief as is appropriate
 1012 under the circumstances. Notwithstanding this subsection, the
 1013 remedies provided in this subsection apply to a claim by a
 1014 beneficiary's child, spouse, former spouse, or a judgment
 1015 creditor described in paragraph (2)(a) or paragraph (2)(b) only
 1016 as a last resort upon an initial showing that traditional
 1017 methods of enforcing the claim are insufficient.

1018 736.0504 Discretionary trusts; effect of standard.--

1019 (1) Whether or not a trust contains a spendthrift
 1020 provision, a creditor of a beneficiary may not compel a
 1021 distribution that is subject to the trustee's discretion, even
 1022 if:

1023 (a) The discretion is expressed in the form of a standard
 1024 of distribution; or

1025 (b) The trustee has abused the discretion.

1026 (2) If the trustee's discretion to make distributions for
 1027 the trustee's own benefit is limited by an ascertainable
 1028 standard, a creditor may not reach or compel distribution of the
 1029 beneficial interest except to the extent the interest would be
 1030 subject to the creditor's claim were the beneficiary not acting
 1031 as trustee.

1032 (3) This section does not limit the right of a beneficiary
 1033 to maintain a judicial proceeding against a trustee for an abuse
 1034 of discretion or failure to comply with a standard for
 1035 distribution.

1036 736.0505 Creditors' claims against settlor.--

1037 (1) Whether or not the terms of a trust contain a
 1038 spendthrift provision, the following rules apply:

1039 (a) During the lifetime of the settlor, the property of a
 1040 revocable trust is subject to claims of the settlor's creditors.

1041 (b) With respect to an irrevocable trust, a creditor or
 1042 assignee of the settlor may reach the maximum amount that can be
 1043 distributed to or for the settlor's benefit. If a trust has more
 1044 than one settlor, the amount the creditor or assignee of a
 1045 particular settlor may reach may not exceed the settlor's

1046 interest in the portion of the trust attributable to that
 1047 settlor's contribution.

1048 (2) For purposes of this section:

1049 (a) During the period the power may be exercised, the
 1050 holder of a power of withdrawal is treated in the same manner as
 1051 the settlor of a revocable trust to the extent of the property
 1052 subject to the power.

1053 (b) Upon the lapse, release, or waiver of the power, the
 1054 holder is treated as the settlor of the trust only to the extent
 1055 the value of the property affected by the lapse, release, or
 1056 waiver exceeds the greater of the amount specified in:

1057 1. Section 2041(b)(2) or s. 2514(e); or

1058 2. Section 2503(b),

1059
 1060 of the Internal Revenue Code of 1986, as amended.

1061 736.05053 Trustee's duty to pay expenses and obligations
 1062 of settlor's estate.--

1063 (1) A trustee of a trust described in s. 733.707(3) shall
 1064 pay to the personal representative of a settlor's estate any
 1065 amounts that the personal representative certifies in writing to
 1066 the trustee are required to pay the expenses of the
 1067 administration and obligations of the settlor's estate. Payments
 1068 made by a trustee, unless otherwise provided in the trust
 1069 instrument, must be charged as expenses of the trust without a
 1070 contribution from anyone. The interests of all beneficiaries of
 1071 such a trust are subject to the provisions of this subsection;
 1072 however, the payments must be made from assets, property, or the
 1073 proceeds of the assets or property, other than assets proscribed

1074 in s. 733.707(3), that are included in the settlor's gross
 1075 estate for federal estate tax purposes.

1076 (2) Unless a settlor provides by will, or designates in a
 1077 trust described in s. 733.707(3) funds or property passing under
 1078 the trust to be used as designated, the expenses of the
 1079 administration and obligations of the settlor's estate must be
 1080 paid from the trust in the following order:

1081 (a) Property of the residue of the trust remaining after
 1082 all distributions that are to be satisfied by reference to a
 1083 specific property or type of property, fund, or sum.

1084 (b) Property that is not to be distributed from specified
 1085 or identified property or a specified or identified item of
 1086 property.

1087 (c) Property that is to be distributed from specified or
 1088 identified property or a specified or identified item of
 1089 property.

1090 (3) Trust distributions that are to be satisfied from
 1091 specified or identified property must be classed as
 1092 distributions to be satisfied from the general assets of the
 1093 trust and not otherwise disposed of in the trust instrument on
 1094 the failure or insufficiency of funds or property from which
 1095 payment should be made, to the extent of the insufficiency.
 1096 Trust distributions given for valuable consideration abate with
 1097 other distributions of the same class only to the extent of the
 1098 excess over the value of the consideration until all others of
 1099 the same class are exhausted. Except as provided in this
 1100 section, trust distributions abate equally and ratably and
 1101 without preference or priority between real and personal

1102 property. When a specified or identified item of property that
 1103 has been designated for distribution in the trust instrument or
 1104 that is charged with a distribution is sold or taken by the
 1105 trustee, other beneficiaries shall contribute according to their
 1106 respective interests to the beneficiary whose property has been
 1107 sold or taken. Before distribution, the trustee shall determine
 1108 the amounts of the respective contributions and such amounts
 1109 must be paid or withheld before distribution is made.

1110 (4) The trustee shall pay the expenses of trust
 1111 administration, including compensation of trustees and attorneys
 1112 of the trustees, before and in preference to the expenses of the
 1113 administration and obligations of the settlor's estate.

1114 736.05055 Notice of trust.--

1115 (1) Upon the death of a settlor of a trust described in s.
 1116 733.707(3), the trustee must file a notice of trust with the
 1117 court of the county of the settlor's domicile and the court
 1118 having jurisdiction of the settlor's estate.

1119 (2) The notice of trust must contain the name of the
 1120 settlor, the settlor's date of death, the title of the trust, if
 1121 any, the date of the trust, and the name and address of the
 1122 trustee.

1123 (3) If the settlor's probate proceeding has been
 1124 commenced, the clerk shall notify the trustee in writing of the
 1125 date of the commencement of the probate proceeding and the file
 1126 number.

1127 (4) The clerk shall file and index the notice of trust in
 1128 the same manner as a caveat unless there exists a probate
 1129 proceeding for the settlor's estate, in which case the notice of

1130 trust must be filed in the probate proceeding and the clerk
 1131 shall send a copy to the personal representative.

1132 (5) The clerk shall send a copy of any caveat filed
 1133 regarding the settlor to the trustee, and the notice of trust to
 1134 any caveator, unless there is a probate proceeding pending and
 1135 the personal representative and the trustee are the same.

1136 (6) Any proceeding affecting the expenses of the
 1137 administration or obligations of the settlor's estate prior to
 1138 the trustee filing a notice of trust are binding on the trustee.

1139 (7) The trustee's failure to file the notice of trust does
 1140 not affect the trustee's obligation to pay expenses of
 1141 administration and obligations of the settlor's estate as
 1142 provided in s. 733.607(2).

1143 736.0506 Overdue distribution.--

1144 (1) As used in this section, the term "mandatory
 1145 distribution" means a distribution of income or principal the
 1146 trustee is required to make to a beneficiary under the terms of
 1147 the trust, including a distribution on termination of the trust.
 1148 The term does not include a distribution subject to the exercise
 1149 of the trustee's discretion even if:

1150 (a) The discretion is expressed in the form of a standard
 1151 of distribution; or

1152 (b) The terms of the trust authorizing a distribution
 1153 couple language of discretion with language of direction.

1154 (2) A creditor or assignee of a beneficiary may reach a
 1155 mandatory distribution of income or principal, including a
 1156 distribution upon termination of the trust, if the trustee has
 1157 not made the distribution to the beneficiary within a reasonable

1158 time after the designated distribution date, whether or not a
 1159 trust contains a spendthrift provision.

1160 736.0507 Personal obligations of trustee.--Except to the
 1161 extent of the trustee's interest in the trust other than as a
 1162 trustee, trust property is not subject to personal obligations
 1163 of the trustee, even if the trustee becomes insolvent or
 1164 bankrupt.

1165 Section 6. Part VI of chapter 736, Florida Statutes,
 1166 consisting of sections 736.0601, 736.0602, 736.0603, and
 1167 736.0604, is created to read:

1168
 1169 PART VI
 1170 REVOCABLE TRUSTS

1171
 1172 736.0601 Capacity of settlor of revocable trust.--The
 1173 capacity required to create, amend, revoke, or add property to a
 1174 revocable trust, or to direct the actions of the trustee of a
 1175 revocable trust, is the same as that required to make a will.

1176 736.0602 Revocation or amendment of revocable trust.--

1177 (1) Unless the terms of a trust expressly provide that the
 1178 trust is irrevocable, the settlor may revoke or amend the trust.

1179 This subsection does not apply to a trust created under an
 1180 instrument executed before the effective date of this code.

1181 (2) If a revocable trust is created or funded by more than
 1182 one settlor:

1183 (a) To the extent the trust consists of community
 1184 property, the trust may be revoked by either spouse acting alone
 1185 but may be amended only by joint action of both spouses.

1186 (b) To the extent the trust consists of property other
 1187 than community property, each settlor may revoke or amend the
 1188 trust with regard to the portion of the trust property
 1189 attributable to that settlor's contribution.

1190 (c) Upon the revocation or amendment of the trust by fewer
 1191 than all of the settlors, the trustee shall promptly notify the
 1192 other settlors of the revocation or amendment.

1193 (3) Subject to s. 736.0403(2), the settlor may revoke or
 1194 amend a revocable trust:

1195 (a) By substantial compliance with a method provided in
 1196 the terms of the trust; or

1197 (b) If the terms of the trust do not provide a method, by:

1198 1. A later will or codicil that expressly refers to the
 1199 trust or specifically devises property that would otherwise have
 1200 passed according to the terms of the trust; or

1201 2. Any other method manifesting clear and convincing
 1202 evidence of the settlor's intent.

1203 (4) Upon revocation of a revocable trust, the trustee
 1204 shall deliver the trust property as the settlor directs.

1205 (5) A settlor's powers with respect to revocation,
 1206 amendment, or distribution of trust property may be exercised by
 1207 an agent under a power of attorney only as authorized by s.
 1208 709.08.

1209 (6) A guardian of the property of the settlor may exercise
 1210 a settlor's powers with respect to revocation, amendment, or
 1211 distribution of trust property only as provided in s. 744.441.

1212 (7) A trustee who does not know that a trust has been
 1213 revoked or amended is not liable for distributions made and

1214 other actions taken on the assumption that the trust had not
 1215 been amended or revoked.

1216 736.0603 Settlor's powers; powers of withdrawal.--

1217 (1) While a trust is revocable, the duties of the trustee
 1218 are owed exclusively to the settlor.

1219 (2) During the period the power may be exercised, the
 1220 holder of a power of withdrawal has the rights of a settlor of a
 1221 revocable trust under this section to the extent of the property
 1222 subject to the power.

1223 736.0604 Limitation on action contesting validity of
 1224 revocable trust.--An action to contest the validity of a trust
 1225 that was revocable at the settlor's death is barred, if not
 1226 commenced within the earlier of:

1227 (1) The time as provided in chapter 95; or

1228 (2) Six months after the trustee sent the person a copy of
 1229 the trust instrument and a notice informing the person of the
 1230 trust's existence, of the trustee's name and address, and of the
 1231 time allowed for commencing a proceeding.

1232 Section 7. Part VII of chapter 736, Florida Statutes,
 1233 consisting of sections 736.0701, 736.0702, 736.0703, 736.0704,
 1234 736.0705, 736.0706, 736.0707, 736.0708, and 736.0709, is created
 1235 to read:

1236
 1237 PART VII

1238 OFFICE OF TRUSTEE

1239
 1240 736.0701 Accepting or declining trusteeship.--

1241 (1) Except as otherwise provided in subsection (3), a
 1242 person designated as trustee accepts the trusteeship:

1243 (a) By substantially complying with a method of acceptance
 1244 provided in the terms of the trust; or

1245 (b) If the terms of the trust do not provide a method or
 1246 the method provided in the terms is not expressly made
 1247 exclusive, by accepting delivery of the trust property,
 1248 exercising powers or performing duties as trustee, or otherwise
 1249 indicating acceptance of the trusteeship.

1250 (2) A person designated as trustee who has not accepted
 1251 the trusteeship may decline the trusteeship. A designated
 1252 trustee who does not accept the trusteeship within a reasonable
 1253 time after knowing of the designation is deemed to have declined
 1254 the trusteeship.

1255 (3) A person designated as trustee may, without accepting
 1256 the trusteeship:

1257 (a) Act to preserve the trust property if, within a
 1258 reasonable time after acting, the person sends to a qualified
 1259 beneficiary a written statement declining the trusteeship.

1260 (b) Inspect or investigate trust property to determine
 1261 potential liability under environmental or other law or for any
 1262 other purpose.

1263 736.0702 Trustee's bond.--

1264 (1) A trustee shall give bond to secure performance of the
 1265 trustee's duties only if the court finds that a bond is needed
 1266 to protect the interests of the beneficiaries or is required by
 1267 the terms of the trust and the court has not dispensed with the
 1268 requirement.

1269 (2) The court may specify the amount of a bond, the
 1270 trustee's liabilities under the bond, and whether sureties are
 1271 necessary. The court may modify or terminate a bond at any time.

1272 736.0703 Cotrustees.--

1273 (1) Cotrustees who are unable to reach a unanimous
 1274 decision may act by majority decision.

1275 (2) If a vacancy occurs in a cotrusteeship, the remaining
 1276 cotrustees or a majority of the remaining cotrustees may act for
 1277 the trust.

1278 (3) A cotrustee must participate in the performance of a
 1279 trustee's function unless the cotrustee is unavailable to
 1280 perform the function because of absence, illness,
 1281 disqualification under other provision of law, or other
 1282 temporary incapacity or the cotrustee has properly delegated the
 1283 performance of the function to another cotrustee.

1284 (4) If a cotrustee is unavailable to perform duties
 1285 because of absence, illness, disqualification under other law,
 1286 or other temporary incapacity, and prompt action is necessary to
 1287 achieve the purposes of the trust or to avoid injury to the
 1288 trust property, the remaining cotrustee or a majority of the
 1289 remaining cotrustees may act for the trust.

1290 (5) A cotrustee may not delegate to another cotrustee the
 1291 performance of a function the settlor reasonably expected the
 1292 cotrustees to perform jointly. A cotrustee may revoke a
 1293 delegation previously made.

1294 (6) Except as otherwise provided in subsection (7), a
 1295 cotrustee who does not join in an action of another cotrustee is
 1296 not liable for the action.

1297 (7) Each cotrustee shall exercise reasonable care to:
 1298 (a) Prevent a cotrustee from committing a breach of trust.
 1299 (b) Compel a cotrustee to redress a breach of trust.
 1300 (8) A dissenting cotrustee who joins in an action at the
 1301 direction of the majority of the cotrustees and who notifies any
 1302 cotrustee of the dissent at or before the time of the action is
 1303 not liable for the action.
 1304 736.0704 Vacancy in trusteeship; appointment of
 1305 successor.--
 1306 (1) A vacancy in a trusteeship occurs if:
 1307 (a) A person designated as trustee declines the
 1308 trusteeship;
 1309 (b) A person designated as trustee cannot be identified or
 1310 does not exist;
 1311 (c) A trustee resigns;
 1312 (d) A trustee is disqualified or removed;
 1313 (e) A trustee dies; or
 1314 (f) A trustee is adjudicated to be incapacitated.
 1315 (2) If one or more cotrustees remain in office, a vacancy
 1316 in a trusteeship need not be filled. A vacancy in a trusteeship
 1317 must be filled if the trust has no remaining trustee.
 1318 (3) A vacancy in a trusteeship of a noncharitable trust
 1319 that is required to be filled must be filled in the following
 1320 order of priority:
 1321 (a) By a person named or designated pursuant to the terms
 1322 of the trust to act as successor trustee.
 1323 (b) By a person appointed by unanimous agreement of the
 1324 qualified beneficiaries.

1325 (c) By a person appointed by the court.

1326 (4) A vacancy in a trusteeship of a charitable trust that
 1327 is required to be filled must be filled in the following order
 1328 of priority:

1329 (a) By a person named or designated pursuant to the terms
 1330 of the trust to act as successor trustee.

1331 (b) By a person selected by unanimous agreement of the
 1332 charitable organizations expressly designated to receive
 1333 distributions under the terms of the trust.

1334 (c) By a person appointed by the court.

1335 (5) The court may appoint an additional trustee or special
 1336 fiduciary whenever the court considers the appointment necessary
 1337 for the administration of the trust, whether or not a vacancy in
 1338 a trusteeship exists or is required to be filled.

1339 736.0705 Resignation of trustee.--

1340 (1) A trustee may resign:

1341 (a) Upon at least 30 days' notice to the qualified
 1342 beneficiaries, the settlor, if living, and all cotrustees; or

1343 (b) With the approval of the court.

1344 (2) In approving a resignation, the court may issue orders
 1345 and impose conditions reasonably necessary for the protection of
 1346 the trust property.

1347 (3) Any liability of a resigning trustee or of any
 1348 sureties on the trustee's bond for acts or omissions of the
 1349 trustee is not discharged or affected by the trustee's
 1350 resignation.

1351 736.0706 Removal of trustee.--

1352 (1) The settlor, a cotrustee, or a beneficiary may request
 1353 the court to remove a trustee or a trustee may be removed by the
 1354 court on the court's own initiative.

1355 (2) The court may remove a trustee if:

1356 (a) The trustee has committed a serious breach of trust;

1357 (b) The lack of cooperation among cotrustees substantially
 1358 impairs the administration of the trust;

1359 (c) Due to the unfitness, unwillingness, or persistent
 1360 failure of the trustee to administer the trust effectively, the
 1361 court determines that removal of the trustee best serves the
 1362 interests of the beneficiaries; or

1363 (d) There has been a substantial change of circumstances
 1364 or removal is requested by all of the qualified beneficiaries,
 1365 the court finds that removal of the trustee best serves the
 1366 interests of all of the beneficiaries and is not inconsistent
 1367 with a material purpose of the trust, and a suitable cotrustee
 1368 or successor trustee is available.

1369 (3) Pending a final decision on a request to remove a
 1370 trustee, or in lieu of or in addition to removing a trustee, the
 1371 court may order such appropriate relief under s. 736.1001(2) as
 1372 may be necessary to protect the trust property or the interests
 1373 of the beneficiaries.

1374 736.0707 Delivery of property by former trustee.--

1375 (1) Unless a cotrustee remains in office or the court
 1376 otherwise orders and until the trust property is delivered to a
 1377 successor trustee or other person entitled to the property, a
 1378 trustee who has resigned or been removed has the duties of a
 1379 trustee and the powers necessary to protect the trust property.

1380 (2) A trustee who has resigned or been removed shall
 1381 within a reasonable time deliver the trust property within the
 1382 trustee's possession to the cotrustee, successor trustee, or
 1383 other person entitled to the property, subject to the right of
 1384 the trustee to retain a reasonable reserve for the payment of
 1385 debts, expenses, and taxes. The provisions of this subsection
 1386 are in addition to and are not in derogation of the rights of a
 1387 removed or resigning trustee under the common law.

1388 736.0708 Compensation of trustee.--

1389 (1) If the terms of a trust do not specify the trustee's
 1390 compensation, a trustee is entitled to compensation that is
 1391 reasonable under the circumstances.

1392 (2) If the terms of a trust specify the trustee's
 1393 compensation, the trustee is entitled to be compensated as
 1394 specified but the court may allow more or less compensation if:

1395 (a) The duties of the trustee are substantially different
 1396 from those contemplated when the trust was created; or

1397 (b) The compensation specified by the terms of the trust
 1398 would be unreasonably low or high.

1399 (3) If the trustee has rendered other services in
 1400 connection with the administration of the trust, the trustee
 1401 shall also be allowed reasonable compensation for the other
 1402 services rendered in addition to reasonable compensation as
 1403 trustee.

1404 736.0709 Reimbursement of expenses.--

1405 (1) A trustee is entitled to be reimbursed out of the
 1406 trust property, with interest as appropriate, for reasonable

1407 expenses that were properly incurred in the administration of
 1408 the trust.

1409 (2) An advance by the trustee of money for the protection
 1410 of the trust gives rise to a lien against trust property to
 1411 secure reimbursement with reasonable interest.

1412 Section 8. Part VIII of chapter 736, Florida Statutes,
 1413 consisting of sections 736.0801, 736.0802, 736.0803, 736.0804,
 1414 736.0805, 736.0806, 736.0807, 736.0808, 736.0809, 736.0810,
 1415 736.08105, 736.0811, 736.0812, 736.08125, 736.0813, 736.08135,
 1416 736.0814, 736.08147, 736.0815, 736.0816, 736.08163, 736.08165,
 1417 and 736.0817, is created to read:

1418
 1419 PART VIII

1420 DUTIES AND POWERS OF TRUSTEE

1421
 1422 736.0801 Duty to administer trust.--Upon acceptance of a
 1423 trusteeship, the trustee shall administer the trust in good
 1424 faith, in accordance with its terms and purposes and the
 1425 interests of the beneficiaries, and in accordance with this
 1426 code.

1427 736.0802 Duty of loyalty.--

1428 (1) As between a trustee and the beneficiaries, a trustee
 1429 shall administer the trust solely in the interests of the
 1430 beneficiaries.

1431 (2) Subject to the rights of persons dealing with or
 1432 assisting the trustee as provided in s. 736.1016, a sale,
 1433 encumbrance, or other transaction involving the investment or
 1434 management of trust property entered into by the trustee for the

1435 trustee's own personal account or which is otherwise affected by
 1436 a conflict between the trustee's fiduciary and personal
 1437 interests is voidable by a beneficiary affected by the
 1438 transaction unless:

1439 (a) The transaction was authorized by the terms of the
 1440 trust;

1441 (b) The transaction was approved by the court;

1442 (c) The beneficiary did not commence a judicial proceeding
 1443 within the time allowed by s. 736.1008;

1444 (d) The beneficiary consented to the trustee's conduct,
 1445 ratified the transaction, or released the trustee in compliance
 1446 with s. 736.1012;

1447 (e) The transaction involves a contract entered into or
 1448 claim acquired by the trustee when that person had not become or
 1449 contemplated becoming trustee; or

1450 (f) The transaction was consented to in writing by a
 1451 settlor of the trust while the trust was revocable.

1452 (3) A sale, encumbrance, or other transaction involving
 1453 the investment or management of trust property is presumed to be
 1454 affected by a conflict between personal and fiduciary interests
 1455 if the sale, encumbrance, or other transaction is entered into
 1456 by the trustee with:

1457 (a) The trustee's spouse;

1458 (b) The trustee's descendants, siblings, parents, or their
 1459 spouses;

1460 (c) An officer, director, employee, agent, or attorney of
 1461 the trustee; or

1462 (d) A corporation or other person or enterprise in which
 1463 the trustee, or a person that owns a significant interest in the
 1464 trustee, has an interest that might affect the trustee's best
 1465 judgment.

1466 (4) A transaction not concerning trust property in which
 1467 the trustee engages in the trustee's individual capacity
 1468 involves a conflict between personal and fiduciary interests if
 1469 the transaction concerns an opportunity properly belonging to
 1470 the trust.

1471 (5) An investment by a trustee in securities of an
 1472 investment company or investment trust to which the trustee, or
 1473 an affiliate of the trustee, provides services in a capacity
 1474 other than as trustee is not presumed to be affected by a
 1475 conflict between personal and fiduciary interests if the
 1476 investment otherwise complies with chapter 518. In addition to
 1477 the trustee's compensation for acting as trustee, the trustee
 1478 may be compensated by the investment company or investment trust
 1479 for providing those services out of fees charged to the trust.
 1480 If the trustee receives compensation from the investment company
 1481 or investment trust for providing those services, the trustee
 1482 shall notify the qualified beneficiaries at least annually.

1483 (6) In voting shares of stock or in exercising powers of
 1484 control over similar interests in other forms of enterprise, the
 1485 trustee shall act in the best interests of the beneficiaries. If
 1486 the trust is the sole owner of a corporation or other form of
 1487 enterprise, the trustee shall elect or appoint directors or
 1488 other managers who will manage the corporation or enterprise in
 1489 the best interests of the beneficiaries.

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(7) This section does not preclude the following transactions, if fair to the beneficiaries:

(a) An agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;

(b) A payment of reasonable compensation to the trustee;

(c) A transaction between a trust and another trust, the decedent's estate, or a guardian of the property of which the trustee is a fiduciary or in which a beneficiary has an interest;

(d) A deposit of trust money in a regulated financial-service institution operated by the trustee; or

(e) An advance by the trustee of money for the protection of the trust.

(8) This section does not preclude the employment of persons, including, but not limited to, attorneys, accountants, investment advisers, or agents, even if they are the trustee, an affiliate of the trustee, or otherwise associated with the trustee, to advise or assist the trustee in the exercise of any of the trustee's powers and to pay reasonable compensation and costs incurred in connection with such employment from the assets of the trust; to act without independent investigation on their recommendations; and, instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary.

(9) The court may appoint a special fiduciary to act with respect to any proposed transaction that might violate this section if entered into by the trustee.

1517 (10) Payment of costs or attorney's fees incurred in any
 1518 trust proceeding from the assets of the trust may be made by the
 1519 trustee without the approval of any person and without court
 1520 authorization, except that court authorization shall be required
 1521 if an action has been filed or defense asserted against the
 1522 trustee based upon a breach of trust. Court authorization is not
 1523 required if the action or defense is later withdrawn or
 1524 dismissed by the party that is alleging a breach of trust or
 1525 resolved without a determination by the court that the trustee
 1526 has committed a breach of trust.

1527 736.0803 Impartiality.--If a trust has two or more
 1528 beneficiaries, the trustee shall act impartially in
 1529 administering the trust property, giving due regard to the
 1530 beneficiaries' respective interests.

1531 736.0804 Prudent administration.--A trustee shall
 1532 administer the trust as a prudent person would, by considering
 1533 the purposes, terms, distribution requirements, and other
 1534 circumstances of the trust. In satisfying this standard, the
 1535 trustee shall exercise reasonable care, skill, and caution.

1536 736.0805 Expenses of administration.--In administering a
 1537 trust, the trustee shall only incur expenses that are reasonable
 1538 in relation to the trust property, the purposes of the trust,
 1539 and the skills of the trustee.

1540 736.0806 Trustee's skills.--A trustee who has special
 1541 skills or expertise, or is named trustee in reliance on the
 1542 trustee's representation that the trustee has special skills or
 1543 expertise, shall use those special skills or expertise.

1544 736.0807 Delegation by trustee.--

1545 (1) A trustee may delegate duties and powers that a
 1546 prudent trustee of comparable skills could properly delegate
 1547 under the circumstances. The trustee shall exercise reasonable
 1548 care, skill, and caution in:

1549 (a) Selecting an agent.

1550 (b) Establishing the scope and terms of the delegation,
 1551 consistent with the purposes and terms of the trust.

1552 (c) Reviewing the agent's actions periodically, in order
 1553 to monitor the agent's performance and compliance with the terms
 1554 of the delegation.

1555 (2) In performing a delegated function, an agent owes a
 1556 duty to the trust to exercise reasonable care to comply with the
 1557 terms of the delegation.

1558 (3) A trustee who complies with subsection (1) is not
 1559 liable to the beneficiaries or to the trust for an action of the
 1560 agent to whom the function was delegated.

1561 (4) By accepting a delegation of powers or duties from the
 1562 trustee of a trust that is subject to the law of this state, an
 1563 agent submits to the jurisdiction of the courts of this state.

1564 736.0808 Powers to direct.--

1565 (1) Subject to ss. 736.0403(2) and 736.0602(3)(a), the
 1566 trustee may follow a direction of the settlor that is contrary
 1567 to the terms of the trust while a trust is revocable.

1568 (2) If the terms of a trust confer on a person other than
 1569 the settlor of a revocable trust, the power to direct certain
 1570 actions of the trustee, the trustee shall act in accordance with
 1571 an exercise of the power unless the attempted exercise is
 1572 manifestly contrary to the terms of the trust or the trustee

1573 knows the attempted exercise would constitute a serious breach
 1574 of a fiduciary duty that the person holding the power owes to
 1575 the beneficiaries of the trust.

1576 (3) The terms of a trust may confer on a trustee or other
 1577 person a power to direct the modification or termination of the
 1578 trust.

1579 (4) A person, other than a beneficiary, who holds a power
 1580 to direct is presumptively a fiduciary who, as such, is required
 1581 to act in good faith with regard to the purposes of the trust
 1582 and the interests of the beneficiaries. The holder of a power to
 1583 direct is liable for any loss that results from breach of a
 1584 fiduciary duty.

1585 736.0809 Control and protection of trust property.--A
 1586 trustee shall take reasonable steps to take control of and
 1587 protect the trust property.

1588 736.0810 Recordkeeping and identification of trust
 1589 property.--

1590 (1) A trustee shall keep clear, distinct, and accurate
 1591 records of the administration of the trust.

1592 (2) A trustee shall keep trust property separate from the
 1593 trustee's own property.

1594 (3) Except as otherwise provided in subsection (4), a
 1595 trustee shall cause the trust property to be designated so that
 1596 the interest of the trust, to the extent feasible, appears in
 1597 records maintained by a party other than a trustee or
 1598 beneficiary.

1599 (4) If the trustee maintains records clearly indicating
 1600 the respective interests, a trustee may invest as a whole the
 1601 property of two or more separate trusts.

1602 736.08105 Duty to ascertain marketable title of trust real
 1603 property.--A trustee holding title to real property received
 1604 from a settlor or estate shall not be required to obtain title
 1605 insurance or proof of marketable title until a marketable title
 1606 is required for a sale or conveyance of the real property.

1607 736.0811 Enforcement and defense of claims.--A trustee
 1608 shall take reasonable steps to enforce claims of the trust and
 1609 to defend claims against the trust.

1610 736.0812 Collecting trust property.--A trustee shall take
 1611 reasonable steps to compel a former trustee or other person to
 1612 deliver trust property to the trustee and, except as provided in
 1613 s. 736.08125, to redress a breach of trust known to the trustee
 1614 to have been committed by a former trustee.

1615 736.08125 Protection of successor trustees.--

1616 (1) A successor trustee is not personally liable for
 1617 actions taken by any prior trustee, nor does any successor
 1618 trustee have a duty to institute any proceeding against any
 1619 prior trustee, or file any claim against any prior trustee's
 1620 estate, for any of the prior trustee's actions as trustee under
 1621 any of the following circumstances:

1622 (a) As to a successor trustee who succeeds a trustee who
 1623 was also the settlor of a trust that was revocable during the
 1624 time that the settlor served as trustee;

1625 (b) As to any beneficiary who has waived any accounting
 1626 required by s. 736.0813, but only as to the periods included in
 1627 the waiver;

1628 (c) As to any beneficiary who has released the successor
 1629 trustee from the duty to institute any proceeding or file any
 1630 claim;

1631 (d) As to any person who is not an eligible beneficiary;
 1632 or

1633 (e) As to any eligible beneficiary:

1634 1. If a supermajority of the eligible beneficiaries have
 1635 released the successor trustee;

1636 2. If the eligible beneficiary has not delivered a written
 1637 request to the successor trustee to institute an action or file
 1638 a claim against the prior trustee within 6 months after the date
 1639 of the successor trustee's acceptance of the trust, if the
 1640 successor trustee has notified the eligible beneficiary in
 1641 writing of acceptance by the successor trustee in accordance
 1642 with 736.0813(1)(a) and that writing advises the beneficiary
 1643 that, unless the beneficiary delivers the written request within
 1644 6 months after the date of acceptance, the right to proceed
 1645 against the successor trustee will be barred pursuant to this
 1646 section; or

1647 3. For any action or claim that the eligible beneficiary
 1648 is barred from bringing against the prior trustee.

1649 (2) For the purposes of this section, the term:

1650 (a) "Eligible beneficiaries" means:

1651 1. At the time the determination is made, if there are one
 1652 or more beneficiaries as described in s. 736.0103(14)(c), the
 1653 beneficiaries described in s. 736.0103(14)(a) and (c); or

1654 2. If there is no beneficiary as described in s.
 1655 736.0103(14)(c), the beneficiaries described in s.
 1656 736.0103(14)(a) and (b).

1657 (b) "Supermajority of eligible beneficiaries" means at
 1658 least two-thirds in interest of the eligible beneficiaries if
 1659 the interests of the eligible beneficiaries are reasonably
 1660 ascertainable, otherwise, at least two-thirds in number of the
 1661 eligible beneficiaries.

1662 (3) Nothing in this section affects any liability of the
 1663 prior trustee or the right of the successor trustee or any
 1664 beneficiary to pursue an action or claim against the prior
 1665 trustee.

1666 736.0813 Duty to inform and account.--The trustee shall
 1667 keep the qualified beneficiaries of the trust reasonably
 1668 informed of the trust and its administration.

1669 (1) The trustee's duty to inform and account includes, but
 1670 is not limited to, the following:

1671 (a) Within 60 days after acceptance of the trust, the
 1672 trustee shall give notice to the qualified beneficiaries of the
 1673 acceptance of the trust and the full name and address of the
 1674 trustee.

1675 (b) Within 60 days after the date the trustee acquires
 1676 knowledge of the creation of an irrevocable trust, or the date
 1677 the trustee acquires knowledge that a formerly revocable trust
 1678 has become irrevocable, whether by the death of the settlor or

1679 otherwise, the trustee shall give notice to the qualified
 1680 beneficiaries of the trust's existence, the identity of the
 1681 settlor or settlors, the right to request a copy of the trust
 1682 instrument, and the right to accountings under this section.

1683 (c) Upon reasonable request, the trustee shall provide a
 1684 qualified beneficiary with a complete copy of the trust
 1685 instrument.

1686 (d) A trustee of an irrevocable trust shall provide a
 1687 trust accounting, as set forth in s. 736.08135, to each
 1688 qualified beneficiary annually and on termination of the trust
 1689 or on change of the trustee.

1690 (e) Upon reasonable request, the trustee shall provide a
 1691 qualified beneficiary with relevant information about the assets
 1692 and liabilities of the trust and the particulars relating to
 1693 administration.

1694
 1695 Paragraphs (a) and (b) do not apply to an irrevocable trust
 1696 created before the effective date of this code, or to a
 1697 revocable trust that becomes irrevocable before the effective
 1698 date of this code. Paragraph (a) does not apply to a trustee who
 1699 accepts a trusteeship before the effective date of this code.

1700 (2) A qualified beneficiary may waive the trustee's duty
 1701 to account under paragraph (1)(d). A qualified beneficiary may
 1702 withdraw a waiver previously given. Waivers and withdrawals of
 1703 prior waivers under this subsection must be in writing.
 1704 Withdrawals of prior waivers are effective only with respect to
 1705 accountings for future periods.

1706 (3) The representation provisions of part III apply with
 1707 respect to all rights of a qualified beneficiary under this
 1708 section.

1709 (4) As provided in s. 736.0603(1), the trustee's duties
 1710 under this section extend only to the settlor while a trust is
 1711 revocable.

1712 (5) This section applies to trust accountings rendered for
 1713 accounting periods beginning on or after January 1, 2008.

1714 736.08135 Trust accountings.--

1715 (1) A trust accounting must be a reasonably understandable
 1716 report from the date of the last accounting or, if none, from
 1717 the date on which the trustee became accountable, that
 1718 adequately discloses the information required in subsection (2).

1719 (2)(a) The accounting must begin with a statement
 1720 identifying the trust, the trustee furnishing the accounting,
 1721 and the time period covered by the accounting.

1722 (b) The accounting must show all cash and property
 1723 transactions and all significant transactions affecting
 1724 administration during the accounting period, including
 1725 compensation paid to the trustee and the trustee's agents. Gains
 1726 and losses realized during the accounting period and all
 1727 receipts and disbursements must be shown.

1728 (c) To the extent feasible, the accounting must identify
 1729 and value trust assets on hand at the close of the accounting
 1730 period. For each asset or class of assets reasonably capable of
 1731 valuation, the accounting shall contain two values, the asset
 1732 acquisition value or carrying value and the estimated current
 1733 value. The accounting must identify each known noncontingent

1734 liability with an estimated current amount of the liability if
 1735 known.

1736 (d) To the extent feasible, the accounting must show
 1737 significant transactions that do not affect the amount for which
 1738 the trustee is accountable, including name changes in investment
 1739 holdings, adjustments to carrying value, a change of custodial
 1740 institutions, and stock splits.

1741 (e) The accounting must reflect the allocation of
 1742 receipts, disbursements, accruals, or allowances between income
 1743 and principal when the allocation affects the interest of any
 1744 beneficiary of the trust.

1745 (f) The trustee shall include in the final accounting a
 1746 plan of distribution for any undistributed assets shown on the
 1747 final accounting.

1748 (3) This section applies to all trust accountings rendered
 1749 for any accounting periods beginning on or after January 1,
 1750 2003.

1751 736.0814 Discretionary powers; tax savings.--

1752 (1) Notwithstanding the breadth of discretion granted to a
 1753 trustee in the terms of the trust, including the use of such
 1754 terms as "absolute," "sole," or "uncontrolled," the trustee
 1755 shall exercise a discretionary power in good faith and in
 1756 accordance with the terms and purposes of the trust and the
 1757 interests of the beneficiaries. A court shall not determine that
 1758 a trustee abused its discretion merely because the court would
 1759 have exercised the discretion in a different manner or would not
 1760 have exercised the discretion.

1761 (2) Subject to subsection (3) and unless the terms of the
 1762 trust expressly indicate that a rule in this subsection does not
 1763 apply, a person who is a beneficiary and a trustee may not:

1764 (a) Make discretionary distributions of either principal
 1765 or income to or for the benefit of that trustee, other than
 1766 distributions subject to an ascertainable standard;

1767 (b) Make discretionary allocations of receipts or expenses
 1768 as between principal and income, unless the trustee acts in a
 1769 fiduciary capacity whereby the trustee has no power to enlarge
 1770 or shift any beneficial interest except as an incidental
 1771 consequence of the discharge of the trustee's fiduciary duties;

1772 (c) Make discretionary distributions of either principal
 1773 or income to satisfy any of the trustee's legal support
 1774 obligations; or

1775 (d) Exercise any other power, including, but not limited
 1776 to, the right to remove or to replace any trustee, so as to
 1777 cause the powers enumerated in paragraph (a), paragraph (b), or
 1778 paragraph (c) to be exercised on behalf of, or for the benefit
 1779 of, a beneficiary who is also a trustee.

1780 (3) Subsection (2) does not apply to:

1781 (a) A power held by the settlor of the trust;

1782 (b) A power held by the settlor's spouse who is the
 1783 trustee of a trust for which a marital deduction, as defined in
 1784 s. 2056(a) or s. 2523(a) of the Internal Revenue Code of 1986,
 1785 as amended, was previously allowed;

1786 (c) Any trust during any period that the trust may be
 1787 revoked or amended by its settlor; or

1788 (d) A trust if contributions to the trust qualify for the
 1789 annual exclusion under s. 2503(c) of the Internal Revenue Code
 1790 of 1986, as amended.

1791 (4) A power whose exercise is limited or prohibited by
 1792 subsection (2) may be exercised by the remaining trustees whose
 1793 exercise of the power is not so limited or prohibited. If there
 1794 is no trustee qualified to exercise the power, on petition by
 1795 any qualified beneficiary, the court may appoint an independent
 1796 trustee with authority to exercise the power.

1797 (5) A person who has the right to remove or to replace a
 1798 trustee does not possess nor may that person be deemed to
 1799 possess, by virtue of having that right, the powers of the
 1800 trustee that is subject to removal or to replacement.

1801 736.08147 Duty to distribute trust income.--If a will or
 1802 trust instrument granting income to the settlor's or testator's
 1803 spouse for life is silent as to the time of distribution of
 1804 income and the frequency of distributions, the trustee shall
 1805 distribute all net income, as defined in chapter 738, to the
 1806 spouse no less frequently than annually. This provision shall
 1807 apply to any trust established before, on, or after July 1,
 1808 2007, unless the trust instrument expressly directs or permits
 1809 net income to be distributed less frequently than annually.

1810 736.0815 General powers of trustee.--

1811 (1) A trustee, without authorization by the court, may,
 1812 except as limited or restricted by this code, exercise:

1813 (a) Powers conferred by the terms of the trust.

1814 (b) Except as limited by the terms of the trust:

1815 1. All powers over the trust property that an unmarried
 1816 competent owner has over individually owned property.

1817 2. Any other powers appropriate to achieve the proper
 1818 investment, management, and distribution of the trust property.

1819 3. Any other powers conferred by this code.

1820 (2) The exercise of a power is subject to the fiduciary
 1821 duties prescribed by this code.

1822 736.0816 Specific powers of trustee.--Except as limited or
 1823 restricted by this code, a trustee may:

1824 (1) Collect trust property and accept or reject additions
 1825 to the trust property from a settlor, including an asset in
 1826 which the trustee is personally interested, and hold property in
 1827 the name of a nominee or in other form without disclosure of the
 1828 trust so that title to the property may pass by delivery but the
 1829 trustee is liable for any act of the nominee in connection with
 1830 the property so held.

1831 (2) Acquire or sell property, for cash or on credit, at
 1832 public or private sale.

1833 (3) Acquire an undivided interest in a trust asset,
 1834 including, but not limited to, a money market mutual fund,
 1835 mutual fund, or common trust fund, in which asset the trustee
 1836 holds an undivided interest in any trust capacity, including any
 1837 money market or other mutual fund from which the trustee or any
 1838 affiliate or associate of the trustee is entitled to receive
 1839 reasonable compensation for providing necessary services as an
 1840 investment adviser, portfolio manager, or servicing agent. A
 1841 trustee or affiliate or associate of the trustee may receive
 1842 compensation for such services in addition to fees received for

1843 administering the trust provided such compensation is fully
 1844 disclosed in writing to all qualified beneficiaries.

1845 (4) Exchange, partition, or otherwise change the character
 1846 of trust property.

1847 (5) Deposit trust money in an account in a regulated
 1848 financial-service institution.

1849 (6) Borrow money, with or without security, and mortgage
 1850 or pledge trust property for a period within or extending beyond
 1851 the duration of the trust and advance money for the protection
 1852 of the trust.

1853 (7) With respect to an interest in a proprietorship,
 1854 partnership, limited liability company, business trust,
 1855 corporation, or other form of business or enterprise, continue
 1856 the business or other enterprise and take any action that may be
 1857 taken by shareholders, members, or property owners, including,
 1858 but not limited to, merging, dissolving, or otherwise changing
 1859 the form of business organization or contributing additional
 1860 capital.

1861 (8) With respect to stocks or other securities, exercise
 1862 the rights of an absolute owner, including, but not limited to,
 1863 the right to:

1864 (a) Vote, or give proxies to vote, with or without power
 1865 of substitution, or enter into or continue a voting trust
 1866 agreement.

1867 (b) Hold a security in the name of a nominee or in other
 1868 form without disclosure of the trust so that title may pass by
 1869 delivery.

1870 (c) Pay calls, assessments, and other sums chargeable or
 1871 accruing against the securities, and sell or exercise stock
 1872 subscription or conversion rights.

1873 (d) Deposit the securities with a depository or other
 1874 regulated financial-service institution.

1875 (9) With respect to an interest in real property,
 1876 construct, or make ordinary or extraordinary repairs to,
 1877 alterations to, or improvements in, buildings or other
 1878 structures, demolish improvements, raze existing or erect new
 1879 party walls or buildings, subdivide or develop land, dedicate
 1880 land to public use or grant public or private easements, and
 1881 make or vacate plats and adjust boundaries.

1882 (10) Enter into a lease for any purpose as lessor or
 1883 lessee, including a lease or other arrangement for exploration
 1884 and removal of natural resources, with or without the option to
 1885 purchase or renew, for a period within or extending beyond the
 1886 duration of the trust.

1887 (11) Grant an option involving a sale, lease, or other
 1888 disposition of trust property or acquire an option for the
 1889 acquisition of property, including an option exercisable beyond
 1890 the duration of the trust, and exercise an option so acquired.

1891 (12) Insure the property of the trust against damage or
 1892 loss and insure the trustee, trustee's agents, and beneficiaries
 1893 against liability arising from the administration of the trust.

1894 (13) Abandon or decline to administer property of no value
 1895 or of insufficient value to justify the collection or continued
 1896 administration of such property.

- 1897 (14) Pay or contest any claim, settle a claim by or
- 1898 against the trust, and release, in whole or in part, a claim
- 1899 belonging to the trust.
- 1900 (15) Pay taxes, assessments, compensation of the trustee
- 1901 and of employees and agents of the trust, and other expenses
- 1902 incurred in the administration of the trust.
- 1903 (16) Allocate items of income or expense to trust income
- 1904 or principal, as provided by law.
- 1905 (17) Exercise elections with respect to federal, state,
- 1906 and local taxes.
- 1907 (18) Select a mode of payment under any employee benefit
- 1908 or retirement plan, annuity, or life insurance payable to the
- 1909 trustee, exercise rights under such plan, annuity, or insurance,
- 1910 including exercise of the right to indemnification for expenses
- 1911 and against liabilities, and take appropriate action to collect
- 1912 the proceeds.
- 1913 (19) Make loans out of trust property, including, but not
- 1914 limited to, loans to a beneficiary on terms and conditions that
- 1915 are fair and reasonable under the circumstances, and the trustee
- 1916 has a lien on future distributions for repayment of those loans.
- 1917 (20) Employ persons, including, but not limited to,
- 1918 attorneys, accountants, investment advisers, or agents, even if
- 1919 they are the trustee, an affiliate of the trustee, or otherwise
- 1920 associated with the trustee, to advise or assist the trustee in
- 1921 the exercise of any of the trustee's powers and pay reasonable
- 1922 compensation and costs incurred in connection with such
- 1923 employment from the assets of the trust and act without

1924 independent investigation on the recommendations of such
 1925 persons.

1926 (21) Pay an amount distributable to a beneficiary who is
 1927 under a legal disability or who the trustee reasonably believes
 1928 is incapacitated, by paying the amount directly to the
 1929 beneficiary or applying the amount for the beneficiary's
 1930 benefit, or by:

1931 (a) Paying the amount to the beneficiary's guardian of the
 1932 property or, if the beneficiary does not have a guardian of the
 1933 property, the beneficiary's guardian of the person;

1934 (b) Paying the amount to the beneficiary's custodian under
 1935 a Uniform Transfers to Minors Act or custodial trustee under a
 1936 Uniform Custodial Trust Act, and, for that purpose, creating a
 1937 custodianship or custodial trust;

1938 (c) Paying the amount to an adult relative or other person
 1939 having legal or physical care or custody of the beneficiary, to
 1940 be expended on the beneficiary's behalf, if the trustee does not
 1941 know of a guardian of the property, guardian of the person,
 1942 custodian, or custodial trustee; or

1943 (d) Managing the amount as a separate fund on the
 1944 beneficiary's behalf, subject to the beneficiary's continuing
 1945 right to withdraw the distribution.

1946 (22) On distribution of trust property or the division or
 1947 termination of a trust, make distributions in divided or
 1948 undivided interests, allocate particular assets in proportionate
 1949 or disproportionate shares, value the trust property for those
 1950 purposes, and adjust for resulting differences in valuation.

1951 (23) Prosecute or defend, including appeals, an action,
 1952 claim, or judicial proceeding in any jurisdiction to protect
 1953 trust property or the trustee in the performance of the
 1954 trustee's duties.

1955 (24) Sign and deliver contracts and other instruments that
 1956 are useful to achieve or facilitate the exercise of the
 1957 trustee's powers.

1958 (25) On termination of the trust, exercise the powers
 1959 appropriate to wind up the administration of the trust and
 1960 distribute the trust property to the persons entitled to the
 1961 property, subject to the right of the trustee to retain a
 1962 reasonable reserve for the payment of debts, expenses, and
 1963 taxes.

1964 736.08163 Powers of trustees relating to environmental or
 1965 human health laws or to trust property contaminated with
 1966 hazardous or toxic substances; liability.--

1967 (1) From the creation of a trust until final distribution
 1968 of the assets from the trust, the trustee has, without court
 1969 authorization, the powers specified in subsection (2).

1970 (2) Unless otherwise provided in the trust instrument, a
 1971 trustee has the power, acting reasonably, to:

1972 (a) Inspect or investigate, or cause to be inspected or
 1973 investigated, property held by the trustee, including interests
 1974 in sole proprietorships, partnerships, or corporations and any
 1975 assets owned by any such business entity for the purpose of
 1976 determining compliance with an environmental law affecting that
 1977 property or to respond to an actual or threatened violation of
 1978 an environmental law affecting that property;

1979 (b) Take, on behalf of the trust, any action necessary to
 1980 prevent, abate, or otherwise remedy an actual or potential
 1981 violation of an environmental law affecting property held by the
 1982 trustee, before or after initiation of an enforcement action by
 1983 a governmental body;

1984 (c) Refuse to accept property in trust if the trustee
 1985 determines that any property to be donated or conveyed to the
 1986 trustee is contaminated with a hazardous substance or is being
 1987 used or has been used for an activity directly or indirectly
 1988 involving a hazardous substance, which circumstance could result
 1989 in liability to the trust or trustee or otherwise impair the
 1990 value of the assets to be held;

1991 (d) Settle or compromise at any time any claim against the
 1992 trust or trustee that may be asserted by a governmental body or
 1993 private party that involves the alleged violation of an
 1994 environmental law affecting property of any trust over which the
 1995 trustee has responsibility;

1996 (e) Disclaim any power granted by any document, law, or
 1997 rule of law that, in the sole judgment of the trustee, may cause
 1998 the trustee to incur personal liability, or the trust to incur
 1999 liability, under any environmental law;

2000 (f) Decline to serve as a trustee, or having undertaken to
 2001 serve as a trustee, resign at any time, if the trustee believes
 2002 there is or may be a conflict of interest in its fiduciary
 2003 capacity and in its individual capacity because of potential
 2004 claims or liabilities that may be asserted against the trustee
 2005 on behalf of the trust by reason of the type or condition of the
 2006 assets held; or

2007 (g) Charge against the income and principal of the trust
 2008 the cost of any inspection, investigation, review, abatement,
 2009 response, cleanup, or remedial action that this section
 2010 authorizes the trustee to take and, if the trust terminates or
 2011 closes or the trust property is transferred to another trustee,
 2012 hold assets sufficient to cover the cost of cleaning up any
 2013 known environmental problem.

2014 (3) A trustee is not personally liable to any beneficiary
 2015 or any other person for a decrease in value of assets in a trust
 2016 by reason of the trustee's compliance or efforts to comply with
 2017 an environmental law, specifically including any reporting
 2018 requirement under that law.

2019 (4) A trustee that acquires ownership or control of a
 2020 vessel or other property, without having owned, operated, or
 2021 materially participated in the management of that vessel or
 2022 property before assuming ownership or control as trustee, is not
 2023 considered an owner or operator for purposes of liability under
 2024 chapter 376, chapter 403, or any other environmental law. A
 2025 trustee that willfully, knowingly, or recklessly causes or
 2026 exacerbates a release or threatened release of a hazardous
 2027 substance is personally liable for the cost of the response, to
 2028 the extent that the release or threatened release is
 2029 attributable to the trustee's activities. This subsection does
 2030 not preclude the filing of claims against the assets that
 2031 constitute the trust held by the trustee or the filing of
 2032 actions against the trustee in its representative capacity and
 2033 in any such action, an award or judgment against the trustee
 2034 must be satisfied only from the assets of the trust.

2035 (5) The acceptance by the trustee of the property or a
 2036 failure by the trustee to inspect or investigate the property
 2037 does not create any inference as to whether there is liability
 2038 under an environmental law with respect to that property.

2039 (6) For the purposes of this section, the term "hazardous
 2040 substance" means a substance defined as hazardous or toxic, or
 2041 any contaminant, pollutant, or constituent thereof, or otherwise
 2042 regulated, by an environmental law.

2043 (7) This section does not apply to any trust created under
 2044 a document executed before July 1, 1995, unless the trust is
 2045 amendable and the settlor amends the trust at any time to
 2046 incorporate the provisions of this section.

2047 736.08165 Administration pending outcome of contest or
 2048 other proceeding.--

2049 (1) Pending the outcome of a proceeding filed to determine
 2050 the validity of all or part of a trust or the beneficiaries of
 2051 all or part of a trust, the trustee shall proceed with the
 2052 administration of the trust as if no proceeding had been
 2053 commenced, except no action may be taken and no distribution may
 2054 be made to a beneficiary in contravention of the rights of those
 2055 persons who may be affected by the outcome of the proceeding.

2056 (2) Upon motion of a party and after notice to interested
 2057 persons, a court, on good cause shown, may make an exception to
 2058 the prohibition under subsection (1) and authorize the trustee
 2059 to act or to distribute trust assets to a beneficiary subject to
 2060 any conditions the court, in the court's discretion, may impose,
 2061 including the posting of bond by the beneficiary.

2062 736.0817 Distribution on termination.--Upon the occurrence
 2063 of an event terminating or partially terminating a trust, the
 2064 trustee shall proceed expeditiously to distribute the trust
 2065 property to the persons entitled to the property, subject to the
 2066 right of the trustee to retain a reasonable reserve for the
 2067 payment of debts, expenses, and taxes. The provisions of this
 2068 section are in addition to and are not in derogation of the
 2069 rights of a trustee under the common law with respect to final
 2070 distribution of a trust.

2071 Section 9. Part IX of chapter 736, Florida Statutes,
 2072 consisting of section 736.0901, is created to read:

2074 PART IX
 2075 TRUST INVESTMENTS

2077 736.0901 Applicability of chapter 518.--A trustee shall
 2078 invest trust property in accordance with chapter 518.

2079 Section 10. Part X of chapter 736, Florida Statutes,
 2080 consisting of sections 736.1001, 736.1002, 736.1003, 736.1004,
 2081 736.1005, 736.1006, 736.1007, 736.1008, 736.1009, 736.1010,
 2082 736.1011, 736.1012, 736.1013, 736.1014, 736.1015, 736.1016,
 2083 736.1017, and 736.1018, is created to read:

2085 PART X
 2086 LIABILITY OF TRUSTEE AND RIGHTS OF PERSONS DEALING WITH TRUSTEE

2088 736.1001 Remedies for breach of trust.--

2089 (1) A violation by a trustee of a duty the trustee owes to
 2090 a beneficiary is a breach of trust.

2091 (2) To remedy a breach of trust that has occurred or may
 2092 occur, the court may:

2093 (a) Compel the trustee to perform the trustee's duties;

2094 (b) Enjoin the trustee from committing a breach of trust;

2095 (c) Compel the trustee to redress a breach of trust by
 2096 paying money or restoring property or by other means;

2097 (d) Order a trustee to account;

2098 (e) Appoint a special fiduciary to take possession of the
 2099 trust property and administer the trust;

2100 (f) Suspend the trustee;

2101 (g) Remove the trustee as provided in s. 736.706;

2102 (h) Reduce or deny compensation to the trustee;

2103 (i) Subject to s. 736.1016, void an act of the trustee,
 2104 impose a lien or a constructive trust on trust property, or
 2105 trace trust property wrongfully disposed of and recover the
 2106 property or its proceeds; or

2107 (j) Order any other appropriate relief.

2108 (3) As an illustration of the remedies available to the
 2109 court and without limiting the court's discretion as provided in
 2110 subsection (2), if a breach of trust results in the favoring of
 2111 any beneficiary to the detriment of any other beneficiary or
 2112 consists of an abuse of the trustee's discretion:

2113 (a) To the extent the breach of trust has resulted in no
 2114 distribution to a beneficiary or a distribution that is too
 2115 small, the court may require the trustee to pay from the trust
 2116 to the beneficiary an amount the court determines will restore

2117 the beneficiary, in whole or in part, to his or her appropriate
 2118 position.

2119 (b) To the extent the breach of trust has resulted in a
 2120 distribution to a beneficiary that is too large, the court may
 2121 restore the beneficiaries, the trust, or both, in whole or in
 2122 part, to their appropriate positions by requiring the trustee to
 2123 withhold an amount from one or more future distributions to the
 2124 beneficiary who received the distribution that was too large or
 2125 by requiring that beneficiary to return some or all of the
 2126 distribution to the trust.

2127 736.1002 Damages for breach of trust.--

2128 (1) A trustee who commits a breach of trust is liable for
 2129 the greater of:

2130 (a) The amount required to restore the value of the trust
 2131 property and trust distributions to what they would have been if
 2132 the breach had not occurred, including lost income, capital
 2133 gain, or appreciation that would have resulted from proper
 2134 administration; or

2135 (b) The profit the trustee made by reason of the breach.

2136 (2) Except as otherwise provided in this subsection, if
 2137 more than one person, including a trustee or trustees, is liable
 2138 to the beneficiaries for a breach of trust, each liable person
 2139 is entitled to pro rata contribution from the other person or
 2140 persons. A person is not entitled to contribution if the person
 2141 committed the breach of trust in bad faith. A person who
 2142 received a benefit from the breach of trust is not entitled to
 2143 contribution from another person to the extent of the benefit
 2144 received.

2145 (3) In determining the pro rata shares of liable persons
 2146 in the entire liability for a breach of trust:

2147 (a) Their relative degrees of fault shall be the basis for
 2148 allocation of liability.

2149 (b) If equity requires, the collective liability of some
 2150 as a group shall constitute a single share.

2151 (c) Principles of equity applicable to contribution
 2152 generally shall apply.

2153 (4) The right of contribution shall be enforced as
 2154 follows:

2155 (a) Contribution may be enforced by separate action,
 2156 whether or not judgment has been entered in an action against
 2157 two or more liable persons for the same breach of trust.

2158 (b) When a judgment has been entered in an action against
 2159 two or more liable persons for the same breach of trust,
 2160 contribution may be enforced in that action by judgment in favor
 2161 of one judgment defendant against any other judgment defendants
 2162 by motion upon notice to all parties to the action.

2163 (c) If there is a judgment for breach of trust against the
 2164 liable person seeking contribution, any separate action by that
 2165 person to enforce contribution must be commenced within 1 year
 2166 after the judgment has become final by lapse of time for appeal
 2167 or after appellate review.

2168 (d) If there is no judgment for the breach of trust
 2169 against the liable person seeking contribution, the person's
 2170 right of contribution is barred unless the person has:

2171 1. Discharged by payment the common liability within the
 2172 period of the statute of limitations applicable to the

2173 beneficiary's right of action against the liable person and the
 2174 person has commenced an action for contribution within 1 year
 2175 after payment, or

2176 2. Agreed, while action is pending against the liable
 2177 person, to discharge the common liability and has within 1 year
 2178 after the agreement paid the liability and commenced the
 2179 person's action for contribution.

2180 (5) The beneficiary's recovery of a judgment for breach of
 2181 trust against one liable person does not of itself discharge
 2182 other liable persons from liability for the breach of trust
 2183 unless the judgment is satisfied. The satisfaction of the
 2184 judgment does not impair any right of contribution.

2185 (6) The judgment of the court in determining the liability
 2186 of several defendants to the beneficiary for breach of trust is
 2187 binding upon such defendants in determining the right of such
 2188 defendants to contribution.

2189 (7) Subsection (2) applies to all causes of action for
 2190 breach of trust pending on July 1, 2007, under which causes of
 2191 action the right of contribution among persons jointly and
 2192 severally liable is involved and to all causes of action filed
 2193 after July 1, 2007.

2194 736.1003 Damages in absence of breach.--Absent a breach of
 2195 trust, a trustee is not liable to a beneficiary for a loss or
 2196 depreciation in the value of trust property or for not having
 2197 made a profit.

2198 736.1004 Attorney's fees and costs.--

2199 (1)(a) In all actions for breach of fiduciary duty or
 2200 challenging the exercise of, or failure to exercise, a trustee's
 2201 powers; and

2202 (b) In proceedings arising under ss. 736.0410-736.0417,
 2203
 2204 the court shall award taxable costs as in chancery actions,
 2205 including attorney fees and guardian ad litem fees.

2206 (2) When awarding taxable costs under this section,
 2207 including attorney fees and guardian ad litem fees, the court,
 2208 in its discretion, may direct payment from a party's interest,
 2209 if any, in the trust or enter a judgment that may be satisfied
 2210 from other property of the party, or both.

2211 736.1005 Attorney's fees for services to the trust.--

2212 (1) Any attorney who has rendered services to a trust may
 2213 be awarded reasonable compensation from the trust. The attorney
 2214 may apply to the court for an order awarding attorney's fees
 2215 and, after notice and service on the trustee and all
 2216 beneficiaries entitled to an accounting under s. 736.0813, the
 2217 court shall enter an order on the fee application.

2218 (2) Whenever attorney's fees are to be paid out of the
 2219 trust, the court, in its discretion, may direct from what part
 2220 of the trust the fees shall be paid.

2221 (3) Except when a trustee's interest may be adverse in a
 2222 particular matter, the attorney shall give reasonable notice in
 2223 writing to the trustee of the attorney's retention by an
 2224 interested person and the attorney's entitlement to fees
 2225 pursuant to this section. A court may reduce any fee award for
 2226 services rendered by the attorney prior to the date of actual

2227 notice to the trustee, if the actual notice date is later than a
 2228 date of reasonable notice. In exercising this discretion, the
 2229 court may exclude compensation for services rendered after the
 2230 reasonable notice date but prior to the date of actual notice.

2231 736.1006 Costs in trust proceedings.--

2232 (1) In all trust proceedings, costs may be awarded as in
 2233 chancery actions.

2234 (2) Whenever costs are to be paid out of the trust, the
 2235 court, in its discretion, may direct from what part of the trust
 2236 the costs shall be paid.

2237 736.1007 Trustee's attorney's fees.--

2238 (1) If the trustee of a revocable trust retains an
 2239 attorney to render legal services in connection with the initial
 2240 administration of the trust, the attorney is entitled to
 2241 reasonable compensation for those legal services, payable from
 2242 the assets of the trust without court order. The trustee and the
 2243 attorney may agree to compensation that is determined in a
 2244 manner or amount other than the manner or amount provided in
 2245 this section. The agreement is not binding on a person who bears
 2246 the impact of the compensation unless that person is a party to
 2247 or otherwise consents to be bound by the agreement. The
 2248 agreement may provide that the trustee is not individually
 2249 liable for the attorney's fees and costs.

2250 (2) Unless otherwise agreed, compensation based on the
 2251 value of the trust assets immediately following the settlor's
 2252 death and the income earned by the trust during initial
 2253 administration at the rate of 75 percent of the schedule
 2254 provided in s. 733.6171(3)(a)-(h) is presumed to be reasonable

2255 total compensation for ordinary services of all attorneys
 2256 employed generally to advise a trustee concerning the trustee's
 2257 duties in initial trust administration.

2258 (3) An attorney who is retained to render only limited and
 2259 specifically defined legal services shall be compensated as
 2260 provided in the retaining agreement. If the amount or method of
 2261 determining compensation is not provided in the agreement, the
 2262 attorney is entitled to a reasonable fee, taking into account
 2263 the factors set forth in subsection (6).

2264 (4) Ordinary services of the attorney in an initial trust
 2265 administration include legal advice and representation
 2266 concerning the trustee's duties relating to:

2267 (a) Review of the trust instrument and each amendment for
 2268 legal sufficiency and interpretation.

2269 (b) Implementation of substitution of the successor
 2270 trustee.

2271 (c) Persons who must or should be served with required
 2272 notices and the method and timing of such service.

2273 (d) The obligation of a successor to require a former
 2274 trustee to provide an accounting.

2275 (e) The trustee's duty to protect, insure, and manage
 2276 trust assets and the trustee's liability relating to these
 2277 duties.

2278 (f) The trustee's duty regarding investments imposed by
 2279 the prudent investor rule.

2280 (g) The trustee's obligation to inform and account to
 2281 beneficiaries and the method of satisfaction of such
 2282 obligations, the liability of the trust and trustee to the

2283 settlor's creditors, and the advisability or necessity for
 2284 probate proceedings to bar creditors.

2285 (h) Contributions due to the personal representative of
 2286 the settlor's estate for payment of expenses of administration
 2287 and obligations of the settlor's estate.

2288 (i) Identifying tax returns required to be filed by the
 2289 trustee, the trustee's liability for payment of taxes, and the
 2290 due date of returns.

2291 (j) Filing a nontaxable affidavit, if not filed by a
 2292 personal representative.

2293 (k) Order of payment of expenses of administration of the
 2294 trust and order and priority of abatement of trust
 2295 distributions.

2296 (l) Distribution of income or principal to beneficiaries
 2297 or funding of further trusts provided in the governing
 2298 instrument.

2299 (m) Preparation of any legal documents required to effect
 2300 distribution.

2301 (n) Fiduciary duties, avoidance of self-dealing, conflicts
 2302 of interest, duty of impartiality, and obligations to
 2303 beneficiaries.

2304 (o) If there is a conflict of interest between a trustee
 2305 who is a beneficiary and other beneficiaries of the trust,
 2306 advice to the trustee on limitations of certain authority of the
 2307 trustee regarding discretionary distributions or exercise of
 2308 certain powers and alternatives for appointment of an
 2309 independent trustee and appropriate procedures.

2310 (p) Procedures for the trustee's discharge from liability
 2311 for administration of the trust on termination or resignation.

2312 (5) In addition to the attorney's fees for ordinary
 2313 services, the attorney for the trustee shall be allowed further
 2314 reasonable compensation for any extraordinary service. What
 2315 constitutes an extraordinary service may vary depending on many
 2316 factors, including the size of the trust. Extraordinary services
 2317 may include, but are not limited to:

2318 (a) Involvement in a trust contest, trust construction, a
 2319 proceeding for determination of beneficiaries, a contested
 2320 claim, elective share proceedings, apportionment of estate
 2321 taxes, or other adversary proceedings or litigation by or
 2322 against the trust.

2323 (b) Representation of the trustee in an audit or any
 2324 proceeding for adjustment, determination, or collection of any
 2325 taxes.

2326 (c) Tax advice on postmortem tax planning, including, but
 2327 not limited to, disclaimer, renunciation of fiduciary
 2328 commission, alternate valuation date, allocation of
 2329 administrative expenses between tax returns, the QTIP or reverse
 2330 QTIP election, allocation of GST exemption, qualification for
 2331 Internal Revenue Code ss. 303 and 6166 privileges, deduction of
 2332 last illness expenses, distribution planning, asset basis
 2333 considerations, throwback rules, handling income or deductions
 2334 in respect of a decedent, valuation discounts, special use and
 2335 other valuation, handling employee benefit or retirement
 2336 proceeds, prompt assessment request, or request for release from
 2337 personal liability for payment of tax.

2338 (d) Review of an estate tax return and preparation or
 2339 review of other tax returns required to be filed by the trustee.

2340 (e) Preparation of decedent's federal estate tax return.
 2341 If this return is prepared by the attorney, a fee of one-half of
 2342 1 percent up to a value of \$10 million and one-fourth of 1
 2343 percent on the value in excess of \$10 million, of the gross
 2344 estate as finally determined for federal estate tax purposes, is
 2345 presumed to be reasonable compensation for the attorney for this
 2346 service. These fees shall include services for routine audit of
 2347 the return, not beyond the examining agent level, if required.

2348 (f) Purchase, sale, lease, or encumbrance of real property
 2349 by the trustee or involvement in zoning, land use,
 2350 environmental, or other similar matters.

2351 (g) Legal advice regarding carrying on of decedent's
 2352 business or conducting other commercial activity by the trustee.

2353 (h) Legal advice regarding claims for damage to the
 2354 environment or related procedures.

2355 (i) Legal advice regarding homestead status of trust real
 2356 property or proceedings involving the status.

2357 (j) Involvement in fiduciary, employee, or attorney
 2358 compensation disputes.

2359 (k) Considerations of special valuation of trust assets,
 2360 including discounts for blockage, minority interests, lack of
 2361 marketability, and environmental liability.

2362 (6) Upon petition of any interested person in a proceeding
 2363 to review the compensation paid or to be paid to the attorney
 2364 for the trustee, the court may increase or decrease the
 2365 compensation for ordinary services of the attorney for the

2366 trustee or award compensation for extraordinary services if the
 2367 facts and circumstances of the particular administration
 2368 warrant. In determining reasonable compensation, the court shall
 2369 consider all of the following factors giving such weight to each
 2370 as the court may determine to be appropriate:

2371 (a) The promptness, efficiency, and skill with which the
 2372 initial administration was handled by the attorney.

2373 (b) The responsibilities assumed by, and potential
 2374 liabilities of, the attorney.

2375 (c) The nature and value of the assets that are affected
 2376 by the decedent's death.

2377 (d) The benefits or detriments resulting to the trust or
 2378 the trust's beneficiaries from the attorney's services.

2379 (e) The complexity or simplicity of the administration and
 2380 the novelty of issues presented.

2381 (f) The attorney's participation in tax planning for the
 2382 estate, the trust, and the trust's beneficiaries and tax return
 2383 preparation or review and approval.

2384 (g) The nature of the trust assets, the expenses of
 2385 administration, and the claims payable by the trust and the
 2386 compensation paid to other professionals and fiduciaries.

2387 (h) Any delay in payment of the compensation after the
 2388 services were furnished.

2389 (i) Any other relevant factors.

2390 (7) The court may determine reasonable attorney's
 2391 compensation without receiving expert testimony. Any party may
 2392 offer expert testimony after notice to interested persons. If
 2393 expert testimony is offered, an expert witness fee may be

2394 awarded by the court and paid from the assets of the trust. The
 2395 court shall direct from what part of the trust the fee is to be
 2396 paid.

2397 (8) If a separate written agreement regarding compensation
 2398 exists between the attorney and the settlor, the attorney shall
 2399 furnish a copy to the trustee prior to commencement of
 2400 employment and, if employed, shall promptly file and serve a
 2401 copy on all interested persons. A separate agreement or a
 2402 provision in the trust suggesting or directing the trustee to
 2403 retain a specific attorney does not obligate the trustee to
 2404 employ the attorney or obligate the attorney to accept the
 2405 representation but, if the attorney who is a party to the
 2406 agreement or who drafted the trust is employed, the compensation
 2407 paid shall not exceed the compensation provided in the
 2408 agreement.

2409 (9) Court proceedings to determine compensation, if
 2410 required, are a part of the trust administration process and the
 2411 costs, including fees for the trustee's attorney, shall be
 2412 determined by the court and paid from the assets of the trust
 2413 unless the court finds the attorney's fees request to be
 2414 substantially unreasonable. The court shall direct from what
 2415 part of the trust the fees are to be paid.

2416 (10) As used in this section, the term "initial trust
 2417 administration" means administration of a revocable trust during
 2418 the period that begins with the death of the settlor and ends on
 2419 the final distribution of trust assets outright or to continuing
 2420 trusts created under the trust agreement but, if an estate tax
 2421 return is required, not until after issuance of an estate tax

2422 closing letter or other evidence of termination of the estate
 2423 tax proceeding. This initial period is not intended to include
 2424 continued regular administration of the trust.

2425 736.1008 Limitations on proceedings against trustees.--

2426 (1) Except as provided in subsection (2), all claims by a
 2427 beneficiary against a trustee for breach of trust are barred as
 2428 provided in chapter 95 as to:

2429 (a) All matters adequately disclosed in a trust disclosure
 2430 document issued by the trustee, with the limitations period
 2431 beginning on the date of receipt of adequate disclosure.

2432 (b) All matters not adequately disclosed in a trust
 2433 disclosure document if the trustee has issued a final trust
 2434 accounting and has given written notice to the beneficiary of
 2435 the availability of the trust records for examination and that
 2436 any claims with respect to matters not adequately disclosed may
 2437 be barred unless an action is commenced within the applicable
 2438 limitations period provided in chapter 95. The limitations
 2439 period begins on the date of receipt of the final trust
 2440 accounting and notice.

2441 (2) Unless sooner barred by adjudication, consent, or
 2442 limitations, a beneficiary is barred from bringing an action
 2443 against a trustee for breach of trust with respect to a matter
 2444 that was adequately disclosed in a trust disclosure document
 2445 unless a proceeding to assert the claim is commenced within 6
 2446 months after receipt from the trustee of the trust disclosure
 2447 document or a limitation notice that applies to that disclosure
 2448 document, whichever is received later.

2449 (3) When a trustee has not issued a final trust accounting
 2450 or has not given written notice to the beneficiary of the
 2451 availability of the trust records for examination and that
 2452 claims with respect to matters not adequately disclosed may be
 2453 barred, a claim against the trustee for breach of trust based on
 2454 a matter not adequately disclosed in a trust disclosure document
 2455 accrues when the beneficiary has actual knowledge of the
 2456 trustee's repudiation of the trust or adverse possession of
 2457 trust assets, and is barred as provided in chapter 95.

2458 (4) As used in this section, the term:

2459 (a) "Trust disclosure document" means a trust accounting
 2460 or any other written report of the trustee. A trust disclosure
 2461 document adequately discloses a matter if the document provides
 2462 sufficient information so that a beneficiary knows of a claim or
 2463 reasonably should have inquired into the existence of a claim
 2464 with respect to that matter.

2465 (b) "Trust accounting" means an accounting that adequately
 2466 discloses the information required by and that substantially
 2467 complies with the standards set forth in s. 736.08135.

2468 (c) "Limitation notice" means a written statement of the
 2469 trustee that an action by a beneficiary against the trustee for
 2470 breach of trust based on any matter adequately disclosed in a
 2471 trust disclosure document may be barred unless the action is
 2472 commenced within 6 months after receipt of the trust disclosure
 2473 document or receipt of a limitation notice that applies to that
 2474 trust disclosure document, whichever is later. A limitation
 2475 notice may but is not required to be in the following form: "An
 2476 action for breach of trust based on matters disclosed in a trust

2477 accounting or other written report of the trustee may be subject
 2478 to a 6-month statute of limitations from the receipt of the
 2479 trust accounting or other written report. If you have questions,
 2480 please consult your attorney."

2481 (5) For purposes of this section, a limitation notice
 2482 applies to a trust disclosure document when the limitation
 2483 notice is:

2484 (a) Contained as a part of the trust disclosure document
 2485 or as a part of another trust disclosure document received
 2486 within 1 year prior to the receipt of the latter trust
 2487 disclosure document;

2488 (b) Accompanied concurrently by the trust disclosure
 2489 document or by another trust disclosure document that was
 2490 received within 1 year prior to the receipt of the latter trust
 2491 disclosure document;

2492 (c) Delivered separately within 10 days after the delivery
 2493 of the trust disclosure document or of another trust disclosure
 2494 document that was received within 1 year prior to the receipt of
 2495 the latter trust disclosure document. For purposes of this
 2496 paragraph, a limitation notice is not delivered separately if
 2497 the notice is accompanied by another written communication,
 2498 other than a written communication that refers only to the
 2499 limitation notice; or

2500 (d) Received more than 10 days after the delivery of the
 2501 trust disclosure document but only if the limitation notice
 2502 references that trust disclosure document and:

2503 1. Offers to provide to the beneficiary on request another
 2504 copy of that trust disclosure document if the document was

2505 received by the beneficiary within 1 year prior to receipt of
 2506 the limitation notice; or

2507 2. Is accompanied by another copy of that trust disclosure
 2508 document if the trust disclosure document was received by the
 2509 beneficiary 1 year or more prior to the receipt of the
 2510 limitation notice.

2511 (6) This section applies to trust accountings for
 2512 accounting periods beginning on or after January 1, 2008, and to
 2513 written reports, other than trust accountings, received by a
 2514 beneficiary on or after January 1, 2008.

2515 736.1009 Reliance on trust instrument.--A trustee who acts
 2516 in reasonable reliance on the terms of the trust as expressed in
 2517 the trust instrument is not liable to a beneficiary for a breach
 2518 of trust to the extent the breach resulted from the reliance.

2519 736.1010 Event affecting administration or
 2520 distribution.--If the happening of an event, including marriage,
 2521 divorce, performance of educational requirements, or death,
 2522 affects the administration or distribution of a trust, a trustee
 2523 who has exercised reasonable care to ascertain the happening of
 2524 the event is not liable for a loss resulting from the trustee's
 2525 lack of knowledge.

2526 736.1011 Exculpation of trustee.--

2527 (1) A term of a trust relieving a trustee of liability for
 2528 breach of trust is unenforceable to the extent that the term:

2529 (a) Relieves the trustee of liability for breach of trust
 2530 committed in bad faith or with reckless indifference to the
 2531 purposes of the trust or the interests of the beneficiaries; or

2532 (b) Was inserted into the trust instrument as the result
 2533 of an abuse by the trustee of a fiduciary or confidential
 2534 relationship with the settlor.

2535 (2) An exculpatory term drafted or caused to be drafted by
 2536 the trustee is invalid as an abuse of a fiduciary or
 2537 confidential relationship unless the trustee proves that the
 2538 exculpatory term is fair under the circumstances and that the
 2539 term's existence and contents were adequately communicated
 2540 directly to the settlor.

2541 736.1012 Beneficiary's consent, release, or
 2542 ratification.--A trustee is not liable to a beneficiary for
 2543 breach of trust if the beneficiary consented to the conduct
 2544 constituting the breach, released the trustee from liability for
 2545 the breach, or ratified the transaction constituting the breach,
 2546 unless:

2547 (1) The consent, release, or ratification of the
 2548 beneficiary was induced by improper conduct of the trustee; or

2549 (2) At the time of the consent, release, or ratification,
 2550 the beneficiary did not know of the beneficiary's rights or of
 2551 the material facts relating to the breach.

2552 736.1013 Limitation on personal liability of trustee.--

2553 (1) Except as otherwise provided in the contract, a
 2554 trustee is not personally liable on a contract properly entered
 2555 into in the trustee's fiduciary capacity in the course of
 2556 administering the trust if the trustee in the contract disclosed
 2557 the fiduciary capacity.

2558 (2) A trustee is personally liable for torts committed in
 2559 the course of administering a trust or for obligations arising

2560 from ownership or control of trust property only if the trustee
 2561 is personally at fault.

2562 (3) A claim based on a contract entered into by a trustee
 2563 in the trustee's fiduciary capacity, on an obligation arising
 2564 from ownership or control of trust property, or on a tort
 2565 committed in the course of administering a trust may be asserted
 2566 in a judicial proceeding against the trustee in the trustee's
 2567 fiduciary capacity, whether or not the trustee is personally
 2568 liable for the claim.

2569 (4) Issues of liability between the trust estate and the
 2570 trustee individually may be determined in a proceeding for
 2571 accounting, surcharge, or indemnification or in any other
 2572 appropriate proceeding.

2573 736.1014 Limitations on actions against certain trusts.--

2574 (1) After the death of a settlor, no creditor of the
 2575 settlor may bring, maintain, or continue any direct action
 2576 against a trust described in s. 733.707(3), the trustee of the
 2577 trust, or any beneficiary of the trust that is dependent on the
 2578 individual liability of the settlor. Such claims and causes of
 2579 action against the settlor shall be presented and enforced
 2580 against the settlor's estate as provided in part VII of chapter
 2581 733 and the personal representative of the settlor's estate may
 2582 obtain payment from the trustee of a trust described in s.
 2583 733.707(3) as provided in ss. 733.607(2), 733.707(3), and
 2584 736.05053.

2585 (2) This section does not preclude a direct action against
 2586 a trust described in s. 733.707(3), the trustee of the trust, or

2587 a beneficiary of the trust that is not dependent on the
 2588 individual liability of the settlor.

2589 (3) This section does not affect the lien of any duly
 2590 recorded mortgage or security interest or the lien of any person
 2591 in possession of personal property or the right to foreclose and
 2592 enforce the mortgage or lien.

2593 736.1015 Interest as general partner.--

2594 (1) Unless personal liability is imposed in the contract,
 2595 a trustee who holds an interest as a general partner in a
 2596 general or limited partnership is not personally liable on a
 2597 contract entered into by the partnership after the trust's
 2598 acquisition of the interest if the fiduciary capacity was
 2599 disclosed in the contract or in a statement previously filed
 2600 pursuant to a Uniform Partnership Act or Uniform Limited
 2601 Partnership Act.

2602 (2) A trustee who holds an interest as a general partner
 2603 is not personally liable for torts committed by the partnership
 2604 or for obligations arising from ownership or control of the
 2605 interest unless the trustee is personally at fault.

2606 (3) If the trustee of a revocable trust holds an interest
 2607 as a general partner, the settlor is personally liable for
 2608 contracts and other obligations of the partnership as if the
 2609 settlor were a general partner.

2610 736.1016 Protection of person dealing with trustee.--

2611 (1) A person other than a beneficiary who in good faith
 2612 assists a trustee or who in good faith and for value deals with
 2613 a trustee, without knowledge that the trustee is exceeding or

2614 improperly exercising the trustee's powers, is protected from
 2615 liability as if the trustee properly exercised the power.

2616 (2) A person other than a beneficiary who in good faith
 2617 deals with a trustee is not required to inquire into the extent
 2618 of the trustee's powers or the propriety of their exercise.

2619 (3) A person who in good faith delivers assets to a
 2620 trustee need not ensure their proper application.

2621 (4) A person other than a beneficiary who in good faith
 2622 assists a former trustee or who in good faith and for value
 2623 deals with a former trustee, without knowledge that the
 2624 trusteeship has terminated, is protected from liability as if
 2625 the former trustee were still a trustee.

2626 (5) Comparable protective provisions of other laws
 2627 relating to commercial transactions or transfer of securities by
 2628 fiduciaries prevail over the protection provided by this
 2629 section.

2630 736.1017 Certification of trust.--

2631 (1) Instead of furnishing a copy of the trust instrument
 2632 to a person other than a beneficiary, the trustee may furnish to
 2633 the person a certification of trust containing the following
 2634 information:

2635 (a) The trust exists and the date the trust instrument was
 2636 executed.

2637 (b) The identity of the settlor.

2638 (c) The identity and address of the currently acting
 2639 trustee.

2640 (d) The powers of the trustee.

2641 (e) The revocability or irrevocability of the trust and
 2642 the identity of any person holding a power to revoke the trust.

2643 (f) The authority of cotrustees to sign or otherwise
 2644 authenticate and whether all or less than all are required in
 2645 order to exercise powers of the trustee.

2646 (g) The manner of taking title to trust property.

2647 (2) A certification of trust may be signed or otherwise
 2648 authenticated by any trustee.

2649 (3) A certification of trust must state that the trust has
 2650 not been revoked, modified, or amended in any manner that would
 2651 cause the representations contained in the certification of
 2652 trust to be incorrect.

2653 (4) A certification of trust need not contain the
 2654 dispositive terms of a trust.

2655 (5) A recipient of a certification of trust may require
 2656 the trustee to furnish copies of any excerpts from the original
 2657 trust instrument and later amendments that designate the trustee
 2658 and confer upon the trustee the power to act in the pending
 2659 transaction.

2660 (6) A person who acts in reliance on a certification of
 2661 trust without knowledge that the representations contained in
 2662 the certification are incorrect is not liable to any person for
 2663 so acting and may assume without inquiry the existence of the
 2664 facts contained in the certification. Knowledge of the terms of
 2665 the trust may not be inferred solely from the fact that a copy
 2666 of all or part of the trust instrument is held by the person
 2667 relying on the certification.

2696 (1) The intent of the settlor as expressed in the terms of
 2697 the trust controls the legal effect of the dispositions made in
 2698 the trust.

2699 (2) The rules of construction as expressed in this part
 2700 shall apply unless a contrary intent is indicated by the terms
 2701 of the trust.

2702 736.1102 Construction of generic terms.--Adopted persons
 2703 and persons born out of wedlock are included in class gift
 2704 terminology and terms of relationship, in accordance with rules
 2705 for determining relationships for purposes of intestate
 2706 succession.

2707 736.1103 Gifts to multigeneration classes to be per
 2708 stirpes.--Class gifts to descendants, issue, and other
 2709 multigeneration classes shall be per stirpes.

2710 736.1104 Killer not entitled to receive property or other
 2711 benefits by reason of victim's death.--

2712 (1) A beneficiary of a trust who unlawfully and
 2713 intentionally kills or unlawfully and intentionally participates
 2714 in procuring the death of the settlor or another person on whose
 2715 death such beneficiary's interest depends, is not entitled to
 2716 any trust interest, including homestead, dependent on the
 2717 victim's death and such interest shall devolve as though the
 2718 killer had predeceased the victim.

2719 (2) A final judgment of conviction of murder in any degree
 2720 is conclusive for the purposes of this section. In the absence
 2721 of a murder conviction in any degree, the court may determine by
 2722 the greater weight of the evidence whether the killing was
 2723 unlawful and intentional for purposes of this section.

2724 736.1105 Dissolution of marriage; effect on revocable
 2725 trust.--Unless the trust instrument or the judgment for
 2726 dissolution of marriage or divorce expressly provides otherwise,
 2727 if a revocable trust is executed by a husband or wife as settlor
 2728 prior to annulment of the marriage or entry of a judgment for
 2729 dissolution of marriage or divorce of the settlor from the
 2730 settlor's spouse, any provision of the trust that affects the
 2731 settlor's spouse will become void upon annulment of the marriage
 2732 or entry of the judgment of dissolution of marriage or divorce
 2733 and any such trust shall be administered and construed as if the
 2734 settlor's spouse had died on the date of the annulment or on
 2735 entry of the judgment for dissolution of marriage or divorce.

2736 736.1106 Antilapse; survivorship with respect to future
 2737 interests under terms of inter vivos and testamentary trusts;
 2738 substitute takers.--

2739 (1) As used in this section, the term:

2740 (a) "Beneficiary" means the beneficiary of a future
 2741 interest and includes a class member if the future interest is
 2742 in the form of a class gift.

2743 (b) "Distribution date," with respect to a future
 2744 interest, means the time when the future interest is to take
 2745 effect in possession or enjoyment. The distribution date need
 2746 not occur at the beginning or end of a calendar day, but can
 2747 occur at a time during the course of a day.

2748 (c) "Future interest" includes an alternative future
 2749 interest and a future interest in the form of a class gift.

2750 (d) "Future interest under the terms of a trust" means a
 2751 future interest created by an inter vivos or testamentary

2752 transfer to an existing trust or creating a trust or by an
 2753 exercise of a power of appointment to an existing trust
 2754 directing the continuance of an existing trust, designating a
 2755 beneficiary of an existing trust, or creating a trust.

2756 (e) "Surviving beneficiary" or "surviving descendant"
 2757 means a beneficiary or a descendant who did not predecease the
 2758 distribution date or is not deemed to have predeceased the
 2759 distribution date by operation of law.

2760 (2) A future interest under the terms of a trust is
 2761 contingent upon the beneficiary surviving the distribution date.
 2762 Unless a contrary intent appears in the trust instrument, if a
 2763 beneficiary of a future interest under the terms of a trust
 2764 fails to survive the distribution date, and the deceased
 2765 beneficiary leaves surviving descendants, a substitute gift is
 2766 created in the beneficiary's surviving descendants. They take
 2767 per stirpes the property to which the beneficiary would have
 2768 been entitled if the beneficiary had survived the distribution
 2769 date.

2770 (3) In the application of this section:

2771 (a) Words of survivorship attached to a future interest
 2772 are a sufficient indication of an intent contrary to the
 2773 application of this section.

2774 (b) A residuary clause in a will is not a sufficient
 2775 indication of an intent contrary to the application of this
 2776 section, whether or not the will specifically provides that
 2777 lapsed or failed devises are to pass under the residuary clause.

2778 (4) If, after the application of subsections (2) and (3),
 2779 there is no surviving taker, the property passes in the
 2780 following order:

2781 (a) If the future interest was created by the exercise of
 2782 a power of appointment, the property passes under the donor's
 2783 gift-in-default clause, if any, which clause is treated as
 2784 creating a future interest under the terms of a trust.

2785 (b) If no taker is produced by the application of
 2786 paragraph (a) and the trust was created in a nonresiduary devise
 2787 or appointment in the transferor's will, the property passes
 2788 under the residuary clause in the transferor's will. For
 2789 purposes of this section, the residuary clause is treated as
 2790 creating a future interest under the terms of a trust.

2791 (c) If no taker is produced by the application of
 2792 paragraph (a) or paragraph (b), the property passes to those
 2793 persons, including the state, and in such shares as would
 2794 succeed to the transferor's intestate estate under the intestate
 2795 succession law of the transferor's domicile if the transferor
 2796 died when the disposition is to take effect in possession or
 2797 enjoyment.

2798
 2799 For purposes of paragraphs (b) and (c), the term "transferor"
 2800 with respect to a future interest created by the exercise of a
 2801 power of appointment, means the donor if the power was a
 2802 nongeneral power and the donee if the power was a general power.

2803 (5) This section applies to all trusts other than trusts
 2804 that were irrevocable before the effective date of this code.

2805 736.1107 Change in securities; accessions;
 2806 nonademption.--A gift of specific securities, rather than their
 2807 equivalent value, entitles the beneficiary only to:

2808 (1) As much of the gifted securities of the same issuer
 2809 held by the trust estate at the time of the occurrence of the
 2810 event entitling the beneficiary to distribution.

2811 (2) Any additional or other securities of the same issuer
 2812 held by the trust estate because of action initiated by the
 2813 issuer, excluding any acquired by exercise of purchase options.

2814 (3) Securities of another issuer held by the trust estate
 2815 as a result of a merger, consolidation, reorganization, or other
 2816 similar action initiated by the original issuer.

2817 736.1108 Penalty clause for contest.--

2818 (1) A provision in a trust instrument purporting to
 2819 penalize any interested person for contesting the trust
 2820 instrument or instituting other proceedings relating to a trust
 2821 estate or trust assets is unenforceable.

2822 (2) This section applies to trusts created on or after
 2823 October 1, 1993. For purposes of this subsection, a revocable
 2824 trust shall be treated as created when the right of revocation
 2825 terminates.

2826 Section 12. Part XII of chapter 736, Florida Statutes,
 2827 consisting of sections 736.1201, 736.1202, 736.1203, 736.1204,
 2828 736.1205, 736.1206, 736.1207, 736.1208, 736.1209, and 736.1210,
 2829 is created to read:

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2831 PART XII

2832 CHARITABLE TRUSTS

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736.1201 Definitions.--As used in this part:

(1) "Charitable organization" means an organization described in s. 501(c)(3) of the Internal Revenue Code and exempt from tax under s. 501(a) of the Internal Revenue Code.

(2) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended.

(3) "Private foundation trust" means a trust, including a trust described in s. 4947(a)(1) of the Internal Revenue Code, as defined in s. 509(a) of the Internal Revenue Code.

(4) "Split interest trust" means a trust for individual and charitable beneficiaries that is subject to the provisions of s. 4947(a)(2) of the Internal Revenue Code.

(5) "State attorney" means the state attorney for the judicial circuit of the principal place of administration of the trust pursuant to s. 736.0108.

736.1202 Application of this part.--Except as otherwise provided in the trust, the provisions of this part apply to all private foundation trusts and split interest trusts, whether created or established before or after November 1, 1971, and to all trust assets acquired by the trustee before or after November 1, 1971.

736.1203 Trustee of a private foundation trust or a split interest trust.--Except as provided in s. 736.1205, the trustee of a private foundation trust or a split interest trust has the duties and powers conferred on the trustee by this part.

736.1204 Powers and duties of trustee of a private foundation trust or a split interest trust.--

2861 (1) In the exercise of a trustee's powers, including the
 2862 powers granted by this part, a trustee has a duty to act with
 2863 due regard to the trustee's obligation as a fiduciary, including
 2864 a duty not to exercise any power in such a way as to:

2865 (a) Deprive the trust of an otherwise available tax
 2866 exemption, deduction, or credit for tax purposes;

2867 (b) Deprive a donor of a trust asset or tax deduction or
 2868 credit; or

2869 (c) Operate to impose a tax on a donor, trust, or other
 2870 person.

2871
 2872 For purposes of this subsection, the term "tax" includes, but is
 2873 not limited to, any federal, state, or local excise, income,
 2874 gift, estate, or inheritance tax.

2875 (2) Except as provided in s. 736.1205, a trustee of a
 2876 private foundation trust shall make distributions at such time
 2877 and in such manner as not to subject the trust to tax under s.
 2878 4942 of the Internal Revenue Code.

2879 (3) Except as provided in subsection (4) and in s.
 2880 736.1205, a trustee of a private foundation trust, or a split
 2881 interest trust to the extent that the split interest trust is
 2882 subject to the provisions of s. 4947(a)(2) of the Internal
 2883 Revenue Code, in the exercise of the trustee's powers shall not:

2884 (a) Engage in any act of self-dealing as defined in s.
 2885 4941(d) of the Internal Revenue Code;

2886 (b) Retain any excess business holdings as defined in s.
 2887 4943(c) of the Internal Revenue Code;

2888 (c) Make any investments in a manner that subjects the
 2889 foundation to tax under s. 4944 of the Internal Revenue Code; or

2890 (d) Make any taxable expenditures as defined in s. 4945(d)
 2891 of the Internal Revenue Code.

2892 (4) Paragraphs (3)(b) and (c) shall not apply to a split
 2893 interest trust if:

2894 (a) All the interest from income, and none of the
 2895 remainder interest, of the trust is devoted solely to one or
 2896 more of the purposes described in s. 170(c)(2)(B) of the
 2897 Internal Revenue Code, and all amounts in the trust for which a
 2898 deduction was allowed under s. 170, s. 545(b)(2), s. 556(b)(2),
 2899 s. 642(c), s. 2055, s. 2106(a)(2), or s. 2522 of the Internal
 2900 Revenue Code have an aggregate fair market value of not more
 2901 than 60 percent of the aggregate fair market value of all
 2902 amounts in the trust; or

2903 (b) A deduction was allowed under s. 170, s. 545(b)(2), s.
 2904 556(b)(2), s. 642(c), s. 2055, s. 2106(a)(2), or s. 2522 of the
 2905 Internal Revenue Code for amounts payable under the terms of the
 2906 trust to every remainder beneficiary but not to any income
 2907 beneficiary.

2908 736.1205 Notice that this part does not apply.--In the
 2909 case of a power to make distributions, if the trustee determines
 2910 that the governing instrument contains provisions that are more
 2911 restrictive than s. 736.1204(2), or if the trust contains other
 2912 powers, inconsistent with the provisions of s. 736.1204(3) that
 2913 specifically direct acts by the trustee, the trustee shall
 2914 notify the state attorney when the trust becomes subject to this
 2915 part. Section 736.1204 does not apply to any trust for which

2916 notice has been given pursuant to this section unless the trust
 2917 is amended to comply with the terms of this part.

2918 736.1206 Power to amend trust instrument.--

2919 (1) In the case of a trust that is solely for a named
 2920 charitable organization or organizations and for which the
 2921 trustee does not possess any discretion concerning the
 2922 distribution of income or principal among two or more such
 2923 organizations, the trustee may amend the governing instrument to
 2924 comply with the provisions of s. 736.1204(2) with the consent of
 2925 the named charitable organization or organizations.

2926 (2) In the case of a charitable trust that is not subject
 2927 to the provisions of subsection (1), the trustee may amend the
 2928 governing instrument to comply with the provisions of s.
 2929 736.1204(2) with the consent of the state attorney.

2930 736.1207 Power of court to permit deviation.--This part
 2931 does not affect the power of a court to relieve a trustee from
 2932 any restrictions on the powers and duties that are placed on the
 2933 trustee by the governing instrument or applicable law for cause
 2934 shown and on complaint of the trustee, state attorney, or an
 2935 affected beneficiary and notice to the affected parties.

2936 736.1208 Release; property and persons affected; manner of
 2937 effecting.--

2938 (1) The trustee of a trust, all of the unexpired interests
 2939 in which are devoted to one or more charitable purposes, may
 2940 release a power to select charitable donees unless the creating
 2941 instrument provides otherwise.

2942 (2) The release of a power to select charitable donees may
 2943 apply to all or any part of the property subject to the power

2944 and may reduce or limit the charitable organizations, or classes
 2945 of charitable organizations, in whose favor the power is
 2946 exercisable.

2947 (3) A release shall be effected by a duly acknowledged
 2948 written instrument signed by the trustee and delivered as
 2949 provided in subsection (4).

2950 (4) Delivery of a release shall be accomplished as
 2951 follows:

2952 (a) If the release is accomplished by specifying a
 2953 charitable organization or organizations as beneficiary or
 2954 beneficiaries of the trust, by delivery of a copy of the release
 2955 to each designated charitable organization.

2956 (b) If the release is accomplished by reducing the class
 2957 of permissible charitable organizations, by delivery of a copy
 2958 of the release to the state attorney.

2959 (5) If a release is accomplished by specifying a public
 2960 charitable organization or organizations as beneficiary or
 2961 beneficiaries of the trust, the trust at all times thereafter
 2962 shall be operated exclusively for the benefit of, and be
 2963 supervised by, the specified public charitable organization or
 2964 organizations.

2965 736.1209 Election to come under this part.--With the
 2966 consent of that organization or organizations, a trustee of a
 2967 trust for the benefit of a public charitable organization or
 2968 organizations may come under s. 736.0838(5) by filing with the
 2969 state attorney an election, accompanied by the proof of required
 2970 consent. Thereafter the trust shall be subject to s.
 2971 736.1208(5).

2972 736.1210 Interpretation.--This part shall be interpreted
 2973 to effectuate the intent of the state to preserve, foster, and
 2974 encourage gifts to, or for the benefit of, charitable
 2975 organizations.

2976 Section 13. Part XIII of chapter 736, Florida Statutes,
 2977 consisting of sections 736.1301, 736.1302, and 736.1303, is
 2978 created to read:

2979
 2980 PART XIII
 2981 MISCELLANEOUS

2982
 2983 736.1301 Electronic records and signatures.--Any
 2984 provisions of this code governing the legal effect, validity, or
 2985 enforceability of electronic records or electronic signatures,
 2986 and of contracts formed or performed with the use of such
 2987 records or signatures, are deemed to conform to the requirements
 2988 of s. 102 of the Electronic Signatures in Global and National
 2989 Commerce Act, 15 U.S.C. s. 7002, and supersede, modify, and
 2990 limit the requirements of the Electronic Signatures in Global
 2991 and National Commerce Act.

2992 736.1302 Severability clause.--If any provision of this
 2993 code or its application to any person or circumstances is held
 2994 invalid, the invalidity does not affect other provisions or
 2995 applications of this code that can be given effect without the
 2996 invalid provision or application, and to this end the provisions
 2997 of this code are severable.

2998 736.1303 Application to existing relationships.--

2999 (1) Except as otherwise provided in this code, on July 1,
 3000 2007:

3001 (a) This code applies to all trusts created before, on, or
 3002 after such date.

3003 (b) This code applies to all judicial proceedings
 3004 concerning trusts commenced on or after such date.

3005 (c) This code applies to judicial proceedings concerning
 3006 trusts commenced before such date, unless the court finds that
 3007 application of a particular provision of this code would
 3008 substantially interfere with the effective conduct of the
 3009 judicial proceedings or prejudice the rights of the parties, in
 3010 which case the particular provision of this code does not apply
 3011 and the superseded law applies.

3012 (d) Any rule of construction or presumption provided in
 3013 this code applies to trust instruments executed before the
 3014 effective date of this code unless there is a clear indication
 3015 of a contrary intent in the terms of the trust.

3016 (e) An act done before such date is not affected by this
 3017 code.

3018 (2) If a right is acquired, extinguished, or barred on the
 3019 expiration of a prescribed period that has commenced to run
 3020 under any other law before July 1, 2007, that law continues to
 3021 apply to the right even if it has been repealed or superseded.

3022 Section 14. Paragraph (a) of subsection (5) of section
 3023 497.458, Florida Statutes, is amended to read:

3024 497.458 Disposition of proceeds received on contracts.--

3025 (5) The trustee of the trust established pursuant to this
 3026 section shall only have the power to:

3027 (a) Invest in investments as prescribed in s. 215.47 and
 3028 exercise the powers set forth in part VIII of chapter 736 ~~part~~
 3029 ~~IV of chapter 737~~, provided that the licensing authority may by
 3030 order require the trustee to liquidate or dispose of any
 3031 investment within 30 days after such order, or within such other
 3032 times as the order may direct. The licensing authority may issue
 3033 such order if it determines that the investment violates any
 3034 provision of this chapter or is not in the best interests of the
 3035 preneed contract holders whose contracts are secured by the
 3036 trust funds.

3037 Section 15. Subsection (2) of section 607.0802, Florida
 3038 Statutes, is amended to read:

3039 607.0802 Qualifications of directors.--

3040 (2) In the event that the eligibility to serve as a member
 3041 of the board of directors of a condominium association,
 3042 cooperative association, homeowners' association, or mobile home
 3043 owners' association is restricted to membership in such
 3044 association and membership is appurtenant to ownership of a
 3045 unit, parcel, or mobile home, a grantor of a trust described in
 3046 s. 733.707(3), or a qualified beneficiary as defined in s.
 3047 736.0103(14) ~~737.303(4)(b)~~ of a trust which owns a unit, parcel,
 3048 or mobile home shall be deemed a member of the association and
 3049 eligible to serve as a director of the condominium association,
 3050 cooperative association, homeowners' association, or mobile home
 3051 owners' association, provided that said beneficiary occupies the
 3052 unit, parcel, or mobile home.

3053 Section 16. Subsection (2) of section 617.0802, Florida
 3054 Statutes, is amended to read:

3055 617.0802 Qualifications of directors.--

3056 (2) In the event that the eligibility to serve as a member
 3057 of the board of directors of a condominium association,
 3058 cooperative association, homeowners' association, or mobile home
 3059 owners' association is restricted to membership in such
 3060 association and membership is appurtenant to ownership of a
 3061 unit, parcel, or mobile home, a grantor of a trust described in
 3062 s. 733.707(3), or a qualified beneficiary as defined in s.
 3063 736.0103(14) ~~737.303(4)(b)~~ of a trust which owns a unit, parcel,
 3064 or mobile home shall be deemed a member of the association and
 3065 eligible to serve as a director of the condominium association,
 3066 cooperative association, homeowners' association, or mobile home
 3067 owners' association, provided that said beneficiary occupies the
 3068 unit, parcel, or mobile home.

3069 Section 17. Subsection (6) of section 660.25, Florida
 3070 Statutes, is amended to read:

3071 660.25 Definitions.--Subject to other definitions
 3072 contained in other sections of this code, and unless the context
 3073 otherwise requires, in this chapter:

3074 (6) Terms used but not defined in this chapter, but which
 3075 are expressly defined in chapter 518, the financial institutions
 3076 codes, chapter 732, chapter 733, chapter 734, chapter 735,
 3077 chapter 736 ~~737~~, chapter 738, chapter 744, or chapter 747, shall
 3078 in this chapter, unless the context otherwise requires, have the
 3079 meanings ascribed to them in said chapters; and references in
 3080 any of said chapters to a "trust company" or to "trust
 3081 companies" shall include every trust department as defined in s.
 3082 658.12.

3083 Section 18. Paragraphs (a), (d), and (e) of subsection (1)
 3084 and subsections (2), (3), (9), and (10) of section 660.46,
 3085 Florida Statutes, are amended to read:

3086 660.46 Substitution of fiduciaries.--

3087 (1) The provisions of this section shall apply to the
 3088 transfer of fiduciary accounts by substitution, and for those
 3089 purposes these provisions shall constitute alternative
 3090 procedures to those provided or required by any other provisions
 3091 of law relating to the transfer of fiduciary accounts or the
 3092 substitution of persons acting or who are to act in a fiduciary
 3093 capacity. In this section, and only for its purposes, the term:

3094 (a) "Limitation notice" has the meaning ascribed in s.
 3095 736.1008(4) ~~737.307(3)~~.

3096 (d) "Trust accounting" has the meaning ascribed in s.
 3097 736.08135 ~~737.3035~~.

3098 (e) "Trust disclosure document" has the meaning ascribed
 3099 in s. 736.1008(4)(a) ~~737.307(2)~~.

3100 (2) Any original fiduciary and any proposed substitute
 3101 fiduciary may, with respect to any fiduciary account or accounts
 3102 which they shall mutually select, initiate proceedings by
 3103 joining in the filing of a petition in the circuit court,
 3104 requesting the substitution of the proposed substitute fiduciary
 3105 for the original fiduciary as to such fiduciary account or
 3106 accounts. The petition may be filed in the county in which the
 3107 main office of the original fiduciary is located and, except to
 3108 the extent inconsistent with the provisions of this section,
 3109 shall be governed by the Florida Rules of Civil Procedure;
 3110 however, if any fiduciary account is then the subject of a

3111 proceeding in a court in this state pursuant to the Florida
 3112 Probate Code, the Florida Guardianship Law, chapter 736 ~~737~~, or
 3113 chapter 747, the petition relating to such fiduciary account
 3114 shall be filed in that proceeding and shall be governed by the
 3115 procedural or other relevant rules applicable to such proceeding
 3116 except to the extent inconsistent with the provisions of this
 3117 section.

3118 (3) Unless a waiver or consent shall be filed in the
 3119 proceedings as provided in subsection (4), the provisions of s.
 3120 731.301(1) and (2) shall apply with respect to notice of the
 3121 proceedings to all persons who are then cofiduciaries with the
 3122 original fiduciary, other than a person joining as a petitioner
 3123 in the proceedings; to all persons named in the governing
 3124 instrument as substitutes or successors to the fiduciary
 3125 capacity of the original fiduciary; to the persons then living
 3126 who are entitled under the governing instrument to appoint a
 3127 substitute or successor to act in the fiduciary capacity of the
 3128 original fiduciary; to all vested beneficiaries of the fiduciary
 3129 account; and to all then-living originators of the governing
 3130 instrument. Unless a waiver or consent shall be filed in the
 3131 proceedings as provided in subsection (4), the provisions of s.
 3132 731.301 shall apply with respect to notice to all contingent
 3133 beneficiaries of the fiduciary account. Only the persons or
 3134 classes of persons described in the foregoing provisions of this
 3135 subsection shall be deemed to be interested persons for the
 3136 purposes of this section and the proceedings and notices
 3137 provided for in this section; and the provisions of ss.
 3138 731.301(3) and 731.303(3) and ~~(4)~~ and ~~(5)~~ part III of chapter

3139 736, relating to notice requirements, the effect of notice, and
 3140 representation of interests, shall apply to the proceedings
 3141 provided for in this section.

3142 (9) Unless previously or otherwise barred by adjudication,
 3143 waiver, consent, limitation, or the provisions of subsection
 3144 (8), an action for breach of trust or breach of fiduciary duties
 3145 or responsibilities against an original fiduciary in whose place
 3146 and stead another trust company or trust department has been
 3147 substituted pursuant to the provisions of this section is barred
 3148 for any beneficiary who has received a trust disclosure document
 3149 adequately disclosing the matter unless a proceeding to assert
 3150 the claim is commenced within 6 months after receipt of the
 3151 trust disclosure document or the limitation notice that applies
 3152 to the trust disclosure document, whichever is received later.
 3153 In any event, and notwithstanding lack of adequate disclosure,
 3154 all claims against such original fiduciary which has complied
 3155 with the requirements of s. 736.1008 ~~issued a final trust~~
 3156 ~~disclosure document received by the beneficiary and has informed~~
 3157 ~~the beneficiary of the location and availability of records for~~
 3158 ~~his or her examination~~ are barred as provided in chapter 95.
 3159 Section 736.1008(4)(a) and (c) ~~737.307(2) and (3)~~ applies to
 3160 this subsection.

3161 (10) A beneficiary has received a final trust disclosure
 3162 document or a limitation notice if, when the beneficiary is an
 3163 adult, it is received by him or her or if, when the beneficiary
 3164 is a minor or a disabled person, it is received by his or her
 3165 representative as provided in part III of chapter 736 ~~defined in~~
 3166 ~~s. 731.303~~.

3167 Section 19. Section 660.418, Florida Statutes, is amended
 3168 to read:

3169 660.418 Investment of fiduciary funds in syndicate
 3170 securities.--Notwithstanding any other provision of law, any
 3171 financial institution with fiduciary powers may, in its
 3172 fiduciary capacity, purchase bonds or other securities
 3173 underwritten or otherwise distributed by the financial
 3174 institution or by a syndicate that includes the financial
 3175 institution, or an affiliate of the financial institution,
 3176 provided that such purchase is made through a licensed
 3177 securities dealer, is otherwise prudent, and is not prohibited
 3178 by the instrument governing the fiduciary relationship and that
 3179 disclosure is made at least annually to those persons entitled
 3180 to a statement of accounts pursuant to s. 736.0813 ~~737.303(4)~~
 3181 indicating that such securities have been or may be purchased.
 3182 This section applies to purchases of bonds or other securities
 3183 made at the time of the initial offering of such bonds or
 3184 securities or at any time after such initial offering.

3185 Section 20. Subsection (5) of section 689.071, Florida
 3186 Statutes, is amended to read:

3187 689.071 Land trusts transferring interests in real estate;
 3188 ownership vests in trustee.--

3189 (5) In addition to any other limitation on personal
 3190 liability existing pursuant to statute or otherwise, the
 3191 provisions of s. 736.1013 ~~737.306~~ apply to the trustee of a land
 3192 trust created pursuant to this section.

3193 Section 21. Subsections (1) and (4) of section 689.075,
 3194 Florida Statutes, are amended to read:

3195 689.075 Inter vivos trusts; powers retained by settlor.--
 3196 (1) A trust which is otherwise valid and which complies
 3197 with s. 736.0403 ~~737.111~~, including, but not limited to, a trust
 3198 the principal of which is composed of real property, intangible
 3199 personal property, tangible personal property, the possible
 3200 expectancy of receiving as a named beneficiary death benefits as
 3201 described in s. 733.808, or any combination thereof, and which
 3202 has been created by a written instrument shall not be held
 3203 invalid or an attempted testamentary disposition for any one or
 3204 more of the following reasons:
 3205 (a) Because the settlor or another person or both possess
 3206 the power to revoke, amend, alter, or modify the trust in whole
 3207 or in part;
 3208 (b) Because the settlor or another person or both possess
 3209 the power to appoint by deed or will the persons and
 3210 organizations to whom the income shall be paid or the principal
 3211 distributed;
 3212 (c) Because the settlor or another person or both possess
 3213 the power to add to, or withdraw from, the trust all or any part
 3214 of the principal or income at one time or at different times;
 3215 (d) Because the settlor or another person or both possess
 3216 the power to remove the trustee or trustees and appoint a
 3217 successor trustee or trustees;
 3218 (e) Because the settlor or another person or both possess
 3219 the power to control the trustee or trustees in the
 3220 administration of the trust;

3221 (f) Because the settlor has retained the right to receive
 3222 all or part of the income of the trust during her or his life or
 3223 for any part thereof; or

3224 (g) Because the settlor is, at the time of the execution
 3225 of the instrument, or thereafter becomes, sole trustee.

3226 (4) This section shall be applicable to trusts executed
 3227 before or after July 1, 1969, by persons who are living on or
 3228 after said date. ~~However, the requirement of conformity with the~~
 3229 ~~formalities for the execution of wills as found in paragraph~~
 3230 ~~(1)(g) shall not be imposed upon any trust executed prior to~~
 3231 ~~July 1, 1969.~~

3232 Section 22. Section 689.175, Florida Statutes, is created
 3233 to read:

3234 689.175 Worthier title doctrine abolished.--The doctrine
 3235 of worthier title is abolished as a rule of law and as a rule of
 3236 construction. Language in a governing instrument describing the
 3237 beneficiaries of a disposition as the transferor's "heirs,"
 3238 "heirs at law," "next of kin," "distributees," "relatives," or
 3239 "family," or language of similar import, does not create or
 3240 presumptively create a reversionary interest in the transferor.

3241 Section 23. Subsection (8) of section 709.08, Florida
 3242 Statutes, is amended to read:

3243 709.08 Durable power of attorney.--

3244 (8) STANDARD OF CARE.--Except as otherwise provided in
 3245 paragraph (4)(e), an attorney in fact is a fiduciary who must
 3246 observe the standards of care applicable to trustees as
 3247 described in s. 736.0901 ~~737.302~~. The attorney in fact is not
 3248 liable to third parties for any act pursuant to the durable

3249 power of attorney if the act was authorized at the time. If the
 3250 exercise of the power is improper, the attorney in fact is
 3251 liable to interested persons as described in s. 731.201 for
 3252 damage or loss resulting from a breach of fiduciary duty by the
 3253 attorney in fact to the same extent as the trustee of an express
 3254 trust.

3255 Section 24. Paragraph (c) of subsection (2) of section
 3256 721.08, Florida Statutes, is amended to read:

3257 721.08 Escrow accounts; nondisturbance instruments;
 3258 alternate security arrangements; transfer of legal title.--

3259 (2) One hundred percent of all funds or other property
 3260 which is received from or on behalf of purchasers of the
 3261 timeshare plan or timeshare interest prior to the occurrence of
 3262 events required in this subsection shall be deposited pursuant
 3263 to an escrow agreement approved by the division. The funds or
 3264 other property may be released from escrow only as follows:

3265 (c) Compliance with conditions.--

3266 1. Timeshare licenses.--If the timeshare plan is one in
 3267 which timeshare licenses are to be sold and no cancellation or
 3268 default has occurred, the escrow agent may release the escrowed
 3269 funds or other property to or on the order of the developer upon
 3270 presentation of:

3271 a. An affidavit by the developer that all of the following
 3272 conditions have been met:

3273 (I) Expiration of the cancellation period.

3274 (II) Completion of construction.

3275 (III) Closing.

3276 (IV) Either:

3277 (A) Execution, delivery, and recordation by each
 3278 interestholder of the nondisturbance and notice to creditors
 3279 instrument, as described in this section; or

3280 (B) Transfer by the developer of legal title to the
 3281 subject accommodations and facilities, or all use rights
 3282 therein, into a trust satisfying the requirements of
 3283 subparagraph 4. and the execution, delivery, and recordation by
 3284 each other interestholder of the nondisturbance and notice to
 3285 creditors instrument, as described in this section.

3286 b. A certified copy of each recorded nondisturbance and
 3287 notice to creditors instrument.

3288 c. One of the following:

3289 (I) A copy of a memorandum of agreement, as defined in s.
 3290 721.05, together with satisfactory evidence that the original
 3291 memorandum of agreement has been irretrievably delivered for
 3292 recording to the appropriate official responsible for
 3293 maintaining the public records in the county in which the
 3294 subject accommodations and facilities are located. The original
 3295 memorandum of agreement must be recorded within 180 days after
 3296 the date on which the purchaser executed her or his purchase
 3297 agreement.

3298 (II) A notice delivered for recording to the appropriate
 3299 official responsible for maintaining the public records in each
 3300 county in which the subject accommodations and facilities are
 3301 located notifying all persons of the identity of an independent
 3302 escrow agent or trustee satisfying the requirements of
 3303 subparagraph 4. that shall maintain separate books and records,
 3304 in accordance with good accounting practices, for the timeshare

3305 plan in which timeshare licenses are to be sold. The books and
 3306 records shall indicate each accommodation and facility that is
 3307 subject to such a timeshare plan and each purchaser of a
 3308 timeshare license in the timeshare plan.

3309 2. Timeshare estates.--If the timeshare plan is one in
 3310 which timeshare estates are to be sold and no cancellation or
 3311 default has occurred, the escrow agent may release the escrowed
 3312 funds or other property to or on the order of the developer upon
 3313 presentation of:

3314 a. An affidavit by the developer that all of the following
 3315 conditions have been met:

3316 (I) Expiration of the cancellation period.

3317 (II) Completion of construction.

3318 (III) Closing.

3319 b. If the timeshare estate is sold by agreement for deed,
 3320 a certified copy of the recorded nondisturbance and notice to
 3321 creditors instrument, as described in this section.

3322 c. Evidence that each accommodation and facility:

3323 (I) Is free and clear of the claims of any
 3324 interestholders, other than the claims of interestholders that,
 3325 through a recorded instrument, are irrevocably made subject to
 3326 the timeshare instrument and the use rights of purchasers made
 3327 available through the timeshare instrument;

3328 (II) Is the subject of a recorded nondisturbance and
 3329 notice to creditors instrument that complies with subsection (3)
 3330 and s. 721.17; or

3331 (III) Has been transferred into a trust satisfying the
 3332 requirements of subparagraph 4.

3333 d. Evidence that the timeshare estate:
 3334 (I) Is free and clear of the claims of any
 3335 interestholders, other than the claims of interestholders that,
 3336 through a recorded instrument, are irrevocably made subject to
 3337 the timeshare instrument and the use rights of purchasers made
 3338 available through the timeshare instrument; or
 3339 (II) Is the subject of a recorded nondisturbance and
 3340 notice to creditors instrument that complies with subsection (3)
 3341 and s. 721.17.

3342 3. Personal property timeshare interests.--If the
 3343 timeshare plan is one in which personal property timeshare
 3344 interests are to be sold and no cancellation or default has
 3345 occurred, the escrow agent may release the escrowed funds or
 3346 other property to or on the order of the developer upon
 3347 presentation of:

3348 a. An affidavit by the developer that all of the following
 3349 conditions have been met:

3350 (I) Expiration of the cancellation period.
 3351 (II) Completion of construction.
 3352 (III) Closing.

3353 b. If the personal property timeshare interest is sold by
 3354 agreement for transfer, evidence that the agreement for transfer
 3355 complies fully with s. 721.06 and this section.

3356 c. Evidence that one of the following has occurred:

3357 (I) Transfer by the owner of the underlying personal
 3358 property of legal title to the subject accommodations and
 3359 facilities or all use rights therein into a trust satisfying the
 3360 requirements of subparagraph 4.; or

3361 (II) Transfer by the owner of the underlying personal
 3362 property of legal title to the subject accommodations and
 3363 facilities or all use rights therein into an owners' association
 3364 satisfying the requirements of subparagraph 5.

3365 d. Evidence of compliance with the provisions of
 3366 subparagraph 6., if required.

3367 e. If a personal property timeshare plan is created with
 3368 respect to accommodations and facilities that are located on or
 3369 in an oceangoing vessel, including a "documented vessel" or a
 3370 "foreign vessel," as defined and governed by 46 U.S.C., chapter
 3371 301:

3372 (I) In making the transfer required in sub-subparagraph
 3373 c., the developer shall use as its transfer instrument a
 3374 document that establishes and protects the continuance of the
 3375 use rights in the subject accommodations and facilities in a
 3376 manner that is enforceable by the trust or owners' association.

3377 (II) The transfer instrument shall comply fully with the
 3378 provisions of this chapter, shall be part of the timeshare
 3379 instrument, and shall contain specific provisions that:

3380 (A) Prohibit the vessel owner, the developer, any manager
 3381 or operator of the vessel, the owners' association or the
 3382 trustee, the managing entity, or any other person from incurring
 3383 any liens against the vessel except for liens that are required
 3384 for the operation and upkeep of the vessel, including liens for
 3385 fuel expenditures, repairs, crews' wages, and salvage, and
 3386 except as provided in sub-sub-subparagraphs 4.b.(III) and
 3387 5.b.(III). All expenses, fees, and taxes properly incurred in
 3388 connection with the creation, satisfaction, and discharge of any

3389 such permitted lien, or a prorated portion thereof if less than
 3390 all of the accommodations on the vessel are subject to the
 3391 timeshare plan, shall be common expenses of the timeshare plan.

3392 (B) Grant a lien against the vessel in favor of the
 3393 owners' association or trustee to secure the full and faithful
 3394 performance of the vessel owner and developer of all of their
 3395 obligations to the purchasers.

3396 (C) Establish governing law in a jurisdiction that
 3397 recognizes and will enforce the timeshare instrument and the
 3398 laws of the jurisdiction of registry of the vessel.

3399 (D) Require that a description of the use rights of
 3400 purchasers be posted and displayed on the vessel in a manner
 3401 that will give notice of such rights to any party examining the
 3402 vessel. This notice must identify the owners' association or
 3403 trustee and include a statement disclosing the limitation on
 3404 incurring liens against the vessel described in sub-sub-sub-
 3405 subparagraph (A).

3406 (E) Include the nondisturbance and notice to creditors
 3407 instrument for the vessel owner and any other interestholders.

3408 (F) The owners' association created under subparagraph 5.
 3409 or trustee created under subparagraph 4. shall have access to
 3410 any certificates of classification in accordance with the
 3411 timeshare instrument.

3412 (III) If the vessel is a foreign vessel, the vessel must
 3413 be registered in a jurisdiction that permits a filing evidencing
 3414 the use rights of purchasers in the subject accommodations and
 3415 facilities, offers protection for such use rights against
 3416 unfiled and inferior claims, and recognizes the document or

3417 instrument creating such use rights as a lien against the
 3418 vessel.

3419 (IV) In addition to the disclosures required by s.
 3420 721.07(5), the public offering statement and purchase contract
 3421 must contain a disclosure in conspicuous type in substantially
 3422 the following form:

3423
 3424 The laws of the State of Florida govern the offering of this
 3425 timeshare plan in this state. There are inherent risks in
 3426 purchasing a timeshare interest in this timeshare plan because
 3427 the accommodations and facilities of the timeshare plan are
 3428 located on a vessel that will sail into international waters and
 3429 into waters governed by many different jurisdictions. Therefore,
 3430 the laws of the State of Florida cannot fully protect your
 3431 purchase of an interest in this timeshare plan. Specifically,
 3432 management and operational issues may need to be addressed in
 3433 the jurisdiction in which the vessel is registered, which is
 3434 (insert jurisdiction in which vessel is registered) . Concerns
 3435 of purchasers may be sent to (insert name of applicable
 3436 regulatory agency and address) .

- 3437
- 3438 4. Trust.--
- 3439 a. If the subject accommodations or facilities, or all use
 3440 rights therein, are to be transferred into a trust in order to
 3441 comply with this paragraph, such transfer shall take place
 3442 pursuant to this subparagraph.
- 3443 b. Prior to the transfer by each interestholder of the
 3444 subject accommodations and facilities, or all use rights

3445 therein, to a trust, any lien or other encumbrance against such
3446 accommodations and facilities, or use rights therein, shall be
3447 made subject to a nondisturbance and notice to creditors
3448 instrument pursuant to subsection (3). No transfer pursuant to
3449 this subparagraph shall become effective until the trustee
3450 accepts such transfer and the responsibilities set forth herein.
3451 A trust established pursuant to this subparagraph shall comply
3452 with the following provisions:

3453 (I) The trustee shall be an individual or a business
3454 entity authorized and qualified to conduct trust business in
3455 this state. Any corporation authorized to do business in this
3456 state may act as trustee in connection with a timeshare plan
3457 pursuant to this chapter. The trustee must be independent from
3458 any developer or managing entity of the timeshare plan or any
3459 interestholder of any accommodation or facility of such plan.

3460 (II) The trust shall be irrevocable so long as any
3461 purchaser has a right to occupy any portion of the timeshare
3462 property pursuant to the timeshare plan.

3463 (III) The trustee shall not convey, hypothecate, mortgage,
3464 assign, lease, or otherwise transfer or encumber in any fashion
3465 any interest in or portion of the timeshare property with
3466 respect to which any purchaser has a right of use or occupancy
3467 unless the timeshare plan is terminated pursuant to the
3468 timeshare instrument, or such conveyance, hypothecation,
3469 mortgage, assignment, lease, transfer, or encumbrance is
3470 approved by a vote of two-thirds of all voting interests of the
3471 timeshare plan and such decision is declared by a court of
3472 competent jurisdiction to be in the best interests of the

3473 purchasers of the timeshare plan. The trustee shall notify the
 3474 division in writing within 10 days after receiving notice of the
 3475 filing of any petition relating to obtaining such a court order.
 3476 The division shall have standing to advise the court of the
 3477 division's interpretation of the statute as it relates to the
 3478 petition.

3479 (IV) All purchasers of the timeshare plan or the owners'
 3480 association of the timeshare plan shall be the express
 3481 beneficiaries of the trust. The trustee shall act as a fiduciary
 3482 to the beneficiaries of the trust. The personal liability of the
 3483 trustee shall be governed by ss. 736.08125, 736.08163, 736.1013,
 3484 and 736.1015 ~~s. 737.306~~. The agreement establishing the trust
 3485 shall set forth the duties of the trustee. The trustee shall be
 3486 required to furnish promptly to the division upon request a copy
 3487 of the complete list of the names and addresses of the owners in
 3488 the timeshare plan and a copy of any other books and records of
 3489 the timeshare plan required to be maintained pursuant to s.
 3490 721.13 that are in the possession, custody, or control of the
 3491 trustee. All expenses reasonably incurred by the trustee in the
 3492 performance of its duties, together with any reasonable
 3493 compensation of the trustee, shall be common expenses of the
 3494 timeshare plan.

3495 (V) The trustee shall not resign upon less than 90 days'
 3496 prior written notice to the managing entity and the division. No
 3497 resignation shall become effective until a substitute trustee,
 3498 approved by the division, is appointed by the managing entity
 3499 and accepts the appointment.

3500 (VI) The documents establishing the trust arrangement
 3501 shall constitute a part of the timeshare instrument.

3502 (VII) For trusts holding property in a timeshare plan
 3503 located outside this state, the trust and trustee holding such
 3504 property shall be deemed in compliance with the requirements of
 3505 this subparagraph if such trust and trustee are authorized and
 3506 qualified to conduct trust business under the laws of such
 3507 jurisdiction and the agreement or law governing such trust
 3508 arrangement provides substantially similar protections for the
 3509 purchaser as are required in this subparagraph for trusts
 3510 holding property in a timeshare plan in this state.

3511 (VIII) The trustee shall have appointed a registered agent
 3512 in this state for service of process. In the event such a
 3513 registered agent is not appointed, service of process may be
 3514 served pursuant to s. 721.265.

3515 5. Owners' association.--

3516 a. If the subject accommodations or facilities, or all use
 3517 rights therein, are to be transferred into an owners'
 3518 association in order to comply with this paragraph, such
 3519 transfer shall take place pursuant to this subparagraph.

3520 b. Prior to the transfer by each interestholder of the
 3521 subject accommodations and facilities, or all use rights
 3522 therein, to an owners' association, any lien or other
 3523 encumbrance against such accommodations and facilities, or use
 3524 rights therein, shall be made subject to a nondisturbance and
 3525 notice to creditors instrument pursuant to subsection (3). No
 3526 transfer pursuant to this subparagraph shall become effective
 3527 until the owners' association accepts such transfer and the

3528 responsibilities set forth herein. An owners' association
3529 established pursuant to this subparagraph shall comply with the
3530 following provisions:

3531 (I) The owners' association shall be a business entity
3532 authorized and qualified to conduct business in this state.
3533 Control of the board of directors of the owners' association
3534 must be independent from any developer or managing entity of the
3535 timeshare plan or any interestholder.

3536 (II) The bylaws of the owners' association shall provide
3537 that the corporation may not be voluntarily dissolved without
3538 the unanimous vote of all owners of personal property timeshare
3539 interests so long as any purchaser has a right to occupy any
3540 portion of the timeshare property pursuant to the timeshare
3541 plan.

3542 (III) The owners' association shall not convey,
3543 hypothecate, mortgage, assign, lease, or otherwise transfer or
3544 encumber in any fashion any interest in or portion of the
3545 timeshare property with respect to which any purchaser has a
3546 right of use or occupancy, unless the timeshare plan is
3547 terminated pursuant to the timeshare instrument, or unless such
3548 conveyance, hypothecation, mortgage, assignment, lease,
3549 transfer, or encumbrance is approved by a vote of two-thirds of
3550 all voting interests of the association and such decision is
3551 declared by a court of competent jurisdiction to be in the best
3552 interests of the purchasers of the timeshare plan. The owners'
3553 association shall notify the division in writing within 10 days
3554 after receiving notice of the filing of any petition relating to
3555 obtaining such a court order. The division shall have standing

3556 to advise the court of the division's interpretation of the
3557 statute as it relates to the petition.

3558 (IV) All purchasers of the timeshare plan shall be members
3559 of the owners' association and shall be entitled to vote on
3560 matters requiring a vote of the owners' association as provided
3561 in this chapter or the timeshare instrument. The owners'
3562 association shall act as a fiduciary to the purchasers of the
3563 timeshare plan. The articles of incorporation establishing the
3564 owners' association shall set forth the duties of the owners'
3565 association. All expenses reasonably incurred by the owners'
3566 association in the performance of its duties, together with any
3567 reasonable compensation of the officers or directors of the
3568 owners' association, shall be common expenses of the timeshare
3569 plan.

3570 (V) The documents establishing the owners' association
3571 shall constitute a part of the timeshare instrument.

3572 (VI) For owners' associations holding property in a
3573 timeshare plan located outside this state, the owners'
3574 association holding such property shall be deemed in compliance
3575 with the requirements of this subparagraph if such owners'
3576 association is authorized and qualified to conduct owners'
3577 association business under the laws of such jurisdiction and the
3578 agreement or law governing such arrangement provides
3579 substantially similar protections for the purchaser as are
3580 required in this subparagraph for owners' associations holding
3581 property in a timeshare plan in this state.

3582 (VII) The owners' association shall have appointed a
3583 registered agent in this state for service of process. In the

3584 event such a registered agent cannot be located, service of
 3585 process may be made pursuant to s. 721.265.

3586 6. Personal property subject to certificate of title.--If
 3587 any personal property that is an accommodation or facility of a
 3588 timeshare plan is subject to a certificate of title in this
 3589 state pursuant to chapter 319 or chapter 328, the following
 3590 notation must be made on such certificate of title pursuant to
 3591 s. 319.27(1) or s. 328.15(1):

3592
 3593 The further transfer or encumbrance of the property subject to
 3594 this certificate of title, or any lien or encumbrance thereon,
 3595 is subject to the requirements of section 721.17, Florida
 3596 Statutes, and the transferee or lienor agrees to be bound by all
 3597 of the obligations set forth therein.

3598 7. If the developer has previously provided a certified
 3599 copy of any document required by this paragraph, she or he may
 3600 for all subsequent disbursements substitute a true and correct
 3601 copy of the certified copy, provided no changes to the document
 3602 have been made or are required to be made.

3603 8. In the event that use rights relating to an
 3604 accommodation or facility are transferred into a trust pursuant
 3605 to subparagraph 4. or into an owners' association pursuant to
 3606 subparagraph 5., all other interestholders, including the owner
 3607 of the underlying fee or underlying personal property, must
 3608 execute a nondisturbance and notice to creditors instrument
 3609 pursuant to subsection (3).

3610 Section 25. Paragraph (e) of subsection (1) of section
 3611 721.53, Florida Statutes, is amended to read:

3612 721.53 Subordination instruments; alternate security
3613 arrangements.--

3614 (1) With respect to each accommodation or facility of a
3615 multisite timeshare plan, the developer shall provide the
3616 division with satisfactory evidence that one of the following
3617 has occurred with respect to each interestholder prior to
3618 offering the accommodation or facility as a part of the
3619 multisite timeshare plan:

3620 (e) The interestholder has transferred the subject
3621 accommodation or facility or all use rights therein to a trust
3622 that complies with this paragraph. Prior to such transfer, any
3623 lien or other encumbrance against such accommodation or facility
3624 shall be made subject to a nondisturbance and notice to
3625 creditors instrument pursuant to paragraph (a) or a
3626 subordination and notice to creditors instrument pursuant to
3627 paragraph (b). No transfer pursuant to this paragraph shall
3628 become effective until the trust accepts such transfer and the
3629 responsibilities set forth herein. A trust established pursuant
3630 to this paragraph shall comply with the following provisions:

3631 1. The trustee shall be an individual or a business entity
3632 authorized and qualified to conduct trust business in this
3633 state. Any corporation authorized to do business in this state
3634 may act as trustee in connection with a timeshare plan pursuant
3635 to this chapter. The trustee must be independent from any
3636 developer or managing entity of the timeshare plan or any
3637 interestholder of any accommodation or facility of such plan.
3638 The same trustee may hold the accommodations and facilities, or

3639 use rights therein, for one or more of the component sites of
 3640 the timeshare plan.

3641 2. The trust shall be irrevocable so long as any purchaser
 3642 has a right to occupy any portion of the timeshare property
 3643 pursuant to the timeshare plan.

3644 3. The trustee shall not convey, hypothecate, mortgage,
 3645 assign, lease, or otherwise transfer or encumber in any fashion
 3646 any interests in or portion of the timeshare property with
 3647 respect to which any purchaser has a right of use or occupancy
 3648 unless the timeshare plan is terminated pursuant to the
 3649 timeshare instrument, or the timeshare property held in trust is
 3650 deleted from a multisite timeshare plan pursuant to s.
 3651 721.552(3), or such conveyance, hypothecation, mortgage,
 3652 assignment, lease, transfer, or encumbrance is approved by vote
 3653 of two-thirds of all voting interests of the timeshare plan and
 3654 such decision is declared by a court of competent jurisdiction
 3655 to be in the best interests of the purchasers of the timeshare
 3656 plan.

3657 4. All purchasers of the timeshare plan or the owners'
 3658 association of the timeshare plan shall be express beneficiaries
 3659 of the trust. The trustee shall act as a fiduciary to the
 3660 beneficiaries of the trust. The personal liability of the
 3661 trustee shall be governed by ss. 736.08125, 736.08163, 736.1013,
 3662 and 736.1015 ~~s. 737.306~~. The agreement establishing the trust
 3663 shall set forth the duties of the trustee. The trustee shall be
 3664 required to furnish promptly to the division upon request a copy
 3665 of the complete list of the names and addresses of the owners in
 3666 the timeshare plan and a copy of any other books and records of

3667 the timeshare plan required to be maintained pursuant to s.
 3668 721.13 that are in the possession of the trustee. All expenses
 3669 reasonably incurred by the trustee in the performance of its
 3670 duties, together with any reasonable compensation of the
 3671 trustee, shall be common expenses of the timeshare plan.

3672 5. The trustee shall not resign upon less than 90 days'
 3673 prior written notice to the managing entity and the division. No
 3674 resignation shall become effective until a substitute trustee,
 3675 approved by the division, is appointed by the managing entity
 3676 and accepts the appointment.

3677 6. The documents establishing the trust arrangement shall
 3678 constitute a part of the timeshare instrument.

3679 7. For trusts holding property in component sites located
 3680 outside this state, the trust holding such property shall be
 3681 deemed in compliance with the requirements of this paragraph, if
 3682 such trust is authorized and qualified to conduct trust business
 3683 under the laws of such jurisdiction and the agreement or law
 3684 governing such trust arrangement provides substantially similar
 3685 protections for the purchaser as are required in this paragraph
 3686 for trusts holding property in a component site located in this
 3687 state.

3688 8. The trustee shall have appointed a registered agent in
 3689 this state for service of process. In the event such a
 3690 registered agent is not appointed, service of process may be
 3691 served pursuant to s. 721.265.

3692 Section 26. Section 731.103, Florida Statutes, is amended
 3693 to read:

3694 731.103 Evidence as to death or status.--In proceedings
 3695 under this code and under chapter 736, the ~~rules of evidence in~~
 3696 ~~civil actions are applicable unless specifically changed by the~~
 3697 ~~code.~~ The following additional rules relating to determination
 3698 of death and status are applicable:

3699 (1) An authenticated copy of a death certificate issued by
 3700 an official or agency of the place where the death purportedly
 3701 occurred is prima facie proof of the fact, place, date, and time
 3702 of death and the identity of the decedent.

3703 (2) A copy of any record or report of a governmental
 3704 agency, domestic or foreign, that a person is alive, missing,
 3705 detained, or, from the facts related, presumed dead is prima
 3706 facie evidence of the status and of the dates, circumstances,
 3707 and places disclosed by the record or report.

3708 (3) A person who is absent from the place of his or her
 3709 last known domicile for a continuous period of 5 years and whose
 3710 absence is not satisfactorily explained after diligent search
 3711 and inquiry is presumed to be dead. The person's death is
 3712 presumed to have occurred at the end of the period unless there
 3713 is evidence establishing that death occurred earlier. Evidence
 3714 showing that the absent person was exposed to a specific peril
 3715 of death may be a sufficient basis for the court determining at
 3716 any time after such exposure that he or she died less than 5
 3717 years after the date on which his or her absence commenced. A
 3718 petition for this determination shall be filed in the county in
 3719 Florida where the decedent maintained his or her domicile or in
 3720 any county of this state if the decedent was not a resident of
 3721 Florida at the time his or her absence commenced.

3722 (4) This section does not preclude the establishment of
 3723 death by direct or circumstantial evidence prior to expiration
 3724 of the 5-year time period set forth in subsection (3).

3725 Section 27. Section 731.1035, Florida Statutes, is created
 3726 to read:

3727 731.1035 Applicable rules of evidence.--In proceedings
 3728 under this code, the rules of evidence in civil actions are
 3729 applicable unless specifically changed by the code.

3730 Section 28. Section 731.201, Florida Statutes, is amended
 3731 to read:

3732 731.201 General definitions.--Subject to additional
 3733 definitions in subsequent chapters that are applicable to
 3734 specific chapters or parts, and unless the context otherwise
 3735 requires, in this code, in s. 409.9101, and in chapters 736 ~~737~~,
 3736 738, 739, and 744, the term:

3737 (1) "Authenticated," when referring to copies of documents
 3738 or judicial proceedings required to be filed with the court
 3739 under this code, means a certified copy or a copy authenticated
 3740 according to the Federal Rules of Civil Procedure.

3741 (2) "Beneficiary" means heir at law in an intestate estate
 3742 and devisee in a testate estate. The term "beneficiary" does not
 3743 apply to an heir at law or a devisee after that person's
 3744 interest in the estate has been satisfied. In the case of a
 3745 devise to an existing trust or trustee, or to a trust or trustee
 3746 described by will, the trustee is a beneficiary of the estate.
 3747 Except as otherwise provided in this subsection, the beneficiary
 3748 of the trust is not a beneficiary of the estate of which that
 3749 trust or the trustee of that trust is a beneficiary. However, if

3750 each trustee is also a personal representative of the estate,
 3751 each qualified beneficiary ~~the beneficiary or beneficiaries~~ of
 3752 the trust as defined in s. 736.0103(14) ~~737.303(4)(b)~~ shall be
 3753 regarded as a beneficiary of the estate.

3754 (3) "Child" includes a person entitled to take as a child
 3755 under this code by intestate succession from the parent whose
 3756 relationship is involved, and excludes any person who is only a
 3757 stepchild, a foster child, a grandchild, or a more remote
 3758 descendant.

3759 (4) "Claim" means a liability of the decedent, whether
 3760 arising in contract, tort, or otherwise, and funeral expense.
 3761 The term does not include an expense of administration or
 3762 estate, inheritance, succession, or other death taxes.

3763 (5) "Clerk" means the clerk or deputy clerk of the court.

3764 (6) "Court" means the circuit court.

3765 (7) "Curator" means a person appointed by the court to
 3766 take charge of the estate of a decedent until letters are
 3767 issued.

3768 (8) "Devise," when used as a noun, means a testamentary
 3769 disposition of real or personal property and, when used as a
 3770 verb, means to dispose of real or personal property by will or
 3771 trust. The term includes "gift," "give," "bequeath," "bequest,"
 3772 and "legacy." A devise is subject to charges for debts,
 3773 expenses, and taxes as provided in this code, the will, or the
 3774 trust.

3775 (9) "Devisee" means a person designated in a will or trust
 3776 to receive a devise. Except as otherwise provided in this
 3777 subsection, in the case of a devise to an existing trust or

3778 trustee, or to a trust or trustee of a trust described by will,
 3779 the trust or trustee, rather than the beneficiaries of the
 3780 trust, is the devisee. However, if each trustee is also a
 3781 personal representative of the estate, each qualified
 3782 beneficiary ~~the beneficiary or beneficiaries~~ of the trust as
 3783 defined in s. 736.0103(14) ~~737.303(4)(b)~~ shall be regarded as a
 3784 devisee.

3785 (10) "Distributee" means a person who has received estate
 3786 property from a personal representative or other fiduciary other
 3787 than as a creditor or purchaser. A testamentary trustee is a
 3788 distributee only to the extent of distributed assets or
 3789 increments to them remaining in the trustee's hands. A
 3790 beneficiary of a testamentary trust to whom the trustee has
 3791 distributed property received from a personal representative is
 3792 a distributee. For purposes of this provision, "testamentary
 3793 trustee" includes a trustee to whom assets are transferred by
 3794 will, to the extent of the devised assets.

3795 (11) "Domicile" means a person's usual place of dwelling
 3796 and shall be synonymous with residence.

3797 (12) "Estate" means the property of a decedent that is the
 3798 subject of administration.

3799 (13) "Exempt property" means the property of a decedent's
 3800 estate which is described in s. 732.402.

3801 (14) "File" means to file with the court or clerk.

3802 (15) "Foreign personal representative" means a personal
 3803 representative of another state or a foreign country.

3804 (16) "Formal notice" means formal notice under the Florida
 3805 Probate Rules.

3806 (17) "Grantor" means one who creates or adds to a trust
3807 and includes "settlor" or "trustor" and a testator who creates
3808 or adds to a trust.

3809 (18) "Heirs" or "heirs at law" means those persons,
3810 including the surviving spouse, who are entitled under the
3811 statutes of intestate succession to the property of a decedent.

3812 (19) "Incompetent" means a minor or a person adjudicated
3813 incompetent.

3814 (20) "Informal notice" or "notice" means informal notice
3815 under the Florida Probate Rules.

3816 (21) "Interested person" means any person who may
3817 reasonably be expected to be affected by the outcome of the
3818 particular proceeding involved. In any proceeding affecting the
3819 estate or the rights of a beneficiary in the estate, the
3820 personal representative of the estate shall be deemed to be an
3821 interested person. In any proceeding affecting the expenses of
3822 the administration and obligations of a decedent's estate, or
3823 any claims described in s. 733.702(1), the trustee of a trust
3824 described in s. 733.707(3) is an interested person in the
3825 administration of the grantor's estate. The term does not
3826 include a beneficiary who has received complete distribution.
3827 The meaning, as it relates to particular persons, may vary from
3828 time to time and must be determined according to the particular
3829 purpose of, and matter involved in, any proceedings.

3830 (22) "Letters" means authority granted by the court to the
3831 personal representative to act on behalf of the estate of the
3832 decedent and refers to what has been known as letters

3833 | testamentary and letters of administration. All letters shall be
 3834 | designated "letters of administration."

3835 | (23) "Other state" means any state of the United States
 3836 | other than Florida and includes the District of Columbia, the
 3837 | Commonwealth of Puerto Rico, and any territory or possession
 3838 | subject to the legislative authority of the United States.

3839 | (24) "Parent" excludes any person who is only a
 3840 | stepparent, foster parent, or grandparent.

3841 | (25) "Personal representative" means the fiduciary
 3842 | appointed by the court to administer the estate and refers to
 3843 | what has been known as an administrator, administrator cum
 3844 | testamento annexo, administrator de bonis non, ancillary
 3845 | administrator, ancillary executor, or executor.

3846 | (26) "Petition" means a written request to the court for
 3847 | an order.

3848 | (27) "Power of appointment" means an authority, other than
 3849 | as an incident of the beneficial ownership of property, to
 3850 | designate recipients of beneficial interests in property.

3851 | ~~(28)~~(27) "Probate of will" means all steps necessary to
 3852 | establish the validity of a will and to admit a will to probate.

3853 | ~~(29)~~(28) "Property" means both real and personal property
 3854 | or any interest in it and anything that may be the subject of
 3855 | ownership.

3856 | ~~(30)~~(29) "Protected homestead" means the property
 3857 | described in s. 4(a)(1), Art. X of the State Constitution on
 3858 | which at the death of the owner the exemption inures to the
 3859 | owner's surviving spouse or heirs under s. 4(b), Art. X of the

3860 State Constitution. For purposes of the code, real property
 3861 owned as tenants by the entirety is not protected homestead.
 3862 (31)~~(30)~~ "Residence" means a person's place of dwelling.
 3863 (32)~~(31)~~ "Residuary devise" means a devise of the assets
 3864 of the estate which remain after the provision for any devise
 3865 which is to be satisfied by reference to a specific property or
 3866 type of property, fund, sum, or statutory amount. If the will
 3867 contains no devise which is to be satisfied by reference to a
 3868 specific property or type of property, fund, sum, or statutory
 3869 amount, "residuary devise" or "residue" means a devise of all
 3870 assets remaining after satisfying the obligations of the estate.
 3871 (33)~~(32)~~ "Security" means a security as defined in s.
 3872 517.021.
 3873 (34)~~(33)~~ "Security interest" means a security interest as
 3874 defined in s. 671.201.
 3875 (35)~~(34)~~ "Trust" means an express trust, private or
 3876 charitable, with additions to it, wherever and however created.
 3877 It also includes a trust created or determined by a judgment or
 3878 decree under which the trust is to be administered in the manner
 3879 of an express trust. "Trust" excludes other constructive trusts,
 3880 and it excludes resulting trusts; conservatorships; custodial
 3881 arrangements pursuant to the Florida Uniform Transfers to Minors
 3882 Act; business trusts providing for certificates to be issued to
 3883 beneficiaries; common trust funds; land trusts under s. 689.05;
 3884 trusts created by the form of the account or by the deposit
 3885 agreement at a financial institution; voting trusts; security
 3886 arrangements; liquidation trusts; trusts for the primary purpose
 3887 of paying debts, dividends, interest, salaries, wages, profits,

3888 pensions, or employee benefits of any kind; and any arrangement
 3889 under which a person is nominee or escrowee for another.

3890 (36)~~(35)~~ "Trustee" includes an original, additional,
 3891 surviving, or successor trustee, whether or not appointed or
 3892 confirmed by court.

3893 (37)~~(36)~~ "Will" means an instrument, including a codicil,
 3894 executed by a person in the manner prescribed by this code,
 3895 which disposes of the person's property on or after his or her
 3896 death and includes an instrument which merely appoints a
 3897 personal representative or revokes or revises another will.

3898 Section 29. Paragraph (a) of subsection (1) and subsection
 3899 (5) of section 731.303, Florida Statutes, are amended to read:

3900 731.303 Representation.--In the administration of or in
 3901 judicial proceedings involving estates of decedents or trusts,
 3902 the following apply:

3903 (1) Persons are bound by orders binding others in the
 3904 following cases:

3905 (a)1. Orders binding the sole holder or all coholders of a
 3906 power of revocation or a general, special, or limited power of
 3907 appointment, including one in the form of a power of amendment
 3908 or revocation to the extent that the power has not become
 3909 unexercisable in fact, bind all persons to the extent that their
 3910 interests, as persons who may take by virtue of the exercise or
 3911 nonexercise of the power, are subject to the power.

3912 2. Subparagraph 1. does not apply to:

3913 a. Any matter determined by the court to involve fraud or
 3914 bad faith by the trustee;

3915 b. A power of a trustee to distribute trust property; or

3916 c. A power of appointment held by a person while the
 3917 person is the sole trustee.

3918 (5) The holder of a power of appointment over property not
 3919 held in trust may represent and bind persons whose interests, as
 3920 permissible appointees, takers in default, or otherwise, are
 3921 subject to the power. Representation under this subsection does
 3922 not apply to:

3923 (a) Any matter determined by the court to involve fraud or
 3924 bad faith by the trustee;

3925 (b) A power of a trustee to distribute trust property; or

3926 (c) A power of appointment held by a person while the
 3927 person is the sole trustee ~~When a sole holder or coholder of a~~
 3928 ~~general, special, or limited power of appointment, including an~~
 3929 ~~exercisable power of amendment or revocation over property in an~~
 3930 ~~estate or trust, is bound by:~~

3931 ~~(a) Agreements, waivers, consents, or approvals; or~~

3932 ~~(b) Accounts, trust accountings, or other written reports~~
 3933 ~~that adequately disclose matters set forth therein,~~

3934
 3935 ~~then all persons who may take by virtue of, and whose interests~~
 3936 ~~are subject to, the exercise or nonexercise of the power are~~
 3937 ~~also bound, but only to the extent of their interests which~~
 3938 ~~could otherwise be affected by the exercise or nonexercise of~~
 3939 ~~the power.~~

3940 Section 30. Subsection (5) of section 732.2075, Florida
 3941 Statutes, is amended to read:

3942 732.2075 Sources from which elective share payable;
 3943 abatement.--

3944 (5) Unless otherwise provided in the trust instrument or,
 3945 in the decedent's will if there is no provision in the trust
 3946 instrument, any amount to be satisfied from trust property shall
 3947 be paid from the assets of the trust in the order provided for
 3948 claims under s. 736.05053 ~~737.3054~~(2) and (3). A direction in
 3949 the decedent's will is effective only for revocable trusts.

3950 Section 31. Subsection (2) of section 732.513, Florida
 3951 Statutes, is amended to read:

3952 732.513 Devises to trustee.--

3953 (2) The devise shall not be invalid for any or all of the
 3954 following reasons:

3955 (a) Because the trust is amendable or revocable, or both,
 3956 by any person.

3957 (b) Because the trust has been amended or revoked in part
 3958 after execution of the will or a codicil to it.

3959 ~~(c) Because the trust instrument or any amendment to it
 3960 was not executed in the manner required for wills.~~

3961 (c)~~(d)~~ Because the only res of the trust is the possible
 3962 expectancy of receiving, as a named beneficiary, a devise under
 3963 a will or death benefits as described in s. 733.808, and even
 3964 though the testator or other person has reserved any or all
 3965 rights of ownership in the death benefit policy, contract, or
 3966 plan, including the right to change the beneficiary.

3967 (d)~~(e)~~ Because of any of the provisions of s. 689.075.

3968 Section 32. Section 732.603, Florida Statutes, is amended
 3969 to read:

3970 (Substantial rewording of section. See
 3971 s. 732.603, F.S., for present text.)

3972 732.603 Antilapse; deceased devisee; class gifts.--
 3973 (1) Unless a contrary intent appears in the will, if a
 3974 devisee who is a grandparent, or a descendant of a grandparent,
 3975 of the testator:
 3976 (a) Is dead at the time of the execution of the will;
 3977 (b) Fails to survive the testator; or
 3978 (c) Is required by the will or by operation of law to be
 3979 treated as having predeceased the testator,
 3980
 3981 a substitute gift is created in the devisee's surviving
 3982 descendants who take per stirpes the property to which the
 3983 devisee would have been entitled had the devisee survived the
 3984 testator.
 3985 (2) When a power of appointment is exercised by will,
 3986 unless a contrary intent appears in the document creating the
 3987 power of appointment or in the testator's will, if an appointee
 3988 who is a grandparent, or a descendant of a grandparent, of the
 3989 donor of the power:
 3990 (a) Is dead at the time of the execution of the will or
 3991 the creation of the power;
 3992 (b) Fails to survive the testator; or
 3993 (c) Is required by the will, the document creating the
 3994 power, or by operation of law to be treated as having
 3995 predeceased the testator,
 3996
 3997 a substitute gift is created in the appointee's surviving
 3998 descendants who take per stirpes the property to which the
 3999 appointee would have been entitled had the appointee survived

4000 the testator. Unless the language creating a power of
4001 appointment expressly excludes the substitution of the
4002 descendants of an object of a power for the object, a surviving
4003 descendant of a deceased object of a power of appointment may be
4004 substituted for the object whether or not the descendant is an
4005 object of the power.

4006 (3) In the application of this section:

4007 (a) Words of survivorship in a devise or appointment to an
4008 individual, such as "if he survives me," or to "my surviving
4009 children," are a sufficient indication of an intent contrary to
4010 the application of subsections (1) and (2). Words of
4011 survivorship used by the donor of the power in a power to
4012 appoint to an individual, such as "if he survives the donee," or
4013 in a power to appoint to the donee's "then surviving children,"
4014 are a sufficient indication of an intent contrary to the
4015 application of subsection (2).

4016 (b) The term:

4017 1. "Appointment" includes an alternative appointment and
4018 an appointment in the form of a class gift.

4019 2. "Appointee" includes:

4020 a. A class member if the appointment is in the form of a
4021 class gift.

4022 b. An individual or class member who was deceased at the
4023 time the testator executed his or her will as well as an
4024 individual or class member who was then living but who failed to
4025 survive the testator.

4026 3. "Devise" also includes an alternative devise and a
4027 devise in the form of a class gift.

- 4028 4. "Devisee" also includes:
 4029 a. A class member if the devise is in the form of a class
 4030 gift.
 4031 b. An individual or class member who was deceased at the
 4032 time the testator executed his or her will as well as an
 4033 individual or class member who was then living but who failed to
 4034 survive the testator.

4035 (4) This section applies only to outright devises and
 4036 appointments. Devises and appointments in trust, including to a
 4037 testamentary trust, are subject to s. 736.1106.

4038 Section 33. Section 732.604, Florida Statutes, is amended
 4039 to read:

4040 732.604 Failure of testamentary provision.--

4041 (1) Except as provided in s. 732.603, if a devise other
 4042 than a residuary devise fails for any reason, it becomes a part
 4043 of the residue.

4044 (2) Except as provided in s. 732.603, if the residue is
 4045 devised to two or more persons, the share of a residuary devisee
 4046 that fails for any reason ~~and the devise to one of the residuary~~
 4047 ~~devisees fails for any reason, that devise passes to the other~~
 4048 residuary devisee, or to the other residuary devisees in
 4049 proportion to the ~~their~~ interests of each in the remaining part
 4050 of the residue.

4051 Section 34. Section 732.611, Florida Statutes, is amended
 4052 to read:

4053 732.611 Devises to multigeneration classes to be per
 4054 stirpes.--Unless the will provides otherwise, all devises to

4055 descendants, issue, and other multigeneration classes shall be
 4056 per stirpes.

4057 Section 35. Subsection (1) of section 733.212, Florida
 4058 Statutes, is amended to read:

4059 733.212 Notice of administration; filing of objections.--

4060 (1) The personal representative shall promptly serve a
 4061 copy of the notice of administration on the following persons
 4062 who are known to the personal representative:

4063 (a) The decedent's surviving spouse;

4064 (b) Beneficiaries;

4065 (c) The trustee of any trust described in s. 733.707(3)
 4066 and each qualified beneficiary of the trust as defined in s.
 4067 736.0103(14) ~~737.303(4)(b)~~, if each trustee is also a personal
 4068 representative of the estate; and

4069 (d) Persons who may be entitled to exempt property

4070
 4071 in the manner provided for service of formal notice, unless
 4072 served under s. 733.2123. The personal representative may
 4073 similarly serve a copy of the notice on any devisees under a
 4074 known prior will or heirs or others who claim or may claim an
 4075 interest in the estate.

4076 Section 36. Subsection (1) of section 733.602, Florida
 4077 Statutes, is amended to read:

4078 733.602 General duties.--

4079 (1) A personal representative is a fiduciary who shall
 4080 observe the standards of care applicable to trustees as
 4081 described by part VII of chapter 736 ~~s. 737.302~~. A personal
 4082 representative is under a duty to settle and distribute the

4083 | estate of the decedent in accordance with the terms of the
 4084 | decedent's will and this code as expeditiously and efficiently
 4085 | as is consistent with the best interests of the estate. A
 4086 | personal representative shall use the authority conferred by
 4087 | this code, the authority in the will, if any, and the authority
 4088 | of any order of the court, for the best interests of interested
 4089 | persons, including creditors.

4090 | Section 37. Subsection (4) of section 733.805, Florida
 4091 | Statutes, is amended to read:

4092 | 733.805 Order in which assets abate.--

4093 | (4) In determining the contribution required under s.
 4094 | 733.607(2), subsections (1)-(3) of this section and s. 736.05053
 4095 | ~~737.3054~~(2) shall be applied as if the beneficiaries of the
 4096 | estate and the beneficiaries of a trust described in s.
 4097 | 733.707(3), other than the estate or trust itself, were taking
 4098 | under a common instrument.

4099 | Section 38. Paragraph (j) of subsection (1) of section
 4100 | 733.817, Florida Statutes, is amended to read:

4101 | 733.817 Apportionment of estate taxes.--

4102 | (1) For purposes of this section:

4103 | (j) "Residuary devise" has the meaning set forth in s.
 4104 | 731.201~~(31)~~.

4105 | Section 39. Paragraphs (a) and (f) of subsection (8) and
 4106 | paragraphs (a) and (d) of subsection (9) of section 738.104,
 4107 | Florida Statutes, are amended to read:

4108 | 738.104 Trustee's power to adjust.--

4109 | (8) With respect to a trust in existence on January 1,
 4110 | 2003:

4111 (a) A trustee shall not have the power to adjust under
 4112 this section until the statement required in subsection (9) is
 4113 provided and either no objection is made or any objection which
 4114 is made has been terminated.

4115 1. An objection is made if, within 60 days after the date
 4116 of the statement required in subsection (9), a super majority of
 4117 the eligible ~~trust~~ beneficiaries deliver to the trustee a
 4118 written objection to the application of this section to such
 4119 trust. An objection shall be deemed to be delivered to the
 4120 trustee on the date the objection is mailed to the mailing
 4121 address listed in the notice provided in subsection (9).

4122 2. An objection is terminated upon the earlier of the
 4123 receipt of consent from a super majority of eligible ~~trust~~
 4124 beneficiaries of the class that made the objection, or the
 4125 resolution of the objection pursuant to paragraph (c).

4126 (f) The objection of a super majority of eligible
 4127 beneficiaries under this subsection shall be valid for a period
 4128 of 1 year after the date of the notice set forth in subsection
 4129 (9). Upon expiration of the objection, the trustee may
 4130 thereafter give a new notice under subsection (9).

4131 (9)(a) A trustee of a trust in existence on January 1,
 4132 2003, that is not prohibited under subsection (3) from
 4133 exercising the power to adjust shall, any time prior to
 4134 initially exercising the power, provide to all eligible
 4135 ~~reasonably ascertainable current~~ beneficiaries ~~described in s.~~
 4136 ~~737.303(4)(b)1. and all reasonably ascertainable remainder~~
 4137 ~~beneficiaries described in s. 737.303(4)(b)2.~~ a statement
 4138 containing the following:

4139 1. The name, telephone number, street address, and mailing
 4140 address of the trustee and of any individuals who may be
 4141 contacted for further information;

4142 2. A statement that unless a super majority of the
 4143 eligible beneficiaries objects to the application of this
 4144 section to the trust within 60 days after the date the statement
 4145 pursuant to this subsection was served, s. 738.104 shall apply
 4146 to the trust; and

4147 3. A statement that, if s. 738.104 applies to the trust,
 4148 the trustee will have the power to adjust between income and
 4149 principal and that such a power may have an effect on the
 4150 distributions to such beneficiary from the trust.

4151 (d) For purposes of subsection (8) and this subsection,
 4152 the term:

4153 1. "Eligible beneficiaries" means:

4154 a. If at the time the determination is made there is one
 4155 or more beneficiaries described in s. 736.0103(14)(c), the
 4156 beneficiaries described in s. 736.0103(14)(a) and (c); or

4157 b. If there is no beneficiary described in s.
 4158 736.0103(14)(c), the beneficiaries described in s.
 4159 736.0103(14)(a) and (b).

4160 2. A "Super majority of the eligible ~~trust~~ beneficiaries"
 4161 means:

4162 a. If at the time the determination is made there is one
 4163 or more beneficiaries described in s. 736.0103(14)(c), at least
 4164 two-thirds in interest of the ~~reasonably ascertainable current~~
 4165 beneficiaries described in s. 736.0103(14)(a) ~~737.303(4)(b)1.~~ or
 4166 two-thirds in interest of the ~~reasonably ascertainable remainder~~

HB 425

2006

4167 beneficiaries described in s. 736.0103(14)(c) ~~737.303(4)(b)2.~~,
 4168 if the interests of the beneficiaries are reasonably
 4169 ascertainable; otherwise, it means two-thirds in number of
 4170 either such class; or

4171 b. If there is no beneficiary described in s.
 4172 736.0103(14)(c), at least two-thirds in interest of the
 4173 beneficiaries described in s. 736.0103(14)(a) or two-thirds in
 4174 interest of the beneficiaries described in s. 736.0103(14)(b),
 4175 if the interests of the beneficiaries are reasonably
 4176 ascertainable, otherwise, two-thirds in number of either such
 4177 class.

4178 Section 40. Subsection (4) of section 738.1041, Florida
 4179 Statutes, is amended to read:

4180 738.1041 Total return unitrust.--

4181 (4) All determinations made pursuant to sub-subparagraph
 4182 (2)(b)2.b. shall be conclusive if reasonable and made in good
 4183 faith. Such determination shall be conclusively presumed to have
 4184 been made reasonably and in good faith unless proven otherwise
 4185 in a proceeding commenced by or on behalf of a person interested
 4186 in the trust within the time provided in s. 736.1008 ~~737.307~~.
 4187 The burden will be on the objecting interested party to prove
 4188 that the determinations were not made reasonably and in good
 4189 faith.

4190 Section 41. Subsection (5) of section 738.202, Florida
 4191 Statutes, is amended to read:

4192 738.202 Distribution to residuary and remainder
 4193 beneficiaries.--

4194 (5) The value of trust assets shall be determined on an
 4195 asset-by-asset basis and shall be conclusive if reasonable and
 4196 determined in good faith. Determinations based on appraisals
 4197 performed within 2 years before or after the valuation date
 4198 shall be presumed reasonable. The value of trust assets shall be
 4199 conclusively presumed to be reasonable and determined in good
 4200 faith unless proven otherwise in a proceeding commenced by or on
 4201 behalf of a person interested in the trust within the time
 4202 provided in s. 736.1008 ~~737.307~~.

4203 Section 42. Paragraph (a) of subsection (12) of section
 4204 739.102, Florida Statutes, is amended to read:

4205 739.102 Definitions.--As used in this chapter, the term:

4206 (12) "Trust" means:

4207 (a) An express trust (including an honorary trust or a
 4208 trust under s. 736.0408 ~~737.116~~), charitable or noncharitable,
 4209 with additions thereto, whenever and however created; and

4210
 4211 As used in this chapter, the term "trust" does not include a
 4212 constructive trust or a resulting trust.

4213 Section 43. Paragraphs (b) and (f) of subsection (6) of
 4214 section 744.331, Florida Statutes, are amended to read:

4215 744.331 Procedures to determine incapacity.--

4216 (6) ORDER DETERMINING INCAPACITY.--If, after making
 4217 findings of fact on the basis of clear and convincing evidence,
 4218 the court finds that a person is incapacitated with respect to
 4219 the exercise of a particular right, or all rights, the court
 4220 shall enter a written order determining such incapacity. A

4221 person is determined to be incapacitated only with respect to
4222 those rights specified in the order.

4223 (b) When an order determines that a person is incapable of
4224 exercising delegable rights, the court must consider and find
4225 whether there is an alternative to guardianship which will
4226 sufficiently address the problems of the incapacitated person. A
4227 guardian must be appointed to exercise the incapacitated
4228 person's delegable rights unless the court finds there is an
4229 alternative. A guardian may not be appointed if the court finds
4230 there is an alternative to guardianship which will sufficiently
4231 address the problems of the incapacitated person. ~~In any order~~
4232 ~~declaring a person incapacitated the court must find that~~
4233 ~~alternatives to guardianship were considered and that no~~
4234 ~~alternative to guardianship will sufficiently address the~~
4235 ~~problems of the ward.~~

4236 (f) Upon the filing of a verified statement by an
4237 interested person stating:

4238 1. That he or she has a good faith belief that the alleged
4239 incapacitated person's trust, trust amendment, or durable power
4240 of attorney is invalid; and

4241 2. A reasonable factual basis for that belief,

4242
4243 the trust, trust amendment, or durable power of attorney shall
4244 not be deemed to be an alternative to the appointment of a
4245 guardian. The appointment of a guardian does not limit the
4246 court's power to determine that certain authority granted by a
4247 durable power of attorney is to remain exercisable by the
4248 attorney in fact. ~~When an order is entered which determines that~~

4249 ~~a person is incapable of exercising delegable rights, a guardian~~
 4250 ~~must be appointed to exercise those rights.~~

4251 Section 44. Paragraph (a) of subsection (6) of section
 4252 744.361, Florida Statutes, is amended to read:

4253 744.361 Powers and duties of guardian.--

4254 (6) A guardian who is given authority over any property of
 4255 the ward shall:

4256 (a) Protect and preserve the property and invest it
 4257 prudently as provided in chapter 518 ~~defined in s. 737.302,~~
 4258 apply it as provided in s. 744.397, and account for it
 4259 faithfully.

4260 Section 45. Subsections (11) and (18) of section 744.441,
 4261 Florida Statutes, are amended to read:

4262 744.441 Powers of guardian upon court approval.--After
 4263 obtaining approval of the court pursuant to a petition for
 4264 authorization to act, a plenary guardian of the property, or a
 4265 limited guardian of the property within the powers granted by
 4266 the order appointing the guardian or an approved annual or
 4267 amended guardianship report, may:

4268 (11) Prosecute or defend claims or proceedings in any
 4269 jurisdiction for the protection of the estate and of the
 4270 guardian in the performance of his or her duties. Before
 4271 authorizing a guardian to bring an action described in s.
 4272 736.0207, the court shall first find that the action appears to
 4273 be in the ward's best interests during the ward's probable
 4274 lifetime. If the court denies a request that a guardian be
 4275 authorized to bring an action described in s. 736.0207, the

4276 court shall review the continued need for a guardian and the
 4277 extent of the need for delegation of the ward's rights.

4278 (18) When the ward's will evinces an objective to obtain a
 4279 United States estate tax charitable deduction by use of a split
 4280 interest trust (as that term is defined in s. 736.1201 ~~737.501~~),
 4281 but the maximum charitable deduction otherwise allowable will
 4282 not be achieved in whole or in part, execute a codicil on the
 4283 ward's behalf amending said will to obtain the maximum
 4284 charitable deduction allowable without diminishing the aggregate
 4285 value of the benefits of any beneficiary under such will.

4286 Section 46. Section 744.462, Florida Statutes, is created
 4287 to read:

4288 744.462 Determination regarding alternatives to
 4289 guardianship.--Any judicial determination concerning the
 4290 validity of the ward's durable power of attorney, trust, or
 4291 trust amendment shall be promptly reported in the guardianship
 4292 proceeding by the guardian of the property. If the instrument
 4293 has been judicially determined to be valid or if, after the
 4294 appointment of a guardian, a petition is filed alleging that
 4295 there is an alternative to guardianship which will sufficiently
 4296 address the problems of the ward, the court shall review the
 4297 continued need for a guardian and the extent of the need for
 4298 delegation of the ward's rights.

4299 Section 47. Sections 737.101, 737.105, 737.106, 737.111,
 4300 737.115, 737.116, 737.201, 737.202, 737.203, 737.2035, 737.204,
 4301 737.2041, 737.205, 737.206, 737.2065, 737.207, 737.208, 737.209,
 4302 737.301, 737.302, 737.303, 737.3035, 737.304, 737.305, 737.3053,
 4303 737.3054, 737.3055, 737.306, 737.3061, 737.307, 737.308,

HB 425

2006

4304 737.309, 737.401, 737.402, 737.4025, 737.403, 737.4031,
 4305 737.4032, 737.4033, 737.404, 737.405, 737.406, 737.501, 737.502,
 4306 737.503, 737.504, 737.505, 737.506, 737.507, 737.508, 737.509,
 4307 737.510, 737.511, 737.512, 737.6035, 737.621, 737.622, 737.623,
 4308 737.624, 737.625, 737.626, and 737.627, Florida Statutes, are
 4309 repealed.

4310 Section 48. This act shall take effect July 1, 2007.