

CHAMBER ACTION

1 The Civil Justice Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to the Florida Trust Code; creating parts
7 I, II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, and XIII
8 of chapter 736, F.S.; providing a short title; providing
9 general provisions and definitions; providing for judicial
10 proceedings; providing for representations; providing for
11 creation, validity, modification, and termination of
12 trusts; providing for creditors' claims; providing for
13 spendthrift, discretionary, and revocable trusts;
14 providing for the office of trustee; providing for powers
15 and duties of the trustee; providing for trust
16 investments; providing for liability of trustee and rights
17 of persons dealing with trustee; providing for rules of
18 construction; providing for charitable trusts; providing
19 miscellaneous provisions; creating s. 518.117, F.S.;
20 authorizing investment of certain fiduciary funds by
21 certain fiduciaries; amending s. 660.25, F.S.; providing a
22 definition of the term "investment instrument"; amending
23 s. 660.417, F.S.; revising provisions relating to

24 investment of fiduciary funds in investment instruments by
25 certain banks or trust companies; creating s. 689.175,
26 F.S.; abolishing the worthier title doctrine; providing
27 construction of certain instrument language; amending s.
28 731.103, F.S.; correcting a cross-reference; providing
29 construction relating to establishment of death by certain
30 evidence under certain circumstances; creating s.
31 731.1035, F.S.; providing for application of rules of
32 evidence in civil actions to certain proceedings; amending
33 s. 731.201, F.S.; revising definitions; conforming terms
34 and correcting cross-references; amending s. 731.303,
35 F.S.; specifying nonapplication of certain orders relating
36 to powers of revocation and powers of appointment;
37 revising provisions relating to representation by a holder
38 of a power of appointment; amending s. 732.513, F.S.;
39 deleting a ground protecting a devise's validity; amending
40 s. 732.603, F.S.; revising provisions relating to
41 antilapse, deceased devisees, and class gifts; amending s.
42 744.331, F.S.; revising provisions relating to orders
43 determining incapacity; amending s. 744.441, F.S.;
44 revising authority of certain guardians to prosecute or
45 defend claims or proceedings for certain purposes;
46 specifying duties of a court; creating s. 744.462, F.S.;
47 providing requirements for judicial determinations
48 relating to alternatives to guardianship; providing duties
49 of a court; amending ss. 497.458, 607.0802, 617.0802,
50 660.46, 660.418, 689.071, 689.075, 709.08, 721.08, 721.53,
51 732.2075, 732.604, 732.611, 733.212, 733.602, 733.805,

52 733.817, 738.104, 738.1041, 738.202, 739.102, and 744.361,
 53 F.S., to conform terms and correct cross-references;
 54 repealing ss. 737.101, 737.105, 737.106, 737.111, 737.115,
 55 and 737.116, constituting part I of ch. 737, F.S.,
 56 relating to trust registration; repealing ss. 737.201,
 57 737.202, 737.203, 737.2035, 737.204, 737.2041, 737.205,
 58 737.206, 737.2065, 737.207, 737.208, and 737.209,
 59 constituting part II of ch. 737, F.S., relating to
 60 jurisdiction of courts; repealing ss. 737.301, 737.302,
 61 737.303, 737.3035, 737.304, 737.305, 737.3053, 737.3054,
 62 737.3055, 737.306, 737.3061, 737.307, 737.308, and
 63 737.309, constituting part III of ch. 737, F.S., relating
 64 to duties and liabilities of trustees; repealing ss.
 65 737.401, 737.402, 737.4025, 737.403, 737.4031, 737.4032,
 66 737.4033, 737.404, 737.405, and 737.406, constituting part
 67 IV of ch. 737, F.S., relating to powers of trustees;
 68 repealing ss. 737.501, 737.502, 737.503, 737.504, 737.505,
 69 737.506, 737.507, 737.508, 737.509, 737.510, 737.511, and
 70 737.512, constituting part V of ch. 737, F.S., relating to
 71 charitable trusts; repealing ss. 737.6035, 737.621,
 72 737.622, 737.623, 737.624, 737.625, 737.626, and 737.627,
 73 consisting of part VI of ch. 737, F.S., relating to rules
 74 of construction of trust administration; providing an
 75 effective date.

76
 77 Be It Enacted by the Legislature of the State of Florida:
 78

79 Section 1. Part I of chapter 736, Florida Statutes,
80 consisting of sections 736.0101, 736.0102, 736.0103, 736.0104,
81 736.0105, 736.0106, 736.0107, 736.0108, 736.0109, 736.0110,
82 736.0111, and 736.0112, is created to read:

83
84 PART I

85 GENERAL PROVISIONS AND DEFINITIONS

86
87 736.0101 Short title.--This chapter may be cited as the
88 "Florida Trust Code" and for purposes of this chapter is
89 referred to as the "code."

90 736.0102 Scope.--This code applies to express trusts,
91 charitable or noncharitable, and trusts created pursuant to a
92 law, judgment, or decree that requires the trust to be
93 administered in the manner of an express trust. This code does
94 not apply to constructive or resulting trusts; conservatorships;
95 custodial arrangements pursuant to the Florida Uniform Transfers
96 to Minors Act; business trusts providing for certificates to be
97 issued to beneficiaries; common trust funds; land trusts under
98 s. 689.05; trusts created by the form of the account or by the
99 deposit agreement at a financial institution; voting trusts;
100 security arrangements; liquidation trusts; trusts for the
101 primary purpose of paying debts, dividends, interest, salaries,
102 wages, profits, pensions, or employee benefits of any kind; and
103 any arrangement under which a person is nominee or escrowee for
104 another.

105 736.0103 Definitions.--Unless the context otherwise
106 requires, in this code:

- 107 (1) "Action," with respect to an act of a trustee,
 108 includes a failure to act.
- 109 (2) "Affiliate" means any person or entity that directly
 110 or indirectly through one or more intermediaries owns or
 111 controls, is owned or controlled by, or is under common control
 112 or ownership with, the fiduciary. An affiliate may include, but
 113 is not limited to, an investment adviser, administrator, broker,
 114 custodian, transfer agent, placement agent, servicing agent,
 115 registrar, custodian, underwriter, sponsor, distributor, or
 116 manager.
- 117 (3) "Ascertainable standard" means a standard relating to
 118 an individual's health, education, support, or maintenance
 119 within the meaning of s. 2041(b) (1) (A) or s. 2514(c) (1) of the
 120 Internal Revenue Code of 1986, as amended.
- 121 (4) "Beneficiary" means a person who:
- 122 (a) Has a present or future beneficial interest in a
 123 trust, vested or contingent; or
- 124 (b) Holds a power of appointment over trust property in a
 125 capacity other than that of trustee.
- 126 (5) "Charitable trust" means a trust, or portion of a
 127 trust, created for a charitable purpose as described in s.
 128 736.0405(1).
- 129 (6) "Environmental law" means a federal, state, or local
 130 law, rule, regulation, or ordinance that relates to protection
 131 of the environment or human health.
- 132 (7) "General power of appointment" means a power of
 133 appointment exercisable in favor of the holder of the power, the

134 power holder's creditors, the power holder's estate, or the
135 creditors of the power holder's estate.

136 (8) "Guardian of the person" means a person appointed by
137 the court to make decisions regarding the support, care,
138 education, health, and welfare of a minor or an incapacitated
139 adult. The term does not include a guardian ad litem.

140 (9) "Guardian of the property" means a person appointed by
141 the court to administer the estate of a minor or incapacitated
142 adult.

143 (10) "Interests of the beneficiaries" means the beneficial
144 interests provided in the terms of the trust.

145 (11) "Jurisdiction" with respect to a geographic area,
146 includes a state or country.

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

149 (a) Exercisable by a trustee and limited by an
150 ascertainable standard; or

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

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

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

158 (a) Is a distributee or permissible distributee of trust
159 income or principal;

160 (b) Would be a distributee or permissible distributee of
161 trust income or principal if the interests of the distributees

162 described in paragraph (a) terminated on that date without
163 causing the trust to terminate; or

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

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

170 (16) "Settlor" means a person, including a testator, who
171 creates or contributes property to a trust. If more than one
172 person creates or contributes property to a trust, each person
173 is a settlor of the portion of the trust property attributable
174 to that person's contribution except to the extent another
175 person has the power to revoke or withdraw that portion.

176 (17) "Spendthrift provision" means a term of a trust that
177 restrains both voluntary and involuntary transfer of a
178 beneficiary's interest.

179 (18) "State" means any state of the United States and
180 includes the District of Columbia, the Commonwealth of Puerto
181 Rico, and any territory or possession subject to the legislative
182 authority of the United States.

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

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

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

192 736.0104 Knowledge.--

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

195 (a) Has actual knowledge of the fact;

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

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

199 (2) An organization that conducts activities through
 200 employees has notice or knowledge of a fact involving a trust
 201 only from the time the information was received by an employee
 202 having responsibility to act on matters involving the trust, or
 203 would have been brought to the employee's attention if the
 204 organization had exercised reasonable diligence. An organization
 205 exercises reasonable diligence if the organization maintains
 206 reasonable routines for communicating significant information to
 207 the employee having responsibility to act on matters involving
 208 the trust and there is reasonable compliance with the routines.
 209 Reasonable diligence does not require an employee of the
 210 organization to communicate information unless the communication
 211 is part of the individual's regular duties or the individual
 212 knows a matter involving the trust would be materially affected
 213 by the information.

214 736.0105 Default and mandatory rules.--

215 (1) Except as otherwise provided in the terms of the
 216 trust, this code governs the duties and powers of a trustee,

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217 relations among trustees, and the rights and interests of a
218 beneficiary.

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

221 (a) The requirements for creating a trust.

222 (b) The duty of the trustee to act in good faith and in
223 accordance with the terms and purposes of the trust and the
224 interests of the beneficiaries.

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

229 (d) The periods of limitation for commencing a judicial
230 proceeding.

231 (e) The power of the court to take such action and
232 exercise such jurisdiction as may be necessary in the interests
233 of justice.

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

236 (g) The jurisdiction and venue provisions in ss. 736.0202,
237 736.0203, and 736.0204.

238 (h) The restrictions on the designation of representative
239 under s. 736.0306.

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

242 (j) The power of the court to modify or terminate a trust
243 under ss. 736.0410-736.04115, except as provided in s.

244 736.04115(3) (b), and under ss. 736.0413, 736.0415, and 736.0416.

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

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

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

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

254 (o) The right of a trustee under s. 736.0701 to decline a
255 trusteeship and the right of a trustee under s. 736.0705 to
256 resign a trusteeship.

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

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

262 (r) The duty under s. 736.0813(1)(a) and (b) to notify
263 qualified beneficiaries of an irrevocable trust of the existence
264 of the trust, of the identity of the trustee, and of their
265 rights to trust accountings.

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

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

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

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

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

278 736.0106 Common law of trusts; principles of equity.--The
 279 common law of trusts and principles of equity supplement this
 280 code, except to the extent modified by this code or another law
 281 of this state.

282 736.0107 Governing law.--The meaning and effect of the
 283 terms of a trust are determined by:

284 (1) The law of the jurisdiction designated in the terms of
 285 the trust, provided there is a sufficient nexus to the
 286 designated jurisdiction at the time of the creation of the trust
 287 or during the trust administration, including, but not limited
 288 to, the location of real property held by the trust or the
 289 residence of location of an office of the settlor, trustee, or
 290 any beneficiary; or

291 (2) In the absence of a controlling designation in the
 292 terms of the trust, the law of the jurisdiction where the
 293 settlor resides at the time the trust is first created.

294
 295 Notwithstanding subsection (1) or subsection (2), a designation
 296 in the terms of a trust is not controlling as to any matter for
 297 which the designation would be contrary to a strong public
 298 policy of this state.

299 736.0108 Principal place of administration.--

300 (1) Terms of a trust designating the principal place of
301 administration of the trust are valid only if there is a
302 sufficient connection with the designated jurisdiction. Without
303 precluding other means for establishing a sufficient connection,
304 terms of a trust designating the principal place of
305 administration are valid and controlling if:

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

308 (b) All or part of the administration occurs in the
309 designated jurisdiction.

310 (2) Unless otherwise validly designated in the trust
311 instrument, the principal place of administration of a trust is
312 the trustee's usual place of business where the records
313 pertaining to the trust are kept or, if the trustee has no place
314 of business, the trustee's residence. In the case of cotrustees,
315 the principal place of administration is:

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

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

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

323 (3) Notwithstanding any other provision of this section,
324 the principal place of administration of a trust, for which a
325 bank, association, or trust company organized under the laws of
326 this state or bank or savings association organized under the
327 laws of the United States with its main office in this state has

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328 been appointed trustee, shall not be moved or otherwise affected
329 solely because the trustee engaged in an interstate merger
330 transaction with an out-of-state bank pursuant to s. 658.2953 in
331 which the out-of-state bank is the resulting bank.

332 (4) A trustee is under a continuing duty to administer the
333 trust at a place appropriate to its purposes and its
334 administration.

335 (5) Without precluding the right of the court to order,
336 approve, or disapprove a transfer, the trustee, in furtherance
337 of the duty prescribed by subsection (4), may transfer the
338 trust's principal place of administration to another state or to
339 a jurisdiction outside of the United States.

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

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

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

348 (c) An explanation of the reasons for the proposed
349 transfer.

350 (d) The date on which the proposed transfer is anticipated
351 to occur.

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

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355 (7) The authority of a trustee to act under this section
356 without court approval to transfer a trust's principal place of
357 administration is suspended if a qualified beneficiary files a
358 lawsuit objecting to the proposed transfer on or before the date
359 specified in the notice. The suspension is effective until the
360 lawsuit is dismissed or withdrawn.

361 (8) In connection with a transfer of the trust's principal
362 place of administration, the trustee may transfer any of the
363 trust property to a successor trustee designated in the terms of
364 the trust or appointed pursuant to s. 736.0704.

365 736.0109 Methods and waiver of notice.--

366 (1) Notice to a person under this code or the sending of a
367 document to a person under this code must be accomplished in a
368 manner reasonably suitable under the circumstances and likely to
369 result in receipt of the notice or document. Permissible methods
370 of notice or for sending a document include first-class mail,
371 personal delivery, delivery to the person's last known place of
372 residence or place of business, or a properly directed facsimile
373 or other electronic message.

374 (2) Notice otherwise required under this code or a
375 document otherwise required to be sent under this code need not
376 be provided to a person whose identity or location is unknown to
377 and not reasonably ascertainable by the trustee.

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

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

383 736.0110 Others treated as qualified beneficiaries.--

384 (1) A charitable organization expressly designated to
 385 receive distributions under the terms of a charitable trust has
 386 the rights of a qualified beneficiary under this code if the
 387 charitable organization, on the date the charitable
 388 organization's qualification is being determined:

389 (a) Is a distributee or permissible distributee of trust
 390 income or principal;

391 (b) Would be a distributee or permissible distributee of
 392 trust income or principal on termination of the interests of
 393 other distributees or permissible distributees then receiving or
 394 eligible to receive distributions; or

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

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

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

404 736.0111 Nonjudicial settlement agreements.--

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

408 (2) Except as otherwise provided in subsection (3),
 409 interested persons may enter into a binding nonjudicial

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410 settlement agreement with respect to any matter involving a
411 trust.

412 (3) A nonjudicial settlement agreement among the trustee
413 and trust beneficiaries is valid only to the extent the terms
414 and conditions could be properly approved by the court. A
415 nonjudicial settlement may not be used to produce a result not
416 authorized by other provisions of this code, including, but not
417 limited to, terminating or modifying a trust in an impermissible
418 manner.

419 (4) Matters that may be resolved by a nonjudicial
420 settlement agreement include:

421 (a) The interpretation or construction of the terms of the
422 trust.

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

424 (c) The direction to a trustee to refrain from performing
425 a particular act or the grant to a trustee of any necessary or
426 desirable power.

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

429 (e) The transfer of a trust's principal place of
430 administration.

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

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

435 736.0112 Qualification of foreign trustee.--Unless
436 otherwise doing business in this state, local qualification by a
437 foreign trustee is not required for the trustee to receive

438 distribution from a local estate. Nothing in this chapter shall
 439 affect the provisions of s. 660.41.

440 Section 2. Part II of chapter 736, Florida Statutes,
 441 consisting of sections 736.0201, 736.0202, 736.0203, 736.0204,
 442 736.0205, 736.0206, and 736.0207, is created to read:

443
 444 PART II
 445 JUDICIAL PROCEEDINGS
 446

447 736.0201 Role of court in trust proceedings.--

448 (1) Except as provided in subsection (5) and s. 736.0206,
 449 proceedings concerning trusts shall be commenced by filing a
 450 complaint and shall be governed by the Florida Rules of Civil
 451 Procedure.

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

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

457 (4) A judicial proceeding involving a trust may relate to
 458 the validity, administration, or distribution of a trust,
 459 including proceedings to:

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

461 (b) Appoint or remove a trustee;

462 (c) Review trustees' fees;

463 (d) Review and settle interim or final accounts;

464 (e) Ascertain beneficiaries; determine any question

465 arising in the administration or distribution of any trust,

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466 including questions of construction of trust instruments;
467 instruct trustees; and determine the existence or nonexistence
468 of any immunity, power, privilege, duty, or right;

469 (f) Obtain a declaration of rights; or

470 (g) Determine any other matters involving trustees and
471 beneficiaries.

472 (5) A proceeding for the construction of a testamentary
473 trust may be filed in the probate proceeding for the testator's
474 estate. The proceeding shall be governed by the Florida Probate
475 Rules.

476 736.0202 Jurisdiction over trustee and beneficiary.--

477 (1) By accepting the trusteeship of a trust having its
478 principal place of administration in this state or by moving the
479 principal place of administration to this state, the trustee
480 submits personally to the jurisdiction of the courts of this
481 state regarding any matter involving the trust.

482 (2) With respect to their interests in the trust, the
483 beneficiaries of a trust having its principal place of
484 administration in this state are subject to the jurisdiction of
485 the courts of this state regarding any matter involving the
486 trust. By accepting a distribution from such a trust, the
487 recipient submits personally to the jurisdiction of the courts
488 of this state regarding any matter involving the distribution.

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

492 736.0203 Subject-matter jurisdiction.--The circuit court
 493 has original jurisdiction in this state of all proceedings
 494 arising under this code.

495 736.0204 Venue.--Venue for actions and proceedings
 496 concerning trusts, including those under s. 736.0201, may be
 497 laid in:

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

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

501 (3) The county where the trust has its principal place of
 502 administration.

503 736.0205 Trust proceedings; dismissal of matters relating
 504 to foreign trusts.--Over the objection of a party, the court
 505 shall not entertain proceedings under s. 736.0201 for a trust
 506 registered, or having its principal place of administration, in
 507 another state unless all interested parties could not be bound
 508 by litigation in the courts of the state where the trust is
 509 registered or has its principal place of administration. The
 510 court may condition a stay or dismissal of a proceeding under
 511 this section on the consent of any party to jurisdiction of the
 512 state where the trust is registered or has its principal place
 513 of business, or the court may grant a continuance or enter any
 514 other appropriate order.

515 736.0206 Proceedings for review of employment of agents
 516 and review of compensation of trustee and employees of trust.--

517 (1) After notice to all interested persons, the court may
 518 review the propriety of the employment by a trustee of any
 519 person, including any attorney, auditor, investment adviser, or

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520 other specialized agent or assistant, and the reasonableness of
521 any compensation paid to that person or to the trustee.

522 (2) If the settlor's estate is being probated, and the
523 settlor's trust or the trustee of the settlor's trust is a
524 beneficiary under the settlor's will, the trustee, any person
525 employed by the trustee, or any interested person may have the
526 propriety of employment and the reasonableness of the
527 compensation of the trustee or any person employed by the
528 trustee determined in the probate proceeding.

529 (3) The burden of proof of the propriety of the employment
530 and the reasonableness of the compensation shall be on the
531 trustee and the person employed by the trustee. Any person who
532 is determined to have received excessive compensation from a
533 trust for services rendered may be ordered to make appropriate
534 refunds.

535 (4) Court proceedings to determine reasonable compensation
536 of a trustee or any person employed by a trustee, if required,
537 are a part of the trust administration process. The costs,
538 including attorney's fees, of the person assuming the burden of
539 proof of propriety of the employment and reasonableness of the
540 compensation shall be determined by the court and paid from the
541 assets of the trust unless the court finds the compensation paid
542 or requested to be substantially unreasonable. The court shall
543 direct from which part of the trust assets the compensation
544 shall be paid.

545 (5) The court may determine reasonable compensation for a
546 trustee or any person employed by a trustee without receiving
547 expert testimony. Any party may offer expert testimony after

548 notice to interested persons. If expert testimony is offered, a
 549 reasonable expert witness fee shall be awarded by the court and
 550 paid from the assets of the trust. The court shall direct from
 551 which part of the trust assets the fee shall be paid.

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

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

559 736.0207 Trust contests.--An action to contest the
 560 validity of all or part of a trust may not be commenced until
 561 the trust becomes irrevocable, except this section does not
 562 prohibit such action by the guardian of the property of an
 563 incapacitated settlor.

564 Section 3. Part III of chapter 736, Florida Statutes,
 565 consisting of sections 736.0301, 736.0302, 736.0303, 736.0304,
 566 736.0305, and 736.0306, is created to read:

567
 568 PART III
 569 REPRESENTATION

570
 571 736.0301 Representation; basic effect.--

572 (1) Notice, information, accountings, or reports given to
 573 a person who may represent and bind another person under this
 574 part may serve as a substitute for and have the same effect as

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575 notice, information, accountings, or reports given directly to
576 the other person.

577 (2) Actions taken by a person who represents the interests
578 of another person under this part are binding on the person
579 whose interests are represented to the same extent as if the
580 actions had been taken by the person whose interests are
581 represented.

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

586 (4) A trustee is not liable for giving notice,
587 information, accountings, or reports to a beneficiary who is
588 represented by another person under this part and nothing in
589 this part prohibits the trustee from giving notice, information,
590 accountings, or reports to the person represented.

591 736.0302 Representation by holder of power of
592 appointment.--

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

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

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

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

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

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602 736.0303 Representation by fiduciaries and parents.--To
 603 the extent there is no conflict of interest between the
 604 representative and the person represented or among those being
 605 represented with respect to a particular question or dispute:

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

608 (2) An agent having authority to act with respect to the
 609 particular question or dispute may represent and bind the
 610 principal.

611 (3) A trustee may represent and bind the beneficiaries of
 612 the trust.

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

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

618 736.0304 Representation by person having substantially
 619 identical interest.--Unless otherwise represented, a minor,
 620 incapacitated, or unborn individual, or a person whose identity
 621 or location is unknown and not reasonably ascertainable, may be
 622 represented by and bound by another person having a
 623 substantially identical interest with respect to the particular
 624 question or dispute, but only to the extent there is no conflict
 625 of interest between the representative and the person
 626 represented.

627 736.0305 Appointment of representative.--

628 (1) If the court determines that an interest is not
 629 represented under this part, or that the otherwise available

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630 representation might be inadequate, the court may appoint a
631 representative to receive notice, give consent, and otherwise
632 represent, bind, and act on behalf of a minor, incapacitated, or
633 unborn individual, or a person whose identity or location is
634 unknown. If not precluded by a conflict of interest, a
635 representative may be appointed to represent several persons or
636 interests.

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

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

644 736.0306 Designated representative.--

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

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

651 (3) Except as otherwise provided in this code, a person
652 designated, as provided in subsection (1) may not represent and
653 bind another beneficiary if the person designated also is a
654 beneficiary, unless:

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

656 (b) That person is the beneficiary's spouse or a
 657 grandparent or descendant of a grandparent of the beneficiary or
 658 the beneficiary's spouse.

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

663 Section 4. Part IV of chapter 736, Florida Statutes,
 664 consisting of sections 736.0401, 736.0402, 736.0403, 736.0404,
 665 736.0405, 736.0406, 736.0407, 736.0408, 736.0409, 736.0410,
 666 736.04113, 736.04115, 736.0412, 736.0413, 736.0414, 736.0415,
 667 736.0416, and 736.0417, is created to read:

668
 669 PART IV

670 CREATION, VALIDITY, MODIFICATION, AND TERMINATION

671
 672 736.0401 Methods of creating trust.--A trust may be
 673 created by:

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

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

679 (3) Exercise of a power of appointment in favor of a
 680 trustee.

681 736.0402 Requirements for creation.--

682 (1) A trust is created only if:

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

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

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

686 1. A charitable trust;

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

688 736.0408; or

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

690 736.0409.

691 (d) The trustee has duties to perform.

692 (e) The same person is not the sole trustee and sole
693 beneficiary.

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

697 (3) A power of a trustee to select a beneficiary from an
698 indefinite class is valid. If the power is not exercised within
699 a reasonable time, the power fails and the property subject to
700 the power passes to the persons who would have taken the
701 property had the power not been conferred.

702 736.0403 Trusts created in other jurisdictions;
703 formalities required for revocable trusts.--

704 (1) A trust not created by will is validly created if the
705 creation of the trust complies with the law of the jurisdiction
706 in which the trust instrument was executed or the law of the
707 jurisdiction in which, at the time of creation, the settlor was
708 domiciled.

709 (2) Notwithstanding subsection (1):

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

713 (b) The testamentary aspects of a revocable trust,
 714 executed by a settlor who is a domiciliary of this state at the
 715 time of execution, are invalid unless the trust instrument is
 716 executed by the settlor with the formalities required for the
 717 execution of a will in this state. For purposes of this
 718 subsection, the term "testamentary aspects" means those
 719 provisions of the trust instrument that dispose of the trust
 720 property on or after the death of the settlor other than to the
 721 settlor's estate.

722 (3) This section does not apply to trusts established as
 723 part of an employee annuity described in s. 403 of the Internal
 724 Revenue Code of 1986, as amended, an individual retirement
 725 account as described in s. 408 of the Internal Revenue Code of
 726 1986, as amended, a Keogh (HR-10) Plan, or a retirement or other
 727 plan that is qualified under s. 401 of the Internal Revenue Code
 728 of 1986, as amended.

729 (4) This section applies to trusts created on or after the
 730 effective date of this code. Section 737.111, as in effect prior
 731 to the effective date of this code, continues to apply to trusts
 732 created before the effective date of this code.

733 736.0404 Trust purposes.--A trust may be created only to
 734 the extent the purposes of the trust are lawful, not contrary to
 735 public policy, and possible to achieve. A trust and its terms
 736 must be for the benefit of its beneficiaries.

737 736.0405 Charitable purposes; enforcement.--

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738 (1) A trust may be created for charitable purposes.
739 Charitable purposes include, but are not limited to, the relief
740 of poverty; the advancement of arts, sciences, education, or
741 religion; and the promotion of health, governmental, or
742 municipal purposes.

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

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

750 736.0406 Effect of fraud, duress, mistake, or undue
751 influence.--A trust is void if the creation of the trust is
752 procured by fraud, duress, mistake, or undue influence. Any part
753 of the trust is void if procured by such means, but the
754 remainder of the trust not procured by such means is valid if
755 the remainder is not invalid for other reasons.

756 736.0407 Evidence of oral trust.--Except as required by s.
757 736.0403 or a law other than this code, a trust need not be
758 evidenced by a trust instrument but the creation of an oral
759 trust and its terms may be established only by clear and
760 convincing evidence.

761 736.0408 Trust for care of an animal.--

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

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

767 (2) A trust authorized by this section may be enforced by
 768 a person appointed in the terms of the trust or, if no person is
 769 appointed, by a person appointed by the court. A person having
 770 an interest in the welfare of the animal may request the court
 771 to appoint a person to enforce the trust or to remove a person
 772 appointed.

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

781 736.0409 Noncharitable trust without ascertainable
 782 beneficiary.--Except as otherwise provided in s. 736.0408 or by
 783 another provision of law, the following rules apply:

784 (1) A trust may be created for a noncharitable purpose
 785 without a definite or definitely ascertainable beneficiary or
 786 for a noncharitable but otherwise valid purpose to be selected
 787 by the trustee. The trust may not be enforced for more than 21
 788 years.

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

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792 (3) Property of a trust authorized by this section may be
793 applied only to the intended use of the property, except to the
794 extent the court determines that the value of the trust property
795 exceeds the amount required for the intended use. Except as
796 otherwise provided in the terms of the trust, property not
797 required for the intended use must be distributed to the
798 settlor, if then living, otherwise as part of the settlor's
799 estate.

800 736.0410 Modification or termination of trust; proceedings
801 for disapproval of nonjudicial acts.--

802 (1) In addition to the methods of termination prescribed
803 by ss. 736.04113-736.0414, a trust terminates to the extent the
804 trust expires or is revoked or is properly distributed pursuant
805 to the terms of the trust.

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

809 (3) A proceeding to disapprove a proposed termination
810 under s. 736.0414(1) may be commenced by any qualified
811 beneficiary.

812 736.04113 Judicial modification of irrevocable trust when
813 modification is not inconsistent with settlor's purpose.--

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

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818 (a) The purposes of the trust have been fulfilled or have
819 become illegal, impossible, wasteful, or impracticable to
820 fulfill;

821 (b) Because of circumstances not anticipated by the
822 settlor, compliance with the terms of the trust would defeat or
823 substantially impair the accomplishment of a material purpose of
824 the trust; or

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

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

827 (a) Amend or change the terms of the trust, including
828 terms governing distribution of the trust income or principal or
829 terms governing administration of the trust;

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

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

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

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

837 (a) The court shall consider the terms and purposes of the
838 trust, the facts and circumstances surrounding the creation of
839 the trust, and extrinsic evidence relevant to the proposed
840 modification.

841 (b) The court shall consider spendthrift provisions as a
842 factor in making a decision but the court is not precluded from
843 modifying a trust because the trust contains spendthrift
844 provisions.

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

848 736.04115 Judicial modification of irrevocable trust when
849 modification is in best interest of beneficiaries.--

850 (1) Without regard to the reasons for modification
851 provided in s. 736.04113, if compliance with the terms of a
852 trust is not in the best interests of the beneficiaries, upon
853 the application of a trustee or any qualified beneficiary, a
854 court may at any time modify a trust that is not then revocable
855 as provided in s. 736.04113(2).

856 (2) In exercising discretion to modify a trust under this
857 section:

858 (a) The court shall exercise discretion in a manner that
859 conforms to the extent possible with the intent of the settlor,
860 taking into account the current circumstances and best interests
861 of the beneficiaries.

862 (b) The court shall consider the terms and purposes of the
863 trust, the facts and circumstances surrounding the creation of
864 the trust, and extrinsic evidence relevant to the proposed
865 modification.

866 (c) The court shall consider spendthrift provisions as a
867 factor in making a decision but the court is not precluded from
868 modifying a trust because the trust contains spendthrift
869 provisions.

870 (3) This section shall not apply to:

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

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

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873 1. Under the terms of the trust, all beneficial interests
874 in the trust must vest or terminate within the period prescribed
875 by the rule against perpetuities in s. 689.225(2),
876 notwithstanding s. 689.225(2)(f).

877 2. The terms of the trust expressly prohibit judicial
878 modification.

879 (4) For purposes of subsection (3), a revocable trust
880 shall be treated as created when the right of revocation
881 terminates.

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

885 736.0412 Nonjudicial modification of irrevocable trust.--

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

889 (2) Modification of a trust as authorized in this section
890 is not prohibited by a spendthrift clause or by a provision in
891 the trust instrument that prohibits amendment or revocation of
892 the trust.

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

896 (4) This section shall not apply to:

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

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

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901 against perpetuities in s. 689.225(2), notwithstanding s.
 902 689.225(2)(f), unless the terms of the trust expressly authorize
 903 nonjudicial modification.

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

907 (5) For purposes of subsection (4), a revocable trust
 908 shall be treated as created when the right of revocation
 909 terminates.

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

913 736.0413 Cy pres.--

914 (1) If a particular charitable purpose becomes unlawful,
 915 impracticable, impossible to achieve, or wasteful, the court may
 916 apply the doctrine of cy pres to modify or terminate the trust
 917 by directing that the trust property be applied or distributed,
 918 in whole or in part, in a manner consistent with the settlor's
 919 charitable purposes.

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

923 736.0414 Modification or termination of uneconomic
 924 trust.--

925 (1) After notice to the qualified beneficiaries, the
 926 trustee of a trust consisting of trust property having a total
 927 value less than \$50,000 may terminate the trust if the trustee

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928 concludes that the value of the trust property is insufficient
929 to justify the cost of administration.

930 (2) Upon application of a trustee or any qualified
931 beneficiary, the court may modify or terminate a trust or remove
932 the trustee and appoint a different trustee if the court
933 determines that the value of the trust property is insufficient
934 to justify the cost of administration.

935 (3) Upon termination of a trust under this section, the
936 trustee shall distribute the trust property in a manner
937 consistent with the purposes of the trust. The trustee may enter
938 into agreements or make such other provisions that the trustee
939 deems necessary or appropriate to protect the interests of the
940 beneficiaries and the trustee and to carry out the intent and
941 purposes of the trust.

942 (4) The existence of a spendthrift provision in the trust
943 does not make this section inapplicable unless the trust
944 instrument expressly provides that the trustee may not terminate
945 the trust pursuant to this section.

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

948 736.0415 Reformation to correct mistakes.--Upon
949 application of a settlor or any interested person, the court may
950 reform the terms of a trust, even if unambiguous, to conform the
951 terms to the settlor's intent if it is proved by clear and
952 convincing evidence that both the accomplishment of the
953 settlor's intent and the terms of the trust were affected by a
954 mistake of fact or law, whether in expression or inducement. In
955 determining the settlor's original intent, the court may

956 consider evidence relevant to the settlor's intent even though
 957 the evidence contradicts an apparent plain meaning of the trust
 958 instrument.

959 736.0416 Modification to achieve settlor's tax
 960 objectives.--Upon application of any interested person, to
 961 achieve the settlor's tax objectives the court may modify the
 962 terms of a trust in a manner that is not contrary to the
 963 settlor's probable intent. The court may provide that the
 964 modification has retroactive effect.

965 736.0417 Combination and division of trusts.--

966 (1) After notice to the qualified beneficiaries, a trustee
 967 may combine two or more trusts into a single trust or divide a
 968 trust into two or more separate trusts, if the result does not
 969 impair rights of any beneficiary or adversely affect achievement
 970 of the purposes of the trusts or trust, respectively.

971 (2) Subject to the terms of the trust, the trustee may
 972 take into consideration differences in federal tax attributes
 973 and other pertinent factors in administering the trust property
 974 of any separate account or trust, in making applicable tax
 975 elections, and in making distributions. A separate trust created
 976 by severance must be treated as a separate trust for all
 977 purposes from the date on which the severance is effective. The
 978 effective date of the severance may be retroactive to a date
 979 before the date on which the trustee exercises such power.

980 Section 5. Part V of chapter 736, Florida Statutes,
 981 consisting of sections 736.0501, 736.0502, 736.0503, 736.0504,
 982 736.0505, 736.05053, 736.05055, 736.0506, and 736.0507, is
 983 created to read:

984
985 PART V

986 CREDITORS' CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS

987
988 736.0501 Rights of beneficiary's creditor or assignee.--To
989 the extent a beneficiary's interest is not subject to a
990 spendthrift provision, the court may authorize a creditor or
991 assignee of the beneficiary to reach the beneficiary's interest
992 by attachment of present or future distributions to or for the
993 benefit of the beneficiary or by other means. The court may
994 limit the award to such relief as is appropriate under the
995 circumstances.

996 736.0502 Spendthrift provision.--

997 (1) A spendthrift provision is valid only if the provision
998 restrains both voluntary and involuntary transfer of a
999 beneficiary's interest. This subsection does not apply to any
1000 trust in existence on the effective date of this code.

1001 (2) A term of a trust providing that the interest of a
1002 beneficiary is held subject to a spendthrift trust, or words of
1003 similar import, is sufficient to restrain both voluntary and
1004 involuntary transfer of the beneficiary's interest.

1005 (3) A beneficiary may not transfer an interest in a trust
1006 in violation of a valid spendthrift provision and, except as
1007 otherwise provided in this part, a creditor or assignee of the
1008 beneficiary may not reach the interest or a distribution by the
1009 trustee before receipt of the interest or distribution by the
1010 beneficiary.

1011 (4) A valid spendthrift provision does not prevent the
 1012 appointment of interests through the exercise of a power of
 1013 appointment.

1014 736.0503 Exceptions to spendthrift provision.--

1015 (1) As used in this section, the term "child" includes any
 1016 person for whom an order or judgment for child support has been
 1017 entered in this or any other state.

1018 (2) To the extent provided in subsection (3), a
 1019 spendthrift provision is unenforceable against:

1020 (a) A beneficiary's child, spouse, or former spouse who
 1021 has a judgment or court order against the beneficiary for
 1022 support or maintenance.

1023 (b) A judgment creditor who has provided services for the
 1024 protection of a beneficiary's interest in the trust.

1025 (c) A claim of this state or the United States to the
 1026 extent a law of this state or a federal law so provides.

1027 (3) Except as otherwise provided in this subsection, a
 1028 claimant against which a spendthrift provision may not be
 1029 enforced may obtain from a court, or pursuant to the Uniform
 1030 Interstate Family Support Act, an order attaching present or
 1031 future distributions to or for the benefit of the beneficiary.
 1032 The court may limit the award to such relief as is appropriate
 1033 under the circumstances. Notwithstanding this subsection, the
 1034 remedies provided in this subsection apply to a claim by a
 1035 beneficiary's child, spouse, former spouse, or a judgment
 1036 creditor described in paragraph (2) (a) or paragraph (2) (b) only
 1037 as a last resort upon an initial showing that traditional
 1038 methods of enforcing the claim are insufficient.

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1039 736.0504 Discretionary trusts; effect of standard.--

1040 (1) Whether or not a trust contains a spendthrift
 1041 provision, a creditor of a beneficiary may not compel a
 1042 distribution that is subject to the trustee's discretion, even
 1043 if:

1044 (a) The discretion is expressed in the form of a standard
 1045 of distribution; or

1046 (b) The trustee has abused the discretion.

1047 (2) If the trustee's discretion to make distributions for
 1048 the trustee's own benefit is limited by an ascertainable
 1049 standard, a creditor may not reach or compel distribution of the
 1050 beneficial interest except to the extent the interest would be
 1051 subject to the creditor's claim were the beneficiary not acting
 1052 as trustee.

1053 (3) This section does not limit the right of a beneficiary
 1054 to maintain a judicial proceeding against a trustee for an abuse
 1055 of discretion or failure to comply with a standard for
 1056 distribution.

1057 736.0505 Creditors' claims against settlor.--

1058 (1) Whether or not the terms of a trust contain a
 1059 spendthrift provision, the following rules apply:

1060 (a) The property of a revocable trust is subject to the
 1061 claims of the settlor's creditors during the settlor's lifetime
 1062 to the extent the property would not otherwise be exempt by law
 1063 if owned directly by the settlor.

1064 (b) With respect to an irrevocable trust, a creditor or
 1065 assignee of the settlor may reach the maximum amount that can be
 1066 distributed to or for the settlor's benefit. If a trust has more

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1067 than one settlor, the amount the creditor or assignee of a
 1068 particular settlor may reach may not exceed the settlor's
 1069 interest in the portion of the trust attributable to that
 1070 settlor's contribution.

1071 (2) For purposes of this section:

1072 (a) During the period the power may be exercised, the
 1073 holder of a power of withdrawal is treated in the same manner as
 1074 the settlor of a revocable trust to the extent of the property
 1075 subject to the power.

1076 (b) Upon the lapse, release, or waiver of the power, the
 1077 holder is treated as the settlor of the trust only to the extent
 1078 the value of the property affected by the lapse, release, or
 1079 waiver exceeds the greater of the amount specified in:

- 1080 1. Section 2041(b)(2) or s. 2514(e); or
- 1081 2. Section 2503(b),

1082
 1083 of the Internal Revenue Code of 1986, as amended.

1084 736.05053 Trustee's duty to pay expenses and obligations
 1085 of settlor's estate.--

1086 (1) A trustee of a trust described in s. 733.707(3) shall
 1087 pay to the personal representative of a settlor's estate any
 1088 amounts that the personal representative certifies in writing to
 1089 the trustee are required to pay the expenses of the
 1090 administration and obligations of the settlor's estate. Payments
 1091 made by a trustee, unless otherwise provided in the trust
 1092 instrument, must be charged as expenses of the trust without a
 1093 contribution from anyone. The interests of all beneficiaries of
 1094 such a trust are subject to the provisions of this subsection;

1095 however, the payments must be made from assets, property, or the
 1096 proceeds of the assets or property, other than assets proscribed
 1097 in s. 733.707(3), that are included in the settlor's gross
 1098 estate for federal estate tax purposes.

1099 (2) Unless a settlor provides by will, or designates in a
 1100 trust described in s. 733.707(3) funds or property passing under
 1101 the trust to be used as designated, the expenses of the
 1102 administration and obligations of the settlor's estate must be
 1103 paid from the trust in the following order:

1104 (a) Property of the residue of the trust remaining after
 1105 all distributions that are to be satisfied by reference to a
 1106 specific property or type of property, fund, or sum.

1107 (b) Property that is not to be distributed from specified
 1108 or identified property or a specified or identified item of
 1109 property.

1110 (c) Property that is to be distributed from specified or
 1111 identified property or a specified or identified item of
 1112 property.

1113 (3) Trust distributions that are to be satisfied from
 1114 specified or identified property must be classed as
 1115 distributions to be satisfied from the general assets of the
 1116 trust and not otherwise disposed of in the trust instrument on
 1117 the failure or insufficiency of funds or property from which
 1118 payment should be made, to the extent of the insufficiency.
 1119 Trust distributions given for valuable consideration abate with
 1120 other distributions of the same class only to the extent of the
 1121 excess over the value of the consideration until all others of
 1122 the same class are exhausted. Except as provided in this

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1123 section, trust distributions abate equally and ratably and
1124 without preference or priority between real and personal
1125 property. When a specified or identified item of property that
1126 has been designated for distribution in the trust instrument or
1127 that is charged with a distribution is sold or taken by the
1128 trustee, other beneficiaries shall contribute according to their
1129 respective interests to the beneficiary whose property has been
1130 sold or taken. Before distribution, the trustee shall determine
1131 the amounts of the respective contributions and such amounts
1132 must be paid or withheld before distribution is made.

1133 (4) The trustee shall pay the expenses of trust
1134 administration, including compensation of trustees and attorneys
1135 of the trustees, before and in preference to the expenses of the
1136 administration and obligations of the settlor's estate.

1137 736.05055 Notice of trust.--

1138 (1) Upon the death of a settlor of a trust described in s.
1139 733.707(3), the trustee must file a notice of trust with the
1140 court of the county of the settlor's domicile and the court
1141 having jurisdiction of the settlor's estate.

1142 (2) The notice of trust must contain the name of the
1143 settlor, the settlor's date of death, the title of the trust, if
1144 any, the date of the trust, and the name and address of the
1145 trustee.

1146 (3) If the settlor's probate proceeding has been
1147 commenced, the clerk shall notify the trustee in writing of the
1148 date of the commencement of the probate proceeding and the file
1149 number.

1150 (4) The clerk shall file and index the notice of trust in
 1151 the same manner as a caveat unless there exists a probate
 1152 proceeding for the settlor's estate, in which case the notice of
 1153 trust must be filed in the probate proceeding and the clerk
 1154 shall send a copy to the personal representative.

1155 (5) The clerk shall send a copy of any caveat filed
 1156 regarding the settlor to the trustee, and the notice of trust to
 1157 any caveator, unless there is a probate proceeding pending and
 1158 the personal representative and the trustee are the same.

1159 (6) Any proceeding affecting the expenses of the
 1160 administration or obligations of the settlor's estate prior to
 1161 the trustee filing a notice of trust are binding on the trustee.

1162 (7) The trustee's failure to file the notice of trust does
 1163 not affect the trustee's obligation to pay expenses of
 1164 administration and obligations of the settlor's estate as
 1165 provided in s. 733.607(2).

1166 736.0506 Overdue distribution.--

1167 (1) As used in this section, the term "mandatory
 1168 distribution" means a distribution of income or principal the
 1169 trustee is required to make to a beneficiary under the terms of
 1170 the trust, including a distribution on termination of the trust.
 1171 The term does not include a distribution subject to the exercise
 1172 of the trustee's discretion even if:

1173 (a) The discretion is expressed in the form of a standard
 1174 of distribution; or

1175 (b) The terms of the trust authorizing a distribution
 1176 couple language of discretion with language of direction.

1177 (2) A creditor or assignee of a beneficiary may reach a
 1178 mandatory distribution of income or principal, including a
 1179 distribution upon termination of the trust, if the trustee has
 1180 not made the distribution to the beneficiary within a reasonable
 1181 time after the designated distribution date, whether or not a
 1182 trust contains a spendthrift provision.

1183 736.0507 Personal obligations of trustee.--Except to the
 1184 extent of the trustee's interest in the trust other than as a
 1185 trustee, trust property is not subject to personal obligations
 1186 of the trustee, even if the trustee becomes insolvent or
 1187 bankrupt.

1188 Section 6. Part VI of chapter 736, Florida Statutes,
 1189 consisting of sections 736.0601, 736.0602, 736.0603, and
 1190 736.0604, is created to read:

1191
 1192 PART VI
 1193 REVOCABLE TRUSTS

1194
 1195 736.0601 Capacity of settlor of revocable trust.--The
 1196 capacity required to create, amend, revoke, or add property to a
 1197 revocable trust, or to direct the actions of the trustee of a
 1198 revocable trust, is the same as that required to make a will.

1199 736.0602 Revocation or amendment of revocable trust.--
 1200 (1) Unless the terms of a trust expressly provide that the
 1201 trust is irrevocable, the settlor may revoke or amend the trust.
 1202 This subsection does not apply to a trust created under an
 1203 instrument executed before the effective date of this code.

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1204 (2) If a revocable trust is created or funded by more than
1205 one settlor:

1206 (a) To the extent the trust consists of community
1207 property, the trust may be revoked by either spouse acting alone
1208 but may be amended only by joint action of both spouses.

1209 (b) To the extent the trust consists of property other
1210 than community property, each settlor may revoke or amend the
1211 trust with regard to the portion of the trust property
1212 attributable to that settlor's contribution.

1213 (c) Upon the revocation or amendment of the trust by fewer
1214 than all of the settlors, the trustee shall promptly notify the
1215 other settlors of the revocation or amendment.

1216 (3) Subject to s. 736.0403(2), the settlor may revoke or
1217 amend a revocable trust:

1218 (a) By substantial compliance with a method provided in
1219 the terms of the trust; or

1220 (b) If the terms of the trust do not provide a method, by:

1221 1. A later will or codicil that expressly refers to the
1222 trust or specifically devises property that would otherwise have
1223 passed according to the terms of the trust; or

1224 2. Any other method manifesting clear and convincing
1225 evidence of the settlor's intent.

1226 (4) Upon revocation of a revocable trust, the trustee
1227 shall deliver the trust property as the settlor directs.

1228 (5) A settlor's powers with respect to revocation,
1229 amendment, or distribution of trust property may be exercised by
1230 an agent under a power of attorney only as authorized by s.

1231 709.08.

1232 (6) A guardian of the property of the settlor may exercise
 1233 a settlor's powers with respect to revocation, amendment, or
 1234 distribution of trust property only as provided in s. 744.441.

1235 (7) A trustee who does not know that a trust has been
 1236 revoked or amended is not liable for distributions made and
 1237 other actions taken on the assumption that the trust had not
 1238 been amended or revoked.

1239 736.0603 Settlor's powers; powers of withdrawal.--

1240 (1) While a trust is revocable, the duties of the trustee
 1241 are owed exclusively to the settlor.

1242 (2) During the period the power may be exercised, the
 1243 holder of a power of withdrawal has the rights of a settlor of a
 1244 revocable trust under this section to the extent of the property
 1245 subject to the power.

1246 736.0604 Limitation on action contesting validity of
 1247 revocable trust.--An action to contest the validity of a trust
 1248 that was revocable at the settlor's death is barred, if not
 1249 commenced within the earlier of:

1250 (1) The time as provided in chapter 95; or

1251 (2) Six months after the trustee sent the person a copy of
 1252 the trust instrument and a notice informing the person of the
 1253 trust's existence, of the trustee's name and address, and of the
 1254 time allowed for commencing a proceeding.

1255 Section 7. Part VII of chapter 736, Florida Statutes,
 1256 consisting of sections 736.0701, 736.0702, 736.0703, 736.0704,
 1257 736.0705, 736.0706, 736.0707, 736.0708, and 736.0709, is created
 1258 to read:

1259

PART VII
OFFICE OF TRUSTEE

736.0701 Accepting or declining trusteeship.--

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

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

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

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

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

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

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

736.0702 Trustee's bond.--

1287 (1) A trustee shall give bond to secure performance of the
 1288 trustee's duties only if the court finds that a bond is needed
 1289 to protect the interests of the beneficiaries or is required by
 1290 the terms of the trust and the court has not dispensed with the
 1291 requirement.

1292 (2) The court may specify the amount of a bond, the
 1293 trustee's liabilities under the bond, and whether sureties are
 1294 necessary. The court may modify or terminate a bond at any time.

1295 736.0703 Cotrustees.--

1296 (1) Cotrustees who are unable to reach a unanimous
 1297 decision may act by majority decision.

1298 (2) If a vacancy occurs in a cotrusteeship, the remaining
 1299 cotrustees or a majority of the remaining cotrustees may act for
 1300 the trust.

1301 (3) A cotrustee must participate in the performance of a
 1302 trustee's function unless the cotrustee is unavailable to
 1303 perform the function because of absence, illness,
 1304 disqualification under other provision of law, or other
 1305 temporary incapacity or the cotrustee has properly delegated the
 1306 performance of the function to another cotrustee.

1307 (4) If a cotrustee is unavailable to perform duties
 1308 because of absence, illness, disqualification under other law,
 1309 or other temporary incapacity, and prompt action is necessary to
 1310 achieve the purposes of the trust or to avoid injury to the
 1311 trust property, the remaining cotrustee or a majority of the
 1312 remaining cotrustees may act for the trust.

1313 (5) A cotrustee may not delegate to another cotrustee the
 1314 performance of a function the settlor reasonably expected the

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1315 cotrustees to perform jointly. A cotrustee may revoke a
1316 delegation previously made.

1317 (6) Except as otherwise provided in subsection (7), a
1318 cotrustee who does not join in an action of another cotrustee is
1319 not liable for the action.

1320 (7) Each cotrustee shall exercise reasonable care to:

1321 (a) Prevent a cotrustee from committing a breach of trust.

1322 (b) Compel a cotrustee to redress a breach of trust.

1323 (8) A dissenting cotrustee who joins in an action at the
1324 direction of the majority of the cotrustees and who notifies any
1325 cotrustee of the dissent at or before the time of the action is
1326 not liable for the action.

1327 736.0704 Vacancy in trusteeship; appointment of
1328 successor.--

1329 (1) A vacancy in a trusteeship occurs if:

1330 (a) A person designated as trustee declines the
1331 trusteeship;

1332 (b) A person designated as trustee cannot be identified or
1333 does not exist;

1334 (c) A trustee resigns;

1335 (d) A trustee is disqualified or removed;

1336 (e) A trustee dies; or

1337 (f) A trustee is adjudicated to be incapacitated.

1338 (2) If one or more cotrustees remain in office, a vacancy
1339 in a trusteeship need not be filled. A vacancy in a trusteeship
1340 must be filled if the trust has no remaining trustee.

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1341 (3) A vacancy in a trusteeship of a noncharitable trust
 1342 that is required to be filled must be filled in the following
 1343 order of priority:

1344 (a) By a person named or designated pursuant to the terms
 1345 of the trust to act as successor trustee.

1346 (b) By a person appointed by unanimous agreement of the
 1347 qualified beneficiaries.

1348 (c) By a person appointed by the court.

1349 (4) A vacancy in a trusteeship of a charitable trust that
 1350 is required to be filled must be filled in the following order
 1351 of priority:

1352 (a) By a person named or designated pursuant to the terms
 1353 of the trust to act as successor trustee.

1354 (b) By a person selected by unanimous agreement of the
 1355 charitable organizations expressly designated to receive
 1356 distributions under the terms of the trust.

1357 (c) By a person appointed by the court.

1358 (5) The court may appoint an additional trustee or special
 1359 fiduciary whenever the court considers the appointment necessary
 1360 for the administration of the trust, whether or not a vacancy in
 1361 a trusteeship exists or is required to be filled.

1362 736.0705 Resignation of trustee.--

1363 (1) A trustee may resign:

1364 (a) Upon at least 30 days' notice to the qualified
 1365 beneficiaries, the settlor, if living, and all cotrustees; or

1366 (b) With the approval of the court.

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1367 (2) In approving a resignation, the court may issue orders
1368 and impose conditions reasonably necessary for the protection of
1369 the trust property.

1370 (3) Any liability of a resigning trustee or of any
1371 sureties on the trustee's bond for acts or omissions of the
1372 trustee is not discharged or affected by the trustee's
1373 resignation.

1374 736.0706 Removal of trustee.--

1375 (1) The settlor, a cotrustee, or a beneficiary may request
1376 the court to remove a trustee or a trustee may be removed by the
1377 court on the court's own initiative.

1378 (2) The court may remove a trustee if:

1379 (a) The trustee has committed a serious breach of trust;

1380 (b) The lack of cooperation among cotrustees substantially
1381 impairs the administration of the trust;

1382 (c) Due to the unfitness, unwillingness, or persistent
1383 failure of the trustee to administer the trust effectively, the
1384 court determines that removal of the trustee best serves the
1385 interests of the beneficiaries; or

1386 (d) There has been a substantial change of circumstances
1387 or removal is requested by all of the qualified beneficiaries,
1388 the court finds that removal of the trustee best serves the
1389 interests of all of the beneficiaries and is not inconsistent
1390 with a material purpose of the trust, and a suitable cotrustee
1391 or successor trustee is available.

1392 (3) Pending a final decision on a request to remove a
1393 trustee, or in lieu of or in addition to removing a trustee, the
1394 court may order such appropriate relief under s. 736.1001(2) as

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1395 may be necessary to protect the trust property or the interests
1396 of the beneficiaries.

1397 736.0707 Delivery of property by former trustee.--

1398 (1) Unless a cotrustee remains in office or the court
1399 otherwise orders and until the trust property is delivered to a
1400 successor trustee or other person entitled to the property, a
1401 trustee who has resigned or been removed has the duties of a
1402 trustee and the powers necessary to protect the trust property.

1403 (2) A trustee who has resigned or been removed shall
1404 within a reasonable time deliver the trust property within the
1405 trustee's possession to the cotrustee, successor trustee, or
1406 other person entitled to the property, subject to the right of
1407 the trustee to retain a reasonable reserve for the payment of
1408 debts, expenses, and taxes. The provisions of this subsection
1409 are in addition to and are not in derogation of the rights of a
1410 removed or resigning trustee under the common law.

1411 736.0708 Compensation of trustee.--

1412 (1) If the terms of a trust do not specify the trustee's
1413 compensation, a trustee is entitled to compensation that is
1414 reasonable under the circumstances.

1415 (2) If the terms of a trust specify the trustee's
1416 compensation, the trustee is entitled to be compensated as
1417 specified but the court may allow more or less compensation if:

1418 (a) The duties of the trustee are substantially different
1419 from those contemplated when the trust was created; or

1420 (b) The compensation specified by the terms of the trust
1421 would be unreasonably low or high.

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1450 736.0802 Duty of loyalty.--

1451 (1) As between a trustee and the beneficiaries, a trustee
1452 shall administer the trust solely in the interests of the
1453 beneficiaries.

1454 (2) Subject to the rights of persons dealing with or
1455 assisting the trustee as provided in s. 736.1016, a sale,
1456 encumbrance, or other transaction involving the investment or
1457 management of trust property entered into by the trustee for the
1458 trustee's own personal account or which is otherwise affected by
1459 a conflict between the trustee's fiduciary and personal
1460 interests is voidable by a beneficiary affected by the
1461 transaction unless:

1462 (a) The transaction was authorized by the terms of the
1463 trust;

1464 (b) The transaction was approved by the court;

1465 (c) The beneficiary did not commence a judicial proceeding
1466 within the time allowed by s. 736.1008;

1467 (d) The beneficiary consented to the trustee's conduct,
1468 ratified the transaction, or released the trustee in compliance
1469 with s. 736.1012;

1470 (e) The transaction involves a contract entered into or
1471 claim acquired by the trustee when that person had not become or
1472 contemplated becoming trustee; or

1473 (f) The transaction was consented to in writing by a
1474 settlor of the trust while the trust was revocable.

1475 (3) A sale, encumbrance, or other transaction involving
1476 the investment or management of trust property is presumed to be
1477 affected by a conflict between personal and fiduciary interests

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1478 if the sale, encumbrance, or other transaction is entered into
1479 by the trustee with:

1480 (a) The trustee's spouse;

1481 (b) The trustee's descendants, siblings, parents, or their
1482 spouses;

1483 (c) An officer, director, employee, agent, or attorney of
1484 the trustee; or

1485 (d) A corporation or other person or enterprise in which
1486 the trustee, or a person that owns a significant interest in the
1487 trustee, has an interest that might affect the trustee's best
1488 judgment.

1489 (4) A transaction not concerning trust property in which
1490 the trustee engages in the trustee's individual capacity
1491 involves a conflict between personal and fiduciary interests if
1492 the transaction concerns an opportunity properly belonging to
1493 the trust.

1494 (5) (a) An investment by a trustee authorized by lawful
1495 authority to engage in trust business, as defined in s.
1496 658.12(20), in investment instruments, as defined in s.
1497 660.25(6), that are owned or controlled by the trustee or its
1498 affiliate, or from which the trustee or its affiliate receives
1499 compensation for providing services in a capacity other than as
1500 trustee, is not presumed to be affected by a conflict between
1501 personal and fiduciary interests provided the investment
1502 otherwise complies with chapters 518 and 660 and the trustee
1503 complies with the disclosure requirements of this subsection.

1504 (b) A trustee who invests trust funds in investment
1505 instruments that are owned or controlled by the trustee or its

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1506 affiliate shall disclose the following to all qualified
1507 beneficiaries:

1508 1. Notice that the trustee has invested trust funds in
1509 investment instruments owned or controlled by the trustee or its
1510 affiliate.

1511 2. The identity of the investment instruments.

1512 3. The identity and relationship to the trustee of any
1513 affiliate that owns or controls the investment instruments.

1514 (c) A trustee who invests trust funds in investment
1515 instruments with respect to which the trustee or its affiliate
1516 receives compensation for providing services in a capacity other
1517 than as trustee shall disclose to all qualified beneficiaries,
1518 all compensation, including, but not limited to, fees or
1519 commissions, paid or to be paid by the account and received or
1520 to be received by an affiliate arising from such affiliated
1521 investment.

1522 (d) Disclosure required by this subsection shall be made
1523 at least annually unless there has been no change in the method
1524 or increase in the rate at which such compensation is calculated
1525 since the most recent disclosure. The disclosure may be given in
1526 a trust disclosure document as defined in s. 736.1008, in a copy
1527 of the prospectus for the investment instrument, in any other
1528 written disclosure prepared for the investment instrument under
1529 applicable federal or state law, or in a written summary that
1530 includes all compensation received or to be received by the
1531 trustee and any affiliate of the trustee and an explanation of
1532 the manner in which such compensation is calculated, either as a
1533 percentage of the assets invested or by some other method.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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1534 (e) This subsection shall apply as follows:

1535 1. This subsection does not apply to qualified investment
1536 instruments or to a trust for which a right of revocation
1537 exists.

1538 2. For investment instruments other than qualified
1539 investment instruments, paragraphs (a), (b), (c), and (d) shall
1540 apply to irrevocable trusts created on or after July 1, 2007,
1541 the assets of which are valued in excess of \$5 million on the
1542 date the trust is created.

1543 3. For investment instruments other than qualified
1544 investment instruments, paragraphs (a), (b), (c), and (d) shall
1545 apply to irrevocable trusts not described in subparagraph 2.
1546 only as follows:

1547 a. Such paragraphs shall not apply until 60 days after the
1548 statement required in paragraph (f) is provided and no objection
1549 is made or any objection which is made has been terminated.

1550 (I) An objection is made if, within 60 days after the date
1551 of the statement required in paragraph (f), a super majority of
1552 the eligible beneficiaries deliver to the trustee written
1553 objections to the application of this subsection to such trust.
1554 An objection shall be deemed to be delivered to the trustee on
1555 the date the objection is mailed to the mailing address listed
1556 in the notice provided in paragraph (f).

1557 (II) An objection is terminated upon the earlier of the
1558 receipt of consent from a super majority of eligible
1559 beneficiaries of the class that made the objection or the
1560 resolution of the objection pursuant to this subparagraph.

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1561 (III) If an objection is delivered to the trustee, the
1562 trustee may petition the court for an order overruling the
1563 objection and authorizing the trustee to make investments under
1564 this subsection. The burden shall be on the trustee to show good
1565 cause for the relief sought.

1566 (IV) Any qualified beneficiary may petition the court for
1567 an order to prohibit, limit, or restrict a trustee's authority
1568 to make investments under this subsection. The burden shall be
1569 upon the petitioning beneficiary to show good cause for the
1570 relief sought.

1571 (V) The court may award costs and attorney's fees relating
1572 to any petition under this subparagraph in the same manner as in
1573 chancery actions. When costs and attorney's fees are to be paid
1574 out of the trust, the court, in its discretion, may direct from
1575 which part of the trust such costs and fees shall be paid.

1576 b. The objection of a super majority of eligible
1577 beneficiaries under this subparagraph may thereafter be removed
1578 by the written consent of a super majority of the class or
1579 classes of those eligible beneficiaries that made the objection.

1580 (f)1. Any time prior to initially investing in any
1581 investment instrument described in this subsection other than a
1582 qualified investment instrument, the trustee of a trust
1583 described in subparagraph (e)3. shall provide to all qualified
1584 beneficiaries a statement containing the following:

1585 a. The name, telephone number, street address, and mailing
1586 address of the trustee and of any individuals who may be
1587 contacted for further information.

1588 b. A statement that, unless a super majority of the
 1589 eligible beneficiaries objects to the application of this
 1590 subsection to the trust within 60 days after the date the
 1591 statement pursuant to this subsection was delivered, this
 1592 subsection shall apply to the trust.

1593 c. A statement that, if this subsection applies to the
 1594 trust, the trustee will have the right to make investments in
 1595 investment instruments, as defined in s. 658.12(20), that are
 1596 owned or controlled by the trustee or its affiliate, or from
 1597 which the trustee or its affiliate receives compensation for
 1598 providing services in a capacity other than as trustee, and that
 1599 the trustee or its affiliate may receive fees in addition to the
 1600 trustee's compensation for administering the trust.

1601
 1602 A statement by the trustee is not delivered if the statement is
 1603 accompanied by another written communication other than a
 1604 written communication by the trustee that refers only to the
 1605 statement.

1606 2. For purposes of paragraph (e) and this paragraph:

1607 a. "Eligible beneficiaries" means:

1608 (I) If at the time the determination is made there are one
 1609 or more beneficiaries as described in s. 736.0103(14)(c), the
 1610 beneficiaries described in s. 736.0103(14)(a) and (c); or

1611 (II) If there is no beneficiary described in s.
 1612 736.0103(14)(c), the beneficiaries described in s.
 1613 736.0103(14)(a) and (b).

1614 b. "Super majority of the eligible beneficiaries" means:

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1615 (I) If at the time the determination is made there are one
1616 or more beneficiaries as described in s. 736.0103(14)(c), at
1617 least two-thirds in interest of the beneficiaries described in
1618 s. 736.0103(14)(a) or two-thirds in interest of the
1619 beneficiaries described in s. 736.0103(14)(c), if the interests
1620 of the beneficiaries are reasonably ascertainable; otherwise,
1621 two-thirds in number of either such class; or

1622 (II) If there is no beneficiary as described in s.
1623 736.0103(14)(c), at least two-thirds in interest of the
1624 beneficiaries described in s. 736.0103(14)(a) or two-thirds in
1625 interest of the beneficiaries described in s. 736.0103(14)(b),
1626 if the interests of the beneficiaries are reasonably
1627 ascertainable; otherwise, two-thirds in number of either such
1628 class.

1629 c. "Qualified investment instrument" means a mutual fund,
1630 common trust fund, or money market fund described in and
1631 governed by s. 736.0816(3).

1632 d. An irrevocable trust is created upon execution of the
1633 trust instrument. If a trust that was revocable when created
1634 thereafter becomes irrevocable, the irrevocable trust is created
1635 when the right of revocation terminates.

1636 (6) In voting shares of stock or in exercising powers of
1637 control over similar interests in other forms of enterprise, the
1638 trustee shall act in the best interests of the beneficiaries. If
1639 the trust is the sole owner of a corporation or other form of
1640 enterprise, the trustee shall elect or appoint directors or
1641 other managers who will manage the corporation or enterprise in
1642 the best interests of the beneficiaries.

1643 (7) This section does not preclude the following
1644 transactions, if fair to the beneficiaries:

1645 (a) An agreement between a trustee and a beneficiary
1646 relating to the appointment or compensation of the trustee;

1647 (b) A payment of reasonable compensation to the trustee;

1648 (c) A transaction between a trust and another trust, the
1649 decendent's estate, or a guardian of the property of which the
1650 trustee is a fiduciary or in which a beneficiary has an
1651 interest;

1652 (d) A deposit of trust money in a regulated financial-
1653 service institution operated by the trustee; or

1654 (e) An advance by the trustee of money for the protection
1655 of the trust.

1656 (8) This section does not preclude the employment of
1657 persons, including, but not limited to, attorneys, accountants,
1658 investment advisers, or agents, even if they are the trustee, an
1659 affiliate of the trustee, or otherwise associated with the
1660 trustee, to advise or assist the trustee in the exercise of any
1661 of the trustee's powers and to pay reasonable compensation and
1662 costs incurred in connection with such employment from the
1663 assets of the trust; to act without independent investigation on
1664 their recommendations; and, instead of acting personally, to
1665 employ one or more agents to perform any act of administration,
1666 whether or not discretionary.

1667 (9) The court may appoint a special fiduciary to act with
1668 respect to any proposed transaction that might violate this
1669 section if entered into by the trustee.

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1670 (10) Payment of costs or attorney's fees incurred in any
1671 trust proceeding from the assets of the trust may be made by the
1672 trustee without the approval of any person and without court
1673 authorization, except that court authorization shall be required
1674 if an action has been filed or defense asserted against the
1675 trustee based upon a breach of trust. Court authorization is not
1676 required if the action or defense is later withdrawn or
1677 dismissed by the party that is alleging a breach of trust or
1678 resolved without a determination by the court that the trustee
1679 has committed a breach of trust.

1680 736.0803 Impartiality.--If a trust has two or more
1681 beneficiaries, the trustee shall act impartially in
1682 administering the trust property, giving due regard to the
1683 beneficiaries' respective interests.

1684 736.0804 Prudent administration.--A trustee shall
1685 administer the trust as a prudent person would, by considering
1686 the purposes, terms, distribution requirements, and other
1687 circumstances of the trust. In satisfying this standard, the
1688 trustee shall exercise reasonable care, skill, and caution.

1689 736.0805 Expenses of administration.--In administering a
1690 trust, the trustee shall only incur expenses that are reasonable
1691 in relation to the trust property, the purposes of the trust,
1692 and the skills of the trustee.

1693 736.0806 Trustee's skills.--A trustee who has special
1694 skills or expertise, or is named trustee in reliance on the
1695 trustee's representation that the trustee has special skills or
1696 expertise, shall use those special skills or expertise.

1697 736.0807 Delegation by trustee.--

1698 (1) A trustee may delegate duties and powers that a
 1699 prudent trustee of comparable skills could properly delegate
 1700 under the circumstances. The trustee shall exercise reasonable
 1701 care, skill, and caution in:

1702 (a) Selecting an agent.

1703 (b) Establishing the scope and terms of the delegation,
 1704 consistent with the purposes and terms of the trust.

1705 (c) Reviewing the agent's actions periodically, in order
 1706 to monitor the agent's performance and compliance with the terms
 1707 of the delegation.

1708 (2) In performing a delegated function, an agent owes a
 1709 duty to the trust to exercise reasonable care to comply with the
 1710 terms of the delegation.

1711 (3) A trustee who complies with subsection (1) is not
 1712 liable to the beneficiaries or to the trust for an action of the
 1713 agent to whom the function was delegated.

1714 (4) By accepting a delegation of powers or duties from the
 1715 trustee of a trust that is subject to the law of this state, an
 1716 agent submits to the jurisdiction of the courts of this state.

1717 736.0808 Powers to direct.--

1718 (1) Subject to ss. 736.0403(2) and 736.0602(3)(a), the
 1719 trustee may follow a direction of the settlor that is contrary
 1720 to the terms of the trust while a trust is revocable.

1721 (2) If the terms of a trust confer on a person other than
 1722 the settlor of a revocable trust, the power to direct certain
 1723 actions of the trustee, the trustee shall act in accordance with
 1724 an exercise of the power unless the attempted exercise is
 1725 manifestly contrary to the terms of the trust or the trustee

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1726 knows the attempted exercise would constitute a serious breach
 1727 of a fiduciary duty that the person holding the power owes to
 1728 the beneficiaries of the trust.

1729 (3) The terms of a trust may confer on a trustee or other
 1730 person a power to direct the modification or termination of the
 1731 trust.

1732 (4) A person, other than a beneficiary, who holds a power
 1733 to direct is presumptively a fiduciary who, as such, is required
 1734 to act in good faith with regard to the purposes of the trust
 1735 and the interests of the beneficiaries. The holder of a power to
 1736 direct is liable for any loss that results from breach of a
 1737 fiduciary duty.

1738 736.0809 Control and protection of trust property.--A
 1739 trustee shall take reasonable steps to take control of and
 1740 protect the trust property.

1741 736.0810 Recordkeeping and identification of trust
 1742 property.--

1743 (1) A trustee shall keep clear, distinct, and accurate
 1744 records of the administration of the trust.

1745 (2) A trustee shall keep trust property separate from the
 1746 trustee's own property.

1747 (3) Except as otherwise provided in subsection (4), a
 1748 trustee shall cause the trust property to be designated so that
 1749 the interest of the trust, to the extent feasible, appears in
 1750 records maintained by a party other than a trustee or
 1751 beneficiary.

1752 (4) If the trustee maintains records clearly indicating
 1753 the respective interests, a trustee may invest as a whole the
 1754 property of two or more separate trusts.

1755 736.08105 Duty to ascertain marketable title of trust real
 1756 property.--A trustee holding title to real property received
 1757 from a settlor or estate shall not be required to obtain title
 1758 insurance or proof of marketable title until a marketable title
 1759 is required for a sale or conveyance of the real property.

1760 736.0811 Enforcement and defense of claims.--A trustee
 1761 shall take reasonable steps to enforce claims of the trust and
 1762 to defend claims against the trust.

1763 736.0812 Collecting trust property.--A trustee shall take
 1764 reasonable steps to compel a former trustee or other person to
 1765 deliver trust property to the trustee and, except as provided in
 1766 s. 736.08125, to redress a breach of trust known to the trustee
 1767 to have been committed by a former trustee.

1768 736.08125 Protection of successor trustees.--

1769 (1) A successor trustee is not personally liable for
 1770 actions taken by any prior trustee, nor does any successor
 1771 trustee have a duty to institute any proceeding against any
 1772 prior trustee, or file any claim against any prior trustee's
 1773 estate, for any of the prior trustee's actions as trustee under
 1774 any of the following circumstances:

1775 (a) As to a successor trustee who succeeds a trustee who
 1776 was also the settlor of a trust that was revocable during the
 1777 time that the settlor served as trustee;

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1778 (b) As to any beneficiary who has waived any accounting
1779 required by s. 736.0813, but only as to the periods included in
1780 the waiver;

1781 (c) As to any beneficiary who has released the successor
1782 trustee from the duty to institute any proceeding or file any
1783 claim;

1784 (d) As to any person who is not an eligible beneficiary;
1785 or

1786 (e) As to any eligible beneficiary:

1787 1. If a supermajority of the eligible beneficiaries have
1788 released the successor trustee;

1789 2. If the eligible beneficiary has not delivered a written
1790 request to the successor trustee to institute an action or file
1791 a claim against the prior trustee within 6 months after the date
1792 of the successor trustee's acceptance of the trust, if the
1793 successor trustee has notified the eligible beneficiary in
1794 writing of acceptance by the successor trustee in accordance
1795 with 736.0813(1)(a) and that writing advises the beneficiary
1796 that, unless the beneficiary delivers the written request within
1797 6 months after the date of acceptance, the right to proceed
1798 against the successor trustee will be barred pursuant to this
1799 section; or

1800 3. For any action or claim that the eligible beneficiary
1801 is barred from bringing against the prior trustee.

1802 (2) For the purposes of this section, the term:

1803 (a) "Eligible beneficiaries" means:

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1804 1. At the time the determination is made, if there are one
1805 or more beneficiaries as described in s. 736.0103(14)(c), the
1806 beneficiaries described in s. 736.0103(14)(a) and (c); or

1807 2. If there is no beneficiary as described in s.
1808 736.0103(14)(c), the beneficiaries described in s.
1809 736.0103(14)(a) and (b).

1810 (b) "Supermajority of eligible beneficiaries" means at
1811 least two-thirds in interest of the eligible beneficiaries if
1812 the interests of the eligible beneficiaries are reasonably
1813 ascertainable, otherwise, at least two-thirds in number of the
1814 eligible beneficiaries.

1815 (3) Nothing in this section affects any liability of the
1816 prior trustee or the right of the successor trustee or any
1817 beneficiary to pursue an action or claim against the prior
1818 trustee.

1819 736.0813 Duty to inform and account.--The trustee shall
1820 keep the qualified beneficiaries of the trust reasonably
1821 informed of the trust and its administration.

1822 (1) The trustee's duty to inform and account includes, but
1823 is not limited to, the following:

1824 (a) Within 60 days after acceptance of the trust, the
1825 trustee shall give notice to the qualified beneficiaries of the
1826 acceptance of the trust and the full name and address of the
1827 trustee.

1828 (b) Within 60 days after the date the trustee acquires
1829 knowledge of the creation of an irrevocable trust, or the date
1830 the trustee acquires knowledge that a formerly revocable trust
1831 has become irrevocable, whether by the death of the settlor or

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1832 otherwise, the trustee shall give notice to the qualified
1833 beneficiaries of the trust's existence, the identity of the
1834 settlor or settlors, the right to request a copy of the trust
1835 instrument, and the right to accountings under this section.

1836 (c) Upon reasonable request, the trustee shall provide a
1837 qualified beneficiary with a complete copy of the trust
1838 instrument.

1839 (d) A trustee of an irrevocable trust shall provide a
1840 trust accounting, as set forth in s. 736.08135, to each
1841 qualified beneficiary annually and on termination of the trust
1842 or on change of the trustee.

1843 (e) Upon reasonable request, the trustee shall provide a
1844 qualified beneficiary with relevant information about the assets
1845 and liabilities of the trust and the particulars relating to
1846 administration.

1847
1848 Paragraphs (a) and (b) do not apply to an irrevocable trust
1849 created before the effective date of this code, or to a
1850 revocable trust that becomes irrevocable before the effective
1851 date of this code. Paragraph (a) does not apply to a trustee who
1852 accepts a trusteeship before the effective date of this code.

1853 (2) A qualified beneficiary may waive the trustee's duty
1854 to account under paragraph (1) (d). A qualified beneficiary may
1855 withdraw a waiver previously given. Waivers and withdrawals of
1856 prior waivers under this subsection must be in writing.
1857 Withdrawals of prior waivers are effective only with respect to
1858 accountings for future periods.

1859 (3) The representation provisions of part III apply with
1860 respect to all rights of a qualified beneficiary under this
1861 section.

1862 (4) As provided in s. 736.0603(1), the trustee's duties
1863 under this section extend only to the settlor while a trust is
1864 revocable.

1865 (5) This section applies to trust accountings rendered for
1866 accounting periods beginning on or after January 1, 2008.

1867 736.08135 Trust accountings.--

1868 (1) A trust accounting must be a reasonably understandable
1869 report from the date of the last accounting or, if none, from
1870 the date on which the trustee became accountable, that
1871 adequately discloses the information required in subsection (2).

1872 (2) (a) The accounting must begin with a statement
1873 identifying the trust, the trustee furnishing the accounting,
1874 and the time period covered by the accounting.

1875 (b) The accounting must show all cash and property
1876 transactions and all significant transactions affecting
1877 administration during the accounting period, including
1878 compensation paid to the trustee and the trustee's agents. Gains
1879 and losses realized during the accounting period and all
1880 receipts and disbursements must be shown.

1881 (c) To the extent feasible, the accounting must identify
1882 and value trust assets on hand at the close of the accounting
1883 period. For each asset or class of assets reasonably capable of
1884 valuation, the accounting shall contain two values, the asset
1885 acquisition value or carrying value and the estimated current
1886 value. The accounting must identify each known noncontingent

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1887 liability with an estimated current amount of the liability if
1888 known.

1889 (d) To the extent feasible, the accounting must show
1890 significant transactions that do not affect the amount for which
1891 the trustee is accountable, including name changes in investment
1892 holdings, adjustments to carrying value, a change of custodial
1893 institutions, and stock splits.

1894 (e) The accounting must reflect the allocation of
1895 receipts, disbursements, accruals, or allowances between income
1896 and principal when the allocation affects the interest of any
1897 beneficiary of the trust.

1898 (f) The trustee shall include in the final accounting a
1899 plan of distribution for any undistributed assets shown on the
1900 final accounting.

1901 (3) This section applies to all trust accountings rendered
1902 for any accounting periods beginning on or after January 1,
1903 2003.

1904 736.0814 Discretionary powers; tax savings.--

1905 (1) Notwithstanding the breadth of discretion granted to a
1906 trustee in the terms of the trust, including the use of such
1907 terms as "absolute," "sole," or "uncontrolled," the trustee
1908 shall exercise a discretionary power in good faith and in
1909 accordance with the terms and purposes of the trust and the
1910 interests of the beneficiaries. A court shall not determine that
1911 a trustee abused its discretion merely because the court would
1912 have exercised the discretion in a different manner or would not
1913 have exercised the discretion.

1914 (2) Subject to subsection (3) and unless the terms of the
 1915 trust expressly indicate that a rule in this subsection does not
 1916 apply, a person who is a beneficiary and a trustee may not:

1917 (a) Make discretionary distributions of either principal
 1918 or income to or for the benefit of that trustee, other than
 1919 distributions subject to an ascertainable standard;

1920 (b) Make discretionary allocations of receipts or expenses
 1921 as between principal and income, unless the trustee acts in a
 1922 fiduciary capacity whereby the trustee has no power to enlarge
 1923 or shift any beneficial interest except as an incidental
 1924 consequence of the discharge of the trustee's fiduciary duties;

1925 (c) Make discretionary distributions of either principal
 1926 or income to satisfy any of the trustee's legal support
 1927 obligations; or

1928 (d) Exercise any other power, including, but not limited
 1929 to, the right to remove or to replace any trustee, so as to
 1930 cause the powers enumerated in paragraph (a), paragraph (b), or
 1931 paragraph (c) to be exercised on behalf of, or for the benefit
 1932 of, a beneficiary who is also a trustee.

1933 (3) Subsection (2) does not apply to:

1934 (a) A power held by the settlor of the trust;

1935 (b) A power held by the settlor's spouse who is the
 1936 trustee of a trust for which a marital deduction, as defined in
 1937 s. 2056(a) or s. 2523(a) of the Internal Revenue Code of 1986,
 1938 as amended, was previously allowed;

1939 (c) Any trust during any period that the trust may be
 1940 revoked or amended by its settlor; or

1941 (d) A trust if contributions to the trust qualify for the
 1942 annual exclusion under s. 2503(c) of the Internal Revenue Code
 1943 of 1986, as amended.

1944 (4) A power whose exercise is limited or prohibited by
 1945 subsection (2) may be exercised by the remaining trustees whose
 1946 exercise of the power is not so limited or prohibited. If there
 1947 is no trustee qualified to exercise the power, on petition by
 1948 any qualified beneficiary, the court may appoint an independent
 1949 trustee with authority to exercise the power.

1950 (5) A person who has the right to remove or to replace a
 1951 trustee does not possess nor may that person be deemed to
 1952 possess, by virtue of having that right, the powers of the
 1953 trustee that is subject to removal or to replacement.

1954 736.08147 Duty to distribute trust income.--If a will or
 1955 trust instrument granting income to the settlor's or testator's
 1956 spouse for life is silent as to the time of distribution of
 1957 income and the frequency of distributions, the trustee shall
 1958 distribute all net income, as defined in chapter 738, to the
 1959 spouse no less frequently than annually. This provision shall
 1960 apply to any trust established before, on, or after July 1,
 1961 2007, unless the trust instrument expressly directs or permits
 1962 net income to be distributed less frequently than annually.

1963 736.0815 General powers of trustee.--

1964 (1) A trustee, without authorization by the court, may,
 1965 except as limited or restricted by this code, exercise:

1966 (a) Powers conferred by the terms of the trust.

1967 (b) Except as limited by the terms of the trust:

1968 1. All powers over the trust property that an unmarried
 1969 competent owner has over individually owned property.

1970 2. Any other powers appropriate to achieve the proper
 1971 investment, management, and distribution of the trust property.

1972 3. Any other powers conferred by this code.

1973 (2) The exercise of a power is subject to the fiduciary
 1974 duties prescribed by this code.

1975 736.0816 Specific powers of trustee.--Except as limited or
 1976 restricted by this code, a trustee may:

1977 (1) Collect trust property and accept or reject additions
 1978 to the trust property from a settlor, including an asset in
 1979 which the trustee is personally interested, and hold property in
 1980 the name of a nominee or in other form without disclosure of the
 1981 trust so that title to the property may pass by delivery but the
 1982 trustee is liable for any act of the nominee in connection with
 1983 the property so held.

1984 (2) Acquire or sell property, for cash or on credit, at
 1985 public or private sale.

1986 (3) Acquire an undivided interest in a trust asset,
 1987 including, but not limited to, a money market mutual fund,
 1988 mutual fund, or common trust fund, in which asset the trustee
 1989 holds an undivided interest in any trust capacity, including any
 1990 money market or other mutual fund from which the trustee or any
 1991 affiliate or associate of the trustee is entitled to receive
 1992 reasonable compensation for providing necessary services as an
 1993 investment adviser, portfolio manager, or servicing agent. A
 1994 trustee or affiliate or associate of the trustee may receive
 1995 compensation for such services in addition to fees received for

1996 administering the trust provided such compensation is fully
 1997 disclosed in writing to all qualified beneficiaries.

1998 (4) Exchange, partition, or otherwise change the character
 1999 of trust property.

2000 (5) Deposit trust money in an account in a regulated
 2001 financial-service institution.

2002 (6) Borrow money, with or without security, and mortgage
 2003 or pledge trust property for a period within or extending beyond
 2004 the duration of the trust and advance money for the protection
 2005 of the trust.

2006 (7) With respect to an interest in a proprietorship,
 2007 partnership, limited liability company, business trust,
 2008 corporation, or other form of business or enterprise, continue
 2009 the business or other enterprise and take any action that may be
 2010 taken by shareholders, members, or property owners, including,
 2011 but not limited to, merging, dissolving, or otherwise changing
 2012 the form of business organization or contributing additional
 2013 capital.

2014 (8) With respect to stocks or other securities, exercise
 2015 the rights of an absolute owner, including, but not limited to,
 2016 the right to:

2017 (a) Vote, or give proxies to vote, with or without power
 2018 of substitution, or enter into or continue a voting trust
 2019 agreement.

2020 (b) Hold a security in the name of a nominee or in other
 2021 form without disclosure of the trust so that title may pass by
 2022 delivery.

2023 (c) Pay calls, assessments, and other sums chargeable or
 2024 accruing against the securities, and sell or exercise stock
 2025 subscription or conversion rights.

2026 (d) Deposit the securities with a depository or other
 2027 regulated financial-service institution.

2028 (9) With respect to an interest in real property,
 2029 construct, or make ordinary or extraordinary repairs to,
 2030 alterations to, or improvements in, buildings or other
 2031 structures, demolish improvements, raze existing or erect new
 2032 party walls or buildings, subdivide or develop land, dedicate
 2033 land to public use or grant public or private easements, and
 2034 make or vacate plats and adjust boundaries.

2035 (10) Enter into a lease for any purpose as lessor or
 2036 lessee, including a lease or other arrangement for exploration
 2037 and removal of natural resources, with or without the option to
 2038 purchase or renew, for a period within or extending beyond the
 2039 duration of the trust.

2040 (11) Grant an option involving a sale, lease, or other
 2041 disposition of trust property or acquire an option for the
 2042 acquisition of property, including an option exercisable beyond
 2043 the duration of the trust, and exercise an option so acquired.

2044 (12) Insure the property of the trust against damage or
 2045 loss and insure the trustee, trustee's agents, and beneficiaries
 2046 against liability arising from the administration of the trust.

2047 (13) Abandon or decline to administer property of no value
 2048 or of insufficient value to justify the collection or continued
 2049 administration of such property.

2050 (14) Pay or contest any claim, settle a claim by or
 2051 against the trust, and release, in whole or in part, a claim
 2052 belonging to the trust.

2053 (15) Pay taxes, assessments, compensation of the trustee
 2054 and of employees and agents of the trust, and other expenses
 2055 incurred in the administration of the trust.

2056 (16) Allocate items of income or expense to trust income
 2057 or principal, as provided by law.

2058 (17) Exercise elections with respect to federal, state,
 2059 and local taxes.

2060 (18) Select a mode of payment under any employee benefit
 2061 or retirement plan, annuity, or life insurance payable to the
 2062 trustee, exercise rights under such plan, annuity, or insurance,
 2063 including exercise of the right to indemnification for expenses
 2064 and against liabilities, and take appropriate action to collect
 2065 the proceeds.

2066 (19) Make loans out of trust property, including, but not
 2067 limited to, loans to a beneficiary on terms and conditions that
 2068 are fair and reasonable under the circumstances, and the trustee
 2069 has a lien on future distributions for repayment of those loans.

2070 (20) Employ persons, including, but not limited to,
 2071 attorneys, accountants, investment advisers, or agents, even if
 2072 they are the trustee, an affiliate of the trustee, or otherwise
 2073 associated with the trustee, to advise or assist the trustee in
 2074 the exercise of any of the trustee's powers and pay reasonable
 2075 compensation and costs incurred in connection with such
 2076 employment from the assets of the trust and act without

2077 independent investigation on the recommendations of such
 2078 persons.

2079 (21) Pay an amount distributable to a beneficiary who is
 2080 under a legal disability or who the trustee reasonably believes
 2081 is incapacitated, by paying the amount directly to the
 2082 beneficiary or applying the amount for the beneficiary's
 2083 benefit, or by:

2084 (a) Paying the amount to the beneficiary's guardian of the
 2085 property or, if the beneficiary does not have a guardian of the
 2086 property, the beneficiary's guardian of the person;

2087 (b) Paying the amount to the beneficiary's custodian under
 2088 a Uniform Transfers to Minors Act or custodial trustee under a
 2089 Uniform Custodial Trust Act, and, for that purpose, creating a
 2090 custodianship or custodial trust;

2091 (c) Paying the amount to an adult relative or other person
 2092 having legal or physical care or custody of the beneficiary, to
 2093 be expended on the beneficiary's behalf, if the trustee does not
 2094 know of a guardian of the property, guardian of the person,
 2095 custodian, or custodial trustee; or

2096 (d) Managing the amount as a separate fund on the
 2097 beneficiary's behalf, subject to the beneficiary's continuing
 2098 right to withdraw the distribution.

2099 (22) On distribution of trust property or the division or
 2100 termination of a trust, make distributions in divided or
 2101 undivided interests, allocate particular assets in proportionate
 2102 or disproportionate shares, value the trust property for those
 2103 purposes, and adjust for resulting differences in valuation.

2104 (23) Prosecute or defend, including appeals, an action,
 2105 claim, or judicial proceeding in any jurisdiction to protect
 2106 trust property or the trustee in the performance of the
 2107 trustee's duties.

2108 (24) Sign and deliver contracts and other instruments that
 2109 are useful to achieve or facilitate the exercise of the
 2110 trustee's powers.

2111 (25) On termination of the trust, exercise the powers
 2112 appropriate to wind up the administration of the trust and
 2113 distribute the trust property to the persons entitled to the
 2114 property, subject to the right of the trustee to retain a
 2115 reasonable reserve for the payment of debts, expenses, and
 2116 taxes.

2117 736.08163 Powers of trustees relating to environmental or
 2118 human health laws or to trust property contaminated with
 2119 hazardous or toxic substances; liability.--

2120 (1) From the creation of a trust until final distribution
 2121 of the assets from the trust, the trustee has, without court
 2122 authorization, the powers specified in subsection (2).

2123 (2) Unless otherwise provided in the trust instrument, a
 2124 trustee has the power, acting reasonably, to:

2125 (a) Inspect or investigate, or cause to be inspected or
 2126 investigated, property held by the trustee, including interests
 2127 in sole proprietorships, partnerships, or corporations and any
 2128 assets owned by any such business entity for the purpose of
 2129 determining compliance with an environmental law affecting that
 2130 property or to respond to an actual or threatened violation of
 2131 an environmental law affecting that property;

2132 (b) Take, on behalf of the trust, any action necessary to
 2133 prevent, abate, or otherwise remedy an actual or potential
 2134 violation of an environmental law affecting property held by the
 2135 trustee, before or after initiation of an enforcement action by
 2136 a governmental body;

2137 (c) Refuse to accept property in trust if the trustee
 2138 determines that any property to be donated or conveyed to the
 2139 trustee is contaminated with a hazardous substance or is being
 2140 used or has been used for an activity directly or indirectly
 2141 involving a hazardous substance, which circumstance could result
 2142 in liability to the trust or trustee or otherwise impair the
 2143 value of the assets to be held;

2144 (d) Settle or compromise at any time any claim against the
 2145 trust or trustee that may be asserted by a governmental body or
 2146 private party that involves the alleged violation of an
 2147 environmental law affecting property of any trust over which the
 2148 trustee has responsibility;

2149 (e) Disclaim any power granted by any document, law, or
 2150 rule of law that, in the sole judgment of the trustee, may cause
 2151 the trustee to incur personal liability, or the trust to incur
 2152 liability, under any environmental law;

2153 (f) Decline to serve as a trustee, or having undertaken to
 2154 serve as a trustee, resign at any time, if the trustee believes
 2155 there is or may be a conflict of interest in its fiduciary
 2156 capacity and in its individual capacity because of potential
 2157 claims or liabilities that may be asserted against the trustee
 2158 on behalf of the trust by reason of the type or condition of the
 2159 assets held; or

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2160 (g) Charge against the income and principal of the trust
2161 the cost of any inspection, investigation, review, abatement,
2162 response, cleanup, or remedial action that this section
2163 authorizes the trustee to take and, if the trust terminates or
2164 closes or the trust property is transferred to another trustee,
2165 hold assets sufficient to cover the cost of cleaning up any
2166 known environmental problem.

2167 (3) A trustee is not personally liable to any beneficiary
2168 or any other person for a decrease in value of assets in a trust
2169 by reason of the trustee's compliance or efforts to comply with
2170 an environmental law, specifically including any reporting
2171 requirement under that law.

2172 (4) A trustee that acquires ownership or control of a
2173 vessel or other property, without having owned, operated, or
2174 materially participated in the management of that vessel or
2175 property before assuming ownership or control as trustee, is not
2176 considered an owner or operator for purposes of liability under
2177 chapter 376, chapter 403, or any other environmental law. A
2178 trustee that willfully, knowingly, or recklessly causes or
2179 exacerbates a release or threatened release of a hazardous
2180 substance is personally liable for the cost of the response, to
2181 the extent that the release or threatened release is
2182 attributable to the trustee's activities. This subsection does
2183 not preclude the filing of claims against the assets that
2184 constitute the trust held by the trustee or the filing of
2185 actions against the trustee in its representative capacity and
2186 in any such action, an award or judgment against the trustee
2187 must be satisfied only from the assets of the trust.

2188 (5) The acceptance by the trustee of the property or a
 2189 failure by the trustee to inspect or investigate the property
 2190 does not create any inference as to whether there is liability
 2191 under an environmental law with respect to that property.

2192 (6) For the purposes of this section, the term "hazardous
 2193 substance" means a substance defined as hazardous or toxic, or
 2194 any contaminant, pollutant, or constituent thereof, or otherwise
 2195 regulated, by an environmental law.

2196 (7) This section does not apply to any trust created under
 2197 a document executed before July 1, 1995, unless the trust is
 2198 amendable and the settlor amends the trust at any time to
 2199 incorporate the provisions of this section.

2200 736.08165 Administration pending outcome of contest or
 2201 other proceeding.--

2202 (1) Pending the outcome of a proceeding filed to determine
 2203 the validity of all or part of a trust or the beneficiaries of
 2204 all or part of a trust, the trustee shall proceed with the
 2205 administration of the trust as if no proceeding had been
 2206 commenced, except no action may be taken and no distribution may
 2207 be made to a beneficiary in contravention of the rights of those
 2208 persons who may be affected by the outcome of the proceeding.

2209 (2) Upon motion of a party and after notice to interested
 2210 persons, a court, on good cause shown, may make an exception to
 2211 the prohibition under subsection (1) and authorize the trustee
 2212 to act or to distribute trust assets to a beneficiary subject to
 2213 any conditions the court, in the court's discretion, may impose,
 2214 including the posting of bond by the beneficiary.

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2215 736.0817 Distribution on termination.--Upon the occurrence
 2216 of an event terminating or partially terminating a trust, the
 2217 trustee shall proceed expeditiously to distribute the trust
 2218 property to the persons entitled to the property, subject to the
 2219 right of the trustee to retain a reasonable reserve for the
 2220 payment of debts, expenses, and taxes. The provisions of this
 2221 section are in addition to and are not in derogation of the
 2222 rights of a trustee under the common law with respect to final
 2223 distribution of a trust.

2224 Section 9. Part IX of chapter 736, Florida Statutes,
 2225 consisting of section 736.0901, is created to read:

2226
 2227 PART IX
 2228 TRUST INVESTMENTS

2229
 2230 736.0901 Applicability of chapter 518.--A trustee shall
 2231 invest trust property in accordance with chapter 518.

2232 Section 10. Part X of chapter 736, Florida Statutes,
 2233 consisting of sections 736.1001, 736.1002, 736.1003, 736.1004,
 2234 736.1005, 736.1006, 736.1007, 736.1008, 736.1009, 736.1010,
 2235 736.1011, 736.1012, 736.1013, 736.1014, 736.1015, 736.1016,
 2236 736.1017, and 736.1018, is created to read:

2237
 2238 PART X
 2239 LIABILITY OF TRUSTEE AND RIGHTS OF PERSONS DEALING WITH TRUSTEE

2240
 2241 736.1001 Remedies for breach of trust.--

2242 (1) A violation by a trustee of a duty the trustee owes to
 2243 a beneficiary is a breach of trust.

2244 (2) To remedy a breach of trust that has occurred or may
 2245 occur, the court may:

2246 (a) Compel the trustee to perform the trustee's duties;

2247 (b) Enjoin the trustee from committing a breach of trust;

2248 (c) Compel the trustee to redress a breach of trust by
 2249 paying money or restoring property or by other means;

2250 (d) Order a trustee to account;

2251 (e) Appoint a special fiduciary to take possession of the
 2252 trust property and administer the trust;

2253 (f) Suspend the trustee;

2254 (g) Remove the trustee as provided in s. 736.706;

2255 (h) Reduce or deny compensation to the trustee;

2256 (i) Subject to s. 736.1016, void an act of the trustee,
 2257 impose a lien or a constructive trust on trust property, or
 2258 trace trust property wrongfully disposed of and recover the
 2259 property or its proceeds; or

2260 (j) Order any other appropriate relief.

2261 (3) As an illustration of the remedies available to the
 2262 court and without limiting the court's discretion as provided in
 2263 subsection (2), if a breach of trust results in the favoring of
 2264 any beneficiary to the detriment of any other beneficiary or
 2265 consists of an abuse of the trustee's discretion:

2266 (a) To the extent the breach of trust has resulted in no
 2267 distribution to a beneficiary or a distribution that is too
 2268 small, the court may require the trustee to pay from the trust
 2269 to the beneficiary an amount the court determines will restore

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2270 the beneficiary, in whole or in part, to his or her appropriate
2271 position.

2272 (b) To the extent the breach of trust has resulted in a
2273 distribution to a beneficiary that is too large, the court may
2274 restore the beneficiaries, the trust, or both, in whole or in
2275 part, to their appropriate positions by requiring the trustee to
2276 withhold an amount from one or more future distributions to the
2277 beneficiary who received the distribution that was too large or
2278 by requiring that beneficiary to return some or all of the
2279 distribution to the trust.

2280 736.1002 Damages for breach of trust.--

2281 (1) A trustee who commits a breach of trust is liable for
2282 the greater of:

2283 (a) The amount required to restore the value of the trust
2284 property and trust distributions to what they would have been if
2285 the breach had not occurred, including lost income, capital
2286 gain, or appreciation that would have resulted from proper
2287 administration; or

2288 (b) The profit the trustee made by reason of the breach.

2289 (2) Except as otherwise provided in this subsection, if
2290 more than one person, including a trustee or trustees, is liable
2291 to the beneficiaries for a breach of trust, each liable person
2292 is entitled to pro rata contribution from the other person or
2293 persons. A person is not entitled to contribution if the person
2294 committed the breach of trust in bad faith. A person who
2295 received a benefit from the breach of trust is not entitled to
2296 contribution from another person to the extent of the benefit
2297 received.

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2298 (3) In determining the pro rata shares of liable persons
2299 in the entire liability for a breach of trust:

2300 (a) Their relative degrees of fault shall be the basis for
2301 allocation of liability.

2302 (b) If equity requires, the collective liability of some
2303 as a group shall constitute a single share.

2304 (c) Principles of equity applicable to contribution
2305 generally shall apply.

2306 (4) The right of contribution shall be enforced as
2307 follows:

2308 (a) Contribution may be enforced by separate action,
2309 whether or not judgment has been entered in an action against
2310 two or more liable persons for the same breach of trust.

2311 (b) When a judgment has been entered in an action against
2312 two or more liable persons for the same breach of trust,
2313 contribution may be enforced in that action by judgment in favor
2314 of one judgment defendant against any other judgment defendants
2315 by motion upon notice to all parties to the action.

2316 (c) If there is a judgment for breach of trust against the
2317 liable person seeking contribution, any separate action by that
2318 person to enforce contribution must be commenced within 1 year
2319 after the judgment has become final by lapse of time for appeal
2320 or after appellate review.

2321 (d) If there is no judgment for the breach of trust
2322 against the liable person seeking contribution, the person's
2323 right of contribution is barred unless the person has:

2324 1. Discharged by payment the common liability within the
2325 period of the statute of limitations applicable to the

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2326 beneficiary's right of action against the liable person and the
 2327 person has commenced an action for contribution within 1 year
 2328 after payment, or

2329 2. Agreed, while action is pending against the liable
 2330 person, to discharge the common liability and has within 1 year
 2331 after the agreement paid the liability and commenced the
 2332 person's action for contribution.

2333 (5) The beneficiary's recovery of a judgment for breach of
 2334 trust against one liable person does not of itself discharge
 2335 other liable persons from liability for the breach of trust
 2336 unless the judgment is satisfied. The satisfaction of the
 2337 judgment does not impair any right of contribution.

2338 (6) The judgment of the court in determining the liability
 2339 of several defendants to the beneficiary for breach of trust is
 2340 binding upon such defendants in determining the right of such
 2341 defendants to contribution.

2342 (7) Subsection (2) applies to all causes of action for
 2343 breach of trust pending on July 1, 2007, under which causes of
 2344 action the right of contribution among persons jointly and
 2345 severally liable is involved and to all causes of action filed
 2346 after July 1, 2007.

2347 736.1003 Damages in absence of breach.--Absent a breach of
 2348 trust, a trustee is not liable to a beneficiary for a loss or
 2349 depreciation in the value of trust property or for not having
 2350 made a profit.

2351 736.1004 Attorney's fees and costs.--

2352 (1) (a) In all actions for breach of fiduciary duty or
 2353 challenging the exercise of, or failure to exercise, a trustee's
 2354 powers; and

2355 (b) In proceedings arising under ss. 736.0410-736.0417,
 2356
 2357 the court shall award taxable costs as in chancery actions,
 2358 including attorney fees and guardian ad litem fees.

2359 (2) When awarding taxable costs under this section,
 2360 including attorney fees and guardian ad litem fees, the court,
 2361 in its discretion, may direct payment from a party's interest,
 2362 if any, in the trust or enter a judgment that may be satisfied
 2363 from other property of the party, or both.

2364 736.1005 Attorney's fees for services to the trust.--

2365 (1) Any attorney who has rendered services to a trust may
 2366 be awarded reasonable compensation from the trust. The attorney
 2367 may apply to the court for an order awarding attorney's fees
 2368 and, after notice and service on the trustee and all
 2369 beneficiaries entitled to an accounting under s. 736.0813, the
 2370 court shall enter an order on the fee application.

2371 (2) Whenever attorney's fees are to be paid out of the
 2372 trust, the court, in its discretion, may direct from what part
 2373 of the trust the fees shall be paid.

2374 (3) Except when a trustee's interest may be adverse in a
 2375 particular matter, the attorney shall give reasonable notice in
 2376 writing to the trustee of the attorney's retention by an
 2377 interested person and the attorney's entitlement to fees
 2378 pursuant to this section. A court may reduce any fee award for
 2379 services rendered by the attorney prior to the date of actual

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2380 notice to the trustee, if the actual notice date is later than a
2381 date of reasonable notice. In exercising this discretion, the
2382 court may exclude compensation for services rendered after the
2383 reasonable notice date but prior to the date of actual notice.

2384 736.1006 Costs in trust proceedings.--

2385 (1) In all trust proceedings, costs may be awarded as in
2386 chancery actions.

2387 (2) Whenever costs are to be paid out of the trust, the
2388 court, in its discretion, may direct from what part of the trust
2389 the costs shall be paid.

2390 736.1007 Trustee's attorney's fees.--

2391 (1) If the trustee of a revocable trust retains an
2392 attorney to render legal services in connection with the initial
2393 administration of the trust, the attorney is entitled to
2394 reasonable compensation for those legal services, payable from
2395 the assets of the trust without court order. The trustee and the
2396 attorney may agree to compensation that is determined in a
2397 manner or amount other than the manner or amount provided in
2398 this section. The agreement is not binding on a person who bears
2399 the impact of the compensation unless that person is a party to
2400 or otherwise consents to be bound by the agreement. The
2401 agreement may provide that the trustee is not individually
2402 liable for the attorney's fees and costs.

2403 (2) Unless otherwise agreed, compensation based on the
2404 value of the trust assets immediately following the settlor's
2405 death and the income earned by the trust during initial
2406 administration at the rate of 75 percent of the schedule
2407 provided in s. 733.6171(3)(a)-(h) is presumed to be reasonable

2408 total compensation for ordinary services of all attorneys
2409 employed generally to advise a trustee concerning the trustee's
2410 duties in initial trust administration.

2411 (3) An attorney who is retained to render only limited and
2412 specifically defined legal services shall be compensated as
2413 provided in the retaining agreement. If the amount or method of
2414 determining compensation is not provided in the agreement, the
2415 attorney is entitled to a reasonable fee, taking into account
2416 the factors set forth in subsection (6).

2417 (4) Ordinary services of the attorney in an initial trust
2418 administration include legal advice and representation
2419 concerning the trustee's duties relating to:

2420 (a) Review of the trust instrument and each amendment for
2421 legal sufficiency and interpretation.

2422 (b) Implementation of substitution of the successor
2423 trustee.

2424 (c) Persons who must or should be served with required
2425 notices and the method and timing of such service.

2426 (d) The obligation of a successor to require a former
2427 trustee to provide an accounting.

2428 (e) The trustee's duty to protect, insure, and manage
2429 trust assets and the trustee's liability relating to these
2430 duties.

2431 (f) The trustee's duty regarding investments imposed by
2432 the prudent investor rule.

2433 (g) The trustee's obligation to inform and account to
2434 beneficiaries and the method of satisfaction of such
2435 obligations, the liability of the trust and trustee to the

2436 settlor's creditors, and the advisability or necessity for
2437 probate proceedings to bar creditors.

2438 (h) Contributions due to the personal representative of
2439 the settlor's estate for payment of expenses of administration
2440 and obligations of the settlor's estate.

2441 (i) Identifying tax returns required to be filed by the
2442 trustee, the trustee's liability for payment of taxes, and the
2443 due date of returns.

2444 (j) Filing a nontaxable affidavit, if not filed by a
2445 personal representative.

2446 (k) Order of payment of expenses of administration of the
2447 trust and order and priority of abatement of trust
2448 distributions.

2449 (l) Distribution of income or principal to beneficiaries
2450 or funding of further trusts provided in the governing
2451 instrument.

2452 (m) Preparation of any legal documents required to effect
2453 distribution.

2454 (n) Fiduciary duties, avoidance of self-dealing, conflicts
2455 of interest, duty of impartiality, and obligations to
2456 beneficiaries.

2457 (o) If there is a conflict of interest between a trustee
2458 who is a beneficiary and other beneficiaries of the trust,
2459 advice to the trustee on limitations of certain authority of the
2460 trustee regarding discretionary distributions or exercise of
2461 certain powers and alternatives for appointment of an
2462 independent trustee and appropriate procedures.

2463 (p) Procedures for the trustee's discharge from liability
 2464 for administration of the trust on termination or resignation.

2465 (5) In addition to the attorney's fees for ordinary
 2466 services, the attorney for the trustee shall be allowed further
 2467 reasonable compensation for any extraordinary service. What
 2468 constitutes an extraordinary service may vary depending on many
 2469 factors, including the size of the trust. Extraordinary services
 2470 may include, but are not limited to:

2471 (a) Involvement in a trust contest, trust construction, a
 2472 proceeding for determination of beneficiaries, a contested
 2473 claim, elective share proceedings, apportionment of estate
 2474 taxes, or other adversary proceedings or litigation by or
 2475 against the trust.

2476 (b) Representation of the trustee in an audit or any
 2477 proceeding for adjustment, determination, or collection of any
 2478 taxes.

2479 (c) Tax advice on postmortem tax planning, including, but
 2480 not limited to, disclaimer, renunciation of fiduciary
 2481 commission, alternate valuation date, allocation of
 2482 administrative expenses between tax returns, the QTIP or reverse
 2483 QTIP election, allocation of GST exemption, qualification for
 2484 Internal Revenue Code ss. 303 and 6166 privileges, deduction of
 2485 last illness expenses, distribution planning, asset basis
 2486 considerations, throwback rules, handling income or deductions
 2487 in respect of a decedent, valuation discounts, special use and
 2488 other valuation, handling employee benefit or retirement
 2489 proceeds, prompt assessment request, or request for release from
 2490 personal liability for payment of tax.

2491 (d) Review of an estate tax return and preparation or
 2492 review of other tax returns required to be filed by the trustee.

2493 (e) Preparation of decedent's federal estate tax return.
 2494 If this return is prepared by the attorney, a fee of one-half of
 2495 1 percent up to a value of \$10 million and one-fourth of 1
 2496 percent on the value in excess of \$10 million, of the gross
 2497 estate as finally determined for federal estate tax purposes, is
 2498 presumed to be reasonable compensation for the attorney for this
 2499 service. These fees shall include services for routine audit of
 2500 the return, not beyond the examining agent level, if required.

2501 (f) Purchase, sale, lease, or encumbrance of real property
 2502 by the trustee or involvement in zoning, land use,
 2503 environmental, or other similar matters.

2504 (g) Legal advice regarding carrying on of decedent's
 2505 business or conducting other commercial activity by the trustee.

2506 (h) Legal advice regarding claims for damage to the
 2507 environment or related procedures.

2508 (i) Legal advice regarding homestead status of trust real
 2509 property or proceedings involving the status.

2510 (j) Involvement in fiduciary, employee, or attorney
 2511 compensation disputes.

2512 (k) Considerations of special valuation of trust assets,
 2513 including discounts for blockage, minority interests, lack of
 2514 marketability, and environmental liability.

2515 (6) Upon petition of any interested person in a proceeding
 2516 to review the compensation paid or to be paid to the attorney
 2517 for the trustee, the court may increase or decrease the
 2518 compensation for ordinary services of the attorney for the

2519 trustee or award compensation for extraordinary services if the
 2520 facts and circumstances of the particular administration
 2521 warrant. In determining reasonable compensation, the court shall
 2522 consider all of the following factors giving such weight to each
 2523 as the court may determine to be appropriate:

2524 (a) The promptness, efficiency, and skill with which the
 2525 initial administration was handled by the attorney.

2526 (b) The responsibilities assumed by, and potential
 2527 liabilities of, the attorney.

2528 (c) The nature and value of the assets that are affected
 2529 by the decedent's death.

2530 (d) The benefits or detriments resulting to the trust or
 2531 the trust's beneficiaries from the attorney's services.

2532 (e) The complexity or simplicity of the administration and
 2533 the novelty of issues presented.

2534 (f) The attorney's participation in tax planning for the
 2535 estate, the trust, and the trust's beneficiaries and tax return
 2536 preparation or review and approval.

2537 (g) The nature of the trust assets, the expenses of
 2538 administration, and the claims payable by the trust and the
 2539 compensation paid to other professionals and fiduciaries.

2540 (h) Any delay in payment of the compensation after the
 2541 services were furnished.

2542 (i) Any other relevant factors.

2543 (7) The court may determine reasonable attorney's
 2544 compensation without receiving expert testimony. Any party may
 2545 offer expert testimony after notice to interested persons. If
 2546 expert testimony is offered, an expert witness fee may be

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2547 awarded by the court and paid from the assets of the trust. The
 2548 court shall direct from what part of the trust the fee is to be
 2549 paid.

2550 (8) If a separate written agreement regarding compensation
 2551 exists between the attorney and the settlor, the attorney shall
 2552 furnish a copy to the trustee prior to commencement of
 2553 employment and, if employed, shall promptly file and serve a
 2554 copy on all interested persons. A separate agreement or a
 2555 provision in the trust suggesting or directing the trustee to
 2556 retain a specific attorney does not obligate the trustee to
 2557 employ the attorney or obligate the attorney to accept the
 2558 representation but, if the attorney who is a party to the
 2559 agreement or who drafted the trust is employed, the compensation
 2560 paid shall not exceed the compensation provided in the
 2561 agreement.

2562 (9) Court proceedings to determine compensation, if
 2563 required, are a part of the trust administration process and the
 2564 costs, including fees for the trustee's attorney, shall be
 2565 determined by the court and paid from the assets of the trust
 2566 unless the court finds the attorney's fees request to be
 2567 substantially unreasonable. The court shall direct from what
 2568 part of the trust the fees are to be paid.

2569 (10) As used in this section, the term "initial trust
 2570 administration" means administration of a revocable trust during
 2571 the period that begins with the death of the settlor and ends on
 2572 the final distribution of trust assets outright or to continuing
 2573 trusts created under the trust agreement but, if an estate tax
 2574 return is required, not until after issuance of an estate tax

2575 closing letter or other evidence of termination of the estate
 2576 tax proceeding. This initial period is not intended to include
 2577 continued regular administration of the trust.

2578 736.1008 Limitations on proceedings against trustees.--

2579 (1) Except as provided in subsection (2), all claims by a
 2580 beneficiary against a trustee for breach of trust are barred as
 2581 provided in chapter 95 as to:

2582 (a) All matters adequately disclosed in a trust disclosure
 2583 document issued by the trustee, with the limitations period
 2584 beginning on the date of receipt of adequate disclosure.

2585 (b) All matters not adequately disclosed in a trust
 2586 disclosure document if the trustee has issued a final trust
 2587 accounting and has given written notice to the beneficiary of
 2588 the availability of the trust records for examination and that
 2589 any claims with respect to matters not adequately disclosed may
 2590 be barred unless an action is commenced within the applicable
 2591 limitations period provided in chapter 95. The limitations
 2592 period begins on the date of receipt of the final trust
 2593 accounting and notice.

2594 (2) Unless sooner barred by adjudication, consent, or
 2595 limitations, a beneficiary is barred from bringing an action
 2596 against a trustee for breach of trust with respect to a matter
 2597 that was adequately disclosed in a trust disclosure document
 2598 unless a proceeding to assert the claim is commenced within 6
 2599 months after receipt from the trustee of the trust disclosure
 2600 document or a limitation notice that applies to that disclosure
 2601 document, whichever is received later.

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2602 (3) When a trustee has not issued a final trust accounting
2603 or has not given written notice to the beneficiary of the
2604 availability of the trust records for examination and that
2605 claims with respect to matters not adequately disclosed may be
2606 barred, a claim against the trustee for breach of trust based on
2607 a matter not adequately disclosed in a trust disclosure document
2608 accrues when the beneficiary has actual knowledge of the
2609 trustee's repudiation of the trust or adverse possession of
2610 trust assets, and is barred as provided in chapter 95.

2611 (4) As used in this section, the term:

2612 (a) "Trust disclosure document" means a trust accounting
2613 or any other written report of the trustee. A trust disclosure
2614 document adequately discloses a matter if the document provides
2615 sufficient information so that a beneficiary knows of a claim or
2616 reasonably should have inquired into the existence of a claim
2617 with respect to that matter.

2618 (b) "Trust accounting" means an accounting that adequately
2619 discloses the information required by and that substantially
2620 complies with the standards set forth in s. 736.08135.

2621 (c) "Limitation notice" means a written statement of the
2622 trustee that an action by a beneficiary against the trustee for
2623 breach of trust based on any matter adequately disclosed in a
2624 trust disclosure document may be barred unless the action is
2625 commenced within 6 months after receipt of the trust disclosure
2626 document or receipt of a limitation notice that applies to that
2627 trust disclosure document, whichever is later. A limitation
2628 notice may but is not required to be in the following form: "An
2629 action for breach of trust based on matters disclosed in a trust

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2630 accounting or other written report of the trustee may be subject
2631 to a 6-month statute of limitations from the receipt of the
2632 trust accounting or other written report. If you have questions,
2633 please consult your attorney."

2634 (5) For purposes of this section, a limitation notice
2635 applies to a trust disclosure document when the limitation
2636 notice is:

2637 (a) Contained as a part of the trust disclosure document
2638 or as a part of another trust disclosure document received
2639 within 1 year prior to the receipt of the latter trust
2640 disclosure document;

2641 (b) Accompanied concurrently by the trust disclosure
2642 document or by another trust disclosure document that was
2643 received within 1 year prior to the receipt of the latter trust
2644 disclosure document;

2645 (c) Delivered separately within 10 days after the delivery
2646 of the trust disclosure document or of another trust disclosure
2647 document that was received within 1 year prior to the receipt of
2648 the latter trust disclosure document. For purposes of this
2649 paragraph, a limitation notice is not delivered separately if
2650 the notice is accompanied by another written communication,
2651 other than a written communication that refers only to the
2652 limitation notice; or

2653 (d) Received more than 10 days after the delivery of the
2654 trust disclosure document but only if the limitation notice
2655 references that trust disclosure document and:

2656 1. Offers to provide to the beneficiary on request another
2657 copy of that trust disclosure document if the document was

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2658 received by the beneficiary within 1 year prior to receipt of
2659 the limitation notice; or

2660 2. Is accompanied by another copy of that trust disclosure
2661 document if the trust disclosure document was received by the
2662 beneficiary 1 year or more prior to the receipt of the
2663 limitation notice.

2664 (6) This section applies to trust accountings for
2665 accounting periods beginning on or after January 1, 2008, and to
2666 written reports, other than trust accountings, received by a
2667 beneficiary on or after January 1, 2008.

2668 736.1009 Reliance on trust instrument.--A trustee who acts
2669 in reasonable reliance on the terms of the trust as expressed in
2670 the trust instrument is not liable to a beneficiary for a breach
2671 of trust to the extent the breach resulted from the reliance.

2672 736.1010 Event affecting administration or
2673 distribution.--If the happening of an event, including marriage,
2674 divorce, performance of educational requirements, or death,
2675 affects the administration or distribution of a trust, a trustee
2676 who has exercised reasonable care to ascertain the happening of
2677 the event is not liable for a loss resulting from the trustee's
2678 lack of knowledge.

2679 736.1011 Exculpation of trustee.--

2680 (1) A term of a trust relieving a trustee of liability for
2681 breach of trust is unenforceable to the extent that the term:

2682 (a) Relieves the trustee of liability for breach of trust
2683 committed in bad faith or with reckless indifference to the
2684 purposes of the trust or the interests of the beneficiaries; or

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2685 (b) Was inserted into the trust instrument as the result
 2686 of an abuse by the trustee of a fiduciary or confidential
 2687 relationship with the settlor.

2688 (2) An exculpatory term drafted or caused to be drafted by
 2689 the trustee is invalid as an abuse of a fiduciary or
 2690 confidential relationship unless the trustee proves that the
 2691 exculpatory term is fair under the circumstances and that the
 2692 term's existence and contents were adequately communicated
 2693 directly to the settlor.

2694 736.1012 Beneficiary's consent, release, or
 2695 ratification.--A trustee is not liable to a beneficiary for
 2696 breach of trust if the beneficiary consented to the conduct
 2697 constituting the breach, released the trustee from liability for
 2698 the breach, or ratified the transaction constituting the breach,
 2699 unless:

2700 (1) The consent, release, or ratification of the
 2701 beneficiary was induced by improper conduct of the trustee; or

2702 (2) At the time of the consent, release, or ratification,
 2703 the beneficiary did not know of the beneficiary's rights or of
 2704 the material facts relating to the breach.

2705 736.1013 Limitation on personal liability of trustee.--

2706 (1) Except as otherwise provided in the contract, a
 2707 trustee is not personally liable on a contract properly entered
 2708 into in the trustee's fiduciary capacity in the course of
 2709 administering the trust if the trustee in the contract disclosed
 2710 the fiduciary capacity.

2711 (2) A trustee is personally liable for torts committed in
 2712 the course of administering a trust or for obligations arising

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2713 from ownership or control of trust property only if the trustee
2714 is personally at fault.

2715 (3) A claim based on a contract entered into by a trustee
2716 in the trustee's fiduciary capacity, on an obligation arising
2717 from ownership or control of trust property, or on a tort
2718 committed in the course of administering a trust may be asserted
2719 in a judicial proceeding against the trustee in the trustee's
2720 fiduciary capacity, whether or not the trustee is personally
2721 liable for the claim.

2722 (4) Issues of liability between the trust estate and the
2723 trustee individually may be determined in a proceeding for
2724 accounting, surcharge, or indemnification or in any other
2725 appropriate proceeding.

2726 736.1014 Limitations on actions against certain trusts.--

2727 (1) After the death of a settlor, no creditor of the
2728 settlor may bring, maintain, or continue any direct action
2729 against a trust described in s. 733.707(3), the trustee of the
2730 trust, or any beneficiary of the trust that is dependent on the
2731 individual liability of the settlor. Such claims and causes of
2732 action against the settlor shall be presented and enforced
2733 against the settlor's estate as provided in part VII of chapter
2734 733 and the personal representative of the settlor's estate may
2735 obtain payment from the trustee of a trust described in s.
2736 733.707(3) as provided in ss. 733.607(2), 733.707(3), and
2737 736.05053.

2738 (2) This section does not preclude a direct action against
2739 a trust described in s. 733.707(3), the trustee of the trust, or

2740 a beneficiary of the trust that is not dependent on the
 2741 individual liability of the settlor.

2742 (3) This section does not affect the lien of any duly
 2743 recorded mortgage or security interest or the lien of any person
 2744 in possession of personal property or the right to foreclose and
 2745 enforce the mortgage or lien.

2746 736.1015 Interest as general partner.--

2747 (1) Unless personal liability is imposed in the contract,
 2748 a trustee who holds an interest as a general partner in a
 2749 general or limited partnership is not personally liable on a
 2750 contract entered into by the partnership after the trust's
 2751 acquisition of the interest if the fiduciary capacity was
 2752 disclosed in the contract or in a statement previously filed
 2753 pursuant to a Uniform Partnership Act or Uniform Limited
 2754 Partnership Act.

2755 (2) A trustee who holds an interest as a general partner
 2756 is not personally liable for torts committed by the partnership
 2757 or for obligations arising from ownership or control of the
 2758 interest unless the trustee is personally at fault.

2759 (3) If the trustee of a revocable trust holds an interest
 2760 as a general partner, the settlor is personally liable for
 2761 contracts and other obligations of the partnership as if the
 2762 settlor were a general partner.

2763 736.1016 Protection of person dealing with trustee.--

2764 (1) A person other than a beneficiary who in good faith
 2765 assists a trustee or who in good faith and for value deals with
 2766 a trustee, without knowledge that the trustee is exceeding or

2767 improperly exercising the trustee's powers, is protected from
 2768 liability as if the trustee properly exercised the power.

2769 (2) A person other than a beneficiary who in good faith
 2770 deals with a trustee is not required to inquire into the extent
 2771 of the trustee's powers or the propriety of their exercise.

2772 (3) A person who in good faith delivers assets to a
 2773 trustee need not ensure their proper application.

2774 (4) A person other than a beneficiary who in good faith
 2775 assists a former trustee or who in good faith and for value
 2776 deals with a former trustee, without knowledge that the
 2777 trusteeship has terminated, is protected from liability as if
 2778 the former trustee were still a trustee.

2779 (5) Comparable protective provisions of other laws
 2780 relating to commercial transactions or transfer of securities by
 2781 fiduciaries prevail over the protection provided by this
 2782 section.

2783 736.1017 Certification of trust.--

2784 (1) Instead of furnishing a copy of the trust instrument
 2785 to a person other than a beneficiary, the trustee may furnish to
 2786 the person a certification of trust containing the following
 2787 information:

2788 (a) The trust exists and the date the trust instrument was
 2789 executed.

2790 (b) The identity of the settlor.

2791 (c) The identity and address of the currently acting
 2792 trustee.

2793 (d) The powers of the trustee.

2794 (e) The revocability or irrevocability of the trust and
 2795 the identity of any person holding a power to revoke the trust.

2796 (f) The authority of cotrustees to sign or otherwise
 2797 authenticate and whether all or less than all are required in
 2798 order to exercise powers of the trustee.

2799 (g) The manner of taking title to trust property.

2800 (2) A certification of trust may be signed or otherwise
 2801 authenticated by any trustee.

2802 (3) A certification of trust must state that the trust has
 2803 not been revoked, modified, or amended in any manner that would
 2804 cause the representations contained in the certification of
 2805 trust to be incorrect.

2806 (4) A certification of trust need not contain the
 2807 dispositive terms of a trust.

2808 (5) A recipient of a certification of trust may require
 2809 the trustee to furnish copies of any excerpts from the original
 2810 trust instrument and later amendments that designate the trustee
 2811 and confer upon the trustee the power to act in the pending
 2812 transaction.

2813 (6) A person who acts in reliance on a certification of
 2814 trust without knowledge that the representations contained in
 2815 the certification are incorrect is not liable to any person for
 2816 so acting and may assume without inquiry the existence of the
 2817 facts contained in the certification. Knowledge of the terms of
 2818 the trust may not be inferred solely from the fact that a copy
 2819 of all or part of the trust instrument is held by the person
 2820 relying on the certification.

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2821 (7) A person who in good faith enters into a transaction
2822 in reliance on a certification of trust may enforce the
2823 transaction against the trust property as if the representations
2824 contained in the certification were correct.

2825 (8) This section does not limit the right of a person to
2826 obtain a copy of the trust instrument when required to be
2827 furnished by law or in a judicial proceeding concerning the
2828 trust.

2829 736.1018 Improper distribution or payment; liability of
2830 distributee.--Any person who received a distribution or was paid
2831 improperly from a trust shall return the assets or funds
2832 received and the income from those assets or interest on the
2833 funds from the date of distribution or payment unless the
2834 distribution or payment cannot be questioned because of
2835 adjudication, estoppel, or limitations. If the person does not
2836 have the assets or funds, the value of the assets or funds at
2837 the date of disposition, income from the assets or funds, and
2838 gain received by the person from the assets or funds shall be
2839 returned.

2840 Section 11. Part XI of chapter 736, Florida Statutes,
2841 consisting of sections 736.1101, 736.1102, 736.1103, 736.1104,
2842 736.1105, 736.1106, 736.1107, and 736.1108, is created to read:

2844 PART XI
2845 RULES OF CONSTRUCTION

2847 736.1101 Rules of construction; general
2848 provisions.--Except as provided in s. 736.0105(2):

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2849 (1) The intent of the settlor as expressed in the terms of
2850 the trust controls the legal effect of the dispositions made in
2851 the trust.

2852 (2) The rules of construction as expressed in this part
2853 shall apply unless a contrary intent is indicated by the terms
2854 of the trust.

2855 736.1102 Construction of generic terms.--Adopted persons
2856 and persons born out of wedlock are included in class gift
2857 terminology and terms of relationship, in accordance with rules
2858 for determining relationships for purposes of intestate
2859 succession.

2860 736.1103 Gifts to multi-generation classes to be per
2861 stirpes.--Class gifts to descendants, issue, and other multi-
2862 generation classes shall be per stirpes.

2863 736.1104 Killer not entitled to receive property or other
2864 benefits by reason of victim's death.--

2865 (1) A beneficiary of a trust who unlawfully and
2866 intentionally kills or unlawfully and intentionally participates
2867 in procuring the death of the settlor or another person on whose
2868 death such beneficiary's interest depends, is not entitled to
2869 any trust interest, including homestead, dependent on the
2870 victim's death and such interest shall devolve as though the
2871 killer had predeceased the victim.

2872 (2) A final judgment of conviction of murder in any degree
2873 is conclusive for the purposes of this section. In the absence
2874 of a murder conviction in any degree, the court may determine by
2875 the greater weight of the evidence whether the killing was
2876 unlawful and intentional for purposes of this section.

2877 736.1105 Dissolution of marriage; effect on revocable
 2878 trust.--Unless the trust instrument or the judgment for
 2879 dissolution of marriage or divorce expressly provides otherwise,
 2880 if a revocable trust is executed by a husband or wife as settlor
 2881 prior to annulment of the marriage or entry of a judgment for
 2882 dissolution of marriage or divorce of the settlor from the
 2883 settlor's spouse, any provision of the trust that affects the
 2884 settlor's spouse will become void upon annulment of the marriage
 2885 or entry of the judgment of dissolution of marriage or divorce
 2886 and any such trust shall be administered and construed as if the
 2887 settlor's spouse had died on the date of the annulment or on
 2888 entry of the judgment for dissolution of marriage or divorce.

2889 736.1106 Antilapse; survivorship with respect to future
 2890 interests under terms of inter vivos and testamentary trusts;
 2891 substitute takers.--

2892 (1) As used in this section, the term:

2893 (a) "Beneficiary" means the beneficiary of a future
 2894 interest and includes a class member if the future interest is
 2895 in the form of a class gift.

2896 (b) "Distribution date," with respect to a future
 2897 interest, means the time when the future interest is to take
 2898 effect in possession or enjoyment. The distribution date need
 2899 not occur at the beginning or end of a calendar day, but can
 2900 occur at a time during the course of a day.

2901 (c) "Future interest" includes an alternative future
 2902 interest and a future interest in the form of a class gift.

2903 (d) "Future interest under the terms of a trust" means a
 2904 future interest created by an inter vivos or testamentary

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2905 transfer to an existing trust or creating a trust or by an
2906 exercise of a power of appointment to an existing trust
2907 directing the continuance of an existing trust, designating a
2908 beneficiary of an existing trust, or creating a trust.

2909 (e) "Surviving beneficiary" or "surviving descendant"
2910 means a beneficiary or a descendant who did not predecease the
2911 distribution date or is not deemed to have predeceased the
2912 distribution date by operation of law.

2913 (2) A future interest under the terms of a trust is
2914 contingent upon the beneficiary surviving the distribution date.
2915 Unless a contrary intent appears in the trust instrument, if a
2916 beneficiary of a future interest under the terms of a trust
2917 fails to survive the distribution date, and the deceased
2918 beneficiary leaves surviving descendants, a substitute gift is
2919 created in the beneficiary's surviving descendants. They take
2920 per stirpes the property to which the beneficiary would have
2921 been entitled if the beneficiary had survived the distribution
2922 date.

2923 (3) In the application of this section:

2924 (a) Words of survivorship attached to a future interest
2925 are a sufficient indication of an intent contrary to the
2926 application of this section.

2927 (b) A residuary clause in a will is not a sufficient
2928 indication of an intent contrary to the application of this
2929 section, whether or not the will specifically provides that
2930 lapsed or failed devises are to pass under the residuary clause.

2931 (4) If, after the application of subsections (2) and (3),
 2932 there is no surviving taker, the property passes in the
 2933 following order:

2934 (a) If the future interest was created by the exercise of
 2935 a power of appointment, the property passes under the donor's
 2936 gift-in-default clause, if any, which clause is treated as
 2937 creating a future interest under the terms of a trust.

2938 (b) If no taker is produced by the application of
 2939 paragraph (a) and the trust was created in a nonresiduary devise
 2940 or appointment in the transferor's will, the property passes
 2941 under the residuary clause in the transferor's will. For
 2942 purposes of this section, the residuary clause is treated as
 2943 creating a future interest under the terms of a trust.

2944 (c) If no taker is produced by the application of
 2945 paragraph (a) or paragraph (b), the property passes to those
 2946 persons, including the state, and in such shares as would
 2947 succeed to the transferor's intestate estate under the intestate
 2948 succession law of the transferor's domicile if the transferor
 2949 died when the disposition is to take effect in possession or
 2950 enjoyment.

2951
 2952 For purposes of paragraphs (b) and (c), the term "transferor"
 2953 with respect to a future interest created by the exercise of a
 2954 power of appointment, means the donor if the power was a
 2955 nongeneral power and the donee if the power was a general power.

2956 (5) This section applies to all trusts other than trusts
 2957 that were irrevocable before the effective date of this code.

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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.--

3014 (1) In the exercise of a trustee's powers, including the
 3015 powers granted by this part, a trustee has a duty to act with
 3016 due regard to the trustee's obligation as a fiduciary, including
 3017 a duty not to exercise any power in such a way as to:

3018 (a) Deprive the trust of an otherwise available tax
 3019 exemption, deduction, or credit for tax purposes;

3020 (b) Deprive a donor of a trust asset or tax deduction or
 3021 credit; or

3022 (c) Operate to impose a tax on a donor, trust, or other
 3023 person.

3024
 3025 For purposes of this subsection, the term "tax" includes, but is
 3026 not limited to, any federal, state, or local excise, income,
 3027 gift, estate, or inheritance tax.

3028 (2) Except as provided in s. 736.1205, a trustee of a
 3029 private foundation trust shall make distributions at such time
 3030 and in such manner as not to subject the trust to tax under s.
 3031 4942 of the Internal Revenue Code.

3032 (3) Except as provided in subsection (4) and in s.
 3033 736.1205, a trustee of a private foundation trust, or a split
 3034 interest trust to the extent that the split interest trust is
 3035 subject to the provisions of s. 4947(a)(2) of the Internal
 3036 Revenue Code, in the exercise of the trustee's powers shall not:

3037 (a) Engage in any act of self-dealing as defined in s.
 3038 4941(d) of the Internal Revenue Code;

3039 (b) Retain any excess business holdings as defined in s.
 3040 4943(c) of the Internal Revenue Code;

3041 (c) Make any investments in a manner that subjects the
 3042 foundation to tax under s. 4944 of the Internal Revenue Code; or

3043 (d) Make any taxable expenditures as defined in s. 4945(d)
 3044 of the Internal Revenue Code.

3045 (4) Paragraphs (3)(b) and (c) shall not apply to a split
 3046 interest trust if:

3047 (a) All the interest from income, and none of the
 3048 remainder interest, of the trust is devoted solely to one or
 3049 more of the purposes described in s. 170(c)(2)(B) of the
 3050 Internal Revenue Code, and all amounts in the trust for which a
 3051 deduction was allowed under s. 170, s. 545(b)(2), s. 556(b)(2),
 3052 s. 642(c), s. 2055, s. 2106(a)(2), or s. 2522 of the Internal
 3053 Revenue Code have an aggregate fair market value of not more
 3054 than 60 percent of the aggregate fair market value of all
 3055 amounts in the trust; or

3056 (b) A deduction was allowed under s. 170, s. 545(b)(2), s.
 3057 556(b)(2), s. 642(c), s. 2055, s. 2106(a)(2), or s. 2522 of the
 3058 Internal Revenue Code for amounts payable under the terms of the
 3059 trust to every remainder beneficiary but not to any income
 3060 beneficiary.

3061 736.1205 Notice that this part does not apply.--In the
 3062 case of a power to make distributions, if the trustee determines
 3063 that the governing instrument contains provisions that are more
 3064 restrictive than s. 736.1204(2), or if the trust contains other
 3065 powers, inconsistent with the provisions of s. 736.1204(3) that
 3066 specifically direct acts by the trustee, the trustee shall
 3067 notify the state attorney when the trust becomes subject to this
 3068 part. Section 736.1204 does not apply to any trust for which

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3069 notice has been given pursuant to this section unless the trust
 3070 is amended to comply with the terms of this part.

3071 736.1206 Power to amend trust instrument.--

3072 (1) In the case of a trust that is solely for a named
 3073 charitable organization or organizations and for which the
 3074 trustee does not possess any discretion concerning the
 3075 distribution of income or principal among two or more such
 3076 organizations, the trustee may amend the governing instrument to
 3077 comply with the provisions of s. 736.1204(2) with the consent of
 3078 the named charitable organization or organizations.

3079 (2) In the case of a charitable trust that is not subject
 3080 to the provisions of subsection (1), the trustee may amend the
 3081 governing instrument to comply with the provisions of s.
 3082 736.1204(2) with the consent of the state attorney.

3083 736.1207 Power of court to permit deviation.--This part
 3084 does not affect the power of a court to relieve a trustee from
 3085 any restrictions on the powers and duties that are placed on the
 3086 trustee by the governing instrument or applicable law for cause
 3087 shown and on complaint of the trustee, state attorney, or an
 3088 affected beneficiary and notice to the affected parties.

3089 736.1208 Release; property and persons affected; manner of
 3090 effecting.--

3091 (1) The trustee of a trust, all of the unexpired interests
 3092 in which are devoted to one or more charitable purposes, may
 3093 release a power to select charitable donees unless the creating
 3094 instrument provides otherwise.

3095 (2) The release of a power to select charitable donees may
 3096 apply to all or any part of the property subject to the power

3097 and may reduce or limit the charitable organizations, or classes
 3098 of charitable organizations, in whose favor the power is
 3099 exercisable.

3100 (3) A release shall be effected by a duly acknowledged
 3101 written instrument signed by the trustee and delivered as
 3102 provided in subsection (4).

3103 (4) Delivery of a release shall be accomplished as
 3104 follows:

3105 (a) If the release is accomplished by specifying a
 3106 charitable organization or organizations as beneficiary or
 3107 beneficiaries of the trust, by delivery of a copy of the release
 3108 to each designated charitable organization.

3109 (b) If the release is accomplished by reducing the class
 3110 of permissible charitable organizations, by delivery of a copy
 3111 of the release to the state attorney.

3112 (5) If a release is accomplished by specifying a public
 3113 charitable organization or organizations as beneficiary or
 3114 beneficiaries of the trust, the trust at all times thereafter
 3115 shall be operated exclusively for the benefit of, and be
 3116 supervised by, the specified public charitable organization or
 3117 organizations.

3118 736.1209 Election to come under this part.--With the
 3119 consent of that organization or organizations, a trustee of a
 3120 trust for the benefit of a public charitable organization or
 3121 organizations may come under s. 736.0838(5) by filing with the
 3122 state attorney an election, accompanied by the proof of required
 3123 consent. Thereafter the trust shall be subject to s.
 3124 736.1208(5).

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3125 736.1210 Interpretation.--This part shall be interpreted
3126 to effectuate the intent of the state to preserve, foster, and
3127 encourage gifts to, or for the benefit of, charitable
3128 organizations.

3129 Section 13. Part XIII of chapter 736, Florida Statutes,
3130 consisting of sections 736.1301, 736.1302, and 736.1303, is
3131 created to read:

3132

3133 PART XIII
3134 MISCELLANEOUS

3135

3136 736.1301 Electronic records and signatures.--Any
3137 provisions of this code governing the legal effect, validity, or
3138 enforceability of electronic records or electronic signatures,
3139 and of contracts formed or performed with the use of such
3140 records or signatures, are deemed to conform to the requirements
3141 of s. 102 of the Electronic Signatures in Global and National
3142 Commerce Act, 15 U.S.C. s. 7002, and supersede, modify, and
3143 limit the requirements of the Electronic Signatures in Global
3144 and National Commerce Act.

3145 736.1302 Severability clause.--If any provision of this
3146 code or its application to any person or circumstances is held
3147 invalid, the invalidity does not affect other provisions or
3148 applications of this code that can be given effect without the
3149 invalid provision or application, and to this end the provisions
3150 of this code are severable.

3151 736.1303 Application to existing relationships.--

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3152 (1) Except as otherwise provided in this code, on July 1,
3153 2007:

3154 (a) This code applies to all trusts created before, on, or
3155 after such date.

3156 (b) This code applies to all judicial proceedings
3157 concerning trusts commenced on or after such date.

3158 (c) This code applies to judicial proceedings concerning
3159 trusts commenced before such date, unless the court finds that
3160 application of a particular provision of this code would
3161 substantially interfere with the effective conduct of the
3162 judicial proceedings or prejudice the rights of the parties, in
3163 which case the particular provision of this code does not apply
3164 and the superseded law applies.

3165 (d) Any rule of construction or presumption provided in
3166 this code applies to trust instruments executed before the
3167 effective date of this code unless there is a clear indication
3168 of a contrary intent in the terms of the trust.

3169 (e) An act done before such date is not affected by this
3170 code.

3171 (2) If a right is acquired, extinguished, or barred on the
3172 expiration of a prescribed period that has commenced to run
3173 under any other law before July 1, 2007, that law continues to
3174 apply to the right even if it has been repealed or superseded.

3175 Section 14. Paragraph (a) of subsection (5) of section
3176 497.458, Florida Statutes, is amended to read:

3177 497.458 Disposition of proceeds received on contracts.--

3178 (5) The trustee of the trust established pursuant to this
3179 section shall only have the power to:

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3180 (a) Invest in investments as prescribed in s. 215.47 and
 3181 exercise the powers set forth in part VIII of chapter 736 ~~part~~
 3182 ~~IV of chapter 737~~, provided that the licensing authority may by
 3183 order require the trustee to liquidate or dispose of any
 3184 investment within 30 days after such order, or within such other
 3185 times as the order may direct. The licensing authority may issue
 3186 such order if it determines that the investment violates any
 3187 provision of this chapter or is not in the best interests of the
 3188 preneed contract holders whose contracts are secured by the
 3189 trust funds.

3190 Section 15. Section 518.117, Florida Statutes, is created
 3191 to read:

3192 518.117 Permissible investments of fiduciary funds.--A
 3193 fiduciary that is authorized by lawful authority to engage in
 3194 trust business as defined in s. 658.12(20) may invest fiduciary
 3195 funds in accordance with s. 660.417 so long as the investment
 3196 otherwise complies with this chapter.

3197 Section 16. Subsection (2) of section 607.0802, Florida
 3198 Statutes, is amended to read:

3199 607.0802 Qualifications of directors.--

3200 (2) In the event that the eligibility to serve as a member
 3201 of the board of directors of a condominium association,
 3202 cooperative association, homeowners' association, or mobile home
 3203 owners' association is restricted to membership in such
 3204 association and membership is appurtenant to ownership of a
 3205 unit, parcel, or mobile home, a grantor of a trust described in
 3206 s. 733.707(3), or a qualified beneficiary as defined in s.
 3207 736.0103(14) ~~737.303(4)(b)~~ of a trust which owns a unit, parcel,

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3208 or mobile home shall be deemed a member of the association and
 3209 eligible to serve as a director of the condominium association,
 3210 cooperative association, homeowners' association, or mobile home
 3211 owners' association, provided that said beneficiary occupies the
 3212 unit, parcel, or mobile home.

3213 Section 17. Subsection (2) of section 617.0802, Florida
 3214 Statutes, is amended to read:

3215 617.0802 Qualifications of directors.--

3216 (2) In the event that the eligibility to serve as a member
 3217 of the board of directors of a condominium association,
 3218 cooperative association, homeowners' association, or mobile home
 3219 owners' association is restricted to membership in such
 3220 association and membership is appurtenant to ownership of a
 3221 unit, parcel, or mobile home, a grantor of a trust described in
 3222 s. 733.707(3), or a qualified beneficiary as defined in s.
 3223 736.0103(14) ~~737.303(4)(b)~~ of a trust which owns a unit, parcel,
 3224 or mobile home shall be deemed a member of the association and
 3225 eligible to serve as a director of the condominium association,
 3226 cooperative association, homeowners' association, or mobile home
 3227 owners' association, provided that said beneficiary occupies the
 3228 unit, parcel, or mobile home.

3229 Section 18. Subsection (6) of section 660.25, Florida
 3230 Statutes, renumbered as subsection (7) and amended, and a new
 3231 subsection (6) is added to that section, to read:

3232 660.25 Definitions.--Subject to other definitions
 3233 contained in other sections of this code, and unless the context
 3234 otherwise requires, in this chapter:

3235 (6) "Investment instrument" means any security as defined
 3236 in s. 2(a)(1) of the Securities Act of 1933; any security of an
 3237 open-end or closed-end management investment company or
 3238 investment trust registered under the Investment Company Act of
 3239 1940, 15 U.S.C. ss. 80a-1 et seq., as amended; any contract of
 3240 sale of a commodity for future delivery within the meaning of s.
 3241 2(i) of the Commodity Exchange Act; or any other interest in
 3242 securities, including, but not limited to, shares or interests
 3243 in a private investment fund, including, but not limited to, a
 3244 private investment fund organized as a limited partnership, a
 3245 limited liability company, a statutory or common law business
 3246 trust, a statutory trust, or a real estate investment trust, a
 3247 joint venture, or any other general or limited partnership;
 3248 derivatives or other interests of any nature in securities such
 3249 as options, options on futures, and variable forward contracts;
 3250 mutual funds; common trust funds; money market funds; hedge
 3251 funds; private equity or venture capital funds; insurance
 3252 contracts; and other entities or vehicles investing in
 3253 securities or interests in securities whether registered or
 3254 otherwise.

3255 (7)~~(6)~~ Terms used but not defined in this chapter, but
 3256 which are expressly defined in chapter 518, the financial
 3257 institutions codes, chapter 732, chapter 733, chapter 734,
 3258 chapter 735, chapter 736 ~~737~~, chapter 738, chapter 744, or
 3259 chapter 747, shall in this chapter, unless the context otherwise
 3260 requires, have the meanings ascribed to them in said chapters;
 3261 and references in any of said chapters to a "trust company" or

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3262 to "trust companies" shall include every trust department as
3263 defined in s. 658.12.

3264 Section 19. Section 660.417, Florida Statutes, is amended
3265 to read:

3266 660.417 Investment of fiduciary funds in investment
3267 instruments ~~into mutual fund accounts~~; permissible activity
3268 under certain circumstances; limitations.--

3269 (1) In addition to other investments authorized by law for
3270 the investment of funds held by a fiduciary, or by the
3271 instrument governing the fiduciary relationship, ~~and~~
3272 ~~notwithstanding any other provision of law~~, a bank or trust
3273 company acting as a fiduciary, agent or otherwise may, in the
3274 exercise of its investment discretion or at the direction of
3275 another person authorized to direct investment of funds held by
3276 the bank or trust company as fiduciary, invest and reinvest in
3277 investment instruments ~~the securities of an open end or closed-~~
3278 ~~end management investment company or investment trust registered~~
3279 ~~under the Investment Company Act of 1940, 15 U.S.C. ss. 80a-1 et~~
3280 ~~seq., as amended~~, so long as the ~~portfolio of such investment~~
3281 instruments consist ~~company or investment trust consists~~
3282 substantially of investments not prohibited by the governing
3283 instrument.

3284 (2) The fact that such bank or trust company or an
3285 affiliate of the bank or trust company provides services with
3286 respect to the investment instruments ~~company or investment~~
3287 ~~trust~~ such as that of an investment adviser, administrator,
3288 broker, custodian, transfer agent, placement agent, servicing
3289 agent, registrar, underwriter, sponsor, distributor, or manager

3290 or in any other capacity, ~~otherwise~~ and is receiving reasonable
 3291 compensation for those services, shall not preclude such bank or
 3292 trust company from investing or reinvesting in investment
 3293 instruments ~~the securities of the open end or closed end~~
 3294 ~~management investment trust registered under the Investment~~
 3295 ~~Company Act of 1940, 15 U.S.C. ss. 80a-1 et seq., as amended.~~
 3296 However, with respect to any funds so invested, the basis
 3297 (expressed as a percentage of asset value or otherwise) upon
 3298 which such compensation is calculated shall be disclosed (by
 3299 prospectus, account statement or otherwise) to all persons to
 3300 whom statements of such account are rendered.

3301 (3) The fact that such bank or trust company or an
 3302 affiliate of the bank or trust company owns or controls
 3303 investment instruments shall not preclude the bank or trust
 3304 company acting as a fiduciary from investing or reinvesting in
 3305 such investment instruments, provided such investment
 3306 instruments:

3307 (a) Are held for sale by the bank or trust company or by
 3308 an affiliate of the bank or trust company in the ordinary course
 3309 of its business of providing investment services to its
 3310 customers and do not include any such interests held by the bank
 3311 or trust company or by an affiliate of the bank or trust company
 3312 for its own account.

3313 (b) Are sold primarily to accounts for which the bank or
 3314 trust company is not acting as a fiduciary upon terms that are
 3315 not more favorable to the buyer than the terms upon which they
 3316 are sold to accounts for which the bank or trust company is
 3317 acting as a fiduciary.

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3318 Section 20. Paragraphs (a), (d), and (e) of subsection (1)
3319 and subsections (2), (3), (9), and (10) of section 660.46,
3320 Florida Statutes, are amended to read:

3321 660.46 Substitution of fiduciaries.--

3322 (1) The provisions of this section shall apply to the
3323 transfer of fiduciary accounts by substitution, and for those
3324 purposes these provisions shall constitute alternative
3325 procedures to those provided or required by any other provisions
3326 of law relating to the transfer of fiduciary accounts or the
3327 substitution of persons acting or who are to act in a fiduciary
3328 capacity. In this section, and only for its purposes, the term:

3329 (a) "Limitation notice" has the meaning ascribed in s.
3330 736.1008(4) ~~737.307(3)~~.

3331 (d) "Trust accounting" has the meaning ascribed in s.
3332 736.08135 ~~737.3035~~.

3333 (e) "Trust disclosure document" has the meaning ascribed
3334 in s. 736.1008(4)(a) ~~737.307(2)~~.

3335 (2) Any original fiduciary and any proposed substitute
3336 fiduciary may, with respect to any fiduciary account or accounts
3337 which they shall mutually select, initiate proceedings by
3338 joining in the filing of a petition in the circuit court,
3339 requesting the substitution of the proposed substitute fiduciary
3340 for the original fiduciary as to such fiduciary account or
3341 accounts. The petition may be filed in the county in which the
3342 main office of the original fiduciary is located and, except to
3343 the extent inconsistent with the provisions of this section,
3344 shall be governed by the Florida Rules of Civil Procedure;
3345 however, if any fiduciary account is then the subject of a

3346 proceeding in a court in this state pursuant to the Florida
 3347 Probate Code, the Florida Guardianship Law, chapter 736 ~~737~~, or
 3348 chapter 747, the petition relating to such fiduciary account
 3349 shall be filed in that proceeding and shall be governed by the
 3350 procedural or other relevant rules applicable to such proceeding
 3351 except to the extent inconsistent with the provisions of this
 3352 section.

3353 (3) Unless a waiver or consent shall be filed in the
 3354 proceedings as provided in subsection (4), the provisions of s.
 3355 731.301(1) and (2) shall apply with respect to notice of the
 3356 proceedings to all persons who are then cofiduciaries with the
 3357 original fiduciary, other than a person joining as a petitioner
 3358 in the proceedings; to all persons named in the governing
 3359 instrument as substitutes or successors to the fiduciary
 3360 capacity of the original fiduciary; to the persons then living
 3361 who are entitled under the governing instrument to appoint a
 3362 substitute or successor to act in the fiduciary capacity of the
 3363 original fiduciary; to all vested beneficiaries of the fiduciary
 3364 account; and to all then-living originators of the governing
 3365 instrument. Unless a waiver or consent shall be filed in the
 3366 proceedings as provided in subsection (4), the provisions of s.
 3367 731.301 shall apply with respect to notice to all contingent
 3368 beneficiaries of the fiduciary account. Only the persons or
 3369 classes of persons described in the foregoing provisions of this
 3370 subsection shall be deemed to be interested persons for the
 3371 purposes of this section and the proceedings and notices
 3372 provided for in this section; and the provisions of ss.
 3373 731.301(3) and 731.303(3) and~~7~~ (4)~~7~~ and ~~(5)~~~~7~~ part III of chapter

3374 736, relating to notice requirements, the effect of notice, and
 3375 representation of interests, shall apply to the proceedings
 3376 provided for in this section.

3377 (9) Unless previously or otherwise barred by adjudication,
 3378 waiver, consent, limitation, or the provisions of subsection
 3379 (8), an action for breach of trust or breach of fiduciary duties
 3380 or responsibilities against an original fiduciary in whose place
 3381 and stead another trust company or trust department has been
 3382 substituted pursuant to the provisions of this section is barred
 3383 for any beneficiary who has received a trust disclosure document
 3384 adequately disclosing the matter unless a proceeding to assert
 3385 the claim is commenced within 6 months after receipt of the
 3386 trust disclosure document or the limitation notice that applies
 3387 to the trust disclosure document, whichever is received later.
 3388 In any event, and notwithstanding lack of adequate disclosure,
 3389 all claims against such original fiduciary which has complied
 3390 with the requirements of s. 736.1008 ~~issued a final trust~~
 3391 ~~disclosure document received by the beneficiary and has informed~~
 3392 ~~the beneficiary of the location and availability of records for~~
 3393 ~~his or her examination~~ are barred as provided in chapter 95.
 3394 Section 736.1008(4)(a) and (c) ~~737.307(2) and (3)~~ applies to
 3395 this subsection.

3396 (10) A beneficiary has received a final trust disclosure
 3397 document or a limitation notice if, when the beneficiary is an
 3398 adult, it is received by him or her or if, when the beneficiary
 3399 is a minor or a disabled person, it is received by his or her
 3400 representative as provided in part III of chapter 736 ~~defined in~~
 3401 ~~s. 731.303~~.

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3402 Section 21. Section 660.418, Florida Statutes, is amended
3403 to read:

3404 660.418 Investment of fiduciary funds in syndicate
3405 securities.--Notwithstanding any other provision of law, any
3406 financial institution with fiduciary powers may, in its
3407 fiduciary capacity, purchase bonds or other securities
3408 underwritten or otherwise distributed by the financial
3409 institution or by a syndicate that includes the financial
3410 institution, or an affiliate of the financial institution,
3411 provided that such purchase is made through a licensed
3412 securities dealer, is otherwise prudent, and is not prohibited
3413 by the instrument governing the fiduciary relationship and that
3414 disclosure is made at least annually to those persons entitled
3415 to a statement of accounts pursuant to s. 736.0813 ~~737.303(4)~~
3416 indicating that such securities have been or may be purchased.
3417 This section applies to purchases of bonds or other securities
3418 made at the time of the initial offering of such bonds or
3419 securities or at any time after such initial offering.

3420 Section 22. Subsection (5) of section 689.071, Florida
3421 Statutes, is amended to read:

3422 689.071 Land trusts transferring interests in real estate;
3423 ownership vests in trustee.--

3424 (5) In addition to any other limitation on personal
3425 liability existing pursuant to statute or otherwise, the
3426 provisions of s. 736.1013 ~~737.306~~ apply to the trustee of a land
3427 trust created pursuant to this section.

3428 Section 23. Subsections (1) and (4) of section 689.075,
3429 Florida Statutes, are amended to read:

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3430 689.075 Inter vivos trusts; powers retained by settlor.--
 3431 (1) A trust which is otherwise valid and which complies
 3432 with s. 736.0403 ~~737.111~~, including, but not limited to, a trust
 3433 the principal of which is composed of real property, intangible
 3434 personal property, tangible personal property, the possible
 3435 expectancy of receiving as a named beneficiary death benefits as
 3436 described in s. 733.808, or any combination thereof, and which
 3437 has been created by a written instrument shall not be held
 3438 invalid or an attempted testamentary disposition for any one or
 3439 more of the following reasons:
 3440 (a) Because the settlor or another person or both possess
 3441 the power to revoke, amend, alter, or modify the trust in whole
 3442 or in part;
 3443 (b) Because the settlor or another person or both possess
 3444 the power to appoint by deed or will the persons and
 3445 organizations to whom the income shall be paid or the principal
 3446 distributed;
 3447 (c) Because the settlor or another person or both possess
 3448 the power to add to, or withdraw from, the trust all or any part
 3449 of the principal or income at one time or at different times;
 3450 (d) Because the settlor or another person or both possess
 3451 the power to remove the trustee or trustees and appoint a
 3452 successor trustee or trustees;
 3453 (e) Because the settlor or another person or both possess
 3454 the power to control the trustee or trustees in the
 3455 administration of the trust;

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3456 (f) Because the settlor has retained the right to receive
3457 all or part of the income of the trust during her or his life or
3458 for any part thereof; or

3459 (g) Because the settlor is, at the time of the execution
3460 of the instrument, or thereafter becomes, sole trustee.

3461 (4) This section shall be applicable to trusts executed
3462 before or after July 1, 1969, by persons who are living on or
3463 after said date. ~~However, the requirement of conformity with the~~
3464 ~~formalities for the execution of wills as found in paragraph~~
3465 ~~(1)(g) shall not be imposed upon any trust executed prior to~~
3466 ~~July 1, 1969.~~

3467 Section 24. Section 689.175, Florida Statutes, is created
3468 to read:

3469 689.175 Worthier title doctrine abolished.--The doctrine
3470 of worthier title is abolished as a rule of law and as a rule of
3471 construction. Language in a governing instrument describing the
3472 beneficiaries of a disposition as the transferor's "heirs,"
3473 "heirs at law," "next of kin," "distributees," "relatives," or
3474 "family," or language of similar import, does not create or
3475 presumptively create a reversionary interest in the transferor.

3476 Section 25. Subsection (8) of section 709.08, Florida
3477 Statutes, is amended to read:

3478 709.08 Durable power of attorney.--

3479 (8) STANDARD OF CARE.--Except as otherwise provided in
3480 paragraph (4) (e), an attorney in fact is a fiduciary who must
3481 observe the standards of care applicable to trustees as
3482 described in s. 736.0901 ~~737.302~~. The attorney in fact is not
3483 liable to third parties for any act pursuant to the durable

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3484 power of attorney if the act was authorized at the time. If the
 3485 exercise of the power is improper, the attorney in fact is
 3486 liable to interested persons as described in s. 731.201 for
 3487 damage or loss resulting from a breach of fiduciary duty by the
 3488 attorney in fact to the same extent as the trustee of an express
 3489 trust.

3490 Section 26. Paragraph (c) of subsection (2) of section
 3491 721.08, Florida Statutes, is amended to read:

3492 721.08 Escrow accounts; nondisturbance instruments;
 3493 alternate security arrangements; transfer of legal title.--

3494 (2) One hundred percent of all funds or other property
 3495 which is received from or on behalf of purchasers of the
 3496 timeshare plan or timeshare interest prior to the occurrence of
 3497 events required in this subsection shall be deposited pursuant
 3498 to an escrow agreement approved by the division. The funds or
 3499 other property may be released from escrow only as follows:

3500 (c) Compliance with conditions.--

3501 1. Timeshare licenses.--If the timeshare plan is one in
 3502 which timeshare licenses are to be sold and no cancellation or
 3503 default has occurred, the escrow agent may release the escrowed
 3504 funds or other property to or on the order of the developer upon
 3505 presentation of:

3506 a. An affidavit by the developer that all of the following
 3507 conditions have been met:

3508 (I) Expiration of the cancellation period.

3509 (II) Completion of construction.

3510 (III) Closing.

3511 (IV) Either:

3512 (A) Execution, delivery, and recordation by each
 3513 interestholder of the nondisturbance and notice to creditors
 3514 instrument, as described in this section; or

3515 (B) Transfer by the developer of legal title to the
 3516 subject accommodations and facilities, or all use rights
 3517 therein, into a trust satisfying the requirements of
 3518 subparagraph 4. and the execution, delivery, and recordation by
 3519 each other interestholder of the nondisturbance and notice to
 3520 creditors instrument, as described in this section.

3521 b. A certified copy of each recorded nondisturbance and
 3522 notice to creditors instrument.

3523 c. One of the following:

3524 (I) A copy of a memorandum of agreement, as defined in s.
 3525 721.05, together with satisfactory evidence that the original
 3526 memorandum of agreement has been irretrievably delivered for
 3527 recording to the appropriate official responsible for
 3528 maintaining the public records in the county in which the
 3529 subject accommodations and facilities are located. The original
 3530 memorandum of agreement must be recorded within 180 days after
 3531 the date on which the purchaser executed her or his purchase
 3532 agreement.

3533 (II) A notice delivered for recording to the appropriate
 3534 official responsible for maintaining the public records in each
 3535 county in which the subject accommodations and facilities are
 3536 located notifying all persons of the identity of an independent
 3537 escrow agent or trustee satisfying the requirements of
 3538 subparagraph 4. that shall maintain separate books and records,
 3539 in accordance with good accounting practices, for the timeshare

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3540 plan in which timeshare licenses are to be sold. The books and
3541 records shall indicate each accommodation and facility that is
3542 subject to such a timeshare plan and each purchaser of a
3543 timeshare license in the timeshare plan.

3544 2. Timeshare estates.--If the timeshare plan is one in
3545 which timeshare estates are to be sold and no cancellation or
3546 default has occurred, the escrow agent may release the escrowed
3547 funds or other property to or on the order of the developer upon
3548 presentation of:

3549 a. An affidavit by the developer that all of the following
3550 conditions have been met:

3551 (I) Expiration of the cancellation period.

3552 (II) Completion of construction.

3553 (III) Closing.

3554 b. If the timeshare estate is sold by agreement for deed,
3555 a certified copy of the recorded nondisturbance and notice to
3556 creditors instrument, as described in this section.

3557 c. Evidence that each accommodation and facility:

3558 (I) Is free and clear of the claims of any
3559 interestholders, other than the claims of interestholders that,
3560 through a recorded instrument, are irrevocably made subject to
3561 the timeshare instrument and the use rights of purchasers made
3562 available through the timeshare instrument;

3563 (II) Is the subject of a recorded nondisturbance and
3564 notice to creditors instrument that complies with subsection (3)
3565 and s. 721.17; or

3566 (III) Has been transferred into a trust satisfying the
3567 requirements of subparagraph 4.

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3568 d. Evidence that the timeshare estate:
 3569 (I) Is free and clear of the claims of any
 3570 interestholders, other than the claims of interestholders that,
 3571 through a recorded instrument, are irrevocably made subject to
 3572 the timeshare instrument and the use rights of purchasers made
 3573 available through the timeshare instrument; or
 3574 (II) Is the subject of a recorded nondisturbance and
 3575 notice to creditors instrument that complies with subsection (3)
 3576 and s. 721.17.
 3577 3. Personal property timeshare interests.--If the
 3578 timeshare plan is one in which personal property timeshare
 3579 interests are to be sold and no cancellation or default has
 3580 occurred, the escrow agent may release the escrowed funds or
 3581 other property to or on the order of the developer upon
 3582 presentation of:
 3583 a. An affidavit by the developer that all of the following
 3584 conditions have been met:
 3585 (I) Expiration of the cancellation period.
 3586 (II) Completion of construction.
 3587 (III) Closing.
 3588 b. If the personal property timeshare interest is sold by
 3589 agreement for transfer, evidence that the agreement for transfer
 3590 complies fully with s. 721.06 and this section.
 3591 c. Evidence that one of the following has occurred:
 3592 (I) Transfer by the owner of the underlying personal
 3593 property of legal title to the subject accommodations and
 3594 facilities or all use rights therein into a trust satisfying the
 3595 requirements of subparagraph 4.; or

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3596 (II) Transfer by the owner of the underlying personal
3597 property of legal title to the subject accommodations and
3598 facilities or all use rights therein into an owners' association
3599 satisfying the requirements of subparagraph 5.

3600 d. Evidence of compliance with the provisions of
3601 subparagraph 6., if required.

3602 e. If a personal property timeshare plan is created with
3603 respect to accommodations and facilities that are located on or
3604 in an oceangoing vessel, including a "documented vessel" or a
3605 "foreign vessel," as defined and governed by 46 U.S.C., chapter
3606 301:

3607 (I) In making the transfer required in sub-subparagraph
3608 c., the developer shall use as its transfer instrument a
3609 document that establishes and protects the continuance of the
3610 use rights in the subject accommodations and facilities in a
3611 manner that is enforceable by the trust or owners' association.

3612 (II) The transfer instrument shall comply fully with the
3613 provisions of this chapter, shall be part of the timeshare
3614 instrument, and shall contain specific provisions that:

3615 (A) Prohibit the vessel owner, the developer, any manager
3616 or operator of the vessel, the owners' association or the
3617 trustee, the managing entity, or any other person from incurring
3618 any liens against the vessel except for liens that are required
3619 for the operation and upkeep of the vessel, including liens for
3620 fuel expenditures, repairs, crews' wages, and salvage, and
3621 except as provided in sub-sub-subparagraphs 4.b.(III) and
3622 5.b.(III). All expenses, fees, and taxes properly incurred in
3623 connection with the creation, satisfaction, and discharge of any

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3624 such permitted lien, or a prorated portion thereof if less than
3625 all of the accommodations on the vessel are subject to the
3626 timeshare plan, shall be common expenses of the timeshare plan.

3627 (B) Grant a lien against the vessel in favor of the
3628 owners' association or trustee to secure the full and faithful
3629 performance of the vessel owner and developer of all of their
3630 obligations to the purchasers.

3631 (C) Establish governing law in a jurisdiction that
3632 recognizes and will enforce the timeshare instrument and the
3633 laws of the jurisdiction of registry of the vessel.

3634 (D) Require that a description of the use rights of
3635 purchasers be posted and displayed on the vessel in a manner
3636 that will give notice of such rights to any party examining the
3637 vessel. This notice must identify the owners' association or
3638 trustee and include a statement disclosing the limitation on
3639 incurring liens against the vessel described in sub-sub-sub-
3640 subparagraph (A).

3641 (E) Include the nondisturbance and notice to creditors
3642 instrument for the vessel owner and any other interestholders.

3643 (F) The owners' association created under subparagraph 5.
3644 or trustee created under subparagraph 4. shall have access to
3645 any certificates of classification in accordance with the
3646 timeshare instrument.

3647 (III) If the vessel is a foreign vessel, the vessel must
3648 be registered in a jurisdiction that permits a filing evidencing
3649 the use rights of purchasers in the subject accommodations and
3650 facilities, offers protection for such use rights against
3651 unfiled and inferior claims, and recognizes the document or

3652 instrument creating such use rights as a lien against the
3653 vessel.

3654 (IV) In addition to the disclosures required by s.
3655 721.07(5), the public offering statement and purchase contract
3656 must contain a disclosure in conspicuous type in substantially
3657 the following form:

3658
3659 The laws of the State of Florida govern the offering of this
3660 timeshare plan in this state. There are inherent risks in
3661 purchasing a timeshare interest in this timeshare plan because
3662 the accommodations and facilities of the timeshare plan are
3663 located on a vessel that will sail into international waters and
3664 into waters governed by many different jurisdictions. Therefore,
3665 the laws of the State of Florida cannot fully protect your
3666 purchase of an interest in this timeshare plan. Specifically,
3667 management and operational issues may need to be addressed in
3668 the jurisdiction in which the vessel is registered, which is
3669 (insert jurisdiction in which vessel is registered) . Concerns
3670 of purchasers may be sent to (insert name of applicable
3671 regulatory agency and address) .

3672
3673 4. Trust.--

3674 a. If the subject accommodations or facilities, or all use
3675 rights therein, are to be transferred into a trust in order to
3676 comply with this paragraph, such transfer shall take place
3677 pursuant to this subparagraph.

3678 b. Prior to the transfer by each interestholder of the
3679 subject accommodations and facilities, or all use rights

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3680 | therein, to a trust, any lien or other encumbrance against such
 3681 | accommodations and facilities, or use rights therein, shall be
 3682 | made subject to a nondisturbance and notice to creditors
 3683 | instrument pursuant to subsection (3). No transfer pursuant to
 3684 | this subparagraph shall become effective until the trustee
 3685 | accepts such transfer and the responsibilities set forth herein.
 3686 | A trust established pursuant to this subparagraph shall comply
 3687 | with the following provisions:

3688 | (I) The trustee shall be an individual or a business
 3689 | entity authorized and qualified to conduct trust business in
 3690 | this state. Any corporation authorized to do business in this
 3691 | state may act as trustee in connection with a timeshare plan
 3692 | pursuant to this chapter. The trustee must be independent from
 3693 | any developer or managing entity of the timeshare plan or any
 3694 | interestholder of any accommodation or facility of such plan.

3695 | (II) The trust shall be irrevocable so long as any
 3696 | purchaser has a right to occupy any portion of the timeshare
 3697 | property pursuant to the timeshare plan.

3698 | (III) The trustee shall not convey, hypothecate, mortgage,
 3699 | assign, lease, or otherwise transfer or encumber in any fashion
 3700 | any interest in or portion of the timeshare property with
 3701 | respect to which any purchaser has a right of use or occupancy
 3702 | unless the timeshare plan is terminated pursuant to the
 3703 | timeshare instrument, or such conveyance, hypothecation,
 3704 | mortgage, assignment, lease, transfer, or encumbrance is
 3705 | approved by a vote of two-thirds of all voting interests of the
 3706 | timeshare plan and such decision is declared by a court of
 3707 | competent jurisdiction to be in the best interests of the

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3708 purchasers of the timeshare plan. The trustee shall notify the
 3709 division in writing within 10 days after receiving notice of the
 3710 filing of any petition relating to obtaining such a court order.
 3711 The division shall have standing to advise the court of the
 3712 division's interpretation of the statute as it relates to the
 3713 petition.

3714 (IV) All purchasers of the timeshare plan or the owners'
 3715 association of the timeshare plan shall be the express
 3716 beneficiaries of the trust. The trustee shall act as a fiduciary
 3717 to the beneficiaries of the trust. The personal liability of the
 3718 trustee shall be governed by ss. 736.08125, 736.08163, 736.1013,
 3719 and 736.1015 ~~s. 737.306~~. The agreement establishing the trust
 3720 shall set forth the duties of the trustee. The trustee shall be
 3721 required to furnish promptly to the division upon request a copy
 3722 of the complete list of the names and addresses of the owners in
 3723 the timeshare plan and a copy of any other books and records of
 3724 the timeshare plan required to be maintained pursuant to s.
 3725 721.13 that are in the possession, custody, or control of the
 3726 trustee. All expenses reasonably incurred by the trustee in the
 3727 performance of its duties, together with any reasonable
 3728 compensation of the trustee, shall be common expenses of the
 3729 timeshare plan.

3730 (V) The trustee shall not resign upon less than 90 days'
 3731 prior written notice to the managing entity and the division. No
 3732 resignation shall become effective until a substitute trustee,
 3733 approved by the division, is appointed by the managing entity
 3734 and accepts the appointment.

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3735 (VI) The documents establishing the trust arrangement
3736 shall constitute a part of the timeshare instrument.

3737 (VII) For trusts holding property in a timeshare plan
3738 located outside this state, the trust and trustee holding such
3739 property shall be deemed in compliance with the requirements of
3740 this subparagraph if such trust and trustee are authorized and
3741 qualified to conduct trust business under the laws of such
3742 jurisdiction and the agreement or law governing such trust
3743 arrangement provides substantially similar protections for the
3744 purchaser as are required in this subparagraph for trusts
3745 holding property in a timeshare plan in this state.

3746 (VIII) The trustee shall have appointed a registered agent
3747 in this state for service of process. In the event such a
3748 registered agent is not appointed, service of process may be
3749 served pursuant to s. 721.265.

3750 5. Owners' association.--

3751 a. If the subject accommodations or facilities, or all use
3752 rights therein, are to be transferred into an owners'
3753 association in order to comply with this paragraph, such
3754 transfer shall take place pursuant to this subparagraph.

3755 b. Prior to the transfer by each interestholder of the
3756 subject accommodations and facilities, or all use rights
3757 therein, to an owners' association, any lien or other
3758 encumbrance against such accommodations and facilities, or use
3759 rights therein, shall be made subject to a nondisturbance and
3760 notice to creditors instrument pursuant to subsection (3). No
3761 transfer pursuant to this subparagraph shall become effective
3762 until the owners' association accepts such transfer and the

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3763 responsibilities set forth herein. An owners' association
3764 established pursuant to this subparagraph shall comply with the
3765 following provisions:

3766 (I) The owners' association shall be a business entity
3767 authorized and qualified to conduct business in this state.
3768 Control of the board of directors of the owners' association
3769 must be independent from any developer or managing entity of the
3770 timeshare plan or any interestholder.

3771 (II) The bylaws of the owners' association shall provide
3772 that the corporation may not be voluntarily dissolved without
3773 the unanimous vote of all owners of personal property timeshare
3774 interests so long as any purchaser has a right to occupy any
3775 portion of the timeshare property pursuant to the timeshare
3776 plan.

3777 (III) The owners' association shall not convey,
3778 hypothecate, mortgage, assign, lease, or otherwise transfer or
3779 encumber in any fashion any interest in or portion of the
3780 timeshare property with respect to which any purchaser has a
3781 right of use or occupancy, unless the timeshare plan is
3782 terminated pursuant to the timeshare instrument, or unless such
3783 conveyance, hypothecation, mortgage, assignment, lease,
3784 transfer, or encumbrance is approved by a vote of two-thirds of
3785 all voting interests of the association and such decision is
3786 declared by a court of competent jurisdiction to be in the best
3787 interests of the purchasers of the timeshare plan. The owners'
3788 association shall notify the division in writing within 10 days
3789 after receiving notice of the filing of any petition relating to
3790 obtaining such a court order. The division shall have standing

3791 to advise the court of the division's interpretation of the
3792 statute as it relates to the petition.

3793 (IV) All purchasers of the timeshare plan shall be members
3794 of the owners' association and shall be entitled to vote on
3795 matters requiring a vote of the owners' association as provided
3796 in this chapter or the timeshare instrument. The owners'
3797 association shall act as a fiduciary to the purchasers of the
3798 timeshare plan. The articles of incorporation establishing the
3799 owners' association shall set forth the duties of the owners'
3800 association. All expenses reasonably incurred by the owners'
3801 association in the performance of its duties, together with any
3802 reasonable compensation of the officers or directors of the
3803 owners' association, shall be common expenses of the timeshare
3804 plan.

3805 (V) The documents establishing the owners' association
3806 shall constitute a part of the timeshare instrument.

3807 (VI) For owners' associations holding property in a
3808 timeshare plan located outside this state, the owners'
3809 association holding such property shall be deemed in compliance
3810 with the requirements of this subparagraph if such owners'
3811 association is authorized and qualified to conduct owners'
3812 association business under the laws of such jurisdiction and the
3813 agreement or law governing such arrangement provides
3814 substantially similar protections for the purchaser as are
3815 required in this subparagraph for owners' associations holding
3816 property in a timeshare plan in this state.

3817 (VII) The owners' association shall have appointed a
3818 registered agent in this state for service of process. In the

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3819 event such a registered agent cannot be located, service of
3820 process may be made pursuant to s. 721.265.

3821 6. Personal property subject to certificate of title.--If
3822 any personal property that is an accommodation or facility of a
3823 timeshare plan is subject to a certificate of title in this
3824 state pursuant to chapter 319 or chapter 328, the following
3825 notation must be made on such certificate of title pursuant to
3826 s. 319.27(1) or s. 328.15(1):

3827
3828 The further transfer or encumbrance of the property subject to
3829 this certificate of title, or any lien or encumbrance thereon,
3830 is subject to the requirements of section 721.17, Florida
3831 Statutes, and the transferee or lienor agrees to be bound by all
3832 of the obligations set forth therein.

3833 7. If the developer has previously provided a certified
3834 copy of any document required by this paragraph, she or he may
3835 for all subsequent disbursements substitute a true and correct
3836 copy of the certified copy, provided no changes to the document
3837 have been made or are required to be made.

3838 8. In the event that use rights relating to an
3839 accommodation or facility are transferred into a trust pursuant
3840 to subparagraph 4. or into an owners' association pursuant to
3841 subparagraph 5., all other interestholders, including the owner
3842 of the underlying fee or underlying personal property, must
3843 execute a nondisturbance and notice to creditors instrument
3844 pursuant to subsection (3).

3845 Section 27. Paragraph (e) of subsection (1) of section
3846 721.53, Florida Statutes, is amended to read:

3847 721.53 Subordination instruments; alternate security
3848 arrangements.--

3849 (1) With respect to each accommodation or facility of a
3850 multisite timeshare plan, the developer shall provide the
3851 division with satisfactory evidence that one of the following
3852 has occurred with respect to each interestholder prior to
3853 offering the accommodation or facility as a part of the
3854 multisite timeshare plan:

3855 (e) The interestholder has transferred the subject
3856 accommodation or facility or all use rights therein to a trust
3857 that complies with this paragraph. Prior to such transfer, any
3858 lien or other encumbrance against such accommodation or facility
3859 shall be made subject to a nondisturbance and notice to
3860 creditors instrument pursuant to paragraph (a) or a
3861 subordination and notice to creditors instrument pursuant to
3862 paragraph (b). No transfer pursuant to this paragraph shall
3863 become effective until the trust accepts such transfer and the
3864 responsibilities set forth herein. A trust established pursuant
3865 to this paragraph shall comply with the following provisions:

3866 1. The trustee shall be an individual or a business entity
3867 authorized and qualified to conduct trust business in this
3868 state. Any corporation authorized to do business in this state
3869 may act as trustee in connection with a timeshare plan pursuant
3870 to this chapter. The trustee must be independent from any
3871 developer or managing entity of the timeshare plan or any
3872 interestholder of any accommodation or facility of such plan.
3873 The same trustee may hold the accommodations and facilities, or

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3874 use rights therein, for one or more of the component sites of
3875 the timeshare plan.

3876 2. The trust shall be irrevocable so long as any purchaser
3877 has a right to occupy any portion of the timeshare property
3878 pursuant to the timeshare plan.

3879 3. The trustee shall not convey, hypothecate, mortgage,
3880 assign, lease, or otherwise transfer or encumber in any fashion
3881 any interests in or portion of the timeshare property with
3882 respect to which any purchaser has a right of use or occupancy
3883 unless the timeshare plan is terminated pursuant to the
3884 timeshare instrument, or the timeshare property held in trust is
3885 deleted from a multisite timeshare plan pursuant to s.

3886 721.552(3), or such conveyance, hypothecation, mortgage,
3887 assignment, lease, transfer, or encumbrance is approved by vote
3888 of two-thirds of all voting interests of the timeshare plan and
3889 such decision is declared by a court of competent jurisdiction
3890 to be in the best interests of the purchasers of the timeshare
3891 plan.

3892 4. All purchasers of the timeshare plan or the owners'
3893 association of the timeshare plan shall be express beneficiaries
3894 of the trust. The trustee shall act as a fiduciary to the
3895 beneficiaries of the trust. The personal liability of the
3896 trustee shall be governed by ss. 736.08125, 736.08163, 736.1013,
3897 and 736.1015 ~~s. 737.306~~. The agreement establishing the trust
3898 shall set forth the duties of the trustee. The trustee shall be
3899 required to furnish promptly to the division upon request a copy
3900 of the complete list of the names and addresses of the owners in
3901 the timeshare plan and a copy of any other books and records of

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3902 the timeshare plan required to be maintained pursuant to s.
3903 721.13 that are in the possession of the trustee. All expenses
3904 reasonably incurred by the trustee in the performance of its
3905 duties, together with any reasonable compensation of the
3906 trustee, shall be common expenses of the timeshare plan.

3907 5. The trustee shall not resign upon less than 90 days'
3908 prior written notice to the managing entity and the division. No
3909 resignation shall become effective until a substitute trustee,
3910 approved by the division, is appointed by the managing entity
3911 and accepts the appointment.

3912 6. The documents establishing the trust arrangement shall
3913 constitute a part of the timeshare instrument.

3914 7. For trusts holding property in component sites located
3915 outside this state, the trust holding such property shall be
3916 deemed in compliance with the requirements of this paragraph, if
3917 such trust is authorized and qualified to conduct trust business
3918 under the laws of such jurisdiction and the agreement or law
3919 governing such trust arrangement provides substantially similar
3920 protections for the purchaser as are required in this paragraph
3921 for trusts holding property in a component site located in this
3922 state.

3923 8. The trustee shall have appointed a registered agent in
3924 this state for service of process. In the event such a
3925 registered agent is not appointed, service of process may be
3926 served pursuant to s. 721.265.

3927 Section 28. Section 731.103, Florida Statutes, is amended
3928 to read:

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3929 731.103 Evidence as to death or status.--In proceedings
3930 under this code and under chapter 736, the ~~rules of evidence in~~
3931 ~~civil actions are applicable unless specifically changed by the~~
3932 ~~code.~~ The following additional rules relating to determination
3933 of death and status are applicable:

3934 (1) An authenticated copy of a death certificate issued by
3935 an official or agency of the place where the death purportedly
3936 occurred is prima facie proof of the fact, place, date, and time
3937 of death and the identity of the decedent.

3938 (2) A copy of any record or report of a governmental
3939 agency, domestic or foreign, that a person is alive, missing,
3940 detained, or, from the facts related, presumed dead is prima
3941 facie evidence of the status and of the dates, circumstances,
3942 and places disclosed by the record or report.

3943 (3) A person who is absent from the place of his or her
3944 last known domicile for a continuous period of 5 years and whose
3945 absence is not satisfactorily explained after diligent search
3946 and inquiry is presumed to be dead. The person's death is
3947 presumed to have occurred at the end of the period unless there
3948 is evidence establishing that death occurred earlier. Evidence
3949 showing that the absent person was exposed to a specific peril
3950 of death may be a sufficient basis for the court determining at
3951 any time after such exposure that he or she died less than 5
3952 years after the date on which his or her absence commenced. A
3953 petition for this determination shall be filed in the county in
3954 Florida where the decedent maintained his or her domicile or in
3955 any county of this state if the decedent was not a resident of
3956 Florida at the time his or her absence commenced.

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3957 (4) This section does not preclude the establishment of
 3958 death by direct or circumstantial evidence prior to expiration
 3959 of the 5-year time period set forth in subsection (3).

3960 Section 29. Section 731.1035, Florida Statutes, is created
 3961 to read:

3962 731.1035 Applicable rules of evidence.--In proceedings
 3963 under this code, the rules of evidence in civil actions are
 3964 applicable unless specifically changed by the code.

3965 Section 30. Section 731.201, Florida Statutes, is amended
 3966 to read:

3967 731.201 General definitions.--Subject to additional
 3968 definitions in subsequent chapters that are applicable to
 3969 specific chapters or parts, and unless the context otherwise
 3970 requires, in this code, in s. 409.9101, and in chapters 736 ~~737~~,
 3971 738, 739, and 744, the term:

3972 (1) "Authenticated," when referring to copies of documents
 3973 or judicial proceedings required to be filed with the court
 3974 under this code, means a certified copy or a copy authenticated
 3975 according to the Federal Rules of Civil Procedure.

3976 (2) "Beneficiary" means heir at law in an intestate estate
 3977 and devisee in a testate estate. The term "beneficiary" does not
 3978 apply to an heir at law or a devisee after that person's
 3979 interest in the estate has been satisfied. In the case of a
 3980 devise to an existing trust or trustee, or to a trust or trustee
 3981 described by will, the trustee is a beneficiary of the estate.
 3982 Except as otherwise provided in this subsection, the beneficiary
 3983 of the trust is not a beneficiary of the estate of which that
 3984 trust or the trustee of that trust is a beneficiary. However, if

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3985 each trustee is also a personal representative of the estate,
 3986 each qualified beneficiary ~~the beneficiary or beneficiaries~~ of
 3987 the trust as defined in s. 736.0103(14) ~~737.303(4)(b)~~ shall be
 3988 regarded as a beneficiary of the estate.

3989 (3) "Child" includes a person entitled to take as a child
 3990 under this code by intestate succession from the parent whose
 3991 relationship is involved, and excludes any person who is only a
 3992 stepchild, a foster child, a grandchild, or a more remote
 3993 descendant.

3994 (4) "Claim" means a liability of the decedent, whether
 3995 arising in contract, tort, or otherwise, and funeral expense.
 3996 The term does not include an expense of administration or
 3997 estate, inheritance, succession, or other death taxes.

3998 (5) "Clerk" means the clerk or deputy clerk of the court.

3999 (6) "Court" means the circuit court.

4000 (7) "Curator" means a person appointed by the court to
 4001 take charge of the estate of a decedent until letters are
 4002 issued.

4003 (8) "Devise," when used as a noun, means a testamentary
 4004 disposition of real or personal property and, when used as a
 4005 verb, means to dispose of real or personal property by will or
 4006 trust. The term includes "gift," "give," "bequeath," "bequest,"
 4007 and "legacy." A devise is subject to charges for debts,
 4008 expenses, and taxes as provided in this code, the will, or the
 4009 trust.

4010 (9) "Devisee" means a person designated in a will or trust
 4011 to receive a devise. Except as otherwise provided in this
 4012 subsection, in the case of a devise to an existing trust or

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4013 trustee, or to a trust or trustee of a trust described by will,
 4014 the trust or trustee, rather than the beneficiaries of the
 4015 trust, is the devisee. However, if each trustee is also a
 4016 personal representative of the estate, each qualified
 4017 beneficiary ~~the beneficiary or beneficiaries~~ of the trust as
 4018 defined in s. 736.0103(14) ~~737.303(4)(b)~~ shall be regarded as a
 4019 devisee.

4020 (10) "Distributee" means a person who has received estate
 4021 property from a personal representative or other fiduciary other
 4022 than as a creditor or purchaser. A testamentary trustee is a
 4023 distributee only to the extent of distributed assets or
 4024 increments to them remaining in the trustee's hands. A
 4025 beneficiary of a testamentary trust to whom the trustee has
 4026 distributed property received from a personal representative is
 4027 a distributee. For purposes of this provision, "testamentary
 4028 trustee" includes a trustee to whom assets are transferred by
 4029 will, to the extent of the devised assets.

4030 (11) "Domicile" means a person's usual place of dwelling
 4031 and shall be synonymous with residence.

4032 (12) "Estate" means the property of a decedent that is the
 4033 subject of administration.

4034 (13) "Exempt property" means the property of a decedent's
 4035 estate which is described in s. 732.402.

4036 (14) "File" means to file with the court or clerk.

4037 (15) "Foreign personal representative" means a personal
 4038 representative of another state or a foreign country.

4039 (16) "Formal notice" means formal notice under the Florida
 4040 Probate Rules.

4041 (17) "Grantor" means one who creates or adds to a trust
 4042 and includes "settlor" or "trustor" and a testator who creates
 4043 or adds to a trust.

4044 (18) "Heirs" or "heirs at law" means those persons,
 4045 including the surviving spouse, who are entitled under the
 4046 statutes of intestate succession to the property of a decedent.

4047 (19) "Incompetent" means a minor or a person adjudicated
 4048 incompetent.

4049 (20) "Informal notice" or "notice" means informal notice
 4050 under the Florida Probate Rules.

4051 (21) "Interested person" means any person who may
 4052 reasonably be expected to be affected by the outcome of the
 4053 particular proceeding involved. In any proceeding affecting the
 4054 estate or the rights of a beneficiary in the estate, the
 4055 personal representative of the estate shall be deemed to be an
 4056 interested person. In any proceeding affecting the expenses of
 4057 the administration and obligations of a decedent's estate, or
 4058 any claims described in s. 733.702(1), the trustee of a trust
 4059 described in s. 733.707(3) is an interested person in the
 4060 administration of the grantor's estate. The term does not
 4061 include a beneficiary who has received complete distribution.
 4062 The meaning, as it relates to particular persons, may vary from
 4063 time to time and must be determined according to the particular
 4064 purpose of, and matter involved in, any proceedings.

4065 (22) "Letters" means authority granted by the court to the
 4066 personal representative to act on behalf of the estate of the
 4067 decedent and refers to what has been known as letters

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4068 | testamentary and letters of administration. All letters shall be
4069 | designated "letters of administration."

4070 | (23) "Other state" means any state of the United States
4071 | other than Florida and includes the District of Columbia, the
4072 | Commonwealth of Puerto Rico, and any territory or possession
4073 | subject to the legislative authority of the United States.

4074 | (24) "Parent" excludes any person who is only a
4075 | stepparent, foster parent, or grandparent.

4076 | (25) "Personal representative" means the fiduciary
4077 | appointed by the court to administer the estate and refers to
4078 | what has been known as an administrator, administrator cum
4079 | testamento annexo, administrator de bonis non, ancillary
4080 | administrator, ancillary executor, or executor.

4081 | (26) "Petition" means a written request to the court for
4082 | an order.

4083 | (27) "Power of appointment" means an authority, other than
4084 | as an incident of the beneficial ownership of property, to
4085 | designate recipients of beneficial interests in property.

4086 | ~~(28)-(27)~~ "Probate of will" means all steps necessary to
4087 | establish the validity of a will and to admit a will to probate.

4088 | ~~(29)-(28)~~ "Property" means both real and personal property
4089 | or any interest in it and anything that may be the subject of
4090 | ownership.

4091 | ~~(30)-(29)~~ "Protected homestead" means the property
4092 | described in s. 4(a)(1), Art. X of the State Constitution on
4093 | which at the death of the owner the exemption inures to the
4094 | owner's surviving spouse or heirs under s. 4(b), Art. X of the

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4095 State Constitution. For purposes of the code, real property
 4096 owned as tenants by the entirety is not protected homestead.
 4097 (31)~~(30)~~ "Residence" means a person's place of dwelling.
 4098 (32)~~(31)~~ "Residuary devise" means a devise of the assets
 4099 of the estate which remain after the provision for any devise
 4100 which is to be satisfied by reference to a specific property or
 4101 type of property, fund, sum, or statutory amount. If the will
 4102 contains no devise which is to be satisfied by reference to a
 4103 specific property or type of property, fund, sum, or statutory
 4104 amount, "residuary devise" or "residue" means a devise of all
 4105 assets remaining after satisfying the obligations of the estate.
 4106 (33)~~(32)~~ "Security" means a security as defined in s.
 4107 517.021.
 4108 (34)~~(33)~~ "Security interest" means a security interest as
 4109 defined in s. 671.201.
 4110 (35)~~(34)~~ "Trust" means an express trust, private or
 4111 charitable, with additions to it, wherever and however created.
 4112 It also includes a trust created or determined by a judgment or
 4113 decree under which the trust is to be administered in the manner
 4114 of an express trust. "Trust" excludes other constructive trusts,
 4115 and it excludes resulting trusts; conservatorships; custodial
 4116 arrangements pursuant to the Florida Uniform Transfers to Minors
 4117 Act; business trusts providing for certificates to be issued to
 4118 beneficiaries; common trust funds; land trusts under s. 689.05;
 4119 trusts created by the form of the account or by the deposit
 4120 agreement at a financial institution; voting trusts; security
 4121 arrangements; liquidation trusts; trusts for the primary purpose
 4122 of paying debts, dividends, interest, salaries, wages, profits,

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4123 pensions, or employee benefits of any kind; and any arrangement
4124 under which a person is nominee or escrowee for another.

4125 (36)~~(35)~~ "Trustee" includes an original, additional,
4126 surviving, or successor trustee, whether or not appointed or
4127 confirmed by court.

4128 (37)~~(36)~~ "Will" means an instrument, including a codicil,
4129 executed by a person in the manner prescribed by this code,
4130 which disposes of the person's property on or after his or her
4131 death and includes an instrument which merely appoints a
4132 personal representative or revokes or revises another will.

4133 Section 31. Paragraph (a) of subsection (1) and subsection
4134 (5) of section 731.303, Florida Statutes, are amended to read:

4135 731.303 Representation.--In the administration of or in
4136 judicial proceedings involving estates of decedents or trusts,
4137 the following apply:

4138 (1) Persons are bound by orders binding others in the
4139 following cases:

4140 (a)1. Orders binding the sole holder or all coholders of a
4141 power of revocation or a general, special, or limited power of
4142 appointment, including one in the form of a power of amendment
4143 or revocation to the extent that the power has not become
4144 unexercisable in fact, bind all persons to the extent that their
4145 interests, as persons who may take by virtue of the exercise or
4146 nonexercise of the power, are subject to the power.

4147 2. Subparagraph 1. does not apply to:

4148 a. Any matter determined by the court to involve fraud or
4149 bad faith by the trustee;

4150 b. A power of a trustee to distribute trust property; or

4151 c. A power of appointment held by a person while the
 4152 person is the sole trustee.

4153 (5) The holder of a power of appointment over property not
 4154 held in trust may represent and bind persons whose interests, as
 4155 permissible appointees, takers in default, or otherwise, are
 4156 subject to the power. Representation under this subsection does
 4157 not apply to:

4158 (a) Any matter determined by the court to involve fraud or
 4159 bad faith by the trustee;

4160 (b) A power of a trustee to distribute trust property; or

4161 (c) A power of appointment held by a person while the
 4162 person is the sole trustee ~~When a sole holder or coholder of a~~
 4163 ~~general, special, or limited power of appointment, including an~~
 4164 ~~exercisable power of amendment or revocation over property in an~~
 4165 ~~estate or trust, is bound by:~~

4166 ~~(a) Agreements, waivers, consents, or approvals; or~~

4167 ~~(b) Accounts, trust accountings, or other written reports~~
 4168 ~~that adequately disclose matters set forth therein,~~

4169
 4170 ~~then all persons who may take by virtue of, and whose interests~~
 4171 ~~are subject to, the exercise or nonexercise of the power are~~
 4172 ~~also bound, but only to the extent of their interests which~~
 4173 ~~could otherwise be affected by the exercise or nonexercise of~~
 4174 ~~the power.~~

4175 Section 32. Subsection (5) of section 732.2075, Florida
 4176 Statutes, is amended to read:

4177 732.2075 Sources from which elective share payable;
 4178 abatement.--

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4179 (5) Unless otherwise provided in the trust instrument or,
4180 in the decedent's will if there is no provision in the trust
4181 instrument, any amount to be satisfied from trust property shall
4182 be paid from the assets of the trust in the order provided for
4183 claims under s. 736.05053 ~~737.3054~~(2) and (3). A direction in
4184 the decedent's will is effective only for revocable trusts.

4185 Section 33. Subsection (2) of section 732.513, Florida
4186 Statutes, is amended to read:

4187 732.513 Devises to trustee.--

4188 (2) The devise shall not be invalid for any or all of the
4189 following reasons:

4190 (a) Because the trust is amendable or revocable, or both,
4191 by any person.

4192 (b) Because the trust has been amended or revoked in part
4193 after execution of the will or a codicil to it.

4194 ~~(c) Because the trust instrument or any amendment to it
4195 was not executed in the manner required for wills.~~

4196 (c) ~~(d)~~ Because the only res of the trust is the possible
4197 expectancy of receiving, as a named beneficiary, a devise under
4198 a will or death benefits as described in s. 733.808, and even
4199 though the testator or other person has reserved any or all
4200 rights of ownership in the death benefit policy, contract, or
4201 plan, including the right to change the beneficiary.

4202 (d) ~~(e)~~ Because of any of the provisions of s. 689.075.

4203 Section 34. Section 732.603, Florida Statutes, is amended
4204 to read:

4205 (Substantial rewording of section. See
4206 s. 732.603, F.S., for present text.)

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4207 732.603 Antilapse; deceased devisee; class gifts.--
 4208 (1) Unless a contrary intent appears in the will, if a
 4209 devisee who is a grandparent, or a descendant of a grandparent,
 4210 of the testator:
 4211 (a) Is dead at the time of the execution of the will;
 4212 (b) Fails to survive the testator; or
 4213 (c) Is required by the will or by operation of law to be
 4214 treated as having predeceased the testator,
 4215
 4216 a substitute gift is created in the devisee's surviving
 4217 descendants who take per stirpes the property to which the
 4218 devisee would have been entitled had the devisee survived the
 4219 testator.
 4220 (2) When a power of appointment is exercised by will,
 4221 unless a contrary intent appears in the document creating the
 4222 power of appointment or in the testator's will, if an appointee
 4223 who is a grandparent, or a descendant of a grandparent, of the
 4224 donor of the power:
 4225 (a) Is dead at the time of the execution of the will or
 4226 the creation of the power;
 4227 (b) Fails to survive the testator; or
 4228 (c) Is required by the will, the document creating the
 4229 power, or by operation of law to be treated as having
 4230 predeceased the testator,
 4231
 4232 a substitute gift is created in the appointee's surviving
 4233 descendants who take per stirpes the property to which the
 4234 appointee would have been entitled had the appointee survived

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4235 the testator. Unless the language creating a power of
4236 appointment expressly excludes the substitution of the
4237 descendants of an object of a power for the object, a surviving
4238 descendant of a deceased object of a power of appointment may be
4239 substituted for the object whether or not the descendant is an
4240 object of the power.

4241 (3) In the application of this section:

4242 (a) Words of survivorship in a devise or appointment to an
4243 individual, such as "if he survives me," or to "my surviving
4244 children," are a sufficient indication of an intent contrary to
4245 the application of subsections (1) and (2). Words of
4246 survivorship used by the donor of the power in a power to
4247 appoint to an individual, such as the term "if he survives the
4248 donee," or in a power to appoint to the donee's "then surviving
4249 children," are a sufficient indication of an intent contrary to
4250 the application of subsection (2).

4251 (b) The term:

4252 1. "Appointment" includes an alternative appointment and
4253 an appointment in the form of a class gift.

4254 2. "Appointee" includes:

4255 a. A class member if the appointment is in the form of a
4256 class gift.

4257 b. An individual or class member who was deceased at the
4258 time the testator executed his or her will as well as an
4259 individual or class member who was then living but who failed to
4260 survive the testator.

4261 3. "Devise" also includes an alternative devise and a
4262 devise in the form of a class gift.

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4263 4. "Devisee" also includes:
 4264 a. A class member if the devise is in the form of a class
 4265 gift.
 4266 b. An individual or class member who was deceased at the
 4267 time the testator executed his or her will as well as an
 4268 individual or class member who was then living but who failed to
 4269 survive the testator.

4270 (4) This section applies only to outright devises and
 4271 appointments. Devises and appointments in trust, including to a
 4272 testamentary trust, are subject to s. 736.1106.

4273 Section 35. Section 732.604, Florida Statutes, is amended
 4274 to read:

4275 732.604 Failure of testamentary provision.--

4276 (1) Except as provided in s. 732.603, if a devise other
 4277 than a residuary devise fails for any reason, it becomes a part
 4278 of the residue.

4279 (2) Except as provided in s. 732.603, if the residue is
 4280 devised to two or more persons, the share of a residuary devisee
 4281 that fails for any reason ~~and the devise to one of the residuary~~
 4282 ~~devisees fails for any reason, that devise~~ passes to the other
 4283 residuary devisee, or to the other residuary devisees in
 4284 proportion to the ~~their~~ interests of each in the remaining part
 4285 of the residue.

4286 Section 36. Section 732.611, Florida Statutes, is amended
 4287 to read:

4288 732.611 Devises to multi-generation classes to be per
 4289 stirpes.--Unless the will provides otherwise, all devises to

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4290 descendants, issue, and other multi-generation classes shall be
4291 per stirpes.

4292 Section 37. Subsection (1) of section 733.212, Florida
4293 Statutes, is amended to read:

4294 733.212 Notice of administration; filing of objections.--

4295 (1) The personal representative shall promptly serve a
4296 copy of the notice of administration on the following persons
4297 who are known to the personal representative:

4298 (a) The decedent's surviving spouse;

4299 (b) Beneficiaries;

4300 (c) The trustee of any trust described in s. 733.707(3)
4301 and each qualified beneficiary of the trust as defined in s.
4302 736.0103(14) ~~737.303(4)(b)~~, if each trustee is also a personal
4303 representative of the estate; and

4304 (d) Persons who may be entitled to exempt property

4305
4306 in the manner provided for service of formal notice, unless
4307 served under s. 733.2123. The personal representative may
4308 similarly serve a copy of the notice on any devisees under a
4309 known prior will or heirs or others who claim or may claim an
4310 interest in the estate.

4311 Section 38. Subsection (1) of section 733.602, Florida
4312 Statutes, is amended to read:

4313 733.602 General duties.--

4314 (1) A personal representative is a fiduciary who shall
4315 observe the standards of care applicable to trustees as
4316 described by part VII of chapter 736 ~~s. 737.302~~. A personal
4317 representative is under a duty to settle and distribute the

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4318 | estate of the decedent in accordance with the terms of the
 4319 | decedent's will and this code as expeditiously and efficiently
 4320 | as is consistent with the best interests of the estate. A
 4321 | personal representative shall use the authority conferred by
 4322 | this code, the authority in the will, if any, and the authority
 4323 | of any order of the court, for the best interests of interested
 4324 | persons, including creditors.

4325 | Section 39. Subsection (4) of section 733.805, Florida
 4326 | Statutes, is amended to read:

4327 | 733.805 Order in which assets abate.--

4328 | (4) In determining the contribution required under s.
 4329 | 733.607(2), subsections (1)-(3) of this section and s. 736.05053
 4330 | ~~737.3054~~(2) shall be applied as if the beneficiaries of the
 4331 | estate and the beneficiaries of a trust described in s.
 4332 | 733.707(3), other than the estate or trust itself, were taking
 4333 | under a common instrument.

4334 | Section 40. Paragraph (j) of subsection (1) of section
 4335 | 733.817, Florida Statutes, is amended to read:

4336 | 733.817 Apportionment of estate taxes.--

4337 | (1) For purposes of this section:

4338 | (j) "Residuary devise" has the meaning set forth in s.
 4339 | 731.201~~(31)~~.

4340 | Section 41. Paragraphs (a) and (f) of subsection (8) and
 4341 | paragraphs (a) and (d) of subsection (9) of section 738.104,
 4342 | Florida Statutes, are amended to read:

4343 | 738.104 Trustee's power to adjust.--

4344 | (8) With respect to a trust in existence on January 1,
 4345 | 2003:

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4346 (a) A trustee shall not have the power to adjust under
4347 this section until the statement required in subsection (9) is
4348 provided and either no objection is made or any objection which
4349 is made has been terminated.

4350 1. An objection is made if, within 60 days after the date
4351 of the statement required in subsection (9), a super majority of
4352 the eligible ~~trust~~ beneficiaries deliver to the trustee a
4353 written objection to the application of this section to such
4354 trust. An objection shall be deemed to be delivered to the
4355 trustee on the date the objection is mailed to the mailing
4356 address listed in the notice provided in subsection (9).

4357 2. An objection is terminated upon the earlier of the
4358 receipt of consent from a super majority of eligible ~~trust~~
4359 beneficiaries of the class that made the objection, or the
4360 resolution of the objection pursuant to paragraph (c).

4361 (f) The objection of a super majority of eligible
4362 beneficiaries under this subsection shall be valid for a period
4363 of 1 year after the date of the notice set forth in subsection
4364 (9). Upon expiration of the objection, the trustee may
4365 thereafter give a new notice under subsection (9).

4366 (9) (a) A trustee of a trust in existence on January 1,
4367 2003, that is not prohibited under subsection (3) from
4368 exercising the power to adjust shall, any time prior to
4369 initially exercising the power, provide to all eligible
4370 ~~reasonably ascertainable current~~ beneficiaries ~~described in s.~~
4371 ~~737.303(4)(b)1. and all reasonably ascertainable remainder~~
4372 ~~beneficiaries described in s. 737.303(4)(b)2.~~ a statement
4373 containing the following:

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4374 1. The name, telephone number, street address, and mailing
4375 address of the trustee and of any individuals who may be
4376 contacted for further information;

4377 2. A statement that unless a super majority of the
4378 eligible beneficiaries objects to the application of this
4379 section to the trust within 60 days after the date the statement
4380 pursuant to this subsection was served, s. 738.104 shall apply
4381 to the trust; and

4382 3. A statement that, if s. 738.104 applies to the trust,
4383 the trustee will have the power to adjust between income and
4384 principal and that such a power may have an effect on the
4385 distributions to such beneficiary from the trust.

4386 (d) For purposes of subsection (8) and this subsection,
4387 the term:

4388 1. "Eligible beneficiaries" means:

4389 a. If at the time the determination is made there is one
4390 or more beneficiaries described in s. 736.0103(14)(c), the
4391 beneficiaries described in s. 736.0103(14)(a) and (c); or

4392 b. If there is no beneficiary described in s.
4393 736.0103(14)(c), the beneficiaries described in s.
4394 736.0103(14)(a) and (b).

4395 2. A "Super majority of the eligible ~~trust~~ beneficiaries"
4396 means:

4397 a. If at the time the determination is made there is one
4398 or more beneficiaries described in s. 736.0103(14)(c), at least
4399 two-thirds in interest of the ~~reasonably ascertainable current~~
4400 beneficiaries described in s. 736.0103(14)(a) ~~737.303(4)(b)1.~~ or
4401 two-thirds in interest of the ~~reasonably ascertainable remainder~~

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4402 beneficiaries described in s. 736.0103(14)(c) ~~737.303(4)(b)2.~~,
 4403 if the interests of the beneficiaries are reasonably
 4404 ascertainable; otherwise, it means two-thirds in number of
 4405 either such class; or

4406 b. If there is no beneficiary described in s.
 4407 736.0103(14)(c), at least two-thirds in interest of the
 4408 beneficiaries described in s. 736.0103(14)(a) or two-thirds in
 4409 interest of the beneficiaries described in s. 736.0103(14)(b),
 4410 if the interests of the beneficiaries are reasonably
 4411 ascertainable, otherwise, two-thirds in number of either such
 4412 class.

4413 Section 42. Subsection (4) of section 738.1041, Florida
 4414 Statutes, is amended to read:

4415 738.1041 Total return unitrust.--

4416 (4) All determinations made pursuant to sub-subparagraph
 4417 (2)(b)2.b. shall be conclusive if reasonable and made in good
 4418 faith. Such determination shall be conclusively presumed to have
 4419 been made reasonably and in good faith unless proven otherwise
 4420 in a proceeding commenced by or on behalf of a person interested
 4421 in the trust within the time provided in s. 736.1008 ~~737.307~~.
 4422 The burden will be on the objecting interested party to prove
 4423 that the determinations were not made reasonably and in good
 4424 faith.

4425 Section 43. Subsection (5) of section 738.202, Florida
 4426 Statutes, is amended to read:

4427 738.202 Distribution to residuary and remainder
 4428 beneficiaries.--

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4429 (5) The value of trust assets shall be determined on an
4430 asset-by-asset basis and shall be conclusive if reasonable and
4431 determined in good faith. Determinations based on appraisals
4432 performed within 2 years before or after the valuation date
4433 shall be presumed reasonable. The value of trust assets shall be
4434 conclusively presumed to be reasonable and determined in good
4435 faith unless proven otherwise in a proceeding commenced by or on
4436 behalf of a person interested in the trust within the time
4437 provided in s. 736.1008 ~~737.307~~.

4438 Section 44. Paragraph (a) of subsection (12) of section
4439 739.102, Florida Statutes, is amended to read:

4440 739.102 Definitions.--As used in this chapter, the term:

4441 (12) "Trust" means:

4442 (a) An express trust (including an honorary trust or a
4443 trust under s. 736.0408 ~~737.116~~), charitable or noncharitable,
4444 with additions thereto, whenever and however created; and
4445

4446 As used in this chapter, the term "trust" does not include a
4447 constructive trust or a resulting trust.

4448 Section 45. Paragraphs (b) and (f) of subsection (6) of
4449 section 744.331, Florida Statutes, are amended to read:

4450 744.331 Procedures to determine incapacity.--

4451 (6) ORDER DETERMINING INCAPACITY.--If, after making
4452 findings of fact on the basis of clear and convincing evidence,
4453 the court finds that a person is incapacitated with respect to
4454 the exercise of a particular right, or all rights, the court
4455 shall enter a written order determining such incapacity. A

4456 person is determined to be incapacitated only with respect to
4457 those rights specified in the order.

4458 (b) When an order determines that a person is incapable of
4459 exercising delegable rights, the court must consider and find
4460 whether there is an alternative to guardianship which will
4461 sufficiently address the problems of the incapacitated person. A
4462 guardian must be appointed to exercise the incapacitated
4463 person's delegable rights unless the court finds there is an
4464 alternative. A guardian may not be appointed if the court finds
4465 there is an alternative to guardianship which will sufficiently
4466 address the problems of the incapacitated person. In any order
4467 ~~declaring a person incapacitated the court must find that~~
4468 ~~alternatives to guardianship were considered and that no~~
4469 ~~alternative to guardianship will sufficiently address the~~
4470 ~~problems of the ward.~~

4471 (f) Upon the filing of a verified statement by an
4472 interested person stating:

4473 1. That he or she has a good faith belief that the alleged
4474 incapacitated person's trust, trust amendment, or durable power
4475 of attorney is invalid; and

4476 2. A reasonable factual basis for that belief,
4477
4478 the trust, trust amendment, or durable power of attorney shall
4479 not be deemed to be an alternative to the appointment of a
4480 guardian. The appointment of a guardian does not limit the
4481 court's power to determine that certain authority granted by a
4482 durable power of attorney is to remain exercisable by the
4483 attorney in fact. ~~When an order is entered which determines that~~

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4484 ~~a person is incapable of exercising delegable rights, a guardian~~
 4485 ~~must be appointed to exercise those rights.~~

4486 Section 46. Paragraph (a) of subsection (6) of section
 4487 744.361, Florida Statutes, is amended to read:

4488 744.361 Powers and duties of guardian.--

4489 (6) A guardian who is given authority over any property of
 4490 the ward shall:

4491 (a) Protect and preserve the property and invest it
 4492 prudently as provided in chapter 518 ~~defined in s. 737.302,~~
 4493 apply it as provided in s. 744.397, and account for it
 4494 faithfully.

4495 Section 47. Subsections (11) and (18) of section 744.441,
 4496 Florida Statutes, are amended to read:

4497 744.441 Powers of guardian upon court approval.--After
 4498 obtaining approval of the court pursuant to a petition for
 4499 authorization to act, a plenary guardian of the property, or a
 4500 limited guardian of the property within the powers granted by
 4501 the order appointing the guardian or an approved annual or
 4502 amended guardianship report, may:

4503 (11) Prosecute or defend claims or proceedings in any
 4504 jurisdiction for the protection of the estate and of the
 4505 guardian in the performance of his or her duties. Before
 4506 authorizing a guardian to bring an action described in s.
 4507 736.0207, the court shall first find that the action appears to
 4508 be in the ward's best interests during the ward's probable
 4509 lifetime. If the court denies a request that a guardian be
 4510 authorized to bring an action described in s. 736.0207, the

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4511 court shall review the continued need for a guardian and the
 4512 extent of the need for delegation of the ward's rights.

4513 (18) When the ward's will evinces an objective to obtain a
 4514 United States estate tax charitable deduction by use of a split
 4515 interest trust (as that term is defined in s. 736.1201 ~~737.501~~),
 4516 but the maximum charitable deduction otherwise allowable will
 4517 not be achieved in whole or in part, execute a codicil on the
 4518 ward's behalf amending said will to obtain the maximum
 4519 charitable deduction allowable without diminishing the aggregate
 4520 value of the benefits of any beneficiary under such will.

4521 Section 48. Section 744.462, Florida Statutes, is created
 4522 to read:

4523 744.462 Determination regarding alternatives to
 4524 guardianship.--Any judicial determination concerning the
 4525 validity of the ward's durable power of attorney, trust, or
 4526 trust amendment shall be promptly reported in the guardianship
 4527 proceeding by the guardian of the property. If the instrument
 4528 has been judicially determined to be valid or if, after the
 4529 appointment of a guardian, a petition is filed alleging that
 4530 there is an alternative to guardianship which will sufficiently
 4531 address the problems of the ward, the court shall review the
 4532 continued need for a guardian and the extent of the need for
 4533 delegation of the ward's rights.

4534 Section 49. Sections 737.101, 737.105, 737.106, 737.111,
 4535 737.115, 737.116, 737.201, 737.202, 737.203, 737.2035, 737.204,
 4536 737.2041, 737.205, 737.206, 737.2065, 737.207, 737.208, 737.209,
 4537 737.301, 737.302, 737.303, 737.3035, 737.304, 737.305, 737.3053,
 4538 737.3054, 737.3055, 737.306, 737.3061, 737.307, 737.308,

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4539 737.309, 737.401, 737.402, 737.4025, 737.403, 737.4031,
 4540 737.4032, 737.4033, 737.404, 737.405, 737.406, 737.501, 737.502,
 4541 737.503, 737.504, 737.505, 737.506, 737.507, 737.508, 737.509,
 4542 737.510, 737.511, 737.512, 737.6035, 737.621, 737.622, 737.623,
 4543 737.624, 737.625, 737.626, and 737.627, Florida Statutes, are
 4544 repealed.

4545 Section 50. This act shall take effect July 1, 2007.